

Shardul Amarchand Mangaldas

REAL ESTATE INVESTMENT TRUSTS IN INDIA

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GLOSSARY

| Term | Meaning |
|------------------|--|
| DDT | Dividend Distribution Tax |
| HoldCo | Holding Company |
| IT Act | Income-tax Act, 1961 |
| MMR | Maximum Marginal Rate |
| OFS | Offer For Sale |
| RBI | Reserve Bank of India |
| REIT | Real Estate Investment Trust |
| REIT Regulations | Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2014 |
| SEBI | The Securities and Exchange Board of India |
| SPV | Special Purpose Vehicle |
| STT | Securities Transaction Tax |



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Introduction & Background



BACKGROUND

1. In October 2013, the SEBI released a set of draft regulations setting out the framework governing REITs in India.
2. The SEBI had requested market participants to provide comments on the draft regulations and thereafter at a meeting of its board of directors, on August 10, 2014, approved the final regulations governing REITs.
 - The REIT Regulations were notified on September 26, 2014 and the Guidelines for the Public Issue of units of the REIT were released on December 19, 2016.
3. The SEBI issued a consultation paper on July 18, 2016 in which certain amendments were proposed to be made to the REIT Regulations.
 - After considering the various representations made, the SEBI at its board meeting dated September 23, 2016, approved specific amendments to the REIT Regulations.
 - Amendments to the REIT Regulations were notified on November 30, 2016.

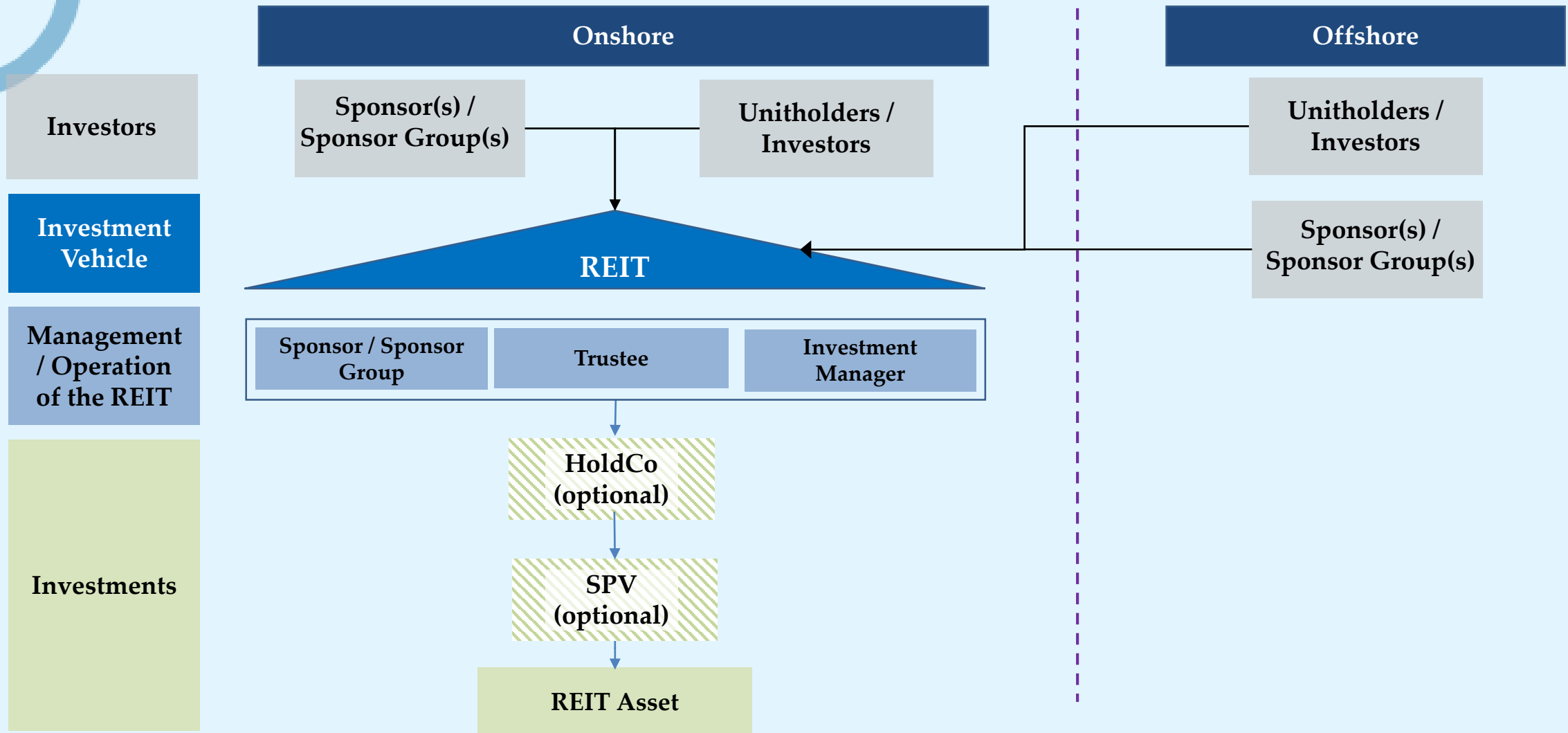


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REIT – Typical Structure in India



TYPICAL STRUCTURE





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Overview of the REIT Regulations



ENTITIES ASSOCIATED WITH REITs...

Sponsor & Sponsor Group

The Sponsor(s) or the Sponsor Group(s) is the promoter of the REIT.

- a) There is no restriction¹ on the number of Sponsors or Sponsor Groups that a REIT may have.
 - For each Sponsor Group, at least 1 person is required to be identified as a Sponsor.
- b) Each Sponsor (or its associates) is required to have not less than 5 years' experience in the development of real estate or of fund management in the real estate industry.
 - Where the Sponsor is a developer, at least 2 projects of such Sponsor should have been completed.
- c) Each Sponsor is required to have a net worth of not less than Rs. 200,000,000. The Sponsors on a collective basis are required to have a net worth of not less than Rs. 1,000,000,000.

¹ *Note: Previously, a REIT was permitted to have a maximum of 3 Sponsors.*



...ENTITIES ASSOCIATED WITH REITs...

- d) The Sponsor / Sponsor Group is required to transfer or undertake to transfer its entire shareholding in the HoldCo or the SPV, as the case may be, or its ownership of the real estate assets to the REIT prior to allotment of units in the REIT.
 - This shall not apply to the extent of any mandatory holding of shares or interests, as required under applicable law.

- e) The Sponsors / Sponsor Groups are required to:
 - collectively hold at least 25% of the total units of the REIT for a period of 3 years post listing;
 - collectively hold any additional pre-listing units for a period of at least 1 year post listing; and
 - hold not less than 15% collectively and 5% individually of the outstanding units of the REIT, at all points in time.



...ENTITIES ASSOCIATED WITH REITs..

Investment Manager

The Investment Manager is responsible for the management of the assets of the REIT and all other investment related functions of the REIT. The Investment Manager is required to have –

- a) a net-worth / net-tangible assets of Rs. 100,000,000;
- b) at least 5 years' experience in fund management, advisory services, property management in the real estate industry or in the development of real estate. This criterion can be met by the Investment Manager or its associates;
- c) at least 2 key personnel, each having not less than 5 years' experience, in fund management, advisory services, property management in the real estate industry or in the development of real estate; and
- d) at least half of the directors / members of the governing board as (i) independent directors / members; and (ii) directors / members who are not on the governing board of any other REIT.



... ENTITIES ASSOCIATED WITH REITs

Trustee

The Trustee is responsible for the day-to-day functioning of the REIT and has a fiduciary responsibility towards all the unitholders of the REIT.

- a) The Trustee is required to be the trustee registered under the SEBI (Debenture Trustee) Regulations, 1993; and
- b) The Trustee cannot be an associate of the Sponsor(s) or the Investment Manager.

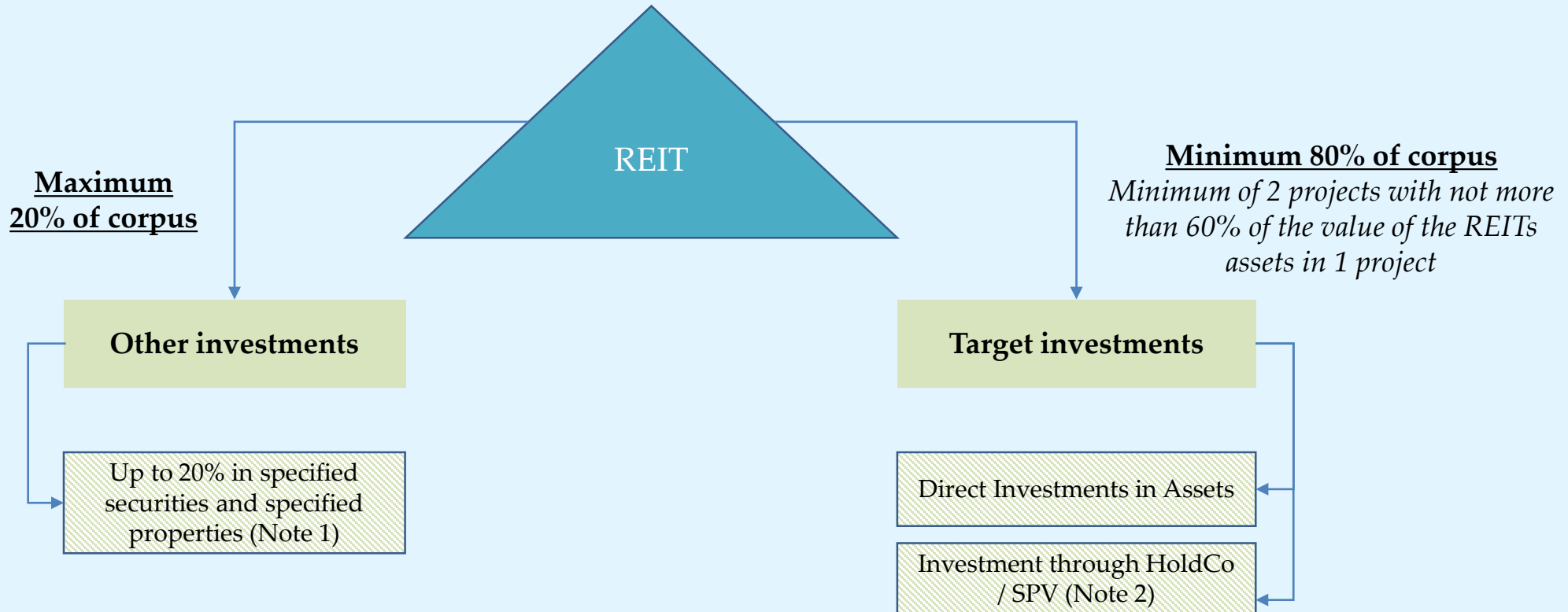


INVESTORS

1. A REIT is permitted to offer units to all types of investors, including foreign investors.
2. On November 16, 2015 and subsequently on February 15, 2016, the RBI issued a notification permitting persons resident outside India to invest in units of a REIT.
 - If specified terms and conditions are fulfilled, all the downstream investments by such REIT would be considered on the same footing as a domestic investment.
3. An investor is required to make a minimum contribution of Rs. 200,000 to a REIT and all pre-listing unitholders (other than the Sponsor Group) are locked in for a period of 1 year post listing.
4. REITs cannot launch multiple schemes.
5. REIT cannot issue multiple classes of units to investors. However, subordinate units carrying inferior rights may be issued to Sponsors and their associates.



INVESTMENT CONDITIONS



Note 1: This includes under-construction properties and completed but not rent generating properties. The restriction of such properties not being more than 10% of the value of the REIT has now been done away with.

Note 2: A REIT is now allowed to hold assets through a two level (HoldCo/ SPV) entity structure - The REIT should have a controlling interest in the HoldCo / SPV and should hold not less than 51% of the share capital of such HoldCo / SPV.



INVESTMENTS & REIT Assets...

1. Each REIT must hold at least 2 projects, directly or through a HoldCo / SPV, with not more than 60% of the value of the REITs assets in 1 project.
2. A REIT is not permitted to invest in vacant or agricultural land, unless such vacant land is an extension of an existing project or in mortgages other than mortgage back securities.
3. REITs are required to invest at least 80% of the value of their assets in completed and rent generating properties.
 - *The definition of 'Real Estate' or 'Property' has now been widened to include hotels, hospitals and convention centers, forming part of composite real estate projects & common infrastructure for composite real estate projects, industrial parks and SEZs*
4. Not more than 20% of the value of the assets of the REIT can be invested in:
 - a) under-construction properties or completed properties which are not yield generating.
 - b) listed and unlisted debt of companies or body corporates in the real estate sector, not including the investment made in the debt of the HoldCo or SPV;
 - c) mortgage backed securities and transferable development rights;
 - d) 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; and
 - e) government securities, money market instruments or cash equivalents.



...INVESTMENTS & REIT Assets...

5. A REIT must hold its completed and rent generating properties, directly or through the HoldCo or SPV, for at least 3 years from the date of purchase of such properties by the REIT.
6. Not less than 51%¹ of the revenues of the REIT, HoldCo and the SPV (other than gains arising from the disposal of properties) should be in the form of rental / leasing income.
7. Not less than 75% of the value of the REIT assets (on a consolidated basis) should be rent generating.
8. REITs are not permitted to (a) invest in units of other REITs; or (b) lend to any person, however, an investment in debt securities would not be considered lending.
9. Co-investments by the REIT with a third party should be such that, the investment by the third party investor is not on terms more favourable than those available to the REIT.

¹ *Note: Previously, 75% of the income of the REIT was required to be in the form of rental / leasing income.*



...INVESTMENTS & REIT Assets

10. REITs are required to appoint valuers to conduct a valuation of their assets.

- a) The valuer cannot be an associate of the Sponsor, Investment Manager or the Trustee;
- b) The valuer is required to have at least 5 years' experience in valuation of real estate;
- c) A full valuation of the assets of the REIT is required to be conducted at least once every financial year and a half yearly valuation is required to be conducted for the half year ending September 30th; and
- d) The valuer cannot undertake the valuation of the same property for more than 4 years consecutively and may be re-appointed not less than 2 years after such valuer ceases to be the valuer of the REIT.



BORROWING CONDITIONS

1. The aggregate consolidated borrowings of the REIT, HoldCo and SPV is not permitted to exceed 49% of the value of the REIT assets.
2. Where the aggregate consolidated borrowings of the REIT, HoldCo and SPV exceeds 25% of the value of the assets of such REIT then the REIT is required to obtain a credit rating and prior approval from its unitholders.



OFFER & LISTING OF UNITS...

1. A REIT is required to make an initial offer of its units by way of a public issue. Such initial offer can be made only if:
 - a) the value of the assets owned by the REIT is not less than Rs. 5,000,000,000;
 - b) the minimum number of unit holders other than the sponsor, its related parties and associates is at least 200.
 - *In the event that the number of public unit holders falls below 200, it would not trigger a mandatory delisting requirement;*
 - a) the size of the offer is not less than Rs. 2,500,000,000.
2. For a REIT raising funds through an initial offer, the units proposed to be offered to the public through such initial offer should be as follows:
 - a) If the post issue capital is less than Rs. 16,000,000,000 - minimum 25% or Rs. 2,500,000,000, whichever is higher.
 - a) If the post issue capital is equal to or more than Rs. 16,000,000,000 but less than Rs. 40,000,000,000 - minimum Rs. 4,000,000,000.
 - b) If the post issue capital is equal to or more than Rs. 40,000,000,000 - minimum 10%.



...OFFER & LISTING OF UNITS

3. The public float in all cases is required to be increased to a minimum of 25% within a period of 3 years from the date of listing.
4. A REIT is required to refund money to all applicants in case it fails to collect 90%¹ of the fresh issue size.
5. All units of the REIT are required to be listed on a recognized stock exchange in India.
6. The guidelines issued by the SEBI, for the public issue of units of the REIT provide for -
 - a) The manner of appointment and the obligations of the merchant banker to the issue;
 - b) Guidelines for filing the offer document with the SEBI; and
 - c) Guidelines for issue of units to '*Anchor Investors*':
 - Allocation to such Anchor Investors shall be on a discretionary basis; and
 - There should be a minimum of 2 Anchor Investors for an allocation of up to Rs. 2,500,000,000 and 5 Anchor Investors for an allocation above Rs. 2,500,000,000.

¹ *Note: Previously, a REIT was required to refund money to all applicants in case it failed to collect 75% of the fresh issue size.*



DISTRIBUTIONS

1. At least 90% of the net distributable cash flows are required to be distributed by –
 - a) the SPV to the REIT or the HoldCo, as the case may be;
 - b) the REIT to its unitholders.

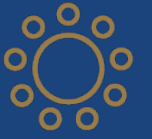
2. Net distributable cash flows of the HoldCo are required to be to the REIT in the following manner (subject to the provisions of applicable law) -
 - a) 100% of the cash flows received from the SPVs; and
 - b) 90% of the balance cash flows generated by the HoldCo.

3. Distributions must be declared not less than once in every 6 months, and such distributions have to be paid out no later than 15 days from the date of declaration.



PRIOR APPROVAL OF SEBI

1. A change in the Investment Manager and a change in control of the Investment Manager both, would require the prior approval of the SEBI.
2. The REIT Regulations set out all the actions and decisions that require the approval of the unitholders, and the thresholds of unitholders whose approval is required, differs depending on the nature of the matter.



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THANK YOU

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