

INDIA BUSINESS LAW JOURNAL

Debt securities guidelines issued for REITs, INVITs

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The Securities and Exchange Board of India (SEBI) issued a notification on 13 April providing guidelines for issuance of debt securities by real estate investment trusts (REITs) and infrastructure investment trusts (InvITs). On 15 December 2017, SEBI had amended the SEBI (Real Estate Investment Trusts) Regulations, 2014, and the SEBI (Infrastructure Investment Trusts) Regulations, 2014, to clarify that REITs and InvITs may issue debt securities.

Under the notification, SEBI clarified that regulations pertaining to the restriction on issuance of debt securities for providing loans to or acquisition of shares of any person who is part of the same group or who is under the same management, and the requirement to create debenture redemption reserves under the SEBI (Issue and Listing of Debt Securities) Regulations, 2008, are not applicable to REITS and InvITs.

The notification mandates the appointment of a debenture trustee (not being a trustee of the REIT or InvIT) registered with SEBI.

In order to ensure the safety of investments, the notification provides for the creation of a charge, on the assets of the REITs and InvITs, which is of sufficient value to repay the investors.

Certain disclosure requirements under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, have also been made applicable, such as disclosures of interest in debentures/bonds, or information having a bearing on operations of a listed entity, asset cover, credit rating, information in respect of debenture trustee, etc. The notification directs REITs and InvITs to make certain financial disclosures, along with disclosures of any deviations in the use of proceeds of the debt securities.

The business law digest is compiled by Nishith Desai Associates (NDA). NDA is a research-based international law firm with offices in Mumbai, New Delhi, Bengaluru, Singapore, Silicon Valley, Munich and New York. It specializes in strategic legal, regulatory and tax advice coupled with industry expertise in an integrated manner.