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REAL ESTATE INVESTMENT TRUST IN INDIA: A TOOL TO STRENGTHEN THE INDIAN ECONOMY

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Abstract

A revenue of around \$3168 billion in the year 2021 has been generated all over the world through the real estate sector and this sector is ranked among top 3 global industries by revenue on the basis of the report of global industries based on their revenue by the IBIS World. The real estate sector in India gives its contribution in country's GDP around 6-7%, further on the basis of the report of the IBEF this contribution may increase to 13% till the year 2025. A new approach relating to the investment in the Real estate is found which is called Real estate investment trust (REITs) also labelled as Real estate securities. Through this article we will discuss this real estate investment trust having a focus on it's legal regulation governing it in India.

Keywords: Real estate , Global industries, IBIS World, Investment , Legal.

Introduction

From over the last hundred years in India, Real estate is considered to be the most favoured venture and generally, it is contemplated that real estate means buying property mainly for residence. REITs was established by the congress in 1960 by making an amendment to the Cigar Excise Tax extension. This law thereby permit the investors to purchase the shares in commercial real estate portfolios which earlier was available only to some moneyed people and with help of large financial intermediaries.⁴ Properties in RIETs portfolio may include malls, warehouses, office, apartment complex, etc.

The concept relating to REITs in India was first introduced by the Securities and Exchange Board of India (SEBI) with an aim to avail the capital needed by the real estate and thereby to revolve the funds of retail investors through a formal system by implementing SEBI (REITs) Regulation, 2014. The SEBI REITs Regulations, among various others include the requirements relating to

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⁴U.S. Securities and Exchange Commission. "[Investor Bulletin: Real Estate Investment Trusts \(REITs\)](http://www.sec.gov/files/riets.pdf)," <http://www.sec.gov/files/riets.pdf>" at 12:30 PM, dated 27 May 2023

registration, registration's procedure, and REITs eligibility conditions, however, it is made compulsory for units of all REITs to be listed on a recognised stock exchange having nationwide trading terminals, whether publicly issued or privately placed.

If we say in common man's language, REITs means these are the companies which are owner or finance the real estate which are income producing in range of property sectors they gave the chance to all the investors to becomes the owner of real estate and also to get the chance to get the dividend based income and return and thereby helped the community to grow, revitalise and thrive.

The shareholders of a REIT earn through share of the income produced through real estate investment without actually having to go out and buy, manage or finance property.

MEANING OF REIT

Real Estate Investment Trust which in short called REIT, is a company which owned and develop the income producing real estate properties. These trust although different from real estate mutual funds but they follows the model of mutual funds which put resources in assets belonging to the real estate also that of companies stock of real estate, REITs are restricted to putting resources into assets of real estate only by becoming an owner and operating real estate properties which are revenue generating.

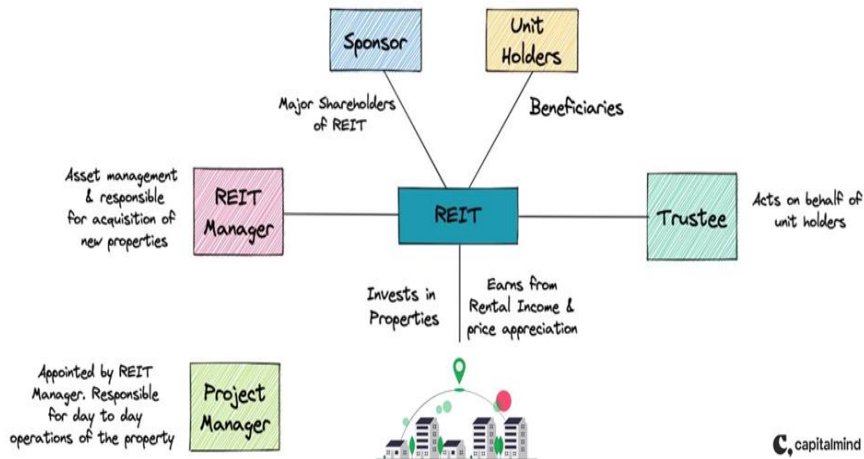
REITs are promptly accessible trade on major stock exchanges and at present, in India, there are only three REITs available Brookfield India REIT, Mindspace Business Parks REIT, and Embassy Office Parks REIT.

A Real Estate Investment Trust (REIT) trades on major stock exchanges acting like a security and in many cases it function like a income generating estate or related estate. Most of the REITs are regd. with the SEC and they are traded publicly on stock exchange market. They are named as publicly traded REITs. A special tax consideration received by the REITs and investors were offered higher dividend, as well as a liquid method of investing in real estate.

There is a similarity between REITs and mutual fund as in both a person is designated whose duty is to manage the assets and allow the investors to put their resources.

But, while the underlying asset of Mutual Funds is usually equity, debt, gold, or a combination of these, the underlying asset in the case of REITs is primarily real estate holdings or loans secured by Real Estate. For the ease of understanding we have the structure of the REIT

The structure of REIT



TYPES OF REITs

Equity REIT is the first REIT which came into existence in India in March, 2019. However, it is not the only REIT which existed, apart from this there are many which can be seen later on in Indian market, although they have already made their place in other countries like in U.S where there can be different types of REIT be seen like:

1. EQUITY REITs

This is the REIT which acquires, sell, manage, build real estate and distributes its income in the form of dividend among its investors. These include all the income-generating properties. Income is generated by the way of rents. This type of REIT is considered to be the most famous one and also the most common one in use.

2. MORTGAGE REITs

This type of REITs means to give the money in the form of lending to the business that are in the real estate industry. The source of earning is not through the rent but they are from the EMI or the mortgage payments. Their earnings are generated primarily by the net interest margin spread between the interest they earn on mortgage loans and the cost of funding these loans.

3. HYBRID REITs

These have both owned properties and mortgage-based properties and they earn their income regularly through interest and rent. It allows investors to diversify and earn through both sources.

4. PUBLIC TRADED REITs

These types of REITs are regd. With SEC however they don't trade on national securities exchanges. As a result, they are less liquid than publicly traded REITs.⁵ Still, they tend to be more stable because they're not subject to market fluctuations.

LEGAL PROVISIONS RELATING TO REITs

SEBI initiate the step to conceptualise the REITs in the year 2008 by enacting regulation however it could not be confirmed till 2014. In the year of 2014 SEBI took a major step to introduce REITs in India capital Market. To apply the same in effective way invited thereafter suggestion, opinion from the public, which are stakeholders, were called and on 26th september 2014, Security and exchange board of India published SEBI (Real Estate Investment Trusts) Regulations, 2014,⁶ and thereby guidelines were laid down which governs the REITs in India. In establishing the REITs provision of Indian trust act,1882 were utilised under which a certificate was granted in order to operate by SEBI which depend upon the application of the sponsor of the REITs in accordance with the format as specified in Schedule 1 of regulation.⁷

Regulation 4 of SEBI (Real Estate Investment Trusts) Regulations, 2014 provides for the eligibility criteria of the grant of certificate for Trust and describe the ground for person or companies to qualify as sponsor, manager and trustee of the REIT.⁸

Regulation 4: Eligibility Criteria

“(1) For the purpose of the grant of certificate to [the trust], the Board shall consider all matters relevant to the activities as a REIT.

(2) Without prejudice to the generality of the foregoing provision, the Board shall consider the following, namely, -

(a) The applicant is [the sponsor on behalf of] trust and the instrument of trust is in the form of a deed duly registered in India under the provisions of the Registration Act, 1908;

(b) The trust deed has its main objective as undertaking activity of REIT in accordance with these regulations and includes responsibilities of the Trustee in accordance with regulation 9;

⁵U.S. Securities and Exchange Commission. "[Investor Bulletin: Publicly Traded REITs](#)

⁶The Gazette of India, Securities and exchange Board of India (Real estate investment trust) regulation,2014, w.e.f 26 Sept 2014

⁷ Schedule 1 deals with Forms in Securities and exchange Board of India (Real estate investment trust) regulation,2014, w.e.f 26 Sept 2014

⁸Regulation 4 of [SEBI \(Real Estate Investment Trusts\) Regulations, 2014](#)

(c) Persons have been designated as sponsor(s), manager and trustee under these regulations and all such persons are separate entities;

(d) With regard to sponsor(s),-

(i) [Each sponsor shall hold or propose] to hold not less than five per cent. of the number of units of the REIT on post-initial offer basis;

(ia) each sponsor and sponsor group shall be clearly identified in the application of registration to the Board and in the offer document/placement memorandum, as applicable:

Provided that, for each sponsor group not less than one person shall be identified as a sponsor;]

[Provided further that, of the entities categorized as sponsor group, only the following entities may be considered:

(a) a person or entity who is directly or indirectly holding an interest or shareholding in any of the assets or SPVs or holdcos proposed to be transferred to the REIT.

b) a person or entity who is directly or indirectly holding units of the REIT on post-issue basis.

c) a person or entity whose experience is being utilized by the sponsor for meeting with the eligibility conditions required under sub-clause (iii) of clause (d) of sub-regulation (2) of regulation 4 of these regulations.]

(ii) the sponsor(s), on a collective basis, have a net worth of not less than one hundred crore rupees: Provided that each sponsor has a net worth of not less than twenty crore rupees; and

(iii) the sponsor or its associate(s) has not less than five years experience in development of real estate or fund management in the real estate industry:

Provided that where the sponsor is a developer, at least two projects of the sponsor have been completed;

(e) With regard to the manager,-

(i) the manager has a net worth of not less than ten crore rupees if the manager is a body corporate or a company or net tangible assets of value not less than ten crore rupees in case the manager is a LLP;

(ii) the manager or its associate has not less than five years' experience in fund management or advisory services or property management in the real estate industry or in development of real estate;

(iii) the manager has not less than two key personnel who each have not less than five years' experience in fund management or advisory services or property management in the real estate industry or in development of real estate;

(iv) the manager has not less than half, of its directors in the case of a company or of members of the governing Board in case of an LLP, as independent and not directors or members of the governing Board 48[of the manager] of another REIT; and the manager has entered into an investment management agreement with the trustee which provides for the responsibilities of the manager in accordance with regulation 10;

(f) with regard to the trustee,-

(i) the trustee is registered with the Board under SEBI(Debtenture Trustees) Regulations, 1993 and is not an associate of the sponsor(s) or manager; and

(ii) the trustee has such wherewithal with respect to infrastructure, personnel, etc. to the satisfaction of the Board and in accordance with circulars or guidelines as may be specified by the Board;

(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]

[Notwithstanding the above, subordinate units may be issued only to the sponsors and its associates, where such subordinate units shall carry only inferior voting or any other rights compared to other units;]

(i) The applicant has clearly described at the time of application for registration, details pertaining to proposed activities of the REIT;

(j) The [REIT] and parties to the REIT are fit and proper persons based on the criteria as specified in Schedule II of the Securities and Exchange Board of India (Intermediaries) Regulations, 2008;

(k) Whether any previous application for grant of certificate by the [REIT or the parties to the REIT or their directors/members of governing board] has been rejected by the Board;

l) whether any disciplinary action has been taken by the Board or any other regulatory authority against the [REIT or the parties to the REIT or their directors/members of governing board] under any Act or the regulations or circulars or guidelines made thereunder.”⁹

⁹ Regulation 4 of SEBI (Real estate investment Trust) Regulation,2014 deals with Eligibility criteria for the grant of certificate to trust.

Regulation 18 of SEBI (REIT) requires REIT to acquire 80% of assets which are to be income generating estate which includes hospital, hotels, Industrial Parks etc. and the rest of 20% of assets requires to be kept in the form securities or real estate companies as debt or mortgage-backed, government securities, money instruments, under-construction properties unlike REMFs which are prohibited to hold uncompleted or vacant land, etc.¹⁰

The Second amendment to SEBI (Real estate investment trust) regulation, inserted certain provision relating to the sponsors. Regulation 7A¹¹, it says that “the status of only those sponsors of a REIT shall qualify for declassification whose units have been listed on the stock exchange for a period of not less than three years, subject to further conditions and approvals as laid down under this Regulation.” By this regulation edge is provided to the sponsors as they are now allowed to exit only after completion of three years from the date of it being listed.

De-classification of the status of sponsor

Regulation 7A (1) De-classification of the status of a sponsor(s) of a REIT whose units have been listed on the stock exchanges for a period of three years shall be permitted upon receipt of an application from the REIT and subject to compliance with the following conditions:

- (a) the unit holding of such sponsor and its associates taken together does not exceed 10% of the outstanding units of the REIT;
- (b) the manager of the REIT is not an entity controlled by such sponsor or its associates;
- (c) the sponsor or its associates are not fugitive economic offender;
- (d) approval of unit holders has been obtained in accordance with sub-regulation 5 of Regulation 22.¹²

Position of REITs in other Countries

U.S based REIT approach to real estate has been adopted by more than 40 countries and regions which offer to all investors access to portfolios of income generating real estate in this world. The most easy and efficient for investors to add worldwide listed real estate allocation to portfolios were offered by mutual funds and exchange traded funds Although there is an increase in the listed real estate market all around the world, however U.S is still at the top. All credit for

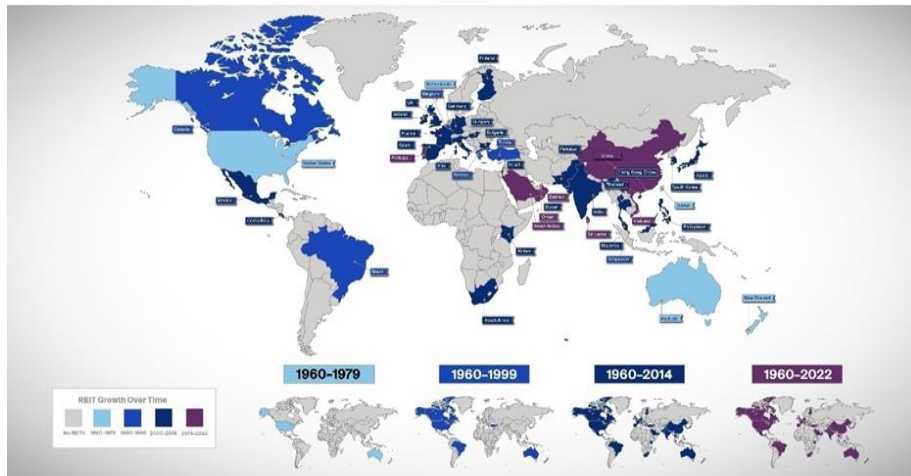
¹⁰ Regulation 18 clause 4 of [SEBI \(Real Estate Investment Trusts\) Regulations, 2014 deals with](#) Investment condition and Distribution policy

¹¹ Inserted by the SEBI (Real estate investment trust) (Second Amendment) regulation, 2020, w.e.f 16.06.2020

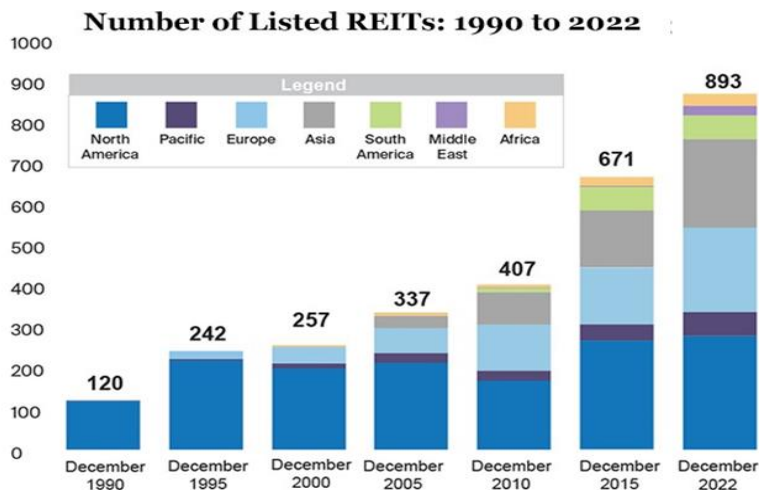
¹² Ibid.

this growth is given to the appeal U.S REIT approach to the real estate investment. Today more than 40 countries and region have REITs including all G7 countries

REITs Around the World Countries and regions with REITs 60 years of growth

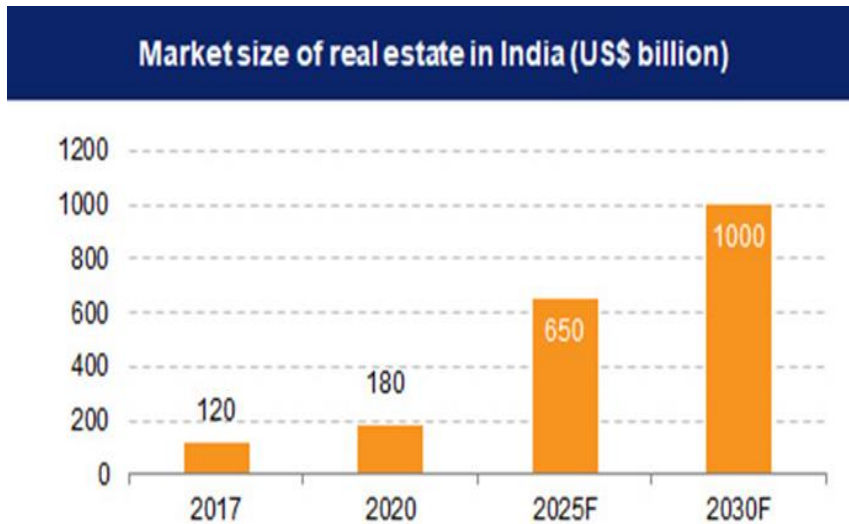


In this world there is a total list of a 893 REITs having an equity market capitalization of approx. \$1.9 trillion. This chart express that there is an increase in the market from the last 30 years which rise from 120 listed REITs in 2 countries to 893 listed REITs in around 40 countries and regions.



In the initial 9 months of the financial year of 2022 it was seen that there has been 1700 acres land deal in the top 8 cities and also “Foreign investments in the commercial real estate sector were at US\$ 10.3 billion from 2017-2021. As per the ICRA estimates, Indian firms are expected

to raise >3.5 trillion (US\$ 48 billion) through infrastructure and real estate investment trust in 2022, as compared with raise funds worth US\$ 29 billion to date.”¹³



Conclusion

Although REITs are a new innovation this cannot be considered effective in everyone’s case. It can be said that REIT in the form of instrument is not proved to be very successful due to effectiveness based on various factors. These factors are responsible for the same low rents is one of the category especially for commercial real estate which changes with the geographical scenario. Many steps were taken to ease the investment in REITs, however a lot is needed to be done like providing tax benefits to the investors which will help in making REIT a successful in India and will attract the investors. But at the same time it can be said that REITs can be seen to have a potential to provide strength to the market of real estate. SEBI is doing very well in this direction to make it effective and workable for Indian conditions. These regulation a tool through which new changes introduce by the regulatory authority with time to time. More than seven amendments have been made by [SEBI in \(REITs\) regulation 2014](#) which relates to sponsors, investors, assets, public issues, etc.

¹³ Real estate industry report by IBEF, <https://www.ibef.org/industry/real-estate-india>