



भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

CONSULTATION PAPER

DEPARTMENT OF DEBT AND HYBRID SECURITIES – POD II

SPECIAL RIGHTS TO UNITHOLDERS AND ROLE OF SPONSOR IN REITs & InvITs

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भारतीय प्रतिभूति और विनिमय बोर्ड
Securities and Exchange Board of India

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How to Respond

Comments on the Consultation paper (CP) may be sent by May 29, 2023

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1. Objective:

1.1. This consultation paper has three parts, objectives of which are specified below:

- 1.1.1. The first part of this consultation paper is on the proposals to strengthen governance norms for REITs and InvITs by providing unitholders the right to nominate representative either on the Board of directors of Manager/Investment Manager or on Unitholders Council constituted by the Manager/Investment Manager, in order to empower unitholders of REITs and InvITs to monitor their investment in REIT/InvIT and aid in decision making.
- 1.1.2. The second part is on the proposal to make applicable principles of stewardship code to members nominated by the unitholders on the Board of Directors of Manager/Investment Manager of REIT/InvIT and/or Unitholders Council, pursuant to exercise of special rights as dealt in first part of this paper.
- 1.1.3. The third part of this consultation paper deals with role of sponsor in REITs/InvITs and also proposes the concept of Self-sponsored REIT/InvIT.

PART – A: SPECIAL RIGHTS TO UNITHOLDERS OF REIT & INVIT – NOMINATION RIGHTS ON BOARD OF DIRECTORS OF MANAGER & INVESTMENT MANAGER OF REIT & INVIT

2. Background:

- 2.1. SEBI (Real Estate Investment Trusts) Regulations, 2014 (“REIT Regulations”) and SEBI (Infrastructure Investment Trusts) Regulations, 2014 (“InvIT Regulations”) were notified on September 26, 2014. REIT Regulations and InvIT Regulations and circulars issued thereunder provide the regulatory framework for REITs/InvITs. In terms of InvIT Regulations, InvITs can employ either of the two structures permitted under the regulations, viz. Publicly offered and listed & privately placed and listed, whereas REIT Regulations envisage publicly offered listed REITs only.
- 2.2. REITs and InvITs were introduced in India to provide investors with an opportunity to gain exposure to real estate and infrastructure projects respectively, with diversification of risks through pooling arrangement. It was envisaged that REITs and InvITs would provide investors with stable distributions through their passive ownership of income producing real estate and infrastructure projects respectively.
- 2.3. REITs invest majorly in completed and rent generating real estate assets. Privately placed InvITs can invest in under-construction assets as well as completed and revenue generating assets; Public InvITs can invest majorly in completed and revenue generating assets. Therefore, privately placed InvITs were considered suitable only for institutional investors and hence primary issuance was restricted only to body corporate and institutional investors. Further, in order to discourage participation in secondary market by retail investors, higher investment and trading lot thresholds were prescribed in privately placed InvITs.

Consequently, such InvITs typically have large holdings by very few investors and are closely held by such investors with little to no trades in the secondary markets.

- 2.4. It has been noted that at times, special/differential rights in form of board nomination rights are granted / proposed to be granted to certain investors through trust deed and / or offer document / placement memorandum. It has been submitted that investors require such rights due to large ticket size of the investment and the need to exercise certain control over the operations of the REIT/InvIT.
- 2.5. However, currently REIT Regulations and InvIT Regulations do not explicitly provide for granting of such special/additional rights and hence these may not be in consonance with the provisions of REIT Regulations and InvIT Regulations, as these Regulations require all unit holders to have equal rights and no superior rights over other unit holder.
- 2.6. Therefore, it is desired to seek public comments in order to assess the desirability and suitability of special/differential rights with respect to unitholders right to nominate directors on the Board of Manager/Investment Manager of REIT/InvIT or alternatively, to nominate members on Unitholders Council constituted by the Manager/Investment manager under the REIT/InvIT structure. This paper discusses the way in which such rights can be conferred on unitholders.

3. CURRENT REGULATORY REQUIREMENT – REIT and INVIT:

- 3.1. Regulations 4(2)(g) of REIT Regulations provides that no unitholder of REIT shall enjoy superior voting or any other rights over another unitholder of REIT. The said regulation reads as under:

“Without prejudice to the generality of the foregoing provision, the Board shall consider the following, namely, -

.....

(g) no unit holder of the REIT enjoys superior voting or any other rights over another unit holder and there are no multiple classes of units of REIT:....”

- 3.2. Regulation 4(2) (h) of InvIT Regulations provides that no unitholder of InvIT shall enjoy superior voting or any other rights over another unitholder of InvIT. The said regulation reads as under:

“Without prejudice to the generality of the foregoing provisions, the Board shall consider the following, mandatory requirements namely, -

.....

(h) no unit holder of the InvIT enjoys superior voting or any other rights over another unit holder and there shall not be multiple classes of units of InvITs:....”

- 3.3. The underlying principle of the above provision in REIT Regulations and InvIT Regulations is that the units of REIT and InvIT are equal in all respects and hence all unitholders should have equal rights and no special rights should exist with any unitholder based on the units held in REIT/InvIT.

- 3.4. As noted earlier, it appears that certain REITs/InvITs have provided the right to nominate directors on the board of Manager/Investment manager to unitholders holding certain percentage of units of REIT/InvIT. Such rights provided to the unit holders above certain percentage of units are not envisaged in the REIT

Regulations and InvIT Regulations and appears to be unequal. Hence the matter was discussed with market participants and their representations have been dealt in subsequent paras.

4. REPRESENTATION FROM MARKET PARTICIPANTS

- 4.1. In this context, it has been represented that rights to nominate directors on the board of Manager/Investment manager are required by institutional investors to protect their investments in the REIT/InvIT. As a practical matter, unitholders acquiring a significant minority stake in REIT/InvIT may seek a right to appoint nominee directors on the board of the manager/investment manager, proportionate to their unitholding. Further, significant minority unitholders or their affiliates may also participate in the manager/investment manager as minority shareholders. By virtue of their shareholding in the manager/investment manager, such investors (or their affiliates) may seek rights to protect their interests, including the right to appoint nominee directors on the board of the manager/investment manager proportionate to their shareholding, the participation of such director in certain key committees at the board level, inter-se transfer restrictions with respect to shareholding in the manager/investment manager and affirmative rights in respect of matters that affect their interests, such as amendment of the constitutional documents of the manager/investment manager in a manner that is adverse to the interests of the minority shareholders.
- 4.2. It has been further argued that these rights are in the nature of protective rights typically sought by minority unitholders to protect their investment and would not impact the day-to-day functioning, business or operations of the REIT/InvIT. It has also been represented that such investors do not seek to control the manager/investment manager or REIT/InvIT in any manner.
- 4.3. However, it may also be argued that such special rights should not be restricted to only certain large institutional investors but be permitted for other investors as well, if availability of such rights is considered a factor in the investment decision by investors. Such rights will enable investors to monitor their investment in the REIT/InvIT and aid in decision making. This may encourage further participation

from the investors, especially large investors in the real estate sector and infrastructure sector.

- 4.4. Considering the same, it was thought appropriate to seek comments from public on whether special rights such as the right to nominate directors on the Board of Manager/Investment Manager of REIT/InvIT should be allowed and if yes, what should be appropriate percentage of holding units that can be prescribed in the REIT Regulations and InvIT Regulations.
- 4.5. In this regard, it is pertinent to also highlight that the working group of Regulation Revamp submitted its report on Special rights to unitholders. The recommendation of the working group with respect to right to nominate director on the Board of Manager/Investment manager of REIT/InvIT is dealt in subsequent paras.

5. RECOMMENDATION OF WORKING GROUP ON REGULATION REVAMP

- 5.1. The working group on regulation revamp submitted its report, wherein it *inter-alia* proposed that in relation to appointment of nominee directors, SEBI could consider providing a carve-out under Regulation 4(2)(g) of the REIT Regulations and Regulation 4(2)(h) of the InvIT Regulations stating that unitholders may have a right to nominate persons for appointment on the board of directors of the manager/investment manager and such right would be subject to the approval of the majority of the public unitholders at the first unitholders meeting held after the initial offer.
- 5.2. A concern with the abovementioned proposal is that the rights granted to sponsor and/or certain unitholders immediately post initial offer could continue in perpetuity even after significant dilution of their stake in the REIT/InvIT which is not desirable.

6. NEED OF NORMS FOR NOMINATION RIGHTS TO UNITHOLDER

- 6.1. As a general law, the directors of a company have fiduciary duties to act in the interests of the company and therefore, are to take into account the interests of its shareholders. Today, Managers/Investment Managers of REIT/InvIT are often wholly-owned / majority owned by the property development company or their financial partners [the “Sponsor”] that sets up, the REIT/InvIT and sells its properties to the REIT/InvIT. Following the REIT’s/ InvIT’s listing, it is not uncommon for the REIT/InvIT to enter into service/maintenance agreements or property transactions with the Sponsor or its subsidiaries.
- 6.2. A strong and independent element on the board of directors of the manager/investment manager of REIT/InvIT is important, given the Board's responsibility for overseeing the management's performance, and providing objective judgement on whether transactions proposed for the REIT/InvIT are in the interests of unitholders. Currently, REIT/InvIT regulations require manager/investment manager of REIT/InvIT to ensure that at least half of the Board are independent directors.
- 6.3. The directors in the Manager/Investment Manager incorporated as company are appointed by the shareholders of the Manager/Investment Manager.
- 6.4. On the basis of representation made to SEBI to permit board nomination rights by unitholders of REIT/InvIT on boards of the manager/investment manager respectively, it has been contended/submitted that such rights will enhance the governance norms, and the unitholders will have more say on the investment decisions and on day-to-day activities undertaken by the Manager/Investment Manager of the REIT/InvIT so as to ensure that the interest of the unitholders are safeguarded.

6.5. Hence, in order to address the demand of industry players to provide unitholders right to nominate directors on the board of Manager/Investment manager of REIT/InvIT and also to ensure principle of rights being proportional to one's holding, it is proposed to specify either or both of the following option to unitholders of the REIT/InvIT:

6.5.1. Option 1: Nomination rights to unitholders holding certain percentage of units and above, on the board of the manager/investment manager and/or

6.5.2. Option 2: Constitution of Unitholders Council with nominees of Unitholders of REIT/InvIT holding certain percentage of units and above

7. OPTION I - BOARD NOMINATION RIGHTS TO UNITHOLDERS

- 7.1. To provide the option/right to unitholder to nominate a person on the Board of Manager/Investment manager of REIT/InvIT, following questions bear consideration:
- 7.1.1. Should the current stipulation of equal rights to all unitholders be modified to permit certain unitholders (*of a particular type/category and/or with a certain percentage of unit holding*) such nomination rights?
- 7.1.2. If so, which type/category of unitholders and/or what level of percentage of unit holding should be specified?
- 7.2. For purposes of this consultation, it is proposed that any unitholder holding minimum ten percent of units for every ten percent held may be entitled to nominate one director on the board of manager/investment manager¹.
- 7.3. It is also proposed that if there are some unitholders who are holding less than ten percent unitholding on an individual basis and who desire to join together such that their collective unitholding amounts to ten percent or more, then such unitholders shall also be entitled to nominate their representation on the board of directors of the Manager/Investment Manager.
- 7.4. The director so nominated shall recuse from voting on any related party transaction i.e. any transaction where either such nominee director or the unitholder who nominated him / her is a related party.

¹ While any threshold arrived at may appear arbitrary, it is noted that there are various provisions in the Companies Act which give powers to 10% shareholding such as dissenting shareholders moving the Tribunal in case they do not consent to variation of shareholder's rights, right to make application to Tribunal for relief in case of oppression and mismanagement, raising objection to compromise or arrangements, application for investigation into company's affairs, calling of EGM's etc. Hence ten percent has been considered in this consultation paper

- 7.5. It is noteworthy that the requirement of REIT Regulations and InvIT Regulations to have not less than half of the directors of the Board of Manager/Investment manager as independent, combined with the right to nominate a director by any unitholder holding ten percent of the units (for every ten percent held) could lead to a possibility of a very large Board - maximum of twenty directors (*ten independent and ten nominated directors assuming each unitholder has ten percent holding of units and that each exercised the right to nominate a director on the Board of Manager/Investment manager of the REIT/InvIT*).
- 7.6. A very large board may lead to: an inability for directors to have their voices heard; the risk of lack of engagement by all the directors; difficulty in having good dialogues/discussions at a board meeting, and the risk of becoming ineffective and bureaucratic.
- 7.7. To avoid the creation of a very large board on account of nomination of director(s) by unitholders on Manger/Investment Manager board, an alternate option is to have participation of unitholders in the decision making process by constituting a distinct Unitholders Council with members nominated by the unitholders holding minimum ten percent of units. This has been outlined in the next section.

8. Option 2 – CONSTITUTION OF UNITHOLDERS COUNCIL

- 8.1. Currently, AIF Regulations provides that the Manager may constitute an Investment Committee (by whatever name called), to approve the decisions of the Alternative Investment Fund. However, this is optional and the composition of committee in AIF has not been prescribed. It has been noted that the investment committee may consist of Internal members (employees, directors or partners of the Manager) and/or external members. The investment committee in case of AIF may be either recommendatory or approving body regarding investment decisions. In case of recommendatory body, the final decision is taken by the Manager, whereas in case of approving body, the manager carries out all the necessary due diligence on an investment proposal and also do the needful to monitor and manage the AIF investments, the decision to invest vests with the Investment committee. Whether the investment committee is to be set up and if it is only a recommendatory body or approving body is disclosed in the placement memorandum.
- 8.2. On similar lines, it is proposed to mandate Manager/Investment manager of REIT/InvIT to constitute a Unitholders Council with representation/ nominees of unitholders of REIT/InvIT. The constitution of such a Unitholders Council with the presence of investors or their nominees may serve to improve the activities and oversight of the Manager/Investment Manager.
- 8.3. In order to have due participation in REIT/InvIT, it is proposed that any unitholder holding minimum ten percent of units shall be allowed to nominate one member in the Unitholders Council.
- 8.4. Similar to Option 1, it is proposed that if there are some unitholders who are holding less than ten percent unitholding on an individual basis and who desire to come together such that their collective unitholding amounts to ten percent or more, then

such unitholders shall also be entitled to nominate their representation on the unitholders council.

8.5. The member so nominated shall recuse from voting on any related party transaction i.e. any transaction where either such nominated member or the unitholder who nominated him / her is a related party.

8.6. It is envisaged that evaluation of investment proposals by Unitholders Council may enhance the quality of decision making process regarding acquisition or divestiture of real estate and infrastructure assets.

8.7. In case of constitution of Unitholders Council, then unitholders shall not have any representation on the Board of Directors of the manager/investment manager.

8.8. Composition of Unitholders Council and decision making

8.8.1. Each unitholder holding 10% or more unit holding in the REIT/ InvIT may be entitled to nominate a member on the Unitholder Council.

8.8.2. The number of members on the Unitholders Council should be at least three.

8.8.3. In the event no nomination is received from unitholders, then the Unitholder Council need not be constituted.

8.8.4. In the event nominations are received from unitholders but the number of nominations is less than three, then one of the following two options can be considered:

8.8.4.1. Independent Director(s) of the Manager/Investment manager may be nominated by the unitholders on the Unitholder Council

to meet the minimum strength of three.

8.8.4.2. Instead of constituting a Unitholders Council, the nominee can be appointed as Nominee Directors on the Board of Manager/Investment Manager

8.8.5. Each member of the Unitholder Council to have one vote for each 10% unit holding represented by him/her. E.g. nominee of 20% percent unitholder to have two votes and nominee of a 30% unitholder to have three votes. Alternatively, the unitholders holding 10% or more of the units can appoint one member on the Unitholder Council per 10% held.

8.8.6. All decisions to be taken by simple majority of Unitholder Council members present and voting. E.g: if 3 members are present representing 2,3 and 2 votes respectively, a matter may be considered to be approved with at least 4 votes being cast in its favour.

8.8.7. Compliance officer of the InvIT to act as the secretary to the Unitholder Council.

8.9. Areas of decision

8.9.1. Any proposal where the Board of directors of the manager/investment manager is the deciding authority, the matter will first be decided by the Board of directors of the manager/investment manager.

8.9.2. The matter then will be presented before the Unitholder Council post the approval of the matter by the board of directors of the Manager/ Investment manager.

- 8.9.3. Any matter which has not been accepted/approved by Unitholders Council of the manager/Investment manager, then such matter shall be put to vote in unitholders meeting.
- 8.9.4. Any matter requiring approval of unitholders, such matter shall include recommendation of the Board of directors of the Manager/Investment manager as well as the recommendation of the Unitholders Council in order to aid unitholders in voting.
- 8.9.5. Matters which relate solely to the operations of the Manager/ Investment manager (e.g. financials of the manager/ Investment manager, compensation to the employees of Manager/ Investment manager) may be decided by the board of directors of the Manager/ Investment manager. Such matters need not be placed before Unitholders Council.
- 8.10. Prohibition of Insider Trading: Members of the Unitholder Council to be considered as 'insider' for the purpose of SEBI (Prohibition of Insider Trading) Regulation, 2015 and they shall ensure that information shared with them during the meetings is not further disseminated.
- 8.11. Compliance with SEBI REIT Regulation and InvIT Regulations: The members of the Unitholders Council shall be responsible for ensuring that the decisions of the Unitholders Council are in compliance with the provision of REIT Regulations, InvIT Regulations, disclosures in the offer document or placement memorandum and applicable laws.

Consultation 1: Special Rights to unitholders of REIT/ InvIT

Kindly provide your comments separately for each of the below items along with supporting rationale:

General Questions related to Special Nomination Rights

- 1) Whether any unitholder should be granted special nomination rights of above nature?
- 2) If yes, what should be the threshold percentage of holding of units to provide these special nomination rights? Is the threshold of 10% discussed above appropriate?
- 3) If special nomination rights are granted to significant unitholders, then which of the following options should be considered:
 - a) Option 1: A right to nominate directors on the board of Manager/Investment manager of REIT/InvIT based on units held by any investor
 - b) Option 2: Introducing the concept of Unitholders Council and a right to nominate members on the Unitholders Council
 - c) Option 3: Both the options may be provided and the Manager/Investment Manager may decide which option to avail based on Unitholders approval
 - d) Other suggested option(s), if any

Specific Questions related to Nomination on Board of Manager / Investment Manager

- 4) If a prescribed threshold is achieved by the unitholder, should that unitholder be entitled to nominate one director irrespective of the unitholding, or should the number of nominations be linked to unitholding? For example, if the threshold is 10% holding and there is a unitholder who is holding 30% units, then should that unitholder be entitled to nominate 'one director', or should that unitholder be entitled to nominate three directors, i.e. 'one director for every 10% units'?

Specific Questions related to Constitution of Unitholders Council and Nomination of Members on Unitholders Council

- 5) Whether all proposals to be decided by the Board of directors of the manager/investment manager be placed before the Unitholders Council? If not, then mention the details/nature of proposals that need to be placed before the Unitholders Council.
- 6) Whether Unitholders Council and Board of directors of manager/investment manager of REIT/InvIT be mandated to include their recommendation on all matters requiring approval of unitholders? If not all matters, then specify details of the matters for which Unitholders Council and board of directors of manager/investment manager be mandated to include its recommendation.
- 7) What should be the minimum strength of the Unitholders Council? What should be the alternative if the number of nominees fall short of the minimum strength?
- 8) Whether the suggestion of one vote for each 10% unit holding for the nominee member looks appropriate?

9. PART – B : STEWARDSHIP CODE ON ENTITIES HAVING REPRESENTATION ON THE BOARD OF DIRECTORS OF MANAGER/INVESTMENT MANAGER AND/OR ON THE UNITHOLDERS COUNCIL

- 9.1. The importance of institutional investors in capital markets across the world is increasing the world over; they are expected to shoulder greater responsibility towards their clients/ beneficiaries by enhancing monitoring and engagement with their investment entities. Such activities are commonly referred to as ‘Stewardship Responsibilities of the institutional investors and are intended to protect their clients’ wealth. Such increased engagement is also seen as an important step towards improved corporate governance in the investment entities and gives a greater fillip to the protection of the interest of investors in such entities.
- 9.2. Mutual Funds and all categories of AIFs have been mandated to follow the principles of Stewardship Code.
- 9.3. In this context, it is proposed that the following principles of Stewardship Code be made applicable to the entities having representation on the Board of Directors of Manager/Investment Manager of REIT/InvIT and/or on the Unitholders Council:
- 9.3.1. The entities having representation on the board of directors of Manager/Investment Manager and/or on the Unitholders Council (hereinafter referred to as “Such Entities”) must act in the best interests of the REIT/InvIT and its unitholders as a whole.
- 9.3.2. Such Entities should formulate a comprehensive policy on the discharge of their stewardship responsibilities, review and update it periodically.

- 9.3.3. Such Entities should have a clear policy on how they manage conflicts of interest in fulfilling their stewardship responsibilities.
- 9.3.4. Such Entities should periodically monitor the REIT/InvITs and their investee entities viz. HoldCo's and SPV's.
- 9.3.5. Such Entities should have a clear policy on intervention in the REIT/InvITs and their HoldCo's and SPV's. Such Entities should also have a clear policy for collaboration with other large institutional investors of the REIT/InvIT where required, to preserve the interests of other unitholders.
- 9.3.6. Such Entities should have a clear policy on voting.

Consultation 3: Stewardship Code

Kindly provide your comments separately for each of the below items along with supporting rationale:

- a. Whether the principles of stewardship should be applied on entities having representation on the board of directors of Manager/Investment Manager and/or on the Unitholders Council?
- b. Whether any other principles need to be added to the above mentioned principles for aligning the interest of unitholders while managing the assets of the REIT/InvIT?

10. PART – C: ROLE OF SPONSOR IN REITs AND InvITs

Background:

- 10.1. REIT Regulations and InvIT Regulations defines “Sponsor” as a person who set(s) up the REIT/InvIT and is designated as such at the time of application for registration. Further REIT Regulations and InvIT Regulations defines “Manager” and “Investment Manager” (‘IM’) as a person who manages the assets and investments of the REIT and InvIT respectively and undertakes activities of the REIT and InvIT as per SEBI Regulations.
- 10.2. The Sponsor is responsible for setting up of the REIT/InvIT and the formation transactions. The registration of REIT/InvIT is *inter alia* granted based on the eligibility conditions fulfilled by the Sponsor. The Sponsor monetizes its assets by transferring its real estate assets or infrastructure projects in the REIT/InvIT and funds are raised from public or by private placement for such acquisition and the listed units are offered to the unit holders.
- 10.3. REIT Regulations and InvIT Regulations mandate the Sponsor to mandatorily hold 15% of total units of REIT/InvIT, on post-issue basis for a period of at least 3 years. Post completion of 3 years, the Sponsor has the option to divest its stake below 15% and/or declassify itself as a Sponsor
- 10.4. As per data on shareholding of Manager or Investment manager, it has been noted that most of the Sponsor(s) have significant shareholding in Manager/Investment Manager of REIT/InvIT which gives them right to appoint directors on the Board of Manager/Investment Manager. By virtue of the shareholding in the Manager/Investment manager, the Sponsor controls the Manager/Investment manager and has a say in the financing related decisions of the REIT/InvIT. It is also observed that acquisition of

assets by REIT/ InvIT post initial offer is generally from the Sponsor(s) or its associates.

- 10.5. Considering the key role played by the Sponsor in the context of a REIT/InvIT, SEBI on February 23, 2023, issued a [“Consultation paper on Holding of Sponsor in REITs and InvITs”](#) inviting public comments inter-alia on the proposal to have at least one Sponsor throughout the life of the REIT/InvIT and mandating the Sponsor to hold certain percentage of units in the REITs/InvITs on a perpetual basis.
- 10.6. The market participants have submitted that while the perpetual holding requirement may be suitable for early-stage REITs and InvITs, there may be certain REITs and InvITs which have matured beyond financial and structural reliance on the Sponsors and have demonstrated a strong track record of financial stability and independence from the Sponsor. Accordingly, the principles which apply to mature REITs and InvITs should be distinct from those applicable to other early-stage REITs/InvITs and a ‘one size fits all’ approach may not be appropriate.
- 10.7. Further, the market participants have also represented that the calculation of lock-in units on an ongoing basis with requirement of additional lock in at every point of time of fresh issuance of units may hamper the growth of REIT/ InvIT.
- 10.8. Considering the feedback from market participants on the consultation paper dated February 23, 2023 on *“Holding of sponsor in REITs/ InvITs”*, it is proposed to suggest the following alternative options which would provide additional flexibility in terms of minimum holding requirement by Sponsor in REITs and InvITs:
- (a) Maximum cap on locked-in units in terms of amount
 - (b) Provision of Self-sponsored REIT/ InvIT

10.8.1. Maximum cap on locked-in units in terms of amount

10.8.1.1. SEBI in consultation paper dated February 23, 2023 proposed that Sponsor shall be required to mandatorily hold certain percentage of total unit capital, in the manner as specified below, at all points in time:

S. No.	Time period	In percentage
1.	Upto 3 years	15% of total unit capital
2.	3-5 years	5% of total unit capital
3.	5-10 years	3% of total unit capital
4.	10-20 years	2% of total unit capital
5.	Post 20 years	1 % of total unit capital

10.8.1.2. Basis the feedback received from market participants, it is proposed that the mandatory unitholding by the Sponsor in REIT/InvIT at all points in time, be capped to the maximum amount, the revised lock-in requirement is proposed as under:

S. No.	Time period	In percentage
1.	Upto 3 years	15% of total unit capital
2.	3-5 years	5% of total unit capital or INR 1,000 crores, whichever is lower
3.	5-10 years	3% of total unit capital or INR 1,000 crores, whichever is lower
4.	10-20 years	2% of total unit capital or INR 1,000 crores, whichever is lower
5.	Post 20 years	1 % of total unit capital or INR 1,000 crores, whichever is lower

10.8.2. Provision of Self-Sponsored REIT/ InvIT

- 10.8.2.1. Basis the feedback received from market participants, it is proposed to debate separation of Sponsor from the REIT/InvIT and to gauge if REITs/InvITs are prepared to stand on their own. The feedback received from market participants indicated that there may be certain REITs and InvITs which have evolved beyond substantial dependencies and linkages with the Sponsor. In view of the same, it is proposed to deliberate whether to permit self-sponsored REITs and InvITs.
- 10.8.2.2. Introduction of a framework for self-sponsored REIT/InvIT will, besides creating space for mature and independent professionally managed Managers/Investment Managers to emerge, provide a further exit option for the Sponsor in addition to the exit option through change of sponsor presently envisaged in the REIT Regulations & InvIT Regulations.
- 10.8.2.3. The primary principle governing the framework for self-sponsored REIT/InvIT is that the Manager/Investment Manager shall be able to meet all the sponsor-related eligibility requirements. The qualifying conditions for becoming a self-sponsored REIT/InvIT are proposed to be as under:
- (a) The REIT/InvIT has been listed for a period of at least five years;
 - (b) The REIT/InvIT has made at least twelve distributions on a continuous basis;
 - (c) The REIT/InvIT is rated AAA by a SEBI registered Credit Rating Agency for a continuous period of five years;
 - (d) During a period of preceding five years, the REIT/InvIT has not breached, at any time, the prescribed maximum leverage thresholds;

- (e) The Manager/Investment Manager is meeting the net worth criteria prescribed for the Sponsor;
- (f) The mandatory unitholding requirement applicable for Sponsor shall be complied with by the Manager/Investment Manager;
- (g) The sponsor or its associates does not own or control the Manager/Investment Manager of the REIT/InvIT;
- (h) The Sponsor has not transferred / sold assets to the REIT/InvIT in the last three years;
- (i) The Sponsor proposing to disassociate should have been a Sponsor of the concerned REIT/InvIT for at least five years before the proposed date of disassociation;
- (j) The REIT or InvIT shall not have any under-construction projects or projects that have not commenced commercial operations that are acquired from the Sponsor;
- (k) The Sponsor or its associates is not the Project Manager and does not own or control the Project Manager;
- (l) Due consent of the Trustee and of Unitholders should be obtained for the proposed disassociation by the Sponsor. Unitholders approval from seventy-five percent of the unit holders by value excluding the value of units held by parties related to the transaction shall be obtained and due exit option should be provided to the dissenting unitholders in case the required approval is not received.

10.8.2.4. Further, if the Manager/ Investment manager is not able to comply with mandatory unitholding requirement in order to qualify for a Self-sponsored REIT/ InvIT, as an additional alternative, the shareholders of the Manager/ Investment manager of the REIT/ InvIT are allowed to contribute their own units of REIT/ InvIT for compliance with the minimum unitholding requirement for REIT/ InvIT.

- 10.8.2.5. Hence with the above proposed flexibility as outlined in 10.8.2.4, there is no requirement to seed capital into Manager/ Investment manager in order to meet the mandatory unitholding requirement, rather shareholders, of Manager/ Investment manager, on their own account can lock-in the required units of REIT/ InvIT.
- 10.8.2.6. The outgoing shareholder in Manager/ Investment Manager who also has locked in units shall be able to release the lock-in on units of REIT/ InvIT post transfer of shares in Manager/ Investment only after the incoming shareholder has locked in units as required in terms of mandatory unitholding requirement under REIT Regulations / InvIT Regulations.
- 10.8.2.7. In case of change in Manager/ Investment manager of REIT/ InvIT, the incoming Manager/ Investment manager shall be required to comply with the minimum unitholding requirement either by holding units by the Manager / Investment manager or by the shareholders of Manager/ Investment Manager.
- 10.8.2.8. With the acceptance of above proposal, it may be noted that the current declassification norms (Regulation 7A of REIT Regulations and InvIT Regulations) shall not be relevant and be deleted. The exit options available for a sponsor shall be only through following methods
- (a) Change in Sponsor and induction of new Sponsor under Regulation 22(8) of REIT Regulations and Regulation 22(7) of InvIT Regulations.
 - (b) Transformation into Self-sponsored REIT/ InvIT as proposed above

11. RESTRICTION ON ENCUMBERANCE

The earlier proposal in the consultation paper February 23, 2023 stating that the units required to be mandatorily held cannot be encumbered shall continue

Consultation 3: Self-Sponsored REIT and InvIT

Kindly provide your comments separately for each of the below items along with supporting rationale:

- 1) Is the concept of self-sponsored REITs and InvITs in the interest of the unitholders?
- 2) Whether the qualifying conditions for becoming a self-sponsored REIT/InvIT described above adequate?
- 3) Is there a need for any other conditions and/or safeguards for permitting a self-sponsored REIT/InvIT? If yes, please indicate the same and provide supporting rationale for your response.
- 4) Is the net worth prescribed for the Manager/Investment Manager in case of a self-sponsored REIT/InvIT adequate?

12. Public Comments

- 12.1. Considering the implications of the aforementioned matters on the market participants, public comments are invited on the above-detailed proposals. The comments/ suggestions may be provided as per the following format given below:

Name of the person/ entity proposing comments:				
Name of the organization (if applicable):				
Contact details:				
Category: whether market intermediary/ participant (mention type/ category) or public (investor, academician etc.)				
Sr. No.	Extract from Consultation paper	Issues (with page/para no., if applicable)	Proposals/ Suggestions	Rationale

- 12.2. Kindly mention the subject of the communication as, “*Comments on Consultation Paper on Special rights to unitholders of REIT and InvIT & Role of Sponsor*”.
- 12.3. Comments as per aforesaid format may be sent to the following, and should reach SEBI latest by May 29, 2023 in any of the following manner:

12.3.1. Preferably by email to

- a) Ritesh Nandwani, DGM (riteshn@sebi.gov.in)
- b) Pawan Kumar Chowdhary, AGM (pawanc@sebi.gov.in)
- c) Barun Gurani, AM (barung@sebi.gov.in)

12.3.2. By post to:

Shri Ritesh Nandwani, DGM
 Department of Debt and Hybrid Securities
 Securities and Exchange Board of India,
 SEBI Bhavan, C4-A, G-Block,
 Bandra Kurla Complex, Bandra (East),
 Mumbai -400051

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