Critical Assessment of Infrastructure Investment Trusts (InvITs) in India and Suggesting measures to increase their Efficiency in comparison with International Instruments

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Abstract

Indian economy, like any other economy, relies heavily on the infrastructure sector. However, by end of 12th five-year plan (2012-2017) private sector investment in infrastructure started declining causing increase in government spending through budgetary support.

To boost investment in infrastructure, Securities Exchange Board of India (SEBI) came up with Infrastructure Investment Trust (InvIT) regulations in 2014. InvIT's are trust holding infrastructure assets that generate steady cash flow with long term concession. The structure of InvIT is similar to Master-Business Trusts instruments that are prevalent in many developed countries like UK, USA, Singapore, Australia & Hong-Kong. They are listed on stock exchange by issuing their units to investors. While interest of investors have increased in recent past, India's progress in InvIT is still at a relatively nascent stage. As on date, around 10 (ten) InvITs are registered with SEBI. In this study we have attempted to do a critical assessment of the market for InvIT in India. We have also evaluated regulations that regulate InvIT in India and compared them with similar International instruments in order to enhance its attractiveness.

Key Words: Infrastructure Investment Trust (InvIT), India, Business Trust, Singapore, Hong-Kong

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1. INTRODUCTION

According to the Global Infrastructure Outlook Report 2017, investment in the infrastructure sector across the globe is expected to be around $94 trillion between 2016 and 2040, of which about 50 percent of this investment comes from just 4 countries i.e. China, United States, India & Japan. In line with the above pattern, if infrastructure spending continues at the same rate, then there will be an investment gap of approx. $14 trillion by 2040.

The general development of any country is driven by a well-developed infrastructural set-up. India's infrastructure spending between 2013 and 2017 was approximately INR 57 lakh crores, which if adjusted to the current price level, amounts to approximately INR 36 lakh crores, which represents ~5.8% of India’s gross domestic product (GDP). For fiscal year 2018 & 2019 India’s infrastructural spending was approximately INR 10.2 lakh crores & INR 10 lakh crores respectively. India alone needs to invest about $4.5 trillion in its infrastructure till 2030 in order to achieve its goal of a $5 trillion economy, as this sector has a multiplier impact on the overall economy. Focus should be made to enhance growth in infrastructure sector to record 7 to 8 percent of growth in the future.

By the end of the 12th five-year plan private sector investment in infrastructure began to decline due to issues related to land acquisition, delay due to clearances, obstacles to utility shifting, lack of dispute settlement process and aggressive bidding from private sector. Due to fiscal constrain, government was unable to provide the capital needed to finance infrastructure which resulted in delay in implementation of these projects. Keeping this in mind the government has proposed to make infrastructure investments of INR 111 lakh crores between fiscal year 2020 to 2025 through the National Infrastructure Pipeline (NIP) initiative. Out of the total budget that has been allocated roughly 70% is expected to be contributed by the centre & state government and rest 30% by private sector.

Additionally, considering the need for additional capital requirements in financing of Infrastructure projects, SEBI in 2014 gave an approval to implement Infrastructure Investment Trust (InvIT) Regulations in India. The launch of InvIT has been seen as an ambitious initiative with high hopes that can play a crucial role in meeting India's important infrastructure requirements.

2. RATIONALE

United States was the first country to implement the framework for Real Estate Investment Trust (REIT) in 1960. Since then many countries have adopted such regulations and have benefited exponentially. While India being considered as a rapidly growing economy in the world, it has been slow in launching of InvITs, which may have attracted significant institutional capital from around the world and serve as a vehicle to release funds for infrastructure developers.

The structure operating behind InvIT draws on their experience from similar such instruments like i.e. Master Limited Partnerships ('MLP'), YieldCos & Business Trusts, etc. that are already prevalent in the financial markets of USA, UK, Australia, Singapore & Hong Kong for many decades. In our neighbouring countries such as Singapore, Hong Kong and Malaysia there are more than 70 such listings of similar kinds of instruments. Globally there exist nearly 400 listings of these instruments, totalling to an investment of over US$ 1 trillion.

While the interest of investors in InvIT investments has increased in the recent past, India's progress in InvIT is at a relatively nascent stage. InvITs are far from reaching their full potential, despite their initial success. The ability to adapt the regulations regulating these instruments in compliance with their market conditions is a primary requirement for its development as seen from the experiences of other countries. While the Government has made significant efforts to make InvIT a reality, a few reforms based on the experience of similar foreign instruments will be fruitful in enhancing the attractiveness of InvIT in India. Many businesses, such as Reliance Infra, GMR, ACME Solar and others, want to follow the InvIT route to raise capital.

3. LITERATURE REVIEW

3.1 About InvIT

InvIT's are simply a trust holding infrastructure assets that generate steady cash flow and have long concession terms like operating roads and transmission assets. InvIT is registered and then listed on the stock exchange to issue their units to investors like pension funds, sovereign wealth funds & insurance firms. Many of these are long-term investors who expects return that are in line with cash-flow from underlying asset.

Over 400 InvITs/REITs have been listed around the world, accounting for over USD 1 trillion in investments. Total assets under InvIT and REIT have increased to INR 3.5 trillion in just over four years since the first InvIT was listed. In India, InvITs and REITs have raised about $9.7 billion (INR 725 billion). InvITs/REITs raised INR 55,000 crores in equity in FY20-21 alone, bringing their total net assets to INR 1.64 lakh crore.

3.2 Types of InvIT:

There are three sorts of InvIT based on perspective of source of fund as shown in Table:1 below

Table 1: Types of InvIT

Publicly Offered InvIT	Privately placed listed InvIT	Privately placed unlisted InvIT
Their units are available to the general public (min 20 investors), with a minimum investment and trading lot of INR. 1 lakh.	Their units are available only to Institutional investors (min 5, max 1000 investors) with a minimum investment of (INR. 1 crore/ INR. 25 crore) and a trading lot of (INR. 1 crore/INR. 2 crore).	Their units are available only to Institutional investors (max 1000 investors) with required investment of atleast (INR. 1 crore).

3.3 The Potential

InvITs have the potential to become new standard for infrastructure financing. Significant long-term capital (such as pension and insurance funds) as well as domestic savings might be channelled into the infrastructure industry.

InvITs/REITs in India have a huge potential to tap ~ INR 8 trillion in the next 4-6 years. New asset types such as HAM highways, renewable energy, and hospitals are expected to emerge. The following Figure:1 & Figure:2 below depicts the asset classes where InvIT structure are applicable and Timeline for InvIT in India.

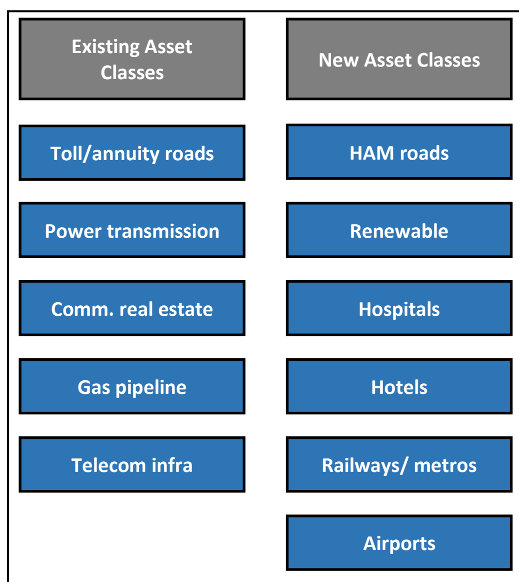


Figure 1: Asset classes where InvIT structure are applicable

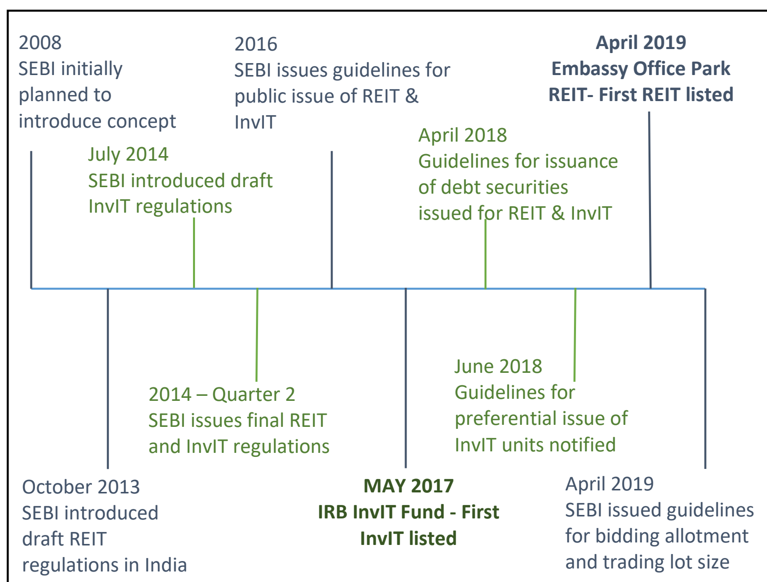
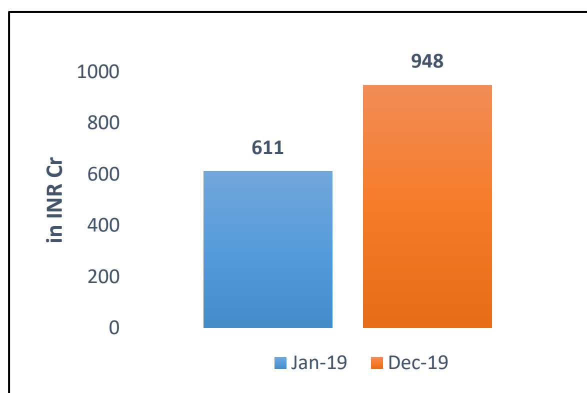
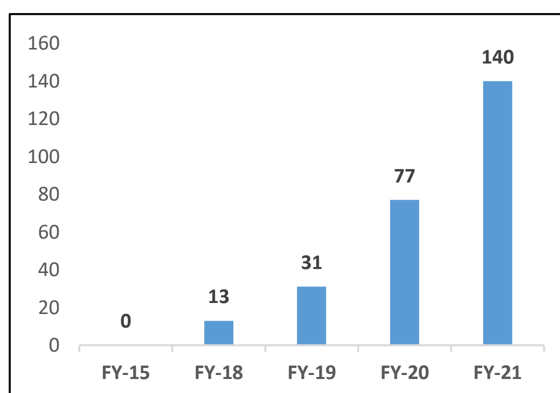


Figure 2: Timeline of InvIT in India

3.4 InvIT Market in India

Between January and December 2019, fund houses boosted their investment in InvITs by 55 percent, from INR 611 crore to INR 948 crore. Despite recent increases in investor interest in InvIT and REIT investments, India still has a long way to go to consider its requirement for real estate/infrastructure funding and growth opportunities. Figure:3 & Figure:4 below details out the share of InvIT market in India for FY-19 and InvITs' asset under management.





Over the previous 4-5 years, India has experienced quite a few InvIT transactions. The total assets under management (AUM) of the 8 operational InvITs is estimated to be over INR.1.4 lakh crore. Toll roads (INR. 47,500 crore) account for the majority of the assets, followed by telecom (INR. 42,000 crore), gas pipeline (INR. 16,500 crore), and electricity transmission (INR. 14,000 crore). As on date, following InvITs are prevalent in India market. The details of which are listed in the Table:2 below

Table 2: InvIT Players in India

Name	Sponsor	Asset class	Structure	AUM (INR Cr)
IRB InvITs Fund	IRB	Roads	Public Listed InvIT	6,500
India Grid Trust	KKR	Power Transmission	Public Listed InvIT	15,000
Indinfravit Trust	L&T IDPL	Roads	Private Listed InvIT	10,500
India Infrastructure Trust	Brook-field	Gas pipeline	Private Listed InvIT	14,500
Oriental Infratrust	Oriental group	Roads	Private Listed InvIT	11,000
IRB Infrastructure Trust	IRB	Roads	Private Unlisted InvIT	22,500
Tower Infrastructure Trust	Reliance Industry	Telecom Towers	Private Unlisted InvIT	42,000
Digital Fibre Infrastructure Trust	Reliance Industry	Fibre Optics	Private Unlisted InvIT	1,500
Power Grid InvIT	Power Grid	Power Transmission	Public Listed InvIT	7,800

The majority of InvITs have been funded by private sector infrastructure developers since the adoption of InvIT legislation. The National Highway Authority of India (NHAI) recently launched its first infrastructure investment trust, which drew in two international pension funds, the Canadian Pension Plan Investment Board and the Ontario Teachers' Pension Plan Board, as well as diversified Domestic Institutional Investors (DIIs), who invested units worth more than INR 5,000 crore in the InvIT portfolio, which currently includes five National Highways.

3.5 Structure of InvIT

SEBI guidelines require sponsor of infrastructure assets to form a trustee. Sponsors, investment manager, and a project manager are vital for running an InvIT.
InvIT are available in two types:

1. Authorised to invest primarily in constructed and revenue generating infrastructure projects.
2. That has the relaxation to invest in infrastructure projects that are either completed or ongoing.

In the former case, InvITs must be listed through a public issue while in the latter one it must opt for private placement of units. However, in any case it is mandatory for both these systems to be listed. The following Figure:5 below describes the structure of InvIT in India.

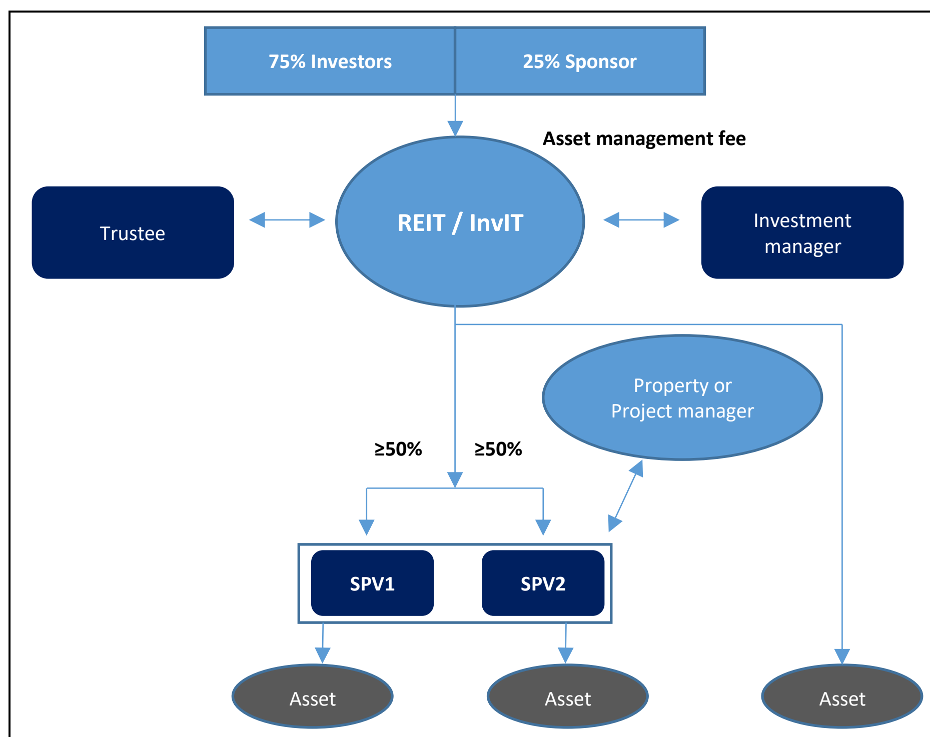


Figure 5: Structure of InvIT in India

3.6 Roles of parties involved and their eligibility criteria

1. Sponsor:

Any corporation, LLP, or other legal entity that establishes an InvIT and is in charge of transferring or undertaking to transfer the initial portfolio of assets to the InvIT, as well as the formation transactions involved in the establishment of an InvIT. In the case of PPP projects, it refers to an infrastructure developer or a specific SPV.

Eligibility Criteria:

There must be no more than three sponsors; with each sponsor having a net worth of at least INR.100 crore (in the case of company or a body corporate) or net tangible assets of at least INR.100 crore if it's a limited liability company. The sponsor or its associate should have a proven track record in infrastructure development or infrastructure fund management with at least 5 years of experience and the completion of at least two of the sponsor's projects if the sponsor is a developer.

Key Responsibilities

For a period of not less than three years after the units are listed, the Sponsor(s) must collectively hold not less than 25% of the total units of the InvIT on a post-issue basis. Any stake by the sponsor that exceeds the aforementioned 25% must be held for at least one year from the date of listing of such units. In the case of PPP, if such keeping is prohibited by any

provisions, the sponsor can retain the PPP at the SPV level if he or she wants to. On a post-issue basis, however, aggregate holdings at the SPV level and in the InvIT should not be less than 25% of the total units of the InvIT for a period of at least three years from the date of the units' listing

2. Trustee:

The one who holds the assets of the InvIT for the interest of the unit holders in the name of InvITs and also check whether work carried out by InvITs, Investment Manager & Project Manager are in line with SEBI's regulation.

Eligibility Criteria

The trustee must be registered with the Board under the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993, and should not be affiliated with the manager or sponsor.

Key Responsibilities

The Trustee is responsible for the management of the InvITs' portfolios & assets. It makes investment decisions consistent with the underlying assets. It is also responsible for signing an investment management agreement with the investment manager on behalf of the InvIT. Along with that it monitor the investment and project manager's activity and get a quarterly compliance statement. The trustee examine transactions between investment manager and its associates, and ensure that the investment manager is following all reporting and disclosure standards.

3. Investment Manager:

It is a corporation, LLP, or other legal entity that administers the management of InvIT's assets and investments. Investment Manager carries out the task of InvIT as specified in the regulations.

Eligibility Criteria

The investment manager is a body corporate or a firm with a net value of at least INR.10 crore. If the investment manager is a limited liability partnership (LLP), its net tangible assets must be worth at least INR.10 crore. The body must have not less than 5 years of expertise in infrastructure fund management or consulting services (exemptions are still being considered) and at least 50 percent of the directors (in the case of a corporation) or members of the governing board (in the case of LLP) that are not the directors or members of the governing board of another InvIT. The investment manager keeps an office in India where the InvIT's operations are overseen and has agreed to work with the trustee on investment management (which outlines the investment manager's responsibilities).It must have no less than two employees with 5 years of work experience in fund advisory or infrastructure development and at least one employee with minimum experience of five years’ experience in sector pertaining to InvIT investment.

Key Responsibilities

The investment manager makes investment decisions regarding the InvIT's underlying assets or initiatives, including any additional investments or divestments of assets. The body is responsible for overseeing the project manager's activities related to project revenue streams and obtaining a quarterly compliance certificate from the project manager. It will also be in charge of all activities related to the InvIT's unit issuance and listing. In accordance with the regulation, the investment manager must declare distributions to unit holders and carry out other tasks as defined by the Trustee-Investment Manager agreement.

4. Project Manager:

The project manager is responsible for the operation and management of InvIT assets, including maintenance arrangements, either directly or through the appointment and supervision of appropriate agents as needed by the project agreement (In the event of a PPP project, this could include a concession agreement).

Eligibility Criteria

Any person selected by the InvIT as the project manager is responsible for the project's execution. In the case of PPP projects, the body is responsible for project execution and milestone achievement in line with the concession agreement.

Key Responsibilities

The Project Manager is responsible for the management of the underlying assets. It ensure proper implementation & monitor the progress of the project. In line with the project management agreement, the project manager shall fulfil all obligations related to the timely completion of infrastructure projects (where applicable), their implementation, operation, maintenance, and management.

Hold Co

It is an LLP or a company that InvIT owns & intends to hold a stake of at least 51 % of the capital/interest share of equity. It cannot engage in operations other than that of holding underlying SPVs/ infrastructure projects.

SPV (Special Purpose Vehicle)

It is a corporation/LLP in which equity portion & controlling stake of at least 51% is owned or proposed by an InvIT or Hold Co (However the same is not considered for the PPP Projects). Around 90% of assets held by an SPV should not be used for other operation.

3.7 Investment by InvITs

Investment Trust is projected to invest not less than 80% of the value in infrastructure projects that are completed and revenue-generating ones, with less than 10% in ongoing construction projects. InvIT units that spend more than 10% in under-construction projects are placed privately because that would offer them greater flexibility of investment. Privately placed InvIT tend to onboard institutional investors & corporate bodies.

InvITs can either invest directly or through SPV (including a holding company). Investment trusts retain controlling interest and equity capital or interest in SPVs of not less than 50%. SPV's are unable to participate in any operations other than those relevant to the underlying projects. An InvIT is forbidden from investing in other InvITs to avoid cross-holdings. A Maximum 20% of overall amount of InvITs are permitted to invest directly in construction of ongoing infrastructure projects and if it is through an SPV, a maximum limit of 10 percent of the InvITs' total amount is permissible.

InvITs can be used for direct holding of infrastructure projects in India. However, investment in the PPP Project is to be made mandatory via a Hold Co/SPV. Investments in a Hold Co are subject to following: (a) InvIT holding in SPVs should not be less than 26%. (b) Others Partners or shareholders should not limit the compliance of an InvIT, Hold Co/ SPV with that of InvIT regulations. SEBI requires listing of fresh InvIT units within three years of the date of registration in order to ensure investor's liquidity. A failure to do so results in the revocation of its SEBI registration.

3.8 Cash-Flow in InvIT

Cash produced by the InvIT-held projects is upstreamed through three streams into the InvIT viz. Dividends, interest and repayment of loans advanced to the projects by the Trust.

1. Dividends: Dividend income distributed by the Trust is excluded from tax when received in the hands of all unit holders (dividends are paid from the profit made by the InvIT; with increase in profit the proportion of dividend distribution rises thus giving unit holders the add-tax advantage)
2. Interest: Interest income is taxable as regular income for unit holders, as if the interest has been directly received by them.

The following Figure: 6 below depicts the direction of flow of cash in InvIT.

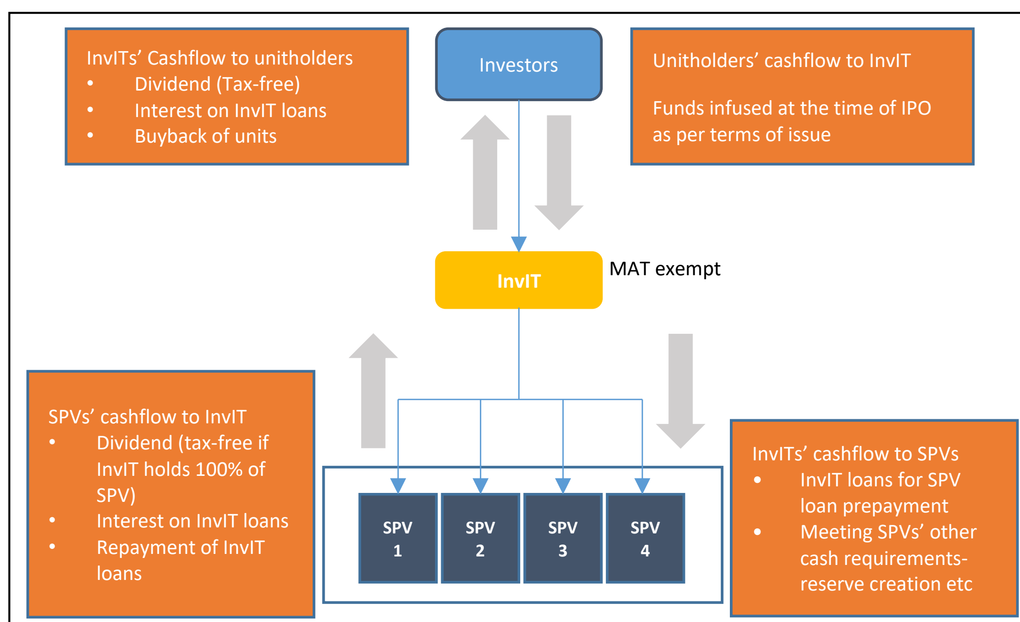


Figure 6: Flow of Cash in InvIT

Distribution Policy

Subject to the relevant provisions of the 2013 Companies Act, 2013 and the Limited Liability Partnership Act, 2008, more than 90% of the total cash flow to the SPV are distributed to investment trust in relation to its holding in the SPV and not less than 90% of the cash generated by investment trust are distributed to the allocated unit holders. Distributions like this must be declared and rendered for REITs and publicly listed InvITs at least once every six months. When asset are sold by investment trust or SPV, the proceeds can be reinvested into another asset of the property or infrastructure and the selling proceeds will not be expected to be distributed. However, if no such reinvestment is made, no less than 90% of the sales profits would be distributable to the unit holders.

Tax Structure

Dividend Distribution Tax (DDT) is not applicable to distributions made by SPVs to InvIT (effective from June 01, 2016). However, in order to qualify for this exemption, the InvIT must own all of the SPV's share capital, minus the portion that must be owned by anybody else. Interest paid by the SPV to the Trust on loans and advances (if any) is not taxable, and no TDS deduction is required. Capital gains arising to Sponsor as a result of the swap of its shares in SPV for units of InvIT will be postponed and taxed only when the units are sold. In the case of income distributed by InvIT (which includes Interest, Dividends, and Capital Gains), only the interest component of income received by the trust to unit holders will be taxed, while the remainder will be exempt.

Capital gains on the sale of listed InvIT units will be subject to security transaction tax in the hands of unit holders (similar to what is levied on listed equity shares). Short-term capital gains (STCG) would be taxed at 15%, while long-term capital gains (LTCG) would be exempt. When units are sold off-exchange, LTCG and STCG are levied at the applicable rates. Interest income and capital gains on the sale of InvIT units will be subject to MAT. For non-resident/offshore investors it is taxed at 5%; incentives are available, if any, under Double Tax Avoidance Agreement (DTAA).Long-term capital gains (LTCG) are tax-exempt when units are held beyond 36 months, while in short-term capital gains (STCG) where units are held for lesser than 36 months are taxable @ 15%

Leverage restriction

InvIT, Hold Co and SPV(s) aggregate net consolidated borrowing and deferred payments are limit to 70% of total value of assets managed by the InvIT. For consolidated borrowings and deferred payments of greater than 25% of value of InvIT's assets following provisions are made:

a. Minimum prescribed Credit-rating
b. Acceptance from unit holders (in which the number of votes casted in favor should be greater than those casted against)

c. If the following parameters are breached due to price movement in the underlying assets/ securities, a six-month adjustment period is allowed

Raising Funds

InvITs can raise capital through a public offering or a private placement. All InvITs must have their units listed on a stock exchange that is well recognized. The InvIT's assets should have a total worth of at least INR 500 crore and the size of the initial offer should be at least INR.250 crore. An investor needs to make a minimum investment of INR.10 lakh (INR.1 crore in case of private placement) with a minimum of 20 investors (5 in the case of a private placement), each holding no more than 25% of the units. Under the automatic method, non-residents, including foreign portfolio investors, are able to invest in InvITs. If an InvIT fails to make a reasonable offer for its units, either through a public offering or a private placement, within three years after the SEBI's registration, it will forfeit its certificate of registration and cease to operate as an InvIT.

Investments Restrictions

An InvIT can invest directly or through SPVs in infrastructure projects. In PPP projects, infrastructure investment must be made through special purpose vehicles (SPVs). According to InvIT legislation, they can invest in constructed and revenue-generating projects as well as ones that are still under construction. Publicly traded InvITs are required to spend not less than 80% of their assets in completed and revenue-generating infrastructure projects (This condition does not apply to privately placed InvITs). They are permitted to invest up to 10% of their asset value in under construction projects. If an InvIT wants to invest more than 10% of its capital, it must use the private placement procedure. An InvIT cannot invest in other InvITs' units.

Asset Valuation

At least once a year, a full valuation of all assets (including examination of all infrastructure projects) should be performed (half yearly in case of public InvITs). In addition, prior to the InvIT, issuing any additional units (excluding Bonus units), valuation is required**.** Any transaction involving the purchase or sale of an InvIT asset must undergo a comprehensive valuation by an independent valuer of the individual project, with the transaction amount capped at 110 percent for acquisition and 90 percent for sale of the assessed value.

3.9 InvIT Process

InvITs are independent trusts registered under the Indian Trust Act of 1882. The SEBI (Infrastructure Investment Trusts) Regulations, 2014 established the regulatory framework for an InvIT issuance.

The procedures for issuance vary depending on whether the sponsor intends to issue the InvIT through a private placement or a public offering (depending on the number of unit holders offered to). In the case of a public offering, units may be issued through one of the following methods: initial public offering (IPO), follow-on public offering (FPO), or any other public

offering as may be specified. The following Figure:7 below gives a brief summary of the issuing process:

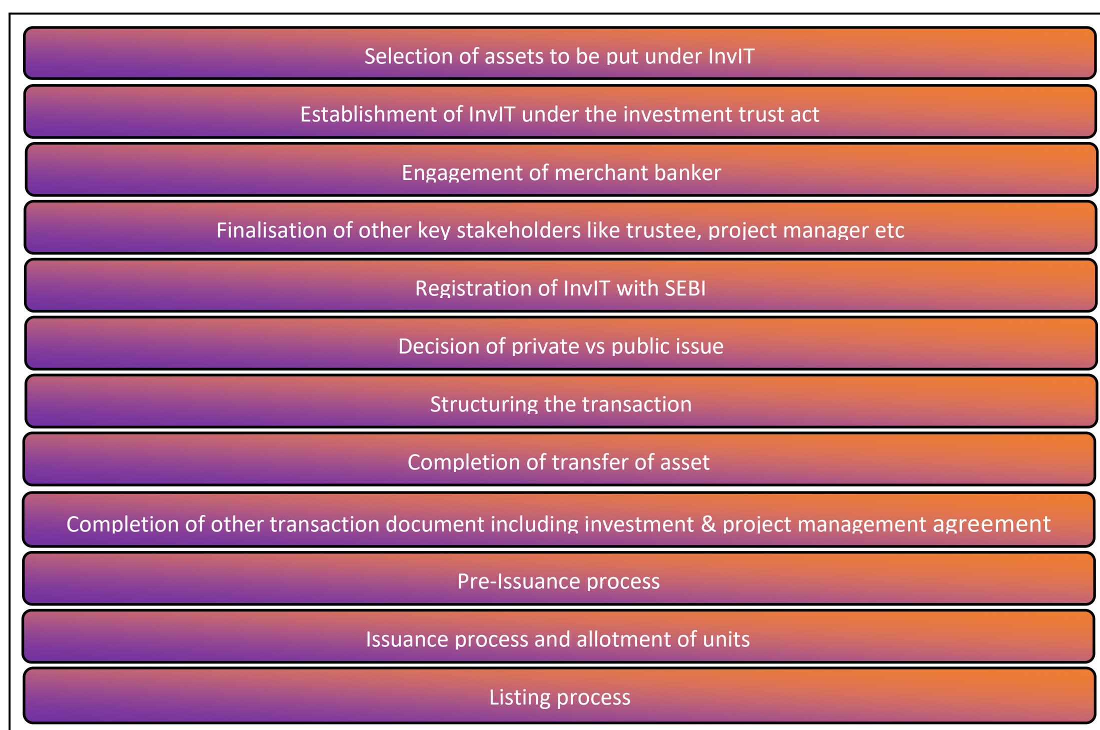


Figure 7: Step by step insurance process

3.10 Regulatory Evolution for InvITs in India

InvlT was created with the goal of alleviating the infrastructure sector's financial shortage. Despite the market regulator's multiple relaxations, these investment vehicles have failed to attract investors. As a result, SEBI has produced a consultation paper-3 with a proposal to alter regulations relevant to InvlT in order to boost the market for REITs and InvlTs and increase the number of participants in this sector. The Table:3 below lists out few of the regulatory changes proposed by SEBI for InvITs.

Table 3: Changes in regulatory framework of InvITs

Measures	Significance
The trading lot size has been reduced to one unit.	More investors participating in the market means more efficient price discovery and liquidity.
Insurance firms and pension funds are now permitted to invest in InvIT debt securities.	Access to long-term debt capital has been made possible.
Sponsor rating standards for pension funds investing in InvIT units have been reduced.	Access to long-term equity capital has been made possible.

The Reserve Bank of India made it possible for banks to lend to InvITs.	Additional ways to raise long-term debt capital were made available.
Guidelines for a listed Infrastructure Investment Trust's rights offering of units (InvIT)	Providing access to expansion financing and allowing existing investors to participate in equity raises
Subject to certain conditions, the leverage limit will be raised from 49 percent to 70 percent.	InvITs will be more competitive in terms of acquisitions, and unit-holders will receive a better return.

3.11 Advantages of InvIT:

Benefits to the sponsor:
InvIT monetise real estate and infrastructure assets that produce income. It offers lower cost of capital by tapping the correct group of long-term investors (pension funds). Along with this sponsor enjoys preferential tax treatment, including dividend payment tax exemption and capital gains tax relaxation and provides the sector with a regular source of capital once listed.

Benefits to the unit holder:
They are able to invest in real estate or infrastructure without directly owning the asset. InvIT offer unit holders tax effective yields. With increase in revenue generated by project, the cash flow increases and with addition of new projects their return enhances.

Other benefits to the investors:

a. Diversification of the portfolio: It helps to reduce the volatility/risk of portfolio value change over a period of time
b. Liquidity: Investing in publicly traded InvIT allows investors to diversify their portfolio while avoiding the liquidity risk associated with direct infrastructure investment.
c. Distributions: Investors seeking recurring revenue can invest in InvIT as they make distributions regularly.
d. Hedge against inflation: Revenue for InvIT is derives from the function of the underlying asset that is not inflation-affected.
e. Transparent corporate structure: Because of the high level of control and strong regulatory transparency, the sector is extremely transparent. They are often expected to allocate their large portion of cash to shareholders and therefore to operators with small retained earnings.

3.12 Risk Involved in InvIT:

Early termination (expiry of the concession period of the asset and now addition of new projects for 6 months could lead to delisting of InvIT). Reduction in revenue due to traffic de-growth and traffic leakage. Apart from this there are regulatory risk, default risk, force majeure. At the time of the IPO, there is also a risk of overvaluation. Also the bid-ask spread is relatively high because of the relatively low liquidity of the InvIT unit on Indian stock exchanges, as a result of which investors are exposed to the risk of order execution. Longer project duration causes

higher probability of project deviation relative to the real cash flow. Hence adequate management is the key to InvITs' performance and growing the value/return of unit holders.

4 METHODOLOGY

The methodology that has been adopted for this research paper is comparative analysis study wherein comparison of Indian InvITs has been carried out with a similar type of foreign instrument i.e. Business Trust for other two Asian countries i.e. Singapore and Hong-Kong, which are considered as pioneers in the listing of Business trusts.

4.1 Global Scenario for Business Trusts (BTs)

Though a relatively new concept in India, for almost a century, business trusts have been a popular funding vehicle in U.S., Singapore, Hong Kong, Malaysia, and U.K. Entrepreneurs have historically used business trusts, which evolved from private charitable trusts, to avoid regulatory and tax obligations imposed on companies however business trusts are now only employed in a few specialised areas, such as structured finance and mutual fund formation. Entrepreneurs who want to launch an operating business in the modern United States have mostly bypassed business trusts in favour of corporations. Business trusts, on the other hand, have had a lot of success in many parts of the world especially Singapore. Singapore, like the United States, allows for the formation of corporations and business trusts under a common law, code-based system. Despite the competition from the corporate form, Singapore's business trust remains a popular company structure. Business trusts, together with Real Estate Investment Trusts (REITs), account for the vast majority of IPOs on the Singapore Exchange. There might have been something that has motivated Singaporean businesses to choose the business trust form over other corporate form.

4.2 Reasons for selecting Singapore & Hong-Kong for comparison

These two nations are in the forefront of promoting business trusts as viable alternatives as compared to other types of corporate structures. First, some context is required: With the Business Trusts Act (BTA) passed in 2004, Singapore became the first country in Asia to establish the concept of business trusts. By the end of 2011, Hong Kong approved the business trust form with Hong Kong's major telecommunications operator listing their business trust on Hong Kong Stock Exchange (HKEx). As a result, both Singapore and Hong Kong now allow business trusts to not only exist as a legal entity, but also to list on the stock exchanges of their respective countries i.e. the Singapore Exchange (SGX) and the Hong Kong Exchange (HKEx). They are the world's only two major economies that have actively promoted and opened their stock exchanges to business trust listings.

The importance of Singapore and Hong Kong as global financial centres is the second reason for focusing on them. Hong Kong and Singapore are the world's third and fourth largest financial centres, respectively, after London and New York, according to the Global Financial Centers Index, and Hong Kong dominated the IPO market in 2010, surpassing New York by approximately US$2 billion in terms of the amount money raised. More broadly, because

financial centres such as Hong Kong and Singapore are located in a rapidly rising market, this makes them particularly fascinating to research because they are at the forefront of financial regulation change and development.

Business trusts, as seen in Singapore and Hong Kong, potentially offer various advantages when listed on public stock exchanges, including: To mention a few, there are more funding opportunities (through listing), increased investor liquidity, and the asset owner's ability to retain control over the trust's assets. Because dual class stock structures are currently prohibited in Singapore and Hong Kong, business trusts provide an appropriate alternative for management to acquire funds while preserving control. The business trust form raises some corporate governance concerns, some of which may be overstated, which can be seen in Singapore and Hong Kong; enthusiasm and hype surrounding the business trust and business trust listings as capital-raising vehicles should also be moderated by the fact that not all companies will be able to benefit from the business trust form and its merits. Nevertheless, Singapore and Hong Kong, which is still working on its legal structure for business trust listings, can act as reference models for empowering business trusts as a long-term alternative corporate structure.

4.3 Business Trust- Singapore

A Singapore Business Trust, first presented by the Singapore Monetary Authority in 2004, is an investment instrument in which a single firm, called as the "trustee-manager," holds and administers businesses for the interest of its unit holders who are investors. Investors profit from a consistent dividend stream despite having no operational control or shareholder rights. The trustee-manager is professionally managed and reports to the Board of Directors, which is mostly made up of Independent Directors. As a result, a single trustee-manager bears sole fiduciary responsibility to beneficiaries. This paradigm promotes effective governance and management systems, which appeal to potential investors because their interests are essential. These BTs are often seen as highly appealing investments by investors since they provide not only good but also consistent returns. BTs are producing returns in the range of 5-8 percent at a time when bank deposit rates are low.

The BT framework has also been chosen by a number of Singaporean infrastructure developers and owners. The average suggested dividend yield of 13 BTs listed on the Singapore Exchange was 8% YTD in 2015, bringing the three-year total return to 13.1 percent. The table 4 below shows the list of top 5 business trusts of Singapore generating highest returns for the year 2015.

Table 4: Top 5 Singaporean BTs giving highest Yield for FY-15

First Ship Lease Trust	+71.6 %
Keppel Infrastructure Trust	+11.7 %
Ascendas India Trust	+11.5 %
Religare Health Trust	+8.3 %
Croesus Retail Trust	+0.5 %

These five trusts had a total return of 20.7 percent on average. The combined market capitalization of these BTs exceeded USD 13 billion in 2015.

4.4 Business Trust- Hong Kong

Business trusts in Hong Kong comprises of both the share stapled units in a company and the units in BT itself. Stapling simply refers to the act of 'stapling' two separate securities together for the purpose of trade or transfer. A stapled security could be made up of two or more of the same or legally different instruments, such as a corporation share and a trust unit. The securities, whether they are units, shares, or both, cannot be traded or transferred individually once they have been stapled.

The trust(s) and the company(ies) can both hold assets and run enterprises, but the company is normally in charge of active business such as asset management and development, while the trust is in charge of passive investments in property or funds. The trust and the corporation essentially operate as one entity in practice, despite the fact that the company is a separate legal entity from the trust.

From the standpoint of an investor, stapled securities can be tax efficient because the trust's pass through distributions may provide tax-free or reduced distributions (due to depreciation allowances) as well as taxed revenue via dividends on the shares. Additional cash can be raised for the company through the issuance of stapled securities, which can then be used to expand the business of the entity performing development activities. Unlike trustee-managers in Singapore, trustee-managers in Hong Kong are solely entitled to repayment of their costs and expenditures and do not receive management fees or other incentives. In Hong Kong, the trustee manager can be replaced by a majority of 50% of share staple unit holders, whereas in Singapore, a majority of 75% of unit holders is required. Finally, the trust is not permitted to accumulate debt in Hong Kong (but the company or its subsidiaries are not), whereas there are no restrictions on the level of gearing that a BT or its operational companies may retain in Singapore.

The following Table:5 below provides comparison of Indian InvITs with Business Trusts of Singapore & Hong Kong in order to get a holistic view of the framework governing the market of InvIT around the globe.

Table 5: Comparative Analysis of Indian InvITs with Business Trusts (BTs) of Singapore and Hong-Kong

Criteria	Singapore BTs	Hong Kong BTs	Indian InvITs
Legal Position	Resulted from a trust deed	The framework consists of the following elements: a. A trust that is affixed to a single investment unit trust constituted by a	Resulted from a trust deed

		trust deed and is not a separate legal body; and b. Listed company that is a legal entity in its own right.	
Principal Regulator	Monetary Authority of Singapore	Hong Kong Stock Exchange	Securities and Exchange Board of India
Status of Listing	It is possible to be listed or not to be listed.	Listed	Listing is mandatory
Owners of business/ property on a legal basis	Trustee-Manager	Listed Company	Trustee
Distribution	Subject to solvency rules, may be paid from cash flows.	a. At the level of trust, Subject to solvency rules, may be financed using capital or cash flows b. Depending on the place of formation of the listed firm, it may only be paid out of profits.	Subject to solvency constraints, may be paid out of cash flows-net distributable
Infrastructural allocation	No allocation	No allocation	All assets that fall under the infrastructure sector's definition
Minimum Initial Public Offering Size	S$300 Million	Not specified	INR 500 crores
Requirement of votes to remove the trustee	75 %	50 %	75 %
Leverage limit	No limit	Trusts are unable to take on debt, whereas companies have no restrictions on how much debt they can take on.	<=70%
Restriction on Investment	There are no restrictions.	There are no restrictions.	The remainder of the investment should be operational assets, with a maximum of 10% in

			construction-eligible infrastructure projects (only in case of Public InvITs)
Treatment of Taxes	a. BT is subject to a 30% corporate tax rate. b. Unit holders are not taxed on trust distribution	a. BT is subject to a 16.5% corporate tax rate. b. Unit holders are not taxed on trust distribution	a. InvITs- Interests and dividends paid by an SPV to an InvIT are not taxable, but other income and capital gains are. b. Dividend distribution are not taxable for unit holders. Chargeable interest income and capital gains

5 FINDINGS

A strong infrastructure sector is critical to a country's economic prosperity. The government's continued focus on infrastructure development is evident in a number of steps implemented by the government and capital market authorities in recent years to create a more favourable regulatory framework, efficient policy decisions, and more transparent and smooth implementations.

The government's infrastructure strategy has been favourable, and InvIT will play a key role in the development of long-term financing options for infrastructure projects. It would allow infrastructure developers to redeploy stranded capital, bringing liquidity to an otherwise cash-strapped infrastructure sector. As a long-term financing mechanism, InvITs could help to deleverage the debt-ridden infrastructure sector while also easing the financial system's load. Investors seeking long-term consistent returns would be attracted to investments in InvITs (though moderate). InvITs have the potential to attract a large pool of long-term capital from pension funds all over the world.

However, issuers of InvITs anticipate the following challenges:

1. The ability to generate a competitive yield in a volatile interest rate environment.
2. Issuers may have difficulty achieving a premium valuation for their assets, which is dependent on a variety of criteria including as
   - Credibility and experience of the sponsor
   - Underlying assets' quality and potential to generate revenue
   - Funding choices are limited
3. InvITs would compete with domestic products like AIF (Alternative Investment Fund), which provide greater operational flexibility and allow investors to invest in all types of infrastructure assets, whether completed or not (without any restrictions). InvITs will be exposed to specific industries, each of which will have its own business cycles.

Apart from this, the following challenges must be solved by the government and regulators in order to thrive the InvIT sector:

a. **Taxation:** The most crucial stage in the development of InvITs in India was the clarification of the taxation viewpoint. Further, to encourage more involvement, international investors should be excluded from withholding tax. Retail investors should also be excluded from paying taxes, according to the past performance of infrastructure bonds.
b. **Asset Ownership Change**: InvIT regulations require the sponsor to transfer or agree to transfer all of the infrastructure assets to the InvIT. However, in other situations, the concessionaire authority (e.g., NHAI) may refuse to allow a change in control or ownership and impose a lock-in period. Transfer of 100 percent ownership to InvIT should be authorised on a case-by-case basis for better management.
c. **Tax benefit due to ownership change:** Certain SPVs may have carried forward tax losses. Because of the change in control ownership, the SPV may lose the tax benefit if ownership is transferred to an InvIT (InvIT has to hold minimum 51 percent in the SPV). Allowing SPV to keep its tax advantages will make the InvIT more appealing to investors.
d. **Single window:** There should be a single window for all regulatory approvals connected to the SPV and InvIT.
e. **Number of Sponsors:** Currently, following the initial sale of units, the sponsor(s) must hold not less than 10% of the total units of the InvIT on a post-issue basis for a period of atleast 3 years from the date of the listing of such units. The regulator's decision to enable five sponsors is a welcome step because it allows them to free up more funds for new investment while also diversifying their ownership structure.
f. **Capital Gains Tax Treatment:** It should be treated the same as equity investments in terms of taxation.

6 DISCUSSION

Infrastructure projects will benefit from the use of InvITs as it will act as an appropriate structure for infrastructure finance and a boost to infrastructure initiatives. The market regulator is working hard to address the current situation, and it is not wholly incorrect to suggest that there is an urgent necessity that should be addressed as quickly as feasible. To make the regulation more extensive, rules related to remedies in cases of information concealment; appeals and jurisdiction of courts in cases of disagreement; general penalties; composition of offence; liabilities of unit holders; and liabilities of manager to unit holders should be added. Clarity in the regulations is also essential in terms of their resemblance to mutual funds and collective investment plans. SEBI's current action tackles only one problem of the infrastructure sector, namely equity financing, and its repercussions must be viewed in the context of the bigger picture.

On the whole we can say that the three key stakeholders responsible for the success of InvITs are the government (Centre or State) that monetises the asset, private investors that take over

ownership/management, and the general public that are typically the asset's consumers. In order to properly roll out a successful InvIT, each of these stakeholder groups must be taken into account. Three elements underpinning the imperatives for accelerating InvITs' monetisation are: (1) Increasing the number of investors and scaling up monetisation tools; (2) strengthening demand-side capabilities; and (3) developing appropriate structures to facilitate monetisation.

First Pillar: Increasing the number of investors and increasing the size of the instruments

Streamlining the investing process:
Because infrastructure projects are long-term in nature, active participation from investors seeking a similar return profile is required. Existing investment guidelines for insurance and pension funds, however, limit their exposure to InvIT/REIT assets. The following are the investment limits:

(i) Insurance funds – Maximum exposure is limited to the lesser of 3% of the insurer's fund size or 5% of the units issued by a single InvIT/ REIT
(ii) Pension funds are also regulated to invest up to 5% of their funds in REIT/ InvIT
(iii) Mutual funds can invest up to 10% of their assets under management in a single InvIT/ REIT

To guarantee uniformity, these must be simplified. Furthermore, there are discrepancies in the level of exposures among categories. For example, IRDA regulations prohibit insurance funds from investing in unlisted InvITs. To keep up with the growth of the InvIT market, a staged strategy for streamlining investment requirements and limits is envisioned, beginning with the deployment of insurance and pension funds to unlisted InvITs.

Benefits from Taxes:
Historically, tax uncertainty and interpretation concerns have harmed investor emotions, as evidenced by the slow pace with which these financing arrangements have been adopted. However, with recent investor-friendly tax reforms, the government of India has attempted to create a suitable regulatory framework for speeding new infrastructure investments and releasing infrastructure developers' cash. More tax-efficient and user-friendly processes, such as permitting tax benefits in InvITs as an acceptable security to invest in, are critical first steps in encouraging retail engagement in the instruments.

Insolvency and Bankruptcy Code Recourse (IBC):
Allowing InvITs to invest in under-construction projects (albeit with restrictions) would be beneficial to developers, as they would be able to partially monetize their unfinished projects. However, there would still be a high level of uncertainty about investment returns. The IBC restrictions do not apply to InvIT loans since trusts are not considered "legal persons" under the current regulations. As a result, the lenders lack a process for recourse to project assets. While lenders are protected under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act") and the Recovery of Debts and Bankruptcy Act, 1993 (the "RDB Act"), the availability of recourse under IBC regulations will provide investors with an additional level of comfort.

Second Pillar: Increasing the effectiveness of demand-side actions

Establish a transparent and unbiased method for determining user charges that are cost-reflective:
A clear and transparent pricing framework for infrastructure services that is commensurate with the transfer of risk is required for the development of scalable asset monetisation models.

To aid monetisation, financial management and accounting processes needs to be reformed:
According to a 2015 survey conducted by Bank of America Merrill Lynch, India was voted the world's favourite capital market by 43 percent of investors. Economies like India have more to offer foreign investors in the form of higher returns than other established economies, which is why India is attracting more capital investors from across the world. Asset-level financial reporting and earmarking of specific revenue streams across all assets should become more common in the public sector, as this would make investors feel more secure.

Creating institutional infrastructure for asset identification and monetisation transactions in a timely manner:
Each ministry may establish a sufficiently empowered working group with the sole mission of identifying assets, methods of monetisation, and a handhold in the transactions/procurement process. This will also serve as a baseline for monitoring and tracking performance and data on potential assets by the Ministry.

Third Pillar: Developing efficient structures to help with monetisation

Across all industries, standard agreements should be adopted:
Corporates have a bullish perspective on the Indian economy, thanks to SEBI loosening the requirements for registered Foreign Portfolio Investments in India, allowing them to invest in infrastructure investment trusts (InvITs) and Real Estate Investment Trusts (REITs). In the road, port, and airport sectors, robust Model Concession Agreements have been developed. For faster adoption by public asset owners, model PPP concession frameworks for many other brownfield asset classes are needed.

Contracts are honoured through effective contract and dispute resolution systems:
Effective contract management, arbitration, and conciliation methods are critical to the monetisation's success. Maintaining contract sanctity is critical for boosting investor confidence. It is critical to raise awareness among state governments and municipal governments about the importance of contract compliance.

7 CONCLUSION

An attempt has been made to conduct a comparative analysis of InvITs and business trusts, more specifically, business trust listings, using Singapore and Hong Kong as examples. There are numerous advantages to using InvIT as an investment vehicle, but they may be limited to

specific types of businesses. Also it is a relatively new investment vehicle in India, but as the public becomes more acquainted and comfortable with InvIT, they would indeed appear to be a very welcome investment vehicle and structure, particularly for injecting liquidity into otherwise illiquid infrastructure sector. Nonetheless, the business trust listings models in Singapore and Hong Kong are useful and informative resources for comparative studies, and they may, more specifically, serve as empowering models for India to allow InvITs to list so that Indian companies could spin-off entities and able to raise sufficient capital from them through stock exchange.

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