

Module - III
CS Professional

Corporate Funding & Listings in Stock Exchanges



Adv. Chirag Chotrani



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“Speak only that which will bring you honour”

In spite of all the variable factors like the canvass, paint and brush, the quality of the painting is the responsibility of a painter. The quality of a sculpture is the responsibility of the sculptor. Similarly, the quality of your life is your responsibility. Your life, your death, your success or failure is in your hands.

If I ask you to carry a 12 KG granite block, you will struggle with it. Instead, if I ask you to carry an adorable child, who weighs 12 KG, you will happily do it. Anything in life that is perceived as KASHTAM KASHTAM will only make you struggle. Anything in life that is perceived as ISHTAM ISHTAM will give you fulfillment.

The secret of living a life of fulfillment is to see responsibilities with ISHTAM ISHTAM attitude. Responsibilities should cause happiness to you and in you. Take charge. Take control. Take ownership. Be responsible. Remember, life or death or success or failure is your responsibility.

MY LOVE AND RESPECT TO....

To **Vikas Vohra** – You have never kept me like a faculty but like a small brother and always loved me unconditionally, I'll be your side till my last breath

To **Harish Mathariya** – for believing in my potentials like no one else can

To **my Mummy** – You are my inspiration, the way you believe in me is what makes me keep going

To **my Papa** – You taught me to stand up and never give up whatever the situation is

To **Shraddha Desai** – Thank You for making me what I am today

To **Manisha Parmar** – For strengthening the contents of this book and adding immense value to it

To **every Student** – Glad to have found so many teachers in you, my source of happiness, my strength

To **my Competitors** – Thank you for being so strong and amazing. You bring out the best in me

To **Yes Academy for everything**

Sandesh....

Dear Reader,

At the outset, let me first take this opportunity to thank you for spending some of your valuable time with my words. I feel pleased to present to you, notes on **Corporate Funding and Listings in Stock Exchanges (latest edition – after amendments)** for **CS Professional**.

While writing this book, I have taken every possible effort to cover each and every provision as may be applicable to you and in the most lucid language, so this sums up the entire syllabus. However, there is always a scope for improvement. I shall highly appreciate any changes, corrections, errors, interpretations suggested by you so that the same can be incorporated in the subsequent editions. You may write to me at **chirag.chotrani2@gmail.com** or get in touch directly on my cell at **+91 8446427759**.

Many a times, while speaking with students, I come across this question about the opportunities for a Company Secretary and their scope in the times to come. I shall be wrong; if I simply quote that life would be simple post completion of the Course. Perhaps, the times ahead poses a lot of challenges and like I always say the only thing, which shall survive in the long run, shall be the Power of Knowledge and the ability to express the same and apply. Readers, empower yourself so robustly that as and when a challenge arises, it turns its way and says: let's catch hold of a weaker one.

It's said, "Fortune favors the brave". You give your best shot and leave the rest upon god to decide. Realize your strengths, work on your weaknesses, grab the best possible opportunity and overcome your threats. Different people define success differently as it means different to different. Realize your **"Being Successful"** factors and start chasing them every morning as you get up.

"Do everything no matter how unglamorous, to the best of your ability"

Because in the end, what shall matter would be quality of life you spent and the smiles you lent to the people around you!!!!

With this, I wish you all a happy reading and I hope that you fall in love with this subject. I wish you all good luck and that you achieve what all you work for. Keep working, keep reading, keep spreading love, happiness and smile. You shall be a part of my prayers. I promise to serve you with the best. Someday, we shall once again meet AT THE TOP....

Try to
Reinvent
Yourself

CHIRAG CHOTRANI
Cell: 8446427759





INTRODUCTION

- a) These are investment vehicles that own, operate and manage a portfolio of income-generating properties for regular returns. These are usually commercial properties (offices, shopping centers, hotels etc.) that generate rental income. It works very much like a mutual fund which pools funds from a number of investors and invests them in rent generating properties.
- b) SEBI requires Indian REITs to be listed on stock exchanges and to make an IPO to raise money. Just like MFs, REITs are subject to a three-tier structure —
 - i. **Sponsor** - who is responsible for setting up the REIT,
 - ii. **Fund Management Company** - which is responsible for selecting and operating the properties, and
 - iii. **The trustee** - who ensures that the money is managed in the interest of unit-holders.
- c) The Real Estate Investment Trust (**REIT**) is an investment vehicle that invests in rent-yielding completed real estate properties which has the potential to transform the Indian real estate sector.
- d) REIT helps attracting long-term financing from domestic as well as foreign sources. This could improve fund availability to real estate developers and reduce some burden on completed assets by allowing owners of such assets to raise capital from investors against issue of units. Further, for the investors, the REIT can provide a new investment vehicle with ongoing returns, elevated transparency and governance standards.
- e) It emanated in the USA in 1960s as tax transparent collective investment vehicle.
- f) In India, SEBI had introduced real estate mutual funds pursuant to recommendations of an AMFI (Association of Mutual Funds in India)





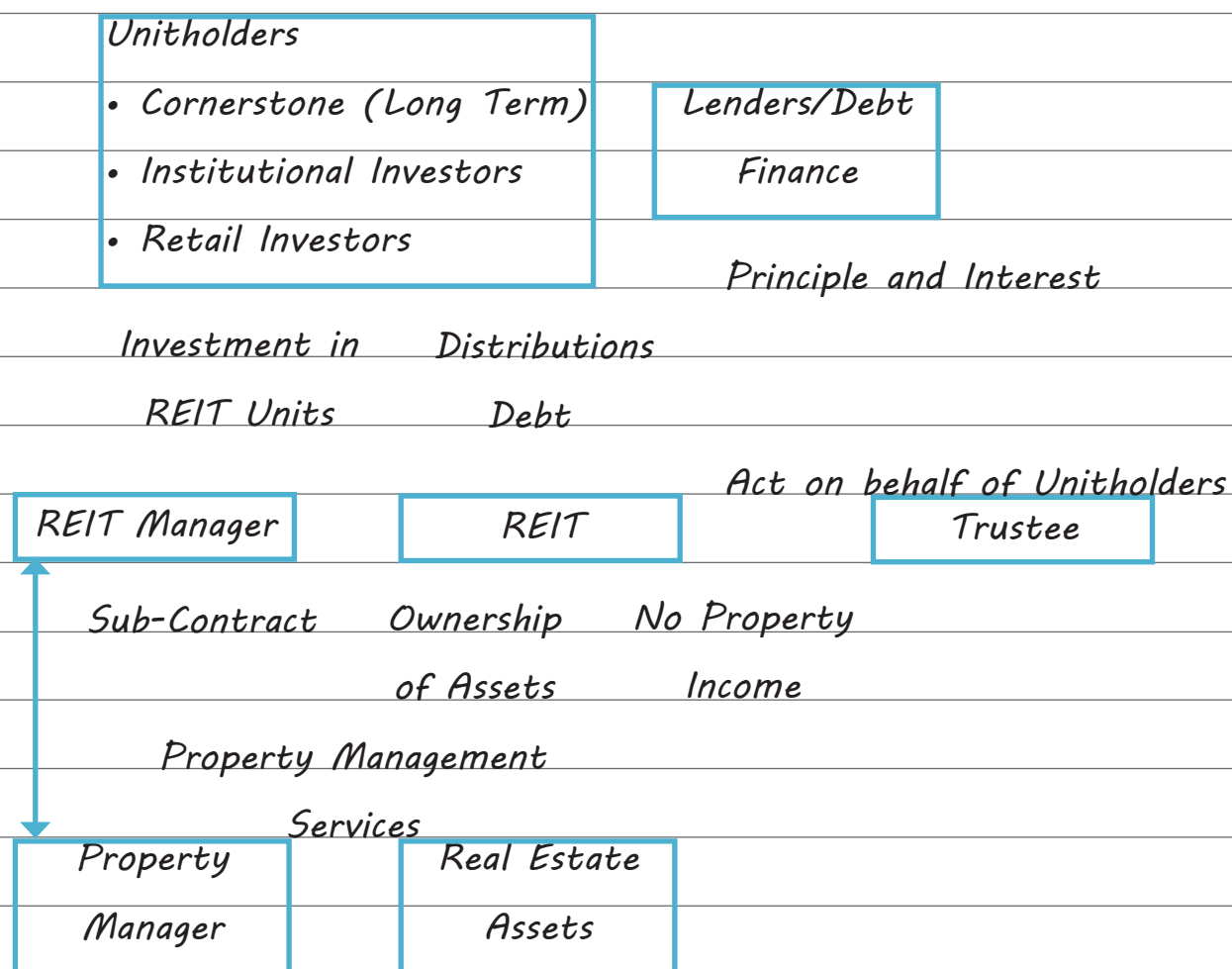
Committee in 2008. In 2013, a regulatory framework was once again put on public domain. The major concern surrounding the viability of REITs in India was the non-availability of Tax Pass Through status. However, by virtue of the Finance Act 2014, Ministry of Finance provided tax incentives to the scheme. SEBI acted proactively after the announcement of Budget and SEBI approved the REITs regulation.

SEBI on 26th September 2014 finally notified the final regulations - SEBI (Real Estate Investment Trust) Regulations, 2014.

- g) REITs in India would issue securities, which would be listed on stock exchanges. REITs will invest predominantly in completed commercial real estate assets, either directly or through SPVs. Initially, REITs are planned to be available only to high net worth individuals and institutions to develop the market. Gradually, they will be available for retail investors as well.



REIT STRUCTURE



SALIENT FEATURES OF SEBI (REIT) REGULATIONS, 2014

Governing Code

SEBI (Real Estate Investment Trusts) Regulations, 2014

Legal Structure

Trust set up under Indian Trusts Act, 1882

Parties to the REITs

Sponsor Group, Re-designated Sponsor, Manager and Trustee.

Maximum number of sponsors that REITs can have & Unit holding obligation

- Each sponsor shall hold or propose to hold minimum 5% of units of REITs.
- Collectively to hold minimum of 25% of the units of the REIT for a period





of not less than 3 years from the date of listing.

- Sponsor(s) and sponsor group(s) together hold not less than fifteen per cent of the outstanding units of the listed REIT at all times.

Eligibility for Trustee

Shall be registered as a Trustee under SEBI (Debenture Trustee) Regulations, 1993 and shall not be an associate of Sponsor/Manager/principle valuer.

Listing requirement

Listing is mandatory for Units

Investment conditions

At least 80% of the value of the REIT assets needs to be in completed and revenue generating properties;

Other Permissible Investments

Remaining 20% can be invested in

- Developmental properties
- Listed or unlisted debt of companies/ body corporate in real estate sector;
- Mortgage backed securities;
- Equity shares of companies listed on a recognized stock exchange in India which derive not less than 75% of their operating income from Real Estate activity;
- Government securities;
- Unutilized FSI (Floor Space Index) of a project;
- TDR acquired for the purpose of Utilization
- Money market instruments or Cash equivalents;

Valuation of assets

Full valuation on a yearly basis and updating the same on a half yearly basis and declare NAV within 15 days from the date of such valuation/updation.



Distribution of Income

At least 90% of the profit after tax should be paid to the unit holders in the form of dividend on half yearly basis and not later than 15 days.

Mode of Investment in properties

- a) *Directly or through SPVs holding at least 80% of their assets directly in such properties and shall not invest in other SPVs.*
- b) *The REIT shall hold controlling interest i.e. not less than 50% of the equity share capital of the Special Purpose Vehicle*

Initial offer restrictions

- *Minimum offer size should be at least Rs. 250 crore*

Minimum Subscription and unit size

Under both the initial offer and follow-on offer, rights issue, QIP, minimum subscription size for units of REIT shall be Rs 50000.

The units offered to the public in initial offer shall not be less than 25% of the number of units of the REIT on post-issue basis

Trading lot shall be 100 Units

Borrowings and Deferred payments

- a) *Borrowing and deferred payment of REIT shall never exceed 49% of the value of REIT assets.*
- b) *In case such borrowings/ deferred payments exceed 25% then approval from unit holders shall be taken and credit rating shall be done.*

DEFINITIONS

“Associate” of any person shall be as defined under the Companies Act, 2013 or under the applicable accounting standards and shall also include following:

- (i) *any person controlled, directly or indirectly, by the said person;*
- (ii) *any person who controls, directly or indirectly, the said person;*





(iii) where the said person is a company or a body corporate, any person(s) who is designated as promoter(s) of the company or body corporate and any other company or body corporate with the same promoter(s);

(iv) where the said person is an individual, any relative of the individual;

"Body corporate" shall have the meaning assigned to it in or under sub-section (11) of section 2 of the Companies Act, 2013;

"Bonus issue" means additional units allotted to the unit holders as on the record date fixed for the said purpose, without any cost to the unit holder;

"Change in control" means, -

(i) in case of a company or body corporate, change in control where 'control' shall have the meaning as provided in sub-section (27) of section 2 of the Companies Act, 2013;

(ii) in any other case, change in the controlling interest.

Explanation. — It may be noted that the expression "controlling interest" means an interest, whether direct or indirect, to the extent of not less than fifty percent of voting rights or interest;

"Completed property" means property for which occupancy certificate has been received from the relevant authority;

"Floor Space Index" or "FSI" shall mean the buildable area on a plot of land as specified by the competent authority.

"Follow-on Offer" means offer of units of a listed REIT to the public for subscription and includes an offer for sale of REIT units by an existing unit holder to the public.

"Holdco" or "holding company" shall mean a company or LLP, -

(i) in which REIT holds or proposes to hold not less than fifty per cent of the equity share capital or interest and which it in turn has made investments in other SPV(s), which ultimately hold the property;





- (ii) which is not engaged in any other activity other than holding of the underlying SPV(s), holding of real estate/properties and any other activities pertaining to and incidental to such holdings;

“Net asset value” or “NAV” means the value of the REIT assets reduced by the external debt divided by the number of outstanding units as on a particular date.

$$NAV = \frac{\text{Assets-Outsiders liability}}{\text{Outstanding Units}}$$

“Occupancy certificate” means a completion certificate, or such other certificate, as the case may be, issued by the competent authority permitting occupation of any property under any law for the time being in force.

“Real Estate” or “Property” means land and any permanently attached improvements to it, whether leasehold or freehold and includes buildings, sheds, garages, fences, fittings, fixtures, warehouses, car parks, etc. and any other assets incidental to the ownership of real estate but does not include mortgage:

However, any asset falling under the purview of ‘infrastructure’ shall not be considered as ‘real estate’ or ‘property’ for the purpose of these Regulations.

Apart from the above, following captured within the above-mentioned definition of infrastructure shall be considered under “real estate” or “property”, -

- (i) hotels, hospitals and convention centers, forming part of composite real estate projects, whether rent generating or income generating;
- (ii) common infrastructure for composite real estate projects, industrial parks and SEZ;





“Real estate assets” means properties held by REIT, on a freehold or leasehold basis, whether directly or through a holdco and/or a special purpose vehicle.

“Re-designated Sponsor” means any person who has assumed the responsibility of the sponsor or from any re-designated sponsor thereafter;

“REIT” or **“Real Estate Investment Trust”** shall mean a trust registered as such under the REIT Regulations;

“REIT assets” means real estate assets and any other assets owned by the REIT on a freehold or leasehold basis, whether directly or through a holdco and /or special purpose vehicle;

“Related Party” shall be defined under the Companies Act, 2013 or under the applicable accounting standards and shall also include:

- (i) parties to the REIT;
- (ii) promoters;
- (iii) directors; and
- (iv) partners of the persons in clause (i).

“Special purpose vehicle” or **“SPV”** means any company or LLP:

- (i) in which either the REIT or the holdco holds or proposes to hold not less than fifty per cent of the equity share capital or interest;
- (ii) which holds not less than eighty per cent of its assets directly in properties and does not invest in other special purpose vehicles; and
- (iii) which is not engaged in any activity other than holding and developing property and any other activity incidental to such holding or development;

“Sponsor” means any person(s) who set(s) up the REIT and designated as such at the time of application made to SEBI.

“Sponsor group” - includes:

- (i) the sponsor(s);
- (ii) in case the sponsor is a body corporate:





- a. entities or person(s) which are controlled by such body corporate;
 - b. entities or person(s) who control such body corporate;
 - c. entities or person(s) which are controlled by person(s) as referred at clause b.
- (iii) in case sponsor is an individual:
- a. an immediate relative of such individual (i.e., any spouse of that person, or any parent, brother, sister or child of the person or of the spouse); and
 - b. entities or person(s) which are controlled by such individual

“Transferable development rights” or “TDR” shall mean development rights issued by the competent authority under relevant laws in lieu of the area relinquished or surrendered by the owner or developer or by way of declared incentives by the Government or authority.

“Valuer” means any person who is a “registered valuer” under Companies Act, 2013.

ELIGIBILITY CRITERIA

No person shall act as a REIT unless it is registered with SEBI under the REIT Regulations. The following conditions shall be considered before grant of registration:

(a) Applicant

The person applying must be a sponsor on behalf of the trust and a Trust Deed having its main objective as undertaking activity of REIT must be registered under Registration Act, 1908.

(b) Sponsor

Each sponsor shall hold or propose to hold not less than 5% of the number of units of the REIT on post-initial offer basis. Further, each sponsor and sponsor group shall be clearly identified in the application of registration to SEBI.





- For each sponsor group not less than one person shall be identified as a sponsor.
- The sponsor(s), on a collective basis, have a net worth of not less than one hundred crore rupees: However, each sponsor has a net worth of not less than twenty crore rupees; and
- The sponsor or its associate(s) has not less than five years' experience in development of real estate or fund management in the real estate industry; However, where the sponsor is a developer, at least two projects of the sponsor have been completed.

(c) Manager:

- If, the Manager is a body corporate, the net worth of the manager shall not be less than Rs. 10 crore or in case, the manager is an LLP, the value of net tangible assets shall not be less than ten crore rupees;
- Experience of 5 Years in fund management/ advisory services/ property management in the real estate industry or in development of real estate and have at least 2 key personnel who each have not less than 5 years of experience in the same field.
- At least 50% of the directors should be Independent Directors and in case of LLP 50% of the members should be Independent and the manager must have entered into an investment management agreement with the trustee which states the responsibilities of the manager.

(d) Trustee

It should be registered with SEBI under SEBI (Debenture Trustees) Regulations, 1993.

- (e) All the unit holders shall have equal voting and other rights; however, sponsor and its associates may be issued with subordinate units which carry inferior rights.





- (f) The applicant has clearly described at the time of application for registration, details pertaining to proposed activities of the REIT.
- (g) The REIT and parties to the REIT are fit and proper persons based on the criteria as specified in Schedule II of the SEBI (Intermediaries) Regulations, 2008.
- (h) Whether any previous application for grant of certificate by the REIT or the parties to the REIT or their directors/members of governing board has been rejected by SEBI.
- (i) Whether any disciplinary action has been taken by SEBI or any other regulatory authority against the REIT or the parties to the REIT.

ISSUE AND ALLOTMENT OF UNITS

1. A REIT shall make an initial offer of its units by way of public issue only.
2. No initial offer of units by the REIT shall be made unless,
 - the REIT is registered with SEBI under the REIT Regulations;
 - the value of the REIT assets owned by the REIT is not less than Rs.500 crores;

It may be noted that such value shall mean the value of the specified portion of the holding of REIT in the underlying assets or SPVs.

 - the minimum number of unit holders other than sponsor(s), its related parties and its associates forming part of public shall be not less than two hundred; and
 - the offer size is not less than Rs. 250 crores.
3. The requirement of ownership of assets and size of REIT to be not less than 500 crores may be complied at any point of time before allotment of units.
4. For a REIT raising funds through an initial offer, the units proposed to be offered to the public through such initial offer:





- (a) If post issue capital is less than Rs. 1600 crore then not less than 25% of the total of the outstanding units of the REIT.
- (b) If above Rs. 1600 crores and less than Rs. 4000 crores then the value of at least Rs 400 crore,
- (c) If post issue capital is more than Rs. 4000 crores than at least 10% of the total of the outstanding units of the REIT.

However, any units offered to sponsor or the manager or their related parties or their associates shall not be counted towards units offered to the public. Further, any listed REIT which has public holding below 25%, such REIT shall increase its public holding to at least 25%, within a period of three years from the date of listing pursuant to initial offer.

- 5. Any subsequent issue of units by the REIT may be by way of follow-on offer, preferential allotment, qualified institutional placement, rights issue, bonus issue, offer for sale or any other mechanism and in the manner as may be specified by SEBI.
- 6. REIT, through the merchant banker, shall file a draft offer document along with the prescribed fees with the designated stock exchange(s) and SEBI, not less than 30 working days before filing offer document with the designated stock exchange and SEBI.
- 7. The draft offer document filed with SEBI shall be made public, for comments, by hosting it on the websites of SEBI, designated stock exchanges and merchant bankers associated with the issue for a period of not less than 21 days.
- 8. The draft offer document and/or final offer document shall be accompanied by a due diligence certificate signed by the lead merchant banker.
- 9. SEBI may communicate its comments to the lead merchant banker and, in the interest of investors, may require the lead merchant banker to carry out such modifications in the draft offer document as it deems fit.





10. The lead merchant banker shall ensure that all comments received from SEBI on the draft offer document are suitably taken into account prior to the filing of the offer document with the designated stock exchanges.
11. In case no observations are issued by SEBI on the draft offer document within 21 working days, then REIT may file the offer document or follow-on offer document with SEBI and the exchange(s).
12. Offer document to be filed with SEBI and DSE at least 5 working days prior to the opening of the issue.
13. The initial offer or follow-on offer or right issue shall be made by the REIT within a period of not more than one year from the date of issuance of observations by SEBI.
However, if the initial offer or follow-on offer or right issue is not made within the specified time period, a fresh draft offer document shall be filed.
14. The application for subscription shall be accompanied by a statement containing the abridged version of the offer document, detailing the risk factors and summary of the terms of issue.
15. Under both the initial offer and follow-on public offer, the REIT shall not accept subscription of an amount less than Rs. 50000 from an applicant.
16. Initial offer and follow-on offer shall not be open for subscription for a period of more than thirty days.
17. In case of over-subscriptions, the REIT shall allot units to the applicants on a proportionate basis.
(Rounded off to the nearest integer subject to minimum subscription amount per subscriber as specified above.)
18. The REIT shall allot units or refund application money as the case may be, within 12 working days from the date of closing of the issue.





19. The REIT shall issue units only in dematerialized form to all the applicants.
20. The price of REIT units issued by way of public issue shall be determined through the book building process.
21. The REIT shall refund money, -
 - (a) to all applicants in case it fails to collect subscription amount of exceeding 90% of the fresh issue size as specified in the offer document.
 - (b) to applicants to the extent of over subscription in case the moneys received is in excess of the extent of over-subscription as specified in the offer document. The right to retain such over subscription cannot exceed 25% of the issue size. The Offer Document shall contain adequate disclosures towards the utilisation of such over subscription proceeds, if any, and such proceeds retained on account of over subscription shall not be utilised towards general purposes.
 - (c) to all applicants in case the number of subscribers to the initial offer forming part of the public is less than 200.
22. Default in the above provision shall lead to penalty of 15% PA.
23. Units may be offered for sale to public: -
 - a) If such units have been held by the existing unit holders for a period of at least one year prior to the filing of draft offer document with SEBI. However, the holding period for the equity shares, compulsorily convertible securities from the date such securities are fully paid up against which such units have been received shall be considered for the purpose of calculation of one-year period.
 - b) Subject to other circulars or guidelines as may be specified by SEBI in this regard.
24. The amount for general purposes, as mentioned in objects of the issue in the draft document filed with SEBI, shall not exceed to 10 % of the amount raised by the REIT by issuance of units.





25. If the REIT fails to make its initial offer within three years from the date of registration with SEBI, it shall surrender its certificate of registration to SEBI and cease to operate as a REIT. SEBI if it deems fit, may extend the period by another one year. Further, the REIT may later re-apply for registration, if it so desires.
26. SEBI may specify by issue of guidelines or circulars any other requirements, as it deems fit, pertaining to issue and allotment of units by a REIT.

OFFER DOCUMENT AND ADVERTISEMENTS

The Offer document of the REIT shall contain material, true, correct and adequate disclosures to enable the investors to make an informed decision. Any advertisement material relating to any issue of units of the REIT shall not be misleading and shall not contain anything extraneous to the contents of the offer document. If an advertisement contains positive highlights, it shall also contain risk factors with equal importance in all aspects including print size.

LISTING AND TRADING OF UNITS

1. The units of the REIT shall be listed within a period of 12 working days from the closure of the offer.
2. The listing of the units of the REIT shall be in accordance with the listing agreement entered into between the REIT and the designated stock exchange.
3. In the event of non-receipt of listing permission from the stock exchange(s) or withdrawal of Observation Letter issued by SEBI, wherever applicable, the units shall not be eligible for listing and the REIT shall be liable to refund the subscription monies, if any, to the respective allottees immediately along with interest at the rate of 15% per annum from the date of allotment.





4. The units of the REIT listed in recognized stock exchanges shall be traded, cleared and settled in accordance with the bye-laws of concerned stock exchanges and such conditions as may be specified by SEBI.
5. Trading lot for the purpose of trading of units of the REIT shall be **100 Units**.
6. The **REIT shall redeem units only by way of a buy-back** or at the time of delisting of units.
7. The minimum public holding for the units of the listed REIT shall be in accordance with point 4 as discussed under Issue and Allotment of Units. However, in case of breach of the conditions specified here, the trustee may provide a period of six months to the manager to rectify the same, failing which the manager shall apply for delisting of units.
Any person other than the sponsor(s) holding units of the REIT prior to initial offer shall hold the units for a period of not less than one year from the date of listing of the units subject to circulars or guidelines as may be specified by SEBI.
8. SEBI and the designated stock exchanges may specify any other requirements pertaining to listing and trading of units of the REIT by issuance of guidelines or circulars.

DELISTING OF UNITS

1. The manager **shall apply for delisting of units** of the REIT to SEBI and the designated stock exchanges if, -
 - (a) the **public holding falls below the specified limit** as prescribed under REIT Regulations.
 - (b) if there are **no projects or assets remaining under the REIT for a period exceeding six months** and REIT does not propose to invest in any project



in future. The period may be extended by further six months, with the approval of unit holders in the manner as specified in REIT Regulations.

- (c) SEBI or the designated stock exchanges require such delisting for violation of the listing agreement or these regulations or the Act;
 - (d) the sponsor(s) or trustee requests such delisting and such request has been approved by unit holders in accordance with the REIT Regulations.
 - (e) The unit holders may also apply for such delisting in accordance with the provisions as prescribed for rights and meeting if unit holders.
 - (f) SEBI or the designated stock exchanges require such delisting for violation of the listing agreement, these regulations or the Act or in the interest of the unit holders.
2. SEBI and the designated stock exchanges may consider such application for approval or rejection as may be appropriate in the interest of the unit holders.
 3. SEBI, instead of requiring delisting of units, if it deems fit, may provide additional time to the REIT or parties to the REIT to comply with REIT Regulations.
 4. SEBI may reject the application for delisting and take any other action, as it deems fit under REIT Regulations or the Act for violation of the listing agreement or REIT Regulations or the Act.
 5. The procedure for delisting of units of REIT including provision of exit option to the unit holders shall be in accordance with the listing agreement and in accordance with procedure as may be specified by SEBI and by the designated stock exchanges from time to time.
 6. SEBI may require the REIT to wind up and sell its assets in order to redeem units of the unit holders for the purpose of delisting of units and SEBI may through circulars or guidelines specify the manner of such winding up or sale.





7. 7. After delisting of its units, the REIT shall surrender its certificate of registration to SEBI and shall no longer undertake activity of a REIT. However, the REIT and parties to the REIT shall continue to be liable for all their acts of omissions and commissions with respect to activities of the REIT notwithstanding such surrender.

INVESTMENT CONDITIONS AND DISTRIBUTION POLICY

1. The Investment by a REIT shall only be in holdco and/or SPVs or properties or securities or TDR in India and in accordance with the investment strategy as detailed in the offer document as may be amended subsequently.
2. Not to invest in vacant land or agricultural land or mortgages other than mortgage backed securities. However, this shall not apply to any land which is contiguous and extension of an existing project being implemented in stages.
3. The REIT may invest in properties through SPVs subject to the following
 - (a) no other shareholder or partner of the SPV shall exercise any rights that prevents the REIT from complying with the provisions of the REIT Regulations and an agreement has been entered into with such shareholders or partners to that effect prior to investment in the SPV. However, the shareholders' agreement or partnership agreement shall provide for an appropriate mechanism for resolution of disputes between the REIT and the other shareholders or partners in the SPV. Further, the provisions of REIT Regulations shall prevail in case of inconsistencies between such agreement(s) and the obligations cast upon a REIT under REIT Regulations.
 - (b) the manager, in consultation with the trustee, shall appoint at least such number of nominees on the board of directors or the governing board



of such SPVs, as applicable, which are in proportion to the shareholding or holding interest of the REIT in the SPV.

- (c) the manager, in consultation with the trustee, shall appoint the majority of the Board of directors or governing board of such SPVs, as applicable;
- (d) the manager shall ensure that in every meeting including annual general meeting of the SPV, the voting of the REIT is exercised.

4. The REIT may invest in properties through holdco subject to the following -

- (a) the ultimate holding interest of the REIT in the underlying SPV(s) is not less than 26%.
- (b) no other shareholder or partner of the holdco or the SPV(s) shall exercise any rights that prevent the REIT, the holdco or the SPV(s) from complying with the provisions of REIT Regulations and an agreement has been entered into with such shareholders or partners to that effect prior to investment in the holdco and/or SPVs;

However, the shareholders' agreement or partnership agreement shall provide for an appropriate mechanism for resolution of disputes between the REIT and the other shareholders or partners in the holder and/or SPV. Further, the provisions of REIT Regulations, shall prevail in case of inconsistencies between such agreement(s) and the obligations cast upon a REIT under REIT Regulations.

Further, the provisions of REIT Regulations shall prevail in case of inconsistencies between such agreement(s) and the obligation casted upon the REIT under REIT Regulations.

- (c) the manager, in consultation with the Trustee, shall appoint at least such members of nominees on the Board of directors or governing board of the holdco and/or SPV(s) in proportion to the shareholding or holding interest in the REIT/holdco in the SPV;





- (d) the manager shall ensure that in every meeting including annual general meeting of the holdco and/or SPV(s), the voting of the REIT is exercised.
5. Not less than 80% of value of the REIT assets shall be invested in completed and rent/and/or income generating properties subject to the following -
- (a) if the investment has been made through a holdco and/or SPV, whether by way of equity or debt or equity linked instruments or partnership interest, only the portion of direct investments in properties by such holdco and/or SPVs shall be considered
 - (b) if any project is implemented in stages, the part of the project which is completed and rent and/ or income generating shall be considered.
6. Not more than 20% of value of the REIT assets shall be invested in assets other than as provided in clause (5) and such other investment shall only be in,
- a) properties, whether directly or through company or through LLP which are:
 - (i) under-construction properties which shall be held by the REIT for not less than three years after completion;
 - (ii) under-construction properties which are a part of the existing income generating properties owned by the REIT which shall be held by the REIT for not less than three years after completion;
 - (iii) completed and not rent generating properties which shall be held by the REIT for not less than three years from date of purchase;
 - b) listed or unlisted debt of companies or body corporate in real estate sector.

However, this shall not include any investment made in debt of the holdco and/or SPVs;





- c) mortgage backed securities;
- d) equity shares of companies which are listed on a recognized stock exchange in India which derive not less than 75% of their operating income from real estate activity as per the audited accounts of the previous financial year;
- e) unlisted equity shares of companies which derive not less than 75% of their operating income from real estate activity as per the audited accounts of the previous financial year.

However, the investments, made through unlisted equity shares of a company, in under construction properties and/or completed and not rent generating properties, shall be in compliance with clause (1).

- f) government securities;
 - g) unutilized FSI of a project where it has already made investment;
 - h) TDR acquired for the purpose of utilization with respect to a project where it has already made investment;
 - i) money market instruments or cash equivalents.
6. The investment conditions as specified above shall be complied at the time of Offer document and thereafter.
 7. Not less than 51% of the consolidated revenues of the REIT, holdco and the SPV, other than gains arising from disposal of properties, shall be, at all times, from rental, leasing and letting real estate assets or any other income incidental to the leasing of such assets.
 8. Conditions specified in above clauses shall be monitored on a half-yearly basis and at the time of acquisition of an asset. Further, if such conditions are breached on account of market movements of the price of the underlying assets or securities or change in tenants or expiry of lease or sale of properties, the manager shall inform the same to the trustee and ensure that the conditions as specified in REIT Regulations are satisfied within six months of such breach.





The period may be extended by another six months subject to approval from investors.

9. A REIT shall hold any completed and rent generating property, whether directly or through holdco or SPV, for a period of not less than three years from the date of purchase of such property by the REIT or holdco or SPV.
10. For any sale of property, whether by the REIT or holdco or the SPV or for sale of shares or interest in the SPV by the holdco or REIT exceeding 10% of the value of REIT assets in a financial year, the manager shall obtain approval from the unit holders.
11. A REIT shall not invest in units of other REITs.
12. A REIT shall not undertake lending to any person, other than the holding company/Special purpose vehicle(s) in which the REIT has invested in, subject to disclosures specified in REIT Regulations and the investment in debt securities shall not be considered as lending.
13. With respect to investment in leasehold properties, the manager shall consider the remaining term of the lease, the objectives of the REIT, the lease profile of the REIT's existing real estate assets and any other factors as may be relevant, prior to making such investment.
14. In case of any co-investment with any person(s) in any transaction,
 - a) The investment by the other person(s) shall not be at terms more favorable than those to the REIT.
 - b) The investment shall not provide any rights to the person(s) which shall prevent the REIT from complying with the provisions of these regulations.
 - c) The agreement with such person(s) shall include the minimum percentage of distributable cash flows that will be distributed and entitlement of the REIT to receive not less than pro rata distributions and mode for resolution of any disputes between the REIT and the other person(s).





15. With respect to distributions made by the REIT and the holdco and/or SPV,
- a) Not less than 90% of net distributable cash flows of the SPV shall be distributed to the REIT or holdco in proportion of its holding in the SPV subject to applicable provisions in the Companies Act, 2013 or the Limited Liability Partnership Act, 2008.
 - b) With regard to distribution of net distributable cash flows by the holdco to the REIT, subject to applicable provisions in the Companies Act, 2013 or the Limited Liability Partnership Act, 2008, the following shall be complied:
 - (i) with respect to the cash flows received by the holdco from underlying SPVs, 100% of such cash flows received by the holdco shall be distributed to the REIT; and
 - (ii) with respect to the cash flows generated by the holdco on its own, not less than 90% of such net distributable cash flows shall be distributed by the holdco to the REIT;

Not less than ninety per cent of net distributable cash flows of the REIT shall be distributed to the unit holders.
 - c) If any property is sold by the REIT or holdco or SPV or if the equity shares or interest in the holdco/ SPV are sold by the REIT, then -
 - (i) if the REIT proposes to reinvest sale proceeds, if any, into another property, it shall not be required to distribute any sale proceeds from such sale to the unit holders;
 - (ii) if the REIT proposes not to invest the sales proceeds made into any other property within a period of 1 year, it shall be required to distribute not less than ninety per cent of the sales proceeds in accordance with the provisions of Listing and trading of units as prescribed under REIT Regulations.
16. If the distributions are not made within fifteen days of declaration, then the manager shall be liable to pay interest to the unit holders at the rate





of 15% per annum till the distribution is made and such interest shall not be recovered in the form of fees or any other form payable to the manager by the REIT.

17. 17. No schemes shall be launched under the REIT.

18. 18. SEBI may specify any additional conditions for investments by the REIT as it deems fit.

RIGHTS AND MEETING OF THE UNIT HOLDERS

1. The unit holder shall have the rights to receive income or distributions as provided for in the Offer document or trust deed.

2. With respect to any matter requiring approval of the unit holders, -

(a) a resolution shall be considered as passed when the votes cast by unit holders, so entitled and voting, in favor of the resolution exceed a certain percentage, as specified in this regulation, of the votes cast against;

(b) the voting may also be done by postal ballot or electronic mode;

(c) a notice of not less than 21 days either in writing or through electronic mode shall be provided to the unit holders;

(d) voting by any person who is a related party in such transaction as well as associates of such person(s) shall not be considered on the specific issue;

(e) manager shall be responsible for all the activities pertaining to conducting of meeting of the unit holders, subject to overseeing by the trustee.

However, In case of issues pertaining to manager such as change in manager including removal of the manager or change in control of the manager, then trustee shall convene and handle all activities pertaining to conduct of the meetings. Further, in case of issues related to trustee such as change in the trustee, the trustee shall not be involved in any manner in the conduct of the meeting.





3. An annual meeting of all unit holders shall be held not less than once a year within 120 days from the end of financial year and the time between two meetings shall not exceed 15 months.
4. With respect to the annual meeting of unit holders,-
 - (a) any information which is required to be disclosed to the unit holders and any issue, in the ordinary course of business, may require approval of the unit holders may be taken up in the meeting including,-
 - latest annual accounts and performance of the REIT;
 - approval of auditor and fees of such auditor, as may be required;
 - latest valuation reports;
 - appointment of valuer, as may be required;
 - any other issue including special issues as specified in clause (6).
 - (b) For any issue taken up in such meetings which require approval from the unit holders, votes cast in favor of the resolution shall be more than the votes cast against the resolution.
5. In case of, -
 - a) any approval from unit holders required for investment conditions, related party transactions and valuation of assets under REIT Regulations.
 - b) any transaction, other than any borrowing, value of which is equal to or greater than 25% of the REIT assets,
 - c) any borrowing in excess of limit as specified under the REIT Regulations.
 - d) any issue of units after initial offer by the REIT, in whatever form, other than any issue of units which may be considered by SEBI under clause (6);
 - e) increasing period for compliance with investment conditions to one year in accordance with the REIT Regulations.
 - f) any issue, in the ordinary course of business, which in the opinion of the sponsor(s) or trustee or manager, is material and requires approval of the





unit holders, if any;

- g) any issue for which SEBI or the designated stock exchange requires approval.

Approval from unit holders shall be required where the votes cast in favor of the resolution shall be more than the votes cast against the resolution.

6. In case of, -

- (a) any change in manager including removal of the manager or change in control of the manager;
- (b) any material changes in investment strategy or any change in the management fees of the REIT;
- (c) the sponsor(s) or manager proposing to seek delisting of units of the REIT;
- (d) the value of the units held by a person along with its associates other than the sponsor(s) and its associates exceeding fifty per cent of the value of outstanding REIT units, prior to acquiring any further units;
- (e) any issue, not in the ordinary course of business, which in the opinion of the sponsor(s) or Manager or trustee requires approval of the unit holders;
- (f) any issue for which SEBI or the designated stock exchanges requires approval;
- (g) any issue taken up on request of the unit holders including:
 - (i) removal of the manager and appointment of another manager to the REIT;
 - (ii) removal of the auditor and appointment of another auditor to the REIT;
 - (iii) removal of the valuer and appointment of another valuer to the REIT;
 - (iv) delisting of the REIT if the unit holders have sufficient reason to believe that such delisting would act in the interest of the unit holders;





- (v) any issue which the unit holders have sufficient reason to believe that acts detrimental to the interest of the unit holders;
- (vi) change in the trustee if the unit holders have sufficient reason to believe that acts of such trustee is detrimental to the interest of the unit holders. Approval from unit holders shall be required where the votes cast in favor of the resolution shall be not less than one and half times the votes cast against the resolution.

However, in case of clause (d), if approval is not obtained, the person shall provide an exit option to the unit holders to the extent and in the manner as may be specified by SEBI.

7. With respect to the right(s) of the unit holders -
 - (a) not less than 25% of the unit holders by value, other than any party related to the transactions and its associates, shall apply, in writing, to the trustee for the purpose;
 - (b) on receipt of such application, the Trustee shall require the manager to place the issue for voting in the manner as specified in the REIT Regulations;
 - (c) with respect to clause (6)(g)(vi) as mentioned above, not less than 60% of the unit holders by value shall apply, in writing, to the manager for the purpose.
8. In case of any change in sponsor or re-designated sponsor or change in control of sponsor or redesignated sponsor:
 - (a) prior to such changes, approval shall be obtained from the unit holders wherein votes cast in favor of the resolution shall not be less than three times the votes cast against the resolution;
9. if such change does not receive the required approval -
 - (a) in case of change of sponsor or re-designated sponsor, the proposed re-designated sponsor who proposes to buy the units shall provide the dissenting unit holders an option to exit by buying their units;





- (b) (b) in case of change in control of the sponsor or re-designated sponsor, the sponsor or redesignated sponsor shall provide the dissenting unit holders an option to exit by buying their units;
- If on account of such sale, the number of unit holders forming part of the public falls below two hundred or below, the trustee may provide a period of one year to the manager to rectify the same, failing which the manager shall apply for delisting of the units of the REIT in accordance with the REIT Regulations.

DISCLOSURES

1. The manager shall ensure that the disclosures in the offer document are in accordance with Schedule II of the REIT Regulations and any circulars or guidelines issued by SEBI in this regard.
2. The manager shall submit an annual report to all unit holders of the REIT with respect to activities of the REIT, within three months from the end of the financial year.
3. The manager shall submit a half-yearly report to all unit holders of the REIT with respect to activities of the REIT within forty-five days from the end of the half year ending on September 30th.
4. Such annual and half yearly reports shall contain disclosures as specified under Schedule IV of the REIT Regulations.

The manager shall disclose to the designated stock exchanges, any information having bearing on the operation or performance of the REIT as well as price sensitive information which includes but is not restricted to the following,- Acquisition or disposal of any properties, value of which exceeds 5% of value of the REIT assets;





- Additional borrowing, at level of holdco or SPV or the REIT, resulting in such borrowing exceeding 5% of the value of the REIT assets during the year;
- Additional issue of units by the REIT;
- Details of any credit rating obtained by the REIT and any change in such rating;
- Any issue which requires approval of the unit holders;
- Any legal proceedings which may have significant bearing on the functioning of the REIT;
- Notices and results of meetings of unit holders;
- Any instance of non-compliance with the REIT Regulations including any breach of limits specified under these regulations;
- Any material issue that in the opinion of the manager or trustee needs to be disclosed to the unit holders.
- The manager shall submit such information to the designated stock exchanges and unit holders on a periodical basis as may be required under the listing agreement.
- The manager shall disclose to the designated stock exchanges, unit holders and SEBI such information and in the manner as may be specified by SEBI.

PARTICIPATION BY STRATEGIC INVESTOR(S) IN REITS

SEBI vide its circular dated 18th January 2018 issued guidelines on participation by the strategic investor's investment trust and REIT's.

This circular seeks to give clarifications on the participation by the 'strategic investors' in the public issue of the REITs and the investment trust





'Strategic investor' means:

1. *an infrastructure finance company registered with RBI as a NBFC;*
2. *a Scheduled Commercial Bank;*
3. *an international multilateral financial institution;*
4. *a systemically important NBFC with RBI;*
5. *a foreign portfolio investor;*

who invest either jointly or severally not less than 5 % of the total offer size of the InvIT or such amount as may be specified by SEBI with applicable provisions of the FEMA Act, 1999 and the rules or regulations or guidelines made thereunder.

Participation by the 'strategic investors' in the public issue of the REITs

<i>Holding requirements</i>	<i>Issue price of the units and utilisation of funds</i>	<i>Lock-in period</i>
<i>a) Holding by strategic investors</i> <i>- Minimum 5%,</i> <i>b) maximum 25%.</i> <i>Holding by public, other than strategic investors</i> <i>c) and sponsors -</i> <i>Minimum 25%</i> <i>Holding by sponsor</i> <i>- Minimum 5%,</i> <i>maximum 70%</i>	<i>a) The price at which units are offered to the strategic investors must not be less than the price determined in the public issue.</i> <i>It must be ensured</i> <i>b) that the subscription amount is kept in the separate account until the public issue is opened.</i>	<i>a) The units subscribed by strategic investors, pursuant to the unit subscription agreement, will be locked-in for a period of 180 days from the date of listing in the public issue.</i>



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Adv. Chirag Chotrani

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Adv. Chirag Chotrani is a young yet experienced faculty in the field of Law. From being the topper of his batch, to creating many All India Rankers in the Field of Company Secretary, Chirag has proved his academic capabilities time and again.

Chirag is a Commerce and Law Graduate and holds a Masters Degree in Corporate Law, earned specialisation in Corporate Laws and in Arbitration Law and is currently completing his PHD in Corporate Laws.

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