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NEW FUNDING SOURCE FOR InvITs: BANK LENDING PERMITTED

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The Reserve Bank of India (RBI) issued a long pending clarification on permissibility of bank lending to Infrastructure Investment Trusts (InvITs) vide Circular no. RBI/2019-20/83 DBR.No.BP.BC.20/08.12.014/2019-20 dated 14 October 2019 (RBI Circular). InvITs are registered with Securities and Exchange Board of India and are regulated by Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014, as amended (SEBI InvIT Regulations).

Initially, the funding sources for InvITs were limited. The RBI had in April 2017 permitted banks to invest in units issued by InvITs subject to certain conditions, including restricting such investments within the overall ceiling of 20% of the net worth of the bank for direct investment in equity instruments.

The RBI Circular seeks to address the concerns raised by the InvITs, banks and other stakeholders on lending by banks to InvITs. A brief overview of the RBI Circular is set out below:

- **Board Approved Policy:** Lending to InvITs shall be subject to the board approved policy of the banks. The policy should, *inter alia*, cover (i) the appraisal mechanism; (ii) the sanctioning conditions; (iii) internal limits; and (iv) monitoring mechanism. The audit committee of the board of the bank shall review compliance of this policy and the RBI Circular on a half yearly basis.
- **Assessment/ Monitoring:** The banks are required to undertake assessment of all critical parameters including, but not limited to: (i) sufficiency of cash flows for timely servicing of debt; (ii) monitoring the performance of the InvITs and the underlying SPVs regularly; and (iii) compliance with legal provisions in respect of these entities, specifically in respect of enforcement of collateral. The overall leverage of the InvITs and the underlying special purpose vehicles (SPVs) collectively shall be within the permissible leverage in accordance with the board approved policy of the banks.
- **Lending to Standard Accounts:** Lending is permitted to only those InvITs where the underlying SPVs, that have existing bank loans are not facing "financial difficulty" as defined in para 2 of Annexure-I of the RBI's 'Prudential Framework for Resolution of Stressed Assets' dated 7 June 2019 (Stressed Assets Circular). The Stressed Assets Circular provides a non-exhaustive indicative list of signs of financial difficulty, which includes default in the exposure or delisting of

securities due to non-compliance of listing requirements or for financial reasons, borrower's credit facilities having non-performing status or their categorisations as non-performing without the concessions and insufficiency of the borrower's cash flows to service all of its loans or debt securities.

- Acquisition of Equity: The banks are permitted to finance InvITs for acquiring equity of other companies as long as such proceeds are utilised in compliance with the specific conditions in relation to financing promoter's equity under the Master Circular on Loans and Advances dated 1 July, 2015. Such conditions include target company being engaged in implementing or operating an infrastructure company in India, target company having satisfactory net worth, bank ensuring maintenance of stipulated margins at all times and bank financing having approval of the Board being restricted to 50% of the finance required for acquisition.

Observations

InvITs have primarily relied on issue of units and debt securities under applicable SEBI regulations to raise financing for acquisition of assets or for on-lending to the underlying SPVs. The RBI Circular enhances the sources of funding for InvITs and is an offshoot of the RBI's circular of April 2018 wherein RBI had permitted banks to invest in the units issued by InvITs. InvITs generally have no operating income of their own and rely on regular source of revenues from their operating underlying infrastructure projects. InvITs therefore had to leverage funds from outside sources. With the much-needed clarification from RBI there is bound to be interest amongst banks to lend to InvITs.

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