

InvITs...Time to “Trust” Infrastructure?

Summary

- ❖ *SEBI had notified the Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014 on September 26, 2014, thereby providing a regulatory framework for registration and regulation of InvITs in India.*
- ❖ *InvITs are investment vehicle which enable infrastructure developers to monetize completed assets.*
- ❖ *Mandatory listing of InvITs provides investment opportunity in infrastructure to a larger pool of investors and financial institutions (domestic as well as global). This acts as a catalyst in deleveraging the developers and encouraging their participation in future growth in Indian infrastructure segment. Additionally it will aid in reducing the exposure of Indian banking system in Infrastructure segment.*
- ❖ *Historically, tax uncertainties and interpretation issues had affected investment sentiments; this was evident in the slow pace at which the investors had moved towards adopting this financing arrangement. However, with recent investor friendly reforms, efforts are being directed by Gol towards creation of conducive regulatory environment for accelerating fresh investments in infrastructure sector and unlocking the capital of the infrastructure developers.*
- ❖ *Major debt-laden infrastructure entities in India exploring long-term refinancing options have welcomed the InvITs route.*
- ❖ *Though relatively less explored in India, refinancing tools such as Business Trusts (BTs) have been in existence since few years in countries such as Singapore, Hong Kong, Malaysia, etc.*
- ❖ *CARE believes InvIT shall be instrumental in creation of long-term financing avenues for infrastructure projects and would enable infrastructure developers to unlock tied-up capital for reinvestment so as to provide liquidity into an otherwise cash-strapped infrastructure sector. However, CARE also foresees few challenges for issuers of InvITs with regards to ability to provide an attractive yield, valuation of assets, competition from similar domestic and global products, etc. Furthermore, clarity on certain issues is yet to emerge which will have a bearing on the successful implementation of the InvITs.*

Outline...

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Why InvITs??

Infrastructure facilities of any country are direct reflection of its economic condition. Following quote by an Indian economist sums up the fundamental linkage between infrastructure and economic development. *It says- “the link between infrastructure and development is not a once for all affair. It is a continuous process- and progress in development has to be preceded, accompanied and followed by progress in infrastructure, if we are to fulfil our declared objectives of a self-accelerating process of economic development”.*

Growing at 7.6%, Indian economy is witnessing an impressive growth story. However, plagued by funding and implementation constraints, Indian infrastructure development has not kept pace with economic growth. Various factors such as high capital outlays, cost overruns due to delay in clearances (in addition to long gestation period), limited funding options and high interest costs have been a drag on the Indian Infrastructure investments.

The Twelfth Five year Plan (2012-2017) projected an investment of USD 860 Billion (Figures as on 2015) in infrastructure during the Plan period which is more than double the investment in infrastructure achieved in the Eleventh Five Year Plan period. Furthermore, the Plan adopted a strategy of encouraging higher private investment infrastructure, directly and through public private partnerships (PPPs). The share of private investment in infrastructure was projected to rise substantially from 37% in Eleventh Plan to about 48% in the Twelfth Plan. The experience in the first three years of Twelfth Plan suggested that the infrastructure investment slowed down and there is a likely shortfall of about 30%, with the shortfall in public investment (Central and States combined) and private investment at 20% and 43%, respectively. Of the projects involving investments of USD 46 billion approved by Planning commission’s Private Public Partnership Appraisal Committee (PPPAC) during 2015, only USD 2 billion of projects have been completed [Source: Department of Economic Affairs/NITI AAYOG]. Slower pace of investment in infrastructure is attributed to liquidity crunch faced by many of the developers/investors on account of high debt exposures (to support the projects under-implementation), and capital investments locked-in completed projects. Subdued investor interest (owing to lower and fluctuating returns) and limited funding options (with many banks peaking their sector exposure limits) have impacted the ability of the developers to avail further funds and invest in new projects. Also, infrastructure projects being long gestation in nature typically necessitate financing through long-term funds. With an under-developed

Indian debt capital market, major portion of such infrastructure financing is met through traditional bank finance which is relatively shorter in tenure. Consequently, need arose for providing an opportunity for long-term refinancing for debt obligations in existing projects, unlocking tied-up capital of developers for reinvestment so as to pump in liquidity into an otherwise cash-strapped infrastructure sector. InvITs would provide a platform for risk averse institutional investors like sovereign funds, pension funds and individual investors to participate in Indian Infrastructure growth story.

Identifying the aforementioned needs of the infrastructure sector, Union Budget in February 2014 had introduced Infrastructure Investment Trusts (InvITs) in India. The underlying focus was to reduce the funding pressure on banking system, while also generating **fresh equity capital** for infrastructure projects. ***Subsequently, on September 26, 2014, SEBI had notified the Securities and Exchange Board of India (Infrastructure Investment Trusts) Regulations, 2014, thereby providing a regulatory framework for registration and regulation of InvITs in India.***

Insights on key aspects of Securities & Exchange of Board of India (Infrastructure Investment Trusts) Regulations, 2014.

A. Key Definitions

<p>What is included in “infrastructure”</p>	<p>Infrastructure includes all sub sectors as defined by the Ministry of Finance vide notification dated October 07, 2013, Harmonized Master list of infrastructure sub sectors includes Roads and bridges, Airports, Ports, Railway tracks, Electricity (Generation, Distribution and Transmission), Oil and Gas (Pipelines and Storage facilities), Telecom Towers, Water Sanitation associated sectors and other social</p>
<p>Eligible infrastructure projects</p>	<p>Infrastructure project which (prior to the date of its acquisition by, or transfer to, the InvIT), satisfies the following conditions,—</p> <ul style="list-style-type: none"> ➤ For PPP projects,— <ul style="list-style-type: none"> i. the Infrastructure Project is <i>completed and revenue generating*</i> <li style="text-align: center;">or ii. the Infrastructure Project is a <i>pre-COD project**</i>; ➤ For non-PPP projects- <p>the infrastructure project has received all the requisite approvals and certifications for commencing construction of the project</p>
<p>Parties to InvITs</p>	<p>InvITs have 4 principal parties:</p> <ol style="list-style-type: none"> 1. Sponsor 2. Trustee 3. Investment Manager 4. Project Manager

**completed and revenue generating project"-means an infrastructure project, which prior to the date of its acquisition by, or transfer to, the InvIT, satisfies the following conditions,—*

(i) the infrastructure project has achieved the commercial operations date(COD) as defined under the relevant project agreement including concession agreement, power purchase agreement or any other agreement of a similar nature.

(ii) the infrastructure project has received all the requisite approvals and certifications for commencing operations; and

*(iii) the infrastructure project has been generating revenue from operations for a period of **not less than one year**;*

***“pre-COD project” means an infrastructure project which,—*

(i) has not achieved commercial operation date as defined under the relevant project agreements

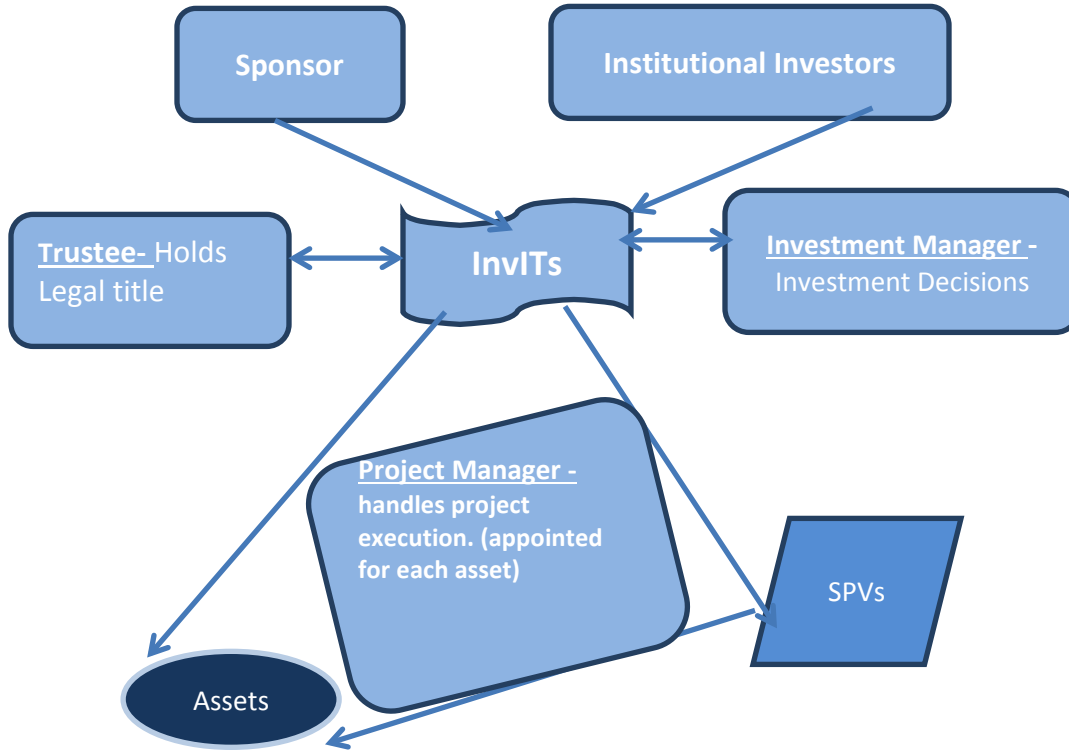
and

(ii) has,

1. *achieved completion of at least fifty per cent of the construction of the infrastructure project as certified by an independent engineer of such project; or*
2. *expended not less than 50% of the total capital cost*

B. Operational Framework-

InvITs Framework



- *InvITs are investment vehicle which would enable developers to de-leverage and monetize completed assets. They will also attract long-term foreign investments.*
- *First step towards establishing InvITs is obtaining certificate of registration. InvIT Regulations provides for certain eligibility requirements for grant of certificate to InvITs and SEBI, upon satisfaction, shall grant the certificate of registration to an InvIT.*

C. Eligibility criteria and responsibilities of key parties-Independent roles..Higher efficiency

Parties	Eligibility criteria	Key Responsibilities
<p>✓ Sponsor</p> <ul style="list-style-type: none"> ▪ Any company or LLP or body corporate which sets up the InvIT and is designated as such at the time of application made to the SEBI. ▪ In case of PPP projects, it shall mean the infrastructure developer or a special SPV; 	<p>i. not more than 3 sponsors;(Still under consultation;</p> <p>ii. each sponsor must have,–</p> <ul style="list-style-type: none"> ▪ a net worth of not less than Rs.100 crore (in case of body corporate or a company) <p style="text-align: center;">or</p> <ul style="list-style-type: none"> ▪ net tangible assets of not less than Rs.100 crore in case it is a LLP <p>Note: in case of PPP projects, where the sponsor is the SPV, the net worth or net tangible assets shall be as defined in the eligibility criteria of the project documents;</p> <p>iii. The sponsor or its associate should have a sound track record in development of infrastructure or fund management in the infrastructure sector.</p> <p>Note: “sound track record “means experience of at least 5 years and where the sponsor is a developer, at least two projects of the sponsor have been completed.</p>	<ul style="list-style-type: none"> ▪ Set-up InvIT and appoint Trustee ▪ The Sponsor(s) shall, collectively, hold not less than 25% of the total units of the InvIT on post issue basis for a period not less than 3 years from the date of listing of the units. <p>Note: In case of PPP, in case such holding is disallowed by any provisions then the sponsor may continue to maintain such holding at SPV level. However, aggregate holding at SPV level and InvIT should not be less than 25% of the total units of the InvIT on post issue basis for a period not less than 3 years from the date of listing of the units.</p> <ul style="list-style-type: none"> ▪ Any holding by sponsor exceeding aforementioned 25% shall be held for a period of not less than one year from the date of listing of such units.
<p>✓ Trustee</p> <ul style="list-style-type: none"> ▪ Person who holds the InvIT assets in trust for the benefit of the unit holders. 	<p>The trustee shall be registered with the Board under Securities and Exchange Board of India (Debenture Trustees) Regulations,1993 and is not an associate of the sponsor(s) or manager.</p>	<p>Trustee Shall</p> <ul style="list-style-type: none"> ▪ enter into an investment management agreement with the investment manager on behalf of the InvIT. ▪ oversee activities of the investment and project manager and obtain quarterly compliance statement. ▪ Review transactions carried out between investment manager and its associates and ensure that the investment manager complies with reporting and disclosures requirements.

Parties	Eligibility criteria	Key Responsibilities
<p>✓ Investment Manager</p> <ul style="list-style-type: none"> any company or LLP or body corporate which manages assets and investments of the InvIT and undertakes activities of the InvIT as specified under regulations. 	<ul style="list-style-type: none"> net worth of not less than Rs.10 crore if the investment manager is a body corporate or a company net tangible assets of value not less than Rs.10 crore in case the investment manager is a LLP the investment manager must have at least 5 years experience (exemption for the same is still under consideration) in fund management or advisory services in the infrastructure sector have more than half of directors (in case of a company) or members of the governing board (in case of an LLP) as independent and not directors or members of the governing board of another InvIT; the investment manager has an office in India from where the operations of the InvIT is conducted; has entered into an investment management agreement with the trustee (which provides for the responsibilities of the investment manager). 	<ul style="list-style-type: none"> Make investment decisions w.r.t the underlying assets or projects of the InvIT including any further investment or divestment of the assets. The investment manager shall oversee activities of the project manager with respect to revenue streams from projects and shall obtain quarterly compliance certificate from the project manager. The investment manager shall be responsible for all activities pertaining to issue of units and listing of units of the InvIT. The investment manager shall declare distributions to the unit holders in accordance with the regulation. Other responsibilities as governed by the agreement executed between the Trustee and the Investment Manager.
<p>✓ Project Manager</p> <p>The project manager shall undertake operations and management of InvIT assets including arrangements for appropriate maintenance, either directly or through appointment and supervision of appropriate agents as required under project agreement (including concession agreement in case of a PPP project).</p>	<ul style="list-style-type: none"> Any person designated as the project manager by the InvIT and responsible for achieving execution of the project in case of PPP projects, shall mean the entity responsible for such execution and achievement of project milestones in accordance with the concession agreement. 	<p>Project manager shall discharge all obligations in respect of achieving timely completion of infrastructure project (wherever applicable), implementation, operation, maintenance and management of such infrastructure project in accordance with the project management agreement.</p>

D. Raising Funds- Targeted towards long term investors with lower risk appetite

- InvITs may raise funds by way of both public offering and or private placement.
- Units of **all InvITs** need to be **mandatorily listed** on a recognized stock exchange.
- Cumulative value of the assets held by the InvIT should be **at least 500 crore**.
- Initial Offer size should be **at least Rs.250 crore**.
- Minimum investment by an **Investor Rs.10 lakh** (Rs.1 crore in case of private placement).
- Minimum 20 (5 in case of private placement) investors with each holding not more than 25% of the units.
- Non-Residents including foreign portfolio investors are permitted to invest in InvITs under the automatic route.
- If the InvIT fails to make any offer of its units, whether by way of public issue or private placement, within three years from the date of registration with the SEBI, it will have surrender its certificate of registration and will thereby cease to operate as an InvIT.

CARE View:

Mandatory listing of InvITs would provide investment opportunity in infrastructure to a larger pool of investors and financial institutions (domestic as well as global). This would act as a catalyst in deleveraging the developers and encouraging their participation in future growth in Indian Infrastructure segment. Additionally, it will also help in reducing the exposure of Indian banking system in Infrastructure segment. InvITs may be categorized as a product designed for institutional and long-term investors. Thus, success of InvITs would largely depend on investor sentiments towards this long- duration-and-moderate returns arrangement. In the past, equity financing options for Indian infrastructure sector, especially for the road project developers has been muted. With InvITs, the class of investors shall be different from the traditional equity market investors and will generally comprise of those who are seeking regular cash-flow.

E. Investments Restrictions- Conservative approach aimed at stable yields

- An InvIT can invest in infrastructure projects either directly or through SPVs. In case of PPP projects, investment in infrastructure projects has to be mandatorily through SPVs.
- InvIT regulations provides that an InvIT can invest in both completed and/or revenue generating projects as well as under construction projects.
- Publicly placed InvITs are required to hold at least 80% of its assets in completed and revenue generating eligible infrastructure projects. (No such condition are applicable to Private placed InvITs)
- Publicly placed InvITs are allowed to invest maximum of 10% of the value of assets in under construction projects. Any InvIT intending to invest more than the threshold of 10% will need to opt for private placement route.
- An InvIT shall not invest in units of other InvITs.

CARE View:

Permitting InvITs to invest even in under-construction projects (although with restriction) would be positive for the developers who will be able to partly monetize even on their incomplete projects. However, uncertainty of returns from investments would still prevail. Consequently, uncertainty continues about the enthusiasm with regard to investments in under construction projects.

F. Distribution of Dividends, Interest, Capital Gains and their Tax implications- *efficient tax structure, greater distribution of surpluses may promote increased participation*

- At least 90% of net distributable cash flows of the **SPVs** shall be distributed to the **InvIT** in proportion of its holding in the SPV subject to provisions applicable laws.
- Not less than 90 % of Net Distributable Cash Flows (NDCF) of the InvITs shall be distributed to the **unit holders**.
- These distributions shall be declared half yearly in case of public InvITs (and at least once a year in case of privately placed InvITs).
- **Such distribution made by SPVs to InvITs shall not be subjected to Dividend Distribution Tax (DDT)(effective from June 01, 2016)**. However, to be eligible for this exemption, the InvIT should hold all the share capital of the SPV, excluding the stake required to be held mandatorily by any other person.
- **Interest paid by SPV to Trust on loans and advances availed (if any) whilst allowed as deductible expense will not be taxable and no TDS deduction will be required.**
- **Capital gain** arising to Sponsor at time of swap of its shareholding in SPV for units of InvITs will be deferred and be subject to **tax only on actual sale of units**.
- In case of income distributed by InvITs (comprising Interest, Dividends and Capital Gains), **only interest component of income distributed** by trust to the unit holders **would attract tax**, and balance portion will be exempted.
- In the hands of unit holder, capital gains on sale of listed units of InvIT will attract levy of security transaction tax (similar to what is levied on listed equity shares). Long-term capital gains (LTCG) would be exempt and short-term capital gains (STCG) would be taxable @ 15%. Where sale of units is off the exchange LTCG and STCG would be levied at applicable rates. MAT will be applicable on interest income and capital gains on sale of InvIT units.

**NDCF = Profit After Tax (PAT)+Depreciation & Amortization as per P&L account
+/- Loss/Gain on sale of Infrastructure assets
– Repayment of debt obligations [(external debt(principal), redeemable preference shares, debentures, etc.)]**

CARE View:

Historically, tax uncertainties and interpretation issues had affected investment sentiments; this was evident in the slow pace at which the investors had moved towards adopting these financing arrangements. However, with recent investor friendly tax reforms, an attempt has been made by GOI towards creation of conducive regulatory environment for accelerating fresh investments in infrastructure sector and unlocking the capital of the infrastructure developers.

G. Low leverage superior returns

- InvIT’s borrowings and deferred payments to be not **more than 49% of** value of assets.
- If the aggregate borrowings and deferred payments of the InvIT (net of cash and cash equivalents) exceed 25% of the value of assets, it shall require following prior to any further borrowing:
 - Credit rating of InvIT’s Debt
 - Approval from unit holder by way of votes.
- Six-month correction period allowed in case the above conditions are breached due to movement in price of the underlying assets/ securities.

H. Valuation of Assets- *Striking the right Value a key challenge for sponsor*

- Full valuation of all the assets (including inspection of every infrastructure project should be carried out at least once a year (half yearly in case of public InvITs).
- Additionally, valuation is also required prior to issue of any further units (except Bonus units) by the InvIT.
- For any transaction relating to purchase/sale of InvIT’s asset, full valuation by independent valuer of the specific project shall be undertaken and the transaction amount shall be capped as under: acquisition- 110% and sell: 90% of the assessed value.

Success story of Asian Business Trusts... will it replicate for Indian InvITs?

Business Trusts (BTs)-Global Scenario

Though relatively newer concept in India, financing tools such as Business Trusts (BTs) have been in existence since few years in countries such as Singapore, Hong Kong, Malaysia, etc.

A. Singapore BTs

- Introduced by the Monetary Authority of Singapore in 2004, a Singapore BT is an investment vehicle structured so that a single company, known as the "trustee-manager", holds and operates business enterprises for the benefit of its investors, beneficiaries who are unit holders.
- While investors do not have any operational control or shareholders' rights, they benefit from the steady dividend stream. The trustee-manager is professionally managed, and reports to the Board which comprises primarily Independent Directors. Thus, the fiduciary responsibility to beneficiaries is placed squarely on a single trustee-manager. This model supports strong governance and efficient management processes - qualities that appeal to potential investors, as their interests are paramount.
- For investors, these BTs often appear to be highly attractive investments because they not only offer good returns but also stable returns. At a time when bank deposit rates are subdued, BTs are generating returns in the range of 5-8%.
- Several Singaporean infrastructure developers and owners have also opted for the BT structure. In 2015, 13 BTs listed on Singapore Exchange maintained an average indicative dividend yield of 8% YTD, taking the three-year total return to 13.1%.
- The five best performers for 2015 were First Ship Lease Trust (+71.6%), Keppel Infrastructure Trust (+11.7%), Ascendas India Trust (+11.5%), Religare Health Trust (+8.3%) and Croesus Retail Trust (+0.5%). Together, these five trusts averaged a 20.7% total return. In 2015, the total market capitalization of these BTs was more than USD 13 billion.

B. Hong Kong BTs

- In Hong Kong, Business trusts use share stapled units in a company as well as units in the BT itself. Stapling simply means that two different securities are "stapled" together for the purposes

of trading or transfers. Stapled security could comprise two or more of the same or legally different instruments, for example, a share in a company and a unit in a trust. Once stapled, the securities, whether they are units or shares only or both, cannot be traded or transferred separately.

- The trust(s) and the company (ies) can hold assets and operate businesses, but active business, such as asset management and development are typically conducted by the company while passive investments in property or funds are undertaken by the trust. In practice, the trust and the company effectively operate as one entity although the company continues to be a separate legal entity from the trust.
- From an investor's perspective, stapled securities can be tax efficient because the trust's pass through distributions may give the investor the benefit of tax free or tax reduced distributions (due to depreciation allowances) as well as taxed income via dividends on the shares. From the company's perspective, additional capital can be raised from the issuance of stapled securities which can be deployed in expanding the business of the entity undertaking development activity.
- Unlike trustee- manager in Singapore, trustee manager in Hong Kong does not receive management fees or other incentives and is only entitled to the reimbursement of its costs and expenses. The trustee manager can be removed upon a decision by 50% of share staple unit holders in Hong Kong, whereas this requires a majority threshold of 75% of unit holders in Singapore. Lastly, in Hong Kong, the trust is not permitted to incur debt (although there are no such restrictions on the company or its subsidiaries), while in Singapore, there are no restrictions on the level of gearing that may be maintained by a BT or its operating companies.

C. Malaysian BTs

- In order to avoid missing out on investment opportunities, Malaysia too approved BTs in the year 2012.
- BTs in Malaysia also pool cash-generating assets and typically distribute a large portion of profits as payouts, akin to real estate investment trusts.
- Malaysia allows both conventional BTs as well as Shariah-compliant Islamic BTs, structured in accordance with approved Shariah principles and concepts.
- In order to obtain a primary listing on Bursa Malaysia, a BT's total market capitalization must be at least RM 1 billion (\$ 405 million) based on the issue or offer price.

Comparison on some features between Singapore, Malaysian and Hong Kong Share Stapled Unit Model & INVIT

Parameters	Malaysian BT	Singapore BT	Hong Kong BTs	INVITs
Legal status	Created by trust deed	Created by trust deed	The structure comprises: i. a trust, which is not a separate legal entity, and is a fixed single investment unit trust created by a trust deed; and ii. a listed company, which is a separate legal entity	Created by trust deed
Primary Regulator	Securities Commission and Bursa Malaysia Securities Berhad	Monetary Authority of Singapore	Hong Kong Stock Exchange	SEBI
Listing Status	Listed	Can be listed or Unlisted	Listed	Mandatory Listing
Legal owner of business/property	Trustee-manager	Trustee manager	Listed company	Trustee
Distribution	May be paid out of cash flows subject to solvency requirements	May be paid out of cash flows subject to solvency requirements	<ul style="list-style-type: none"> ▪ At the trust level, may be paid out of capital or cash flows subject to solvency requirements ▪ Depending on the listed company's place of incorporation, may only be paid out of profits 	May be paid out of cash flows (net distributable) subject to solvency requirements
Infrastructure based BTs	A concession or licence to build and operate the infrastructure must have been awarded by a government/ state agency in or outside Malaysia. The infrastructure must have had	Not Specified	Not Specified	All assets under definition of Infrastructure sector

Parameters	Malaysian BT	Singapore BT	Hong Kong BTs	INVITs
	a development cost of at least RM500 million and the remaining concession or licence period must be at least 15 years			
Minimum IPO size	S\$405 Million	S\$300 Million	NA	Rs. 500 crore
Voting Requirement to remove the trustee	67%	75%	50%	75%
Gearing Limits	No Limit	No Limit	Trust cannot borrow any debt whereas company has no gearing limits	<=49%
Investment Restrictions	None	None	None	To invest maximum of 10% in construction-eligible infrastructure projects and rest of investment should be operational assets(only in case of Public InvITs)
Tax Treatment	BT - Taxed at corporate tax rate of 24% •Unit holders - Trust distributions not taxable	BT- Taxed at corporate tax rate of 30% • Unit holders - Trust distributions not taxable	BT - taxed at profits tax rate of 16.5% •Unit holders - Trust distributions not taxable	InvITs - Interest and Dividends from SPV to InvIT shall not be taxable while other income and capital gains shall be taxed. Unit holders - Dividend distributions not taxable. - Interest income and capital gains chargeable

Performance of some of the major BTs from Singapore and Hong Kong

Features	Singapore Listed Hutchinson Port Holding Trust	Hong Kong Share Stapled Unit Trust-HKT Trust and HKT Limited	Indian company BT listed on SGX(Religare Health Trust)	Indian company BT listed on SGX(Ascendas India Trust)
Purpose	To invest in, develop, operate &manage deep water container ports in Pearl River Delta (Hong Kong)	Principally engaged in the provision of telecommunications and related services	Invest in and develop Medical & healthcare assets &services in Asia, Australasia and other emerging markets	To generate attractive portfolio returns for Unitholders by investing in IT parks and office properties in key Indian cities.
Revenues	\$2752 HK million (year ended December 31, 2015)	\$34.729 million (year ended December 31, 2015)	Rs.655.68 crore (FY16, year ending March 31)	Rs.678.4 crore (FY16,year ending March 31)
Income available for distribution	\$554.9 HK Million	\$3.94 HK Million	Rs.290.36 crore	Rs.239.68 crore
Total Distribution /Unit (For FY 16)	18.7 HK cents	28.27 HK cents	Rs.2.99	Rs.2.59
D/E ratio	1.12	1.02	0.02	0.35

InvITs may face competition from other products (Domestic as well as Global)

Parameter	Business Trust(BT) listed Outside India	InvIT	Indian REIT	Category I Alternative Investment Infrastructure Fund(AIIF)	Listed Company
Constitution	<ul style="list-style-type: none"> Created by a trust deed. Unit holders have beneficial interest and a lesser degree of control than shareholders of a company. 	<ul style="list-style-type: none"> Created by a trust deed. Unit holders have beneficial interest and a lesser degree of control than shareholders of a company. 	<ul style="list-style-type: none"> Created by a trust deed. Unit holders have beneficial interest and a lesser degree of control than shareholders of a company. 	Can be in the form of a trust or a company or a LLP or a body corporate.	A separate Legal entity.
Entity	Trustee-Manager as the single responsible entity with a combined role of asset manager and trustee.	<p>Sponsor responsible for setting up of INVIT and appoint trustee.</p> <p>Trustee shall ensure that the activity of the InvIT is being operated in accordance with the provisions of the trust deed.</p> <p>Investment Manager shall make investments decisions with respect to the underlying assets/projects of the InvITs including further investment and</p>	<p>Sponsor to appoint REIT and appoint trustee.</p> <p>Trustee to hold REIT assets in the name of REIT for the benefit of unit holders.</p> <p>Manager to Identify and recommend investment opportunities and Manage investments.</p>	<p>Manager appointed by AIF to manage its investments and may also be same as the sponsor of the fund.</p> <p>Sponsor responsible to set up the AIF and includes promoter in case of a company and designated partner in case of Limited Liability partnership.</p>	Board of Directors and Management

InvITs...Time to“Trust“Infrastructure?

Parameter	Business Trust(BT) listed Outside India	InvIT	Indian REIT	Category I Alternative Investment Infrastructure Fund(AIIF)	Listed Company
		divestment. Project Manager shall conduct operations and management of a particular InvIT asset with a concessionaire SPV.			
Asset	No restrictions.	Only assets pertaining to Infrastructure sector.	Real Estate Assets.	All assets pertaining to Infrastructure sector (operational and under construction).	No restriction.
Depreciation	No impact on distribution payout.	No impact on distribution payout.	No impact on distribution payout.	No impact on distribution payout.	Affects dividend payout, which is restricted to accounting profits.
Gearing Limit	None	Aggregate consolidated borrowings and deferred payments of the InvIT shall never exceed 49% of the value of the InvIT assets.	Aggregate consolidated borrowings and deferred payments of the REIT shall never exceed 49% of the value of the REIT assets.	Not permitted to borrow funds directly or indirectly or engage in any leverage. (Though underlying companies can borrow)	None
Minimum Investment	Depends on the individual country's jurisdiction	>=Rs.500 crore	>=Rs.500 crore	>=Rs.20 crore	NA
Dividend Distribution	No requirement to	Must distribute at least	Must distribute at	Not Specific tax benefits.	No requirement

Parameter	Business Trust(BT) listed Outside India	InvIT	Indian REIT	Category I Alternative Investment Infrastructure Fund(AIF)	Listed Company
and taxation	distribute, but the trust may pledge to distribute a certain percentage of income as dividends. Dividends taken from operating cash flow. Indian SPV held by business trust outside India will be required pay DDT	90% of distributable surplus to enjoy tax transparency under Income Tax Act Interest by SPV to Trust is not chargeable to tax however it is taxable in the hands of unit-holders when distributed. No DDT shall be charged for SPV as well as InvIT.	least 90% of income to enjoy tax transparency under Income Tax Act. Interest by SPV to Trust is not chargeable to tax however it is taxable in the hands of unit-holders when distributed. No DDT shall be charged for SPV as well as REIT.		to distribute. Dividend distribution from accounting profits.
Investor	All types	Long term, regulated, lower risk appetite.	Long term, regulated, lower risk appetite.	All types	All types

Globally, ability to distribute cash surplus to investors (including amortisation of capital deployed) rather than constrained distribution of accounting profits only, is most important differentiating factor between business trust format and company.

Where do Indian InvITs stand today?

- Major debt-laden infrastructure entities looking to deleverage and long-term refinancing options have welcomed the InvITs route. At present, Summary of Indian Companies which are under planning launch Trust or have received the approval from SEBI are as under :

Company	Registration Certificate received	Assets to be transferred	Approximate Value of the InvIT (in Rs crore)**
IRB Infrastructure Developers Ltd (rated 'CARE AA-(SO)')	Yes	Roads	7,000 to 8,000
GMR Infrastructure Ltd (rated 'CARE BBB-/CARE A3')	Yes	Mix of operational road and transmission assets	Not Available
MEP Infrastructure Developers Ltd (rated 'CARE BBB-/CARE A3')	Yes	Toll Collection and Operate ,Maintain &Transfer assets	1,200
IL&FS Transportation Ltd (rated 'CARE A/A1')	No	Roads, thermal and renewable energy assets	4,700 to 6,100
Sterlite Power Transmission Ltd	No	Power Transmission assets	2,500
Adani Group	No	ports, power transmission lines and power generation assets	Not Available
Mytrah Energy Limited	No	Renewable Energy Assets	2,600

**** As per various media reports**

CARE View

*Well-developed and connected Infrastructure facilities are fundamental and primary requirement towards a country’s economic development. Launch of initiatives such as “**Make in India**” has further stressed upon the need for a well established infrastructure in the country. RBI Governor Mr Raghuram Rajan also emphasized the need for infrastructure investment when he mentioned “If India doesn't create the necessary infrastructure, it will hurt growth. India must take strong political steps to free up resources for investment”.*

Continued impetus and thrust of the government on development of infrastructure is reflected in various initiatives taken by government and capital market authorities in past few years towards creating conducive regulatory framework and efficient policy decisions and more transparent and smooth implementations. Creation of business Trusts is a testament of such initiatives.

CARE believes that the government policy has been conducive for the infrastructure sector and InvIT shall be instrumental in creation of long-term financing avenues for infrastructure projects. It would enable infrastructure developers to unlock tied-up capital for reinvestment so as provide liquidity into an otherwise cash-strapped infrastructure sector. InvITs as a long-term financing tool would help to deleverage the debt-laden infrastructure sector and also help to reduce burden on banking system. Investments in InvITs would be majorly attracted from investors seeking long-term stable returns (though moderate). InvITs possess potential to attract huge pool of long-term investments from pension funds across world.

However, CARE also foresees following challenges for issuers of InvITs-

- ***First, the ability to provide an attractive yield in an environment of interest rates volatility.***
- ***Second, the issuers may face challenge in obtaining a premium valuation for their assets which would depend upon a number of factors like***
 - ***Sponsor credibility and experience***
 - ***Quality and revenue generation ability of underlying assets***
 - ***Limited funding options***
 - ***Government policies.***
- ***Third, InvITs would be competing with similar domestic products such as AIF which offer more operational flexibility and allows investors to invest in all forms of infra assets, whether***

completed or not (without any restrictions). InvITs will be exposed to specific sectors that may be subject to their own business cycles. Unlike InvITs, REITs shall be backed by tangible assets, which could be a key factor for being preferential investing choice for some investors.

- Furthermore, the clarity on certain issues like increase in number of sponsor (from 3 to 5) mandatory sponsor holding (reduce from 25% to 10%), approval relating to related party transactions, minimum public holding requirements, etc, are yet to emerge which will have a bearing on the successful implementation of the InvITs.

In spite of initial teething issues, whether InvITs will find adequate opportunities to flourish and meet the investor expectation will be a key monitorable, so as to indicate if the Indian Infrastructure sector can indeed be “Trust”-ed.

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