PROJECT FINANCE THROUGH INFRASTRUCTURE INVESTMENT TRUST: LEGAL AND REGULATORY ANALYSIS

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Abstract

Structured finance, private equity, and public offerings drive a new global real estate and infrastructure age. Given the necessity for increased capital in funding infrastructure projects, a range of equity instruments can be employed to attract institutional investors in both advanced and emerging economies. In recent years, infrastructure sectors, including roads, highways, ports, power, and real estate, have seen increased financial demand and investment trusts have become critical in meeting India's infrastructural needs. Especially in India, Infrastructure Investment Trusts (InvITs) play a vital role in establishing a well-balanced risk management system, which is essential for addressing infrastructure needs and fulfilling the financial requirements of developers. InvITs were established under the Securities and Exchange Board of India (SEBI) Regulations, 2014, to attract global and local long-term investments for public-private partnership (PPP) and infrastructure projects and to fill gaps in traditional project financing. Despite initial expectations, few projects have utilized this structure since its inception. The author's review, incorporating doctrinal legal research, analyzes the regulatory framework surrounding InvITs in India. The paper contributes to the literature, emphasizing evidence of India's programmatic approach to enhancing infrastructure financing and showcasing structural and financial reforms in InvITs governance as integral components of the nation's strategy.

Keywords: Infrastructure Investment Trust, Special Purpose Vehicle, Project Finance, Structured Finance, Securities and Exchange Board of India

Authors' individual contribution: Conceptualization — A.K.; Methodology — A.K. and V.S.; Validation — A.K. and V.S.; Investigation — A.K.; Resources — A.K.; Data Curation — A.K.; Writing — Original Draft — A.K.; Writing — Review & Editing — A.K. and V.S.

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1. INTRODUCTION

Infrastructure Investment Trusts (InvITs) are crucial for facilitating infrastructure development in India and reducing dependence on bank financing. They enable developers to monetize their completed projects, offering an attractive investment opportunity for retail and institutional investors. InvITs as project financing tools and their influence on India's infrastructure finance sector are examined in this article and real estate investment trusts (REITs).

These schemes are allowed to invest in infrastructure projects as follows:

1. *Investment in completed infrastructure projects*. Herein, such projects must publicly offer their units.
2. *Investment in "under construction" projects*. In this case, there is a higher elasticity of acquisition, and such projects need to be for the option of a private placement of their units.

According to the Securities and Exchange Board of India (SEBI) (Infrastructure Investment Trusts) Regulations, 2014 (SEBI, 2023), the term "infrastructure" includes all fundamental subdivisions as described in the Ministry of Finance's notice of October 7, 2013, which consists of a comprehensive list of infrastructure sub-sectors and should take into account any future revisions (Jain & Gabor, 2020). As per InvIT regulations, special purpose vehicles (SPVs) are required for each InvIT to hold all designated public-funded projects included in the InvITs and serve as an investment manager in the proposed InvITs. This makes it a structured finance strategy for funding infrastructure.

Herein, there are four parties:

- *Trustee*. They need to be registered as a debenture trustee under the SEBI.
- *Sponsor*: It is a promoter, company or body corporate with a net worth of at least 100 crore rupees for setting up the InvIT.
- *Project manager*. He/she is responsible for the smooth execution of the project.
- *Investment manager*. A company or a corporate body that manages all surrounding activities of the InvITs.

InvITs are innovative collective investment vehicles that monetize infrastructure and allow investors to contribute without direct ownership. However, there are 15 SEBI-registered InvITs in India, with two publicly listed (Panda, 2023). The author reveals a significant gap in implementing SEBI's InvITs regulation over ten years, indicating a lack of awareness among investors and players. They investigate reasons for poor performance in India's InvITs despite the government's numerous regulatory initiatives to promote and strengthen them.

The paper explains the relevance of InvITs and its regulatory reforms since 2014 by addressing the following research questions:

RQ1: What causes InvITs to have a significant place in the capital market's collective focus for infrastructure development and asset monetization?

RQ2: How do the current regulatory frameworks for InvITs in India promote the democratization of infrastructure project finance by affecting compliance, disclosure, and the accessibility of various investors into the infrastructure market?

RQ3: What regulatory measures govern InvITs in reducing the risks linked to its slow growth?

This paper suggests that private finance may boost infrastructure investment despite political concerns and private equity firms benefitting from crucial assets. InvITs may raise capital and public value in undeveloped energy infrastructure, power grids, highways, railroads, and airports. This comprehensive doctrinal study will examine Indian InvIT regulations and project finance.

The rest of the paper is structured as follows. Section 2 gives a holistic literature review on the concept of InvITs and its evolution. The section describes the intricacies of the InvIT's structural framework and registration procedure under SEBI regulations in India. Section 3 describes the methodology for research. Section 4 highlights the relevance of InvITs for infrastructure project financing, further dwells on results, discusses research questions, and addresses issues and challenges for InvITs in India and initiatives taken by the government to support development. Section 5 provides a conclusion about the research contributions and importance.

2. LITERATURE REVIEW

An essential component of India's economic growth has been the country's infrastructure (Sarania, 2021). Infrastructure investments boost economic growth and future development, with India's projected $4,5 trillion infrastructure funding needs by 2040, according to the Economic Survey 2017–2018 (Jha & Bakhshi, 2019, p. 3798). Particularly in the Indian context, establishing dedicated financial institutions for projects is crucial in fostering economic growth (Shahrour & Uma, 2020). Private equity investments are becoming more critical, considering the urgent need for large capital inflows to support India's economic growth. Traditionally, the primary sources of financing have been banks and other financial entities (Berger et al., 1993). As per the Government of India et al. (2023), to achieve a gross domestic product (GDP) of $5 trillion by fiscal year 2025, India has to commit almost $1,4 trillion for infrastructure development. To achieve sustainable levels of private investment in infrastructure project finance development, India needs to revive around 40% of these flows. Despite a tumultuous history with public-private partnerships, some successful projects have faced challenges such as unfair risk allocation and disproportionate benefits for private investors (Datta, 2009). The Global Infrastructure Hub (2021) indicates that there is significant potential for increased private investment in infrastructure across low- and middle-income countries (LMICs). Due to budget restrictions, the government encountered difficulties assigning the financial resources required to develop infrastructure projects, resulting in delays in their timely completion (Singh et al., 2023). Capital markets have the potential to serve as a supplementary source of funding alongside traditional bank financing in this context (Hall & Soskice, 2001). The government has taken many steps to stimulate private investment and make infrastructure finance easier through public-private partnership (PPP) models like syndicate lending, infrastructure debt funds and asset monetisation schemes (Tirumala & Tiwari, 2023). Further, the Indian government took the first step by putting in place Investment Trust rules in 2014 (Dar et al., 2023) and, in 2016, enacting the Insolvency and Bankruptcy Code (Kumar & Sharma, 2024).

India established legislation in 2014 to encourage infrastructure and real estate investment via governmental assistance, including creating REITs and InvITs for small investors (Thierie et al., 2016). InvITs are investment vehicles traded on the stock market, enabling investors to invest and acquire partial ownership in infrastructure projects directly (Shah & Bhagwat, 2022). They function similarly to mutual funds and are governed by the SEBI (Bagdi & Pragnyath, 2023). The United States (US) invented the REITs form in 1960 (Bonomo, 2023).

As per its mandate under the SEBI Act of 1992, through its regulations, SEBI ensures the protection of investors in the InvITs market (Dhyana, 2022). The regulations established by the SEBI facilitate the ability of institutional investors to allocate their resources through capital markets (Chandu et al., 2022) to fulfil their responsibility to protect the interest of the investor and develop the capital market for private financing since 1992 (Kaur, 2018). This framework provides an alternative intermediary mechanism that bridges the gap between investors and project developers. InvITs resemble mutual fund institutions (Jaishankar et al., 2022), pooling funds from individual investors for direct infrastructure sector investments. Unitholders receive revenue shares, making InvITs hybrid instruments blending debt and equity.

InvITs are organized as trusts sponsored by infrastructure developers responsible for owning, operating, and investing in completed and ongoing infrastructure projects (Sinha, 2017). These projects include roads, highways, power distribution networks, telecom towers, and fibre optic networks. It is required that the InvITs be established as trusts under the provisions of the Indian Trusts Act of 1882 (Ashar & Seksaria, 2022). InvITs can be structured in the following manner. These are set up like trusts and registered under SEBI.

InvITs must raise funds through public or private placement, depending on the situation, and the trust must initiate a specific plan (Govindasamy, 2019). InvITs are connected with several vital entities, namely: 1) the trustee, 2) the investment manager, 3) the project manager, and 4) the sponsor. Moreover, distinct managers may also be appointed at the SPV level. Other parties, such as an independent engineer, might be necessary in situations involving a concession agreement. Furthermore, depending on the specific business or industry, the concession agreement may require modifications (Mittal et al., 2023). If the project does not involve a public-private partnership, relevant terms and conditions may still be applicable.

The literature review highlights the importance of InvITs in India for financing and liquidity, particularly in infrastructure projects and developers' massive financing needs (Mittal et al., 2023). InvITs invest in infrastructure, including roads, power plants, airports, and telecommunications towers (Manoj, 2016). The IRB InvIT Fund was the first mover to enter the market in 2016, followed by Grid InvIT in 2017 (Agarwalla & Pandey, 2023). The National Highways Authority of India (NHAI) was permitted by the Indian Union Cabinet in 2020 to establish InvITs and generate revenue from finished and operating National Highway (NH) projects (Ahuja & Basu, 2020). These InvITs were established under SEBI's 2014 regulations. They offer long-term cash flows (Mishra, 2018), with IRB's 2018 IPO oversubscribed 8.5 times (Business Standard, 2017).

In principle, REITs and InvITs are similar to mutual funds in that a sponsor obtains cash and distributes it to infrastructure or real estate projects (Bhaskar, 2023). REITs and InvITs have become more important in India as innovative financial tools for directing investments into the real estate and infrastructure industries (Jaishankar et al., 2022). The use of REITs and InvITs as financing mechanisms for large-scale real estate projects has been firmly established in advanced countries, such as the US and the United Kingdom (UK) (Fritsch et al., 2010). Like REITs, InvITs are trusts that own infrastructure assets distinguished by reliable cash flow and prolonged concession periods, such as managing highways and transmission assets (Tirumala & Tiwari, 2023). InvIT has the potential to sustain infrastructure financing with an effective strategy (Sebayang & Sebayang, 2020). Redirecting the long-term investments and domestic resources of pension and insurance funds towards infrastructure may become a standard for infrastructure financing (Kumar, 2022). In response to InvIT asset growth, a growing regulatory environment should improve investor knowledge and involvement (Singh & Ahmad, 2022). India has an increasing momentum of business trusts (Pawha et al., 2014). Tax benefits and the distribution of annual cashflows to investors make them more attractive (Tritt & Teschner, 2019). Today, Pension and sovereign funds in India have substantial investable money (Monk & Sharma 2019). Post-COVID-19, they are becoming more interested in infrastructure projects because of the reliable, long-term, inflation-adjusted, and well-balanced risk-return revenue flows that these projects provide (Aravindan & Thillai Rajan, 2023). India's progress in InvITs is nascent (Shah & Bhagwat, 2022). Although InvITs have had some early success, they have not fully maximised their potential.

3. METHODOLOGY

This paper employs a doctrinal legal research method to investigate the regulatory framework overseeing InvITs within India's project finance context with an interdisciplinary approach. According to Hutchinson (2015), at its core, doctoral legal research involves the analysis and interpretation of prevailing legal rules, principles, statutes, and cases. This method is rooted in thoroughly examining legal sources like statutes, regulations, case law, and legal literature to extract insights and formulate conclusions regarding the law. It becomes a platform to promote further research (Fourie, 2015).

This research thoroughly examines relevant legislation, case law, and academic literature to grasp and analyse InvIT legal concepts — interpretive data analysis. A comprehensive overview is provided by integrating previous studies and expert opinions. Scholars carefully examine doctrinal sources to explain the legislative framework, discover legal precedents, and identify legal gaps and ambiguities.

The secondary sources are collected from SEBI annual reports and commentaries on regulations on InvITs, which are scrutinized through electronic research platforms such as SCOPUS, Elsevier, Hein Online, and SSC Online. Online legal databases, such as Manupatra and LexisNexis, and academic search engines, like Dimensions and Google Scholar, are employed to refer research articles. These platforms offer a plethora of valuable data that facilitates the identification of relevant sources.

The following legal materials have been referred to and thoroughly reviewed for research on the topic:

- SEBI Act 1992;
- InvIT Regulations, 2014;
- SEBI (REIT) Regulations of 2014;
- Indian Trusts Act 1882;

- Companies Act of 2013;
- Limited Liability Partnership Act 2008;
- Income Tax Act 1961.

To substantiate the development of law on InvITs, the SEBI website has been searched for updates on amendments and master guidelines on InvIT players. This descriptive study aims to provide insight into the changes in the regulation of legal relationships within InvITs that resulted from adopting the "InvIT Regulations, 2014". This primarily refers to the relationships between InvITs, project sponsors, investors, and other intermediaries.

4. RESULT AND DISCUSSION

The study finds that the real estate and infrastructure sector on a global scale has undergone significant transformations through the implementation of structured financing, private equity investments, and public offerings.

Infrastructure investment is increasing globally, affecting policy and regulatory incentives. InvITs and REITs provide reliable, convertible funding with robust governance (Shruti & Saurabh, 2020). In India, effective risk management through InvITs is pivotal in facilitating infrastructure development (Mathew, 2017). The SEBI regulations of 2014 enabled India to establish InvITs that encouraged long-term public-private partnerships and infrastructure investments. The researchers found that the InvIT markets have experienced a state of maturation (Tirumala & Tiwari, 2023), facilitating the allocation of investments towards assets of superior quality, yielding consistent returns throughout the previous decade and over the years (Mallick, 2021). REITs have transformed the real estate market, benefiting investors and developers (Mishra, 2018).

Figure 1. Limitations of traditional infrastructure financing

4.1. Economic rationale of InvITs

The main objective of promoting and strengthening the country's infrastructure project finance sector is achieved by encouraging investments in exchange for various benefits (Das & Thomas, 2016). Innovative REITs and InvITs let developers leverage income-generating real estate and infrastructure, allowing investors or unit holders to invest in these assets without direct ownership (Ananthanarayanan & Narla, 2017).

InvITs address infrastructure financing concerns for sustainable development and economic growth as they promote capital mobilisation, resource efficiency, risk sharing, liquidity, predictable returns, and private sector engagement (Nikoliuk et al., 2023). It includes the following benefits:

- provide long-term financing options for existing infrastructure projects;
- low investment risk offered to attract long-term investors like insurance and pension funds;
- free up developer capital for reinvestment into new infrastructure projects;
- facilitation of ownership of diversified infrastructure assets for retail investors;
- bring higher standards of governance into infrastructure development and management;
- delivering predictable distribution;
- growth potential for investors.

Benefits for developers and promoters. From a business standpoint, these investment platforms enable businesses to shift from being "asset-heavy" models[1] to "asset-light" models[2] by allowing them to concentrate on their core competencies while outsourcing infrastructure and operational divisions (Singh et al., 2019). These investing approaches have also helped tiny enterprises get funds by giving them access to previously unreachable assets. Promoters may lower their debt and reinvest in lucrative investment portfolios and projects by selling assets on these platforms.

Benefits for institutional and retail investors. The risks associated with these types of investments can be effectively managed through diversification, which enables strategic investors to handle risks better (Hasan & Sulaiman, 2016). Diversification also reduces risk concentration, further strengthening risk management (Acharya & Das, 2017). InvITs, as an alternative, provide liquidity, ease market access and exit fixed returns, assuring a constant income with lower investment risks via portfolio diversification (Chan et al., 2002). This investment method is particularly beneficial for retired investors as it redistributes risks and guarantees fixed returns, serving as a reliable source of fixed income (Benefield et al., 2009). Moreover, investing in REITs and InvITs discourages the undervaluation of assets during forced sales (Nijkamp et al., 2002). However, smaller investors selling high-value homes could face challenges.

Benefits for macroeconomy. Investing in InvITs and REITs presents an opportunity to generate additional capital by offering significant exposure and different prospects in the real estate and infrastructure sectors (Pawha et al., 2014). This, in turn, promotes the development of capital markets, reducing the burden on banks. From a corporate governance standpoint, these investment vehicles facilitate better investor decision-making (Di Tommaso, 2018) by promoting professionalism and transparency within the sector (Thetlek et al., 2023).

Through structured financing for energy, transportation, and innovative city development, these investment methods raise national income. Additionally, REITs and InvITs produce direct and indirect jobs (Shah & Bhagwat, 2022). This is

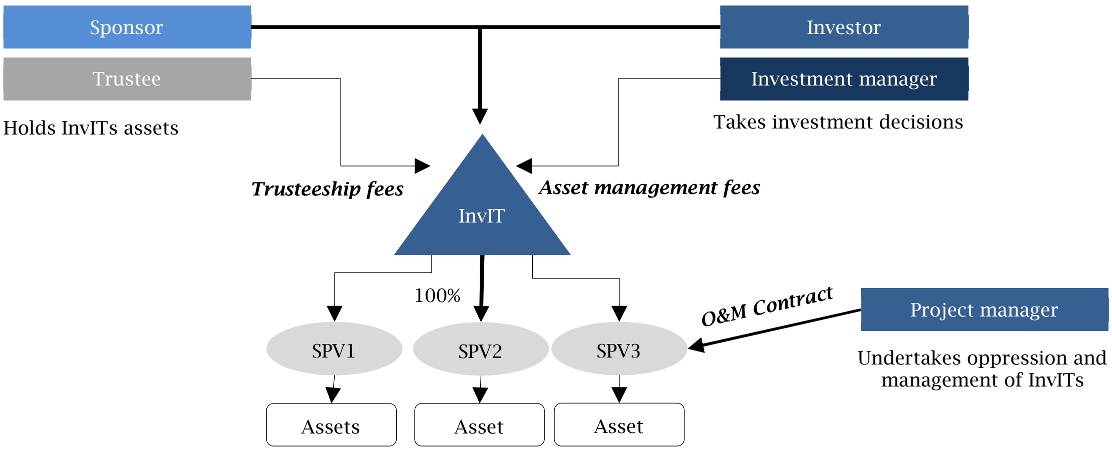
[1] "Asset-heavy" companies allocate significant financial resources towards acquiring and maintaining physical assets, such as operational facilities and infrastructure.
[2] "Asset-light" companies outsource the ownership and administration of these assets to external entities.

achieved through various avenues such as fund management, project management, valuation services, and other professional services.

4.2. InvITs regulations in India

As per the PMI and KPMG (2021), since 2014, the infrastructure project industry in India has undergone a remarkable revival, primarily driven by government reforms, amplified foreign investment, and proactive government initiatives. These reforms have played a pivotal role in liberalizing foreign direct investment regulations and creating opportunities for foreign investment in domestic funds (Agrawal, 2020). To facilitate the realization of infrastructure investment plans, the government of India introduced InvITs (Jaitley, 2015).

Figure 2. Structure of InvITs

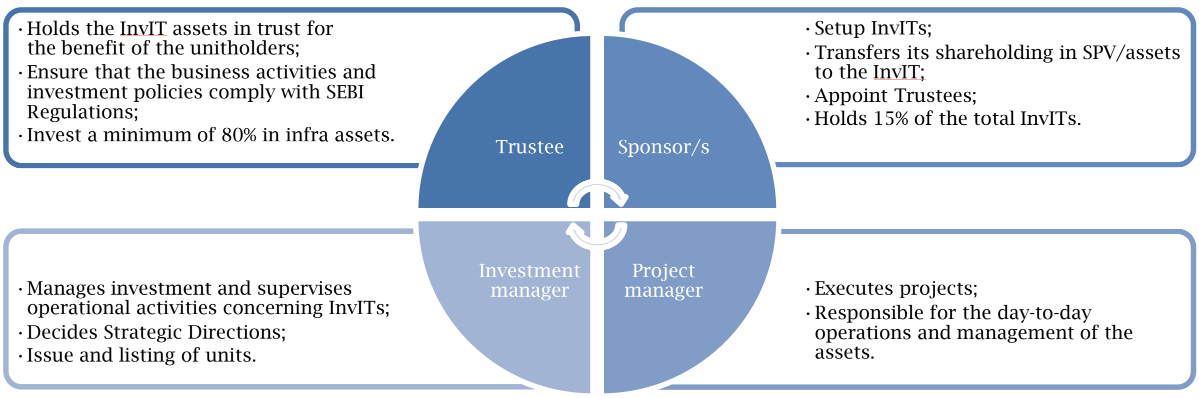


4.2.1. SEBI regulations on InvIT

The SEBI notified the InvIT Regulations on September 26, 2014, establishing the guidelines for registering and regulating InvITs in India (Savla & Khan, 2016). InvIT regulations introduce vital entities, including trustees, investment managers, and sponsors, outlining their roles, rights, and obligations. Both publicly listed and privately placed InvITs must be listed on a recognized stock exchange, and the listing of units must adhere to the listing agreement between the InvIT and the designated stock exchanges. Investment trusts to invest not less than 80% of the value in completed and revenue-generating projects and not more than 10% in under-construction projects (Bhaiya & Singh, 2020). The InvIT Regulation 2014 resembles REITs in terms of its operation (Mackey et al., 2004). REITs and InvITs must adhere to the exact minimum investment requirements and regulated structure. However, their industry concentration is where the primary distinction exists.

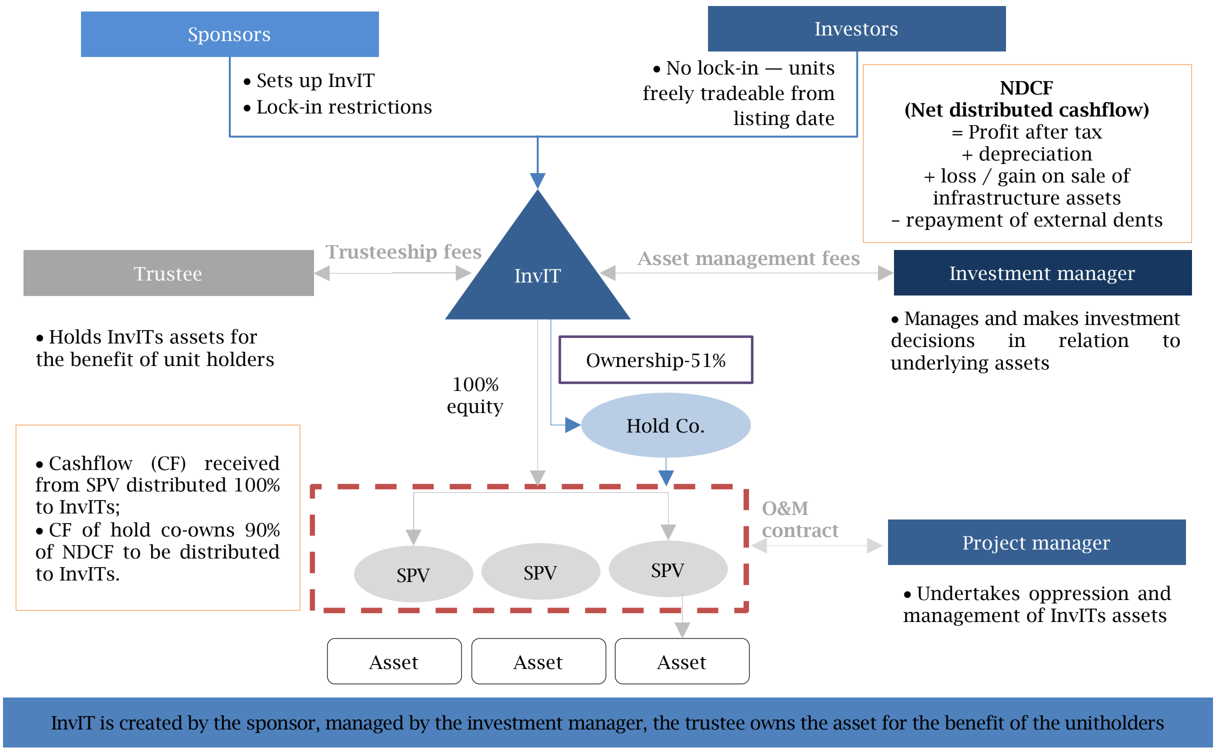
InvITs must register with SEBI as InvITs and are created as private trusts under the Indian Trusts Act of 1882. REITs, on the other hand, mainly invest in real estate or infrastructure assets that provide income.

Figure 3. Structural features of InvITs as per SEBI Regulations, 2014



Due to its pass-through structure, investors get most of these enterprises' income. Due to their high dividend distributions, they are advertised to investors as long-term, stable income with little capital appreciation. By listing investors' units on a stock exchange, they may trade or sell their assets at the best market prices, maximizing their money and value (Pratap & Sethi, 2019). Thus, an investor can possess an asset without holding legal ownership of the said asset.

Figure 4. Legal structure and compliance by InvITs players as per SEBI Regulations, 2014



The SEBI regulations outline four critical entities in an InvIT: 1) the sponsor, 2) the trustee, 3) the investment manager, and 4) the project manager. The sponsor transfers portfolios and establishes the trust, locking in 15% or 25% of outstanding units for three years. The trustee, an independent debenture-holding registered trustee, ensures compliance with SEBI norms and safeguards unitholder interests. The investment manager oversees the trust's core functioning, imposing strict governance norms and maintaining independence. The project manager executes infrastructure projects within a specified timeline, focusing on operational aspects and asset management.

4.2.2. Regulatory compliance of InvITs

InvITs have to comply with the SEBI InvITs Regulations 2014 and register with SEBI. These regulations provide requirements for participating parties, provide a framework for InvITs in India, and describe obligations at various stages, including before and after the issuance of securities and continuing compliance. The government also clarified the rules of InvIT, or "Business Trust", Taxation in an effort to attract investors. As per InvITs Regulations 2014 following compliances are applicable:

- units of InvITs can be listed and traded on stock exchanges;
- 90% of the net distributable cash flow has to be distributed to unitholders;
- the trading lot size has been reduced to one;
- trusts have passthrough structures, i.e., they are not taxed;
- at least 80% of the assets should be operational and generating income;
- invites pool money from investors and put it into real estate or infrastructure assets;
- allow investors to invest in these assets without owning them.

Furthermore, it is required that the investment trust receives 90% of the net distributable cash flow from the SPV, as per the regulations specified in either the Companies Act of 2013 or the Limited Liability Partnership Act of 2008. Moreover, InvITs are bound to allocate 90% of their revenue as dividends biannually, guaranteeing that a substantial fraction of the profits is periodically disseminated among the unit holders.

RBI regulations. The Reserve Bank of India (RBI) has authorized banks to participate in procuring units provided by InvITs subject to specific stipulations. As mentioned earlier, the provisions entail limiting the investments, as discussed above, to a maximum of 10% of the financial institution's net assets, exclusively for investments in direct equity instruments (PTI, 2017). The primary aim of the RBI Circular is to address the concerns expressed by InvITs, banks, and other stakeholders for bank loans provided to InvITs. As part of the sub-limit of 60% for equity investments in group companies, the RBI has also allowed core investment companies (CICs) to invest in InvITs as sponsors (ZeeBiz, 2012).

Tax treatment. REITs and InvITs are categorized as business trusts under Section 2(13A) of the Income Tax Act of 1961 (ITA) (Kumar & Kaushik, 2016). The returns on investments in these trusts are subject to taxation but are exempt from tax deducted at source (TDS). Regarding REITs, long-term capital gains are applicable if the holding period extends to 36 months. Any long-term annual gains exceeding Rs one lakh are taxed at a rate of 10%. On the other hand, short-term gains from units held for 36 months or less are subject to a flat tax rate of 15% (Mohan et al., 2020). For NRIs containing units, the taxation rates may be lower based on the provisions of the Double Taxation Avoidance Agreement (Krishnan, 2021).

Tax benefits. There are particular provisions under the ITA for taxing business trusts, such as REITs and InvITs (Suresh & Maity, 2015). Whether a business trust is public or private, listed on a stock market, or neither, these requirements apply uniformly to all business trusts. These commercial trusts make money by receiving dividends and interest from SPVs. The goods and dividends generated by these SPVs are not subject to taxes under the rules outlined in the ITA. The SPVs themselves, however, are responsible for paying taxes on their taxable revenue, which usually totals 25% plus an extra cess and surcharge. Taxes on capital gains from asset sales or other investment income are the exclusive responsibility of the business trusts (Shah et al., 2021). Consequently, the pass-through tax character of InvITs and REITs is typically advantageous.

Judicial pronouncements on InvITs. In the case of Indiabulls Commercial Real Estate Ltd v. SEBI and Ors, the Supreme Court upheld SEBI's regulations related to InvITs. The case concerned whether Indiabulls Commercial Real Estate could launch an InvIT without prior registration with SEBI. The court held that InvITs are financial products within SEBI's regulatory purview. The court also upheld SEBI's regulations related to InvITs, including the requirement that InvITs must be registered with SEBI before being launched (Moneycontrol, 2024).

InvITs regulation by the Federal States in India. InvITs in India are regulated through central legislation issued by the SEBI. There is no rule or procedure established by any state separately. Consequently, the underlying assets in InvITs are sometimes under the state's significance, which may positively require state intervention. An example is road infrastructure. The road sector implements InvITs or the toll-operate-transfer model to monetize national highways. However, monetising state-level road assets presents a significant opportunity when considering large-scale initiatives. As a result, policies mandating the monetization of state assets are becoming increasingly crucial, considering the substantial reservoir of such assets available for private investment. The active participation of federal legislation is essential in influencing these policies to promote the efficient advancement of InvITs.

4.3. Comparing REITS with InvITs

InvITs are structured similarly to Master-Business Trusts, prevalent in developed countries such as the UK, US, Singapore, Australia, and Hong Kong (Shah & Bhagwat, 2022). REITs and InvITs are financial instruments that facilitate the investment of funds by individuals in a varied portfolio of assets. Both provide investors with the chance to gain from the performance of underlying assets, such as real estate or infrastructure projects, without the necessity of directly acquiring or financing them (Ananthanarayana & Narla, 2017).

4.3.1. Structural difference between REITs and InvITs globally

As both these concepts are at their nascent stage in India, they are often used interchangeably globally (Kapur, 2019). They can be differentiated based on the following.

Asset class. REITs mainly invest in real estate assets, such as residential, commercial, industrial, or retail buildings. InvITs target infrastructure assets, including toll highways, electricity transmission lines, airports, and telecom towers.

Income. REITs generate income mainly through rental income and capital appreciation, whereas InvITs generate revenue through tolls or fees for utilizing infrastructure assets.

Commercial wisdom. REITs are typically regarded as investments with lower risk when compared to InvITs. Real estate assets exhibit comparatively lower volatility than infrastructure assets, susceptible to regulatory and political risks.

Regulation. REITs and InvITs must allocate at least 90% of their taxable income to their respective shareholders. Nevertheless, a disparity exists in the taxation of said distributions. The distributions of REITs are subject to ordinary income tax, whereas those of InvITs are subject to capital gains tax.

Investment. REITs provide higher investment size accessibility due to public exchange trading and mutual or exchange-traded fund structure. Due to their larger investment sizes, InvITs are better suited to institutional investors and high-net-worth individuals.

4.3.2. The regulatory difference between REITs and InvITs in India

SEBI was introduced as an alternative to traditional investing methods in India. Both InvITs and REITs use similar frameworks that combine money from many investors under the supervision of a sponsor or trustee. Whereas InvITs engage in infrastructure projects like power plants and roads, REITs concentrate on real estate.

Structure. REITs target residential, commercial, industrial, and retail real estate. Instead, InvITs invest in infrastructure like toll highways, electricity transmission lines, airports, and telecommunications towers.

REITs and InvITs must allocate at least 90% of their taxable income to their shareholders as part of their taxation requirements. Nevertheless, there are variations in the taxation of these distributions. The distributions of REITs are subject to taxation as regular income, whereas the distributions of InvITs are subject to taxation as capital gains.

Revenue generation and stability. REITs exhibit enhanced stability and revenue generation owing to their strategic allocation of 80% of their assets towards income-generating assets. These assets are usually rental agreements with steady cash flows. Conversely, InvIT cash flows are affected by several variables that may limit their use. Moreover, limitations on adjusting tariffs in proportion to the industry's growth may impede long-term economic development.

Risks. REITs safeguard against political and regulatory risks better than InvITs. REITs hold real estate and buildings or lease them from the government. In contrast, InvITs rely on infrastructural concessions, making them more sensitive to regulatory changes and political interference.

Minimum investment. Following the circular issued by SEBI in 2019, the minimum investment prerequisites are outlined as follows:

- in the context of InvITs, every allotment lot is required to possess a minimum value of Rs one lakh, and each of these lots is composed of 100 units;
- in the context of REITs, every allotment lot is required to consist of 100 units and have a minimum value of Rs50,000.

Liquidity. Both REITs and InvITs are listed on the stock exchange. Due to their higher unit price than REITs, InvITs have witnessed decreased liquidity. Given their experience with real estate, retail investors often choose REITs over infrastructure project funding.

Growth. Investors can observe the expansion of REITs through the refurbishment of current assets or the commencement of novel construction undertakings. A meticulous scrutiny of the financial records is imperative to comprehend the growth prospects of an InvIT, owing to its dependence on the company's proficiency in procuring concession assets via a competitive bidding mechanism.

4.4. InvITs in infrastructure project finance development: Challenges and reforms

Several concerns persist regarding the susceptibility of the infrastructure sector to the impacts of modifications in legal frameworks and regulations (Unnikrishnan & Kattookaran, 2020). An abrupt amendment in legal regulations can impede or impact the advancement of ongoing real estate or infrastructure project finance endeavours (Manoj, 2016). Foreign Portfolio Investors hold a significant position in listed REITs and InvITs in India. Thus, SEBI's retail customer advertising campaigns have been unsuccessful. Retail investors must be educated and given measures to build trust to help REITs and InvITs grow in India.

4.4.1. Challenges

Nevertheless, these financial instruments offer long-term returns. A significant proportion of the Indian population either lacks the financial means or is not inclined to commit their funds for an extended period (Pratap & Sethi, 2019).

InvITs in India encounter several obstacles, such as:

Insufficient investor cognizance. InvITs are a nascent investment instrument in India, and many investors are unacquainted with their advantages or operational mechanics. Vague cognizance regarding InvITs can pose a challenge in terms of investor attraction.

Limited availability of investment opportunities. The number of infrastructure projects in India that meet the requirements for InvIT investment is limited. The diversification of portfolios and the attraction of investors can pose a challenge for InvITs.

Compliance issues. In India, InvITs encounter various regulatory obstacles, such as disclosure, valuation, and income distribution. Adhering to these regulations may entail significant expenditures of time and resources.

Limited track record. InvITs in India have a little track record, as the first InvIT was launched in 2017. The absence of an established performance history can challenge InvITs in garnering investor interest.

Investment risk. Risk perception is a significant factor in the investment decision-making process for infrastructure projects. This perception of risk can challenge InvITs to attract investors who are averse to risk. The perception of risk is frequently attributed to various factors, including but not limited to delays in project completion, exceeding budgetary limits, and uncertainties surrounding regulatory compliance.

Asset quality. The quality of infrastructure assets available for investment can also challenge InvITs. Acquiring premium assets yielding consistent returns is crucial for InvITs to allure investors and expand their investment portfolios.

Financing challenges. InvITs require significant capital to invest in infrastructure projects. Notwithstanding the potential benefits of InvITs, securing financing for such entities can be a formidable task, given the possible apprehensions of banks and other financial institutions regarding the inherent risks associated with infrastructure investments.

Contract structure issues. InvITs framework makes infrastructure asset purchases more challenging owing to concession agreement restrictions. The InvIT regulations prevent the acquisition of an under-construction asset of over 51% until the commercial operation date (COD). Following the COD, developers can only sell 51% of the asset within one year. In renewable energy, attractive potentials sometimes remain undiscovered, posing a significant challenge. Contracts with commercial and industrial customers are gradually replacing power purchase agreements with central and state governments in the renewable energy sector. This shift can broaden the range of assets eligible for InvITs, increasing the demand for long-term hydro assets.

4.4.2. Regulatory reforms

The SEBI has implemented several measures to increase the attraction of InvITs to investors. On April 22, 2021, a circular made these revisions official (PTI, 2019). The main changes made by SEBI include:

Raising the borrowing ceiling. SEBI increased the InvITs' borrowing ceiling from 49% to 70% of the value of their assets. With this, InvITs are now able to sponsor additional initiatives. Strategic investors can now invest up to 25% of the total InvIT units, a new regulation for InvITs. This clause intends to increase liquidity and draw in long-term investment.

Disclosure of required financial results. InvITs must publish them every two years. This mandate increases openness and empowers investors to make wise choices.

Relaxation of related party transaction regulations. Subject to specific criteria, SEBI has loosened regulations governing transactions between associated parties for InvITs. Due to their flexibility, InvITs may do business with linked parties while maintaining sufficient security.

Investment in projects currently being built. InvITs can now invest in projects currently being built, provided specific requirements are satisfied. These include having incurred at least 80% of the project cost and producing income within a certain period.

Ease of doing business. The amendments to the InvITs Regulations have adjusted the minimum subscription and trading lot for publicly issued InvITs from 10,000 to 15,000, with a standardized trading lot of one unit. Changes also include specifications for the minimum number and holding of unit holders in unlisted InvITs. REITs and InvITs are now required to disclose complaints on their websites and stock exchanges, with modifications to the exit option for dissenting unit holders in cases triggering SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011.

Conversion of private unlisted and listed InvITs: SEBI has issued guidelines for converting private, unlisted InvITs into private listed InvITs and private listed InvITs into public InvITs. A private unlisted InvIT can get listing status by issuing units through private placement, adhering to Chapter N of the InvITs regulations. Similarly, privately listed InvITs can become public InvITs through a public issue of units, following the specified InvITs Regulations (PTI, 2022). However, continuance disclosure and compliance with relevant regulations for private or public InvITs is mandatory post-conversion.

Auditing. The InvIT regulations were modified by the SEBI (Infrastructure Investment Trusts) (amendment in 2023) Regulations, which improved corporate governance and audit-related procedures (SCC Times, 2023) and mechanically strong through internal control system (Velte & Loy, 2018). Due to foreign investor interest, the InvIT regulations have strengthened despite good corporate governance. The current system requires openness, limits interested parties' voting rights, and sets credit ratings, among other things.

Corporate governance. SEBI has implemented the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations) to govern InvITs and REITs. These regulations outline the duties and obligations of senior management personnel, including chief executive officers (CEOs), chief financial officers (CFOs), and chief operating officers (COOs). Independent directors are also required to fulfil their responsibilities. Auditors are appointed for six consecutive years, ensuring transparency and accountability. Auditors must examine amalgamated financial statements and remit outstanding disbursements to the Investor Education and Protection Fund (IEPF) (Bhagat et al., 2023). Also, the board of directors of REITs/InvITs must have at least six directors, with at least one independent female director. The quorum at board meetings is determined by two criteria: 1) one-third of the total number of board members or 2) three independent directors (Kulasekhar, 2023). The SEBI has also issued a mandate for a vigil mechanism and whistleblower policy for managers and investment managers, aiming to protect directors, employees, and individuals against victimization (Jaiswal, 2023).

These changes are intended to enhance the InvIT investment environment and increase their allure to prospective investors. Increased regulation impacts the relationship between financial risks and governance characteristics. According to Altawalbeh (2023), these governance laws aim to build confidence to draw in stakeholders.

5. CONCLUSION

The research paper concludes that although the government continues to contribute significantly to infrastructure expenditure, there are sufficient prospects for private sector involvement via innovative models like InvITs and a robust regulatory framework.

REITs and InvITs are novel approaches to capital formation that offer a combination of equity and debt attributes to benefit investors and the infrastructure project finance industry. Under the supervision of SEBI regulations, these trusts provide enhanced liquidity and superior risk management. To attract strategic investors and encourage long-term investments, the government increased InvIT restrictions in April 2021, focusing on boosting financing limits, enforcing transparency, and alleviating party transaction rules. Furthermore, by exempting TDS under the ITA, the government promotes investments in REITs and InvITs, which are attractive vehicles for total return investments. India's entry into InvITs signifies a prospect for expansion, encouraging engagement in the market and gaining international acclaim in real estate and infrastructure development.

To further develop the InvITs market in India, it is suggested, based on research, that the following initiatives should be taken by the government through its various departments and capital market regulator:

1. Increase efforts to educate stakeholders and the general public about InvITs' fundraising tools to increase awareness and involvement.
2. Add additional diversified assets to the InvIT framework, such as storage, water, and railway assets, to extend the possibility for monetization.
3. Consider offering regulatory relief while retaining enough monitoring to promote InvIT issuers and increase participation.
4. Encourage InvIT issuers to look for methods for raising domestic capital, making the product more appealing and encouraging local investment.
5. Implement tax breaks for InvITs to incentivise investors and increase the instrument's attractiveness.

Nevertheless, to implement efficient corporate governance in the InvIT industry, it is necessary to strike a careful balance between the involvement of stakeholders, the power to make decisions, and the systems of responsibility.

This research paper bears substantial importance for forthcoming investigations in various critical aspects, illuminating the evolving landscape of asset monetisation strategies in InvITs, their regulatory framework, issues, challenges, and the market regulator's response to industry demands. Despite accentuating the potential benefits of InvITs, it's vital to recognise specific limitations. The paper views India's venture into InvITs as a valuable learning opportunity and a catalyst for market growth, urging exploration of comparative studies. Due to funding constraints, quantitative data is absent, a notable limitation. Future researchers may investigate how other countries have navigated similar financial landscapes, drawing lessons and best practices to inform India's approach and contribute to the global discourse on infrastructure financing.

To conclude, this paper establishes a robust foundation for comprehending the significance of REITs and InvITs in the Indian context, and further research can enhance our understanding by delving into the nuanced implications of regulatory measures, evaluating practical challenges, and making comparisons with global experiences using quantitative data.

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