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REITs – Structure, Performance, and Impact

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Presentation Outline

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- **History of REITs in India**
- **An overview of REITs under the SEBI (REITS), Regulations, 2014**
- **REITs Regulations - 10 Key Issues**
- **Listing of REIT or corporation owning real estate assets**
- **Comparative analysis of REITs – India vs. Others**
- **Listing REITs - India or other jurisdictions?**
- **Developing a market for REITs - 5 Suggestions**

History of REITs in India

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- History of REITs in India
  - SEBI had released draft regulations in 2008 for offering by way of a scheme
  - Similar structure was also introduced in 2008 in the form of Real Estate Mutual Funds
  - SEBI released revised draft regulations in October 2013
  - SEBI Board approved the final regulations on August 10, 2014 (with some changes highlighted)
  - Finance Act, 2015 includes certain tax framework for REITs
  - Final Regulations notified on September 26, 2014

An overview of REITs under the SEBI (REITS), Regulations, 2014

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- REITs to be set up as a trust under Indian Trusts Act, 1882 and registered under Registration Act, 1908
- Parties to the REIT: Sponsor, Manager and Trustee (registered with SEBI)
- Structure: Investment in commercial assets directly or through more than 50% controlled SPVs
- Who can be a Sponsor and its obligations?
- Listing of units of REITS – subject to various conditionalities
- Further issuance in the form of rights issues, QIPs, etc. allowed. However, detailed mechanism for the same is yet to be provide
- Important investment restrictions are applicable to REITs
- Distributions to Unitholders
- Leverage and borrowings by the REITs

Listing of REIT or corporation owning real estate assets

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- 21 day offer document review process
- Limited disclosure compared to IPO
  - No requirements for extensive disclosure of promoters and group companies
  - Disclosure of only material litigation and regulatory actions - *clarity required for material litigation involving "associates"*
  - Disclosure of summary financial statements required
  - Projections for three years to be disclosed in the offer document
- Distinct differences from a company undertaking an IPO
  - Independent trustee for unitholders and property managed by professional manager
  - Specified distributions to investors with equity type rights
- Corporate Governance Norms – *requirements to be provided in the listing agreement*
- Full year and half yearly valuation

REITs Regulations - 10 Key Issues

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I. Holding of assets permitted only through one level of subsidiary – *two subsidiary levels consistent with Companies Act?*

II. REIT to hold at least 50% of equity capital or interest of the SPV – *does not recognize other forms of control*

III. No preferential voting or other rights and no multiple classes of units – *limits flexibility in raising capital?*

IV. Foreign investment related issues

- Amendment to Portfolio Investment Scheme to include units issued by REIT for participation by FIIs, FPIs and NRIs

- Several amendments required for FDI regime in REIT

V. Facilitating investment by Indian institutional investors - definition of "security" under SCRA

REITs Regulations - 10 Key Issues

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VI. Addressing conflict of interest between the REIT and the Sponsor – is right of first refusal by sponsor in favour of REIT the answer?

VII. Transfer of entire holding by sponsor to REIT prior to listing - *Disincentive?*

VIII. Strictly regulated related party transactions – *disincentive for large group real estate players?*

IX. Tax liberalisation

X. Detailed unitholders' approval process – *exit option in case of new sponsor and exceeding of non-sponsor holding*

Comparative Analysis of REITs – India vs. others

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- Similarities :
  - Similar structure as Indian REITs in Singapore and Hong Kong
  - Independent manager and trustee (but no restriction on affiliation with sponsor)
  - Strictly regulated related party transactions
  - Control required even in cases of joint ownerships
  - Whilst Hong Kong requires 90% of its audited annual net income after tax, Singapore does not prescribe minimum distribution requirement
- Dissimilarities:
  - Hong Kong does not prescribe minimum investment in income generating assets
  - Singapore and Hong Kong allow investment in foreign properties – *investment in foreign properties restricted in India*
  - Hong Kong allows two layers of subsidiaries

Comparative Analysis of REITs – India vs. others (contd.)

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- Whether to list REITs in India or overseas?
  - Unlike most other jurisdictions, investment in property located outside India is not permitted
  - Many jurisdictions allow multiple layers of subsidiaries, Indian regulations do not permit more than one level
  - Mandatory listing of REITs in India provides greater liquidity
  - No mandatory requirement of RoFR - in many other jurisdictions there is no such legislative requirement, but voluntary imposition by regulators
  - Better understanding of Indian ground realities - no specific risk mitigation mechanisms required under REITs Regulations, but overseas jurisdictions often have extensive requirements for Indian issuers
  - Less restructuring and regulatory issues (such as ODI and tax) for listing of REITs India compared to overseas listing

Way Forward

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I. SEBI should lead in co-ordinating with various governmental entities

II. Facilitating participation of Indian institutional investors

III. Permitting holding of assets through more than one level of subsidiaries

IV. Notifying norms for disclosures and further issuances (such as rights issue, FPO, QIP etc.), and the listing agreement

V. Allowing preferential voting and multiple classes of securities

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Thank You

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