Update

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SEBI introduces a framework for Unit Based Employee Benefit Scheme under the SEBI InvIT Regulations & the SEBI REIT Regulations

The Securities and Exchange Board of India ("**SEBI**") has amended both, the SEBI (Infrastructure Investment Trusts) Regulations, 2014 and SEBI (Real Estate Investment Trusts) Regulations, 2014, with effect from July 9, 2024, to introduce a new chapter on '*Framework for Unit Based Employee Benefit Scheme*', *i.e.*, Chapter IVB of the InvIT Regulations and Chapter IVA of the REIT Regulations ("**Framework**"). Several features of the Framework are similar to the SEBI framework in place for listed companies under the SEBI (Share Based Employee Benefits and Sweat Equity) Regulations, 2021.

Set out below are certain key amendments notified by SEBI.

- **Employee unit option scheme and its implementation:** An '*employee unit option scheme*' is a scheme under which the investment manager of an InvIT / manager of a REIT ("**Manager**") grants unit options to its employees (including directors of the Manager but excluding independent directors) ("**Scheme**") through a separate employee benefit trust ("**Employee Trust**"). The introduction of a Scheme would be subject to receipt of unitholders approval (60% majority).

  The minimum vesting period of units under a Scheme is one year. The nomination and remuneration committee of the Manager is responsible for the overall administration and superintendence of a Scheme. The REIT/InvIT, its HoldCo or SPV are not permitted to incur any additional cost on the offer of any Scheme.

  The Framework includes a "grandfathering" provision, pursuant to which any unit based employee benefit schemes which have been introduced prior to the notification of the Framework are required to comply with the Framework, following its notification.

- **Manner of receiving units by the Employee Trust:** The Employee Trust may receive units in the following manner:
  - The Manager may receive (in full or part) the units of the REIT/InvIT in *lieu* of management fees, through the Employee Trust, solely for providing unit based employee benefit on such units.
  - A shareholder of the Manager may transfer, in full or part, the units of the REIT/InvIT held by it to the Employee Trust. In case the sponsor is also a shareholder of the Manager, then the members of the sponsor group and associates of the sponsor are also permitted to transfer their units to the Employee Trust.
  - The Manager may transfer full or part of the units of the REIT/InvIT held by it to the Employee Trust.

  Any transfer of units, as mentioned above, shall be irrevocable and without any consideration in return, *i.e.*, shall constitute a gift.

- **Manner of allotment of units to the Employee Trust:** In the event of allotment of units to the Employee Trust in *lieu* of management fees, the Manager is required to comply with the following:
  - obtain the approval of the unitholders (60% majority) prior to such issuance;
  - issue units to the Employee Trust only once in a financial

year, within 90 days after the completion of the annual valuation exercise;
  - issue units to the Employee Trust in compliance with the 'Guidelines for preferential issue and institutional placement of units by listed REITs' prescribed by SEBI; and
  - allot units directly to the Employee Trust so that such units are used exclusively for a Scheme.

  The Employee Trust may subscribe to units subject to compliance with Employee the minimum lot for primary market transactions under the SEBI regulations. In respect of privately placed InvITs, the minimum trading lot under the SEBI InvIT Regulations shall not apply to vesting of units to the employee of the Manager, and the employees may also sell odd lot quantities of the units vested upon them, in off-market transaction(s).

- **Pricing of options**: The Manager is free to determine the exercise price of the options subject to compliance with the Accounting Standards including any 'Guidance Note on Accounting for employee share-based Payments' issued from time to time.

- **Secondary acquisition of units by the Employee Trust:** Secondary acquisition of units by the Employee Trust in a financial year up to 2% of the total outstanding units of the InvIT/REIT, calculated as at the end of the previous financial year, is permitted. Further, at any given point in time, the Employee Trust is not permitted to acquire over 5% of the total outstanding units of the InvIT/REIT (calculated as at the end of the previous financial year immediately prior to the year in which the unitholders approval is obtained for such secondary acquisition) through secondary acquisitions. This excludes units acquired through a gift or pursuant to a new issue of units. All such units are required to be held for a minimum of six months by the Employee Trust.

  Any plan to undertake secondary acquisition by the Employee Trust is required to be disclosed at least seven working days (excluding the date of the intimation and the start date of such period) in advance to the recognized stock exchanges and depositories and any sale of units by the employees of the Manager during this period is not allowed. Further, a lock-in on the employee units shall be imposed by depositories which will be released after the period during which the Employee Trust plans to undertake secondary acquisition has elapsed. The Employee Trust shall not be used as a mode for trading in units of the InvIT/REIT.

- **Variation of terms of the Scheme:** Subject to receipt of unitholders approval (60% majority), the Manager may vary the terms of the Scheme and reprice the options provided the options have not been exercised by the employees and the amendment is not prejudicial to the interests of the employees. However, any variation in terms on account of legal or regulatory requirements does not require any unitholders approval.

- **Insider trading norms:** The provisions of the SEBI (Prohibition of Insider Trading) Regulations, 2015 and SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003, each as amended, shall apply to the Manager, its directors, its key managerial personnel, sponsor, recipients of units under the Scheme, the Employee Trust and trustee of the Employee Trust. The trading window restrictions under the SEBI (Prohibition of Insider Trading) Regulations, 2015 shall not apply in respect of issue of units by the REIT/InvIT to the Employee Trust in *lieu* of management fees, for providing unit-based employee benefits.

- **Ongoing compliances and disclosures**: The Framework also specifies requirements in relation to the minimum provisions required in the trust deed for the Employee Trust, the additional terms and conditions of Schemes required to be formulated by the Nomination and Remuneration Committee, the details of the information to be provided to unitholders at the time of seeking their approval for a Scheme, the information and undertakings required to be submitted to stock exchanges and disclosures to be made in the annual report on an ongoing basis.

- **Other features of the Framework:**
  - The trustee of the InvIT/REIT is not permitted to act as the trustee of the Employee Trust.
  - Subordinate units shall not be eligible for being transferred to the Employee Trust or being made part of the Scheme.

- The Employee Trust or its trustee is not eligible to vote on account of the units held.
- The units of the InvIT/REIT transferred to the Trust shall be locked in by the depository and released only for the transfer of units to the employees.
- Any new units issued under a Scheme, are required to be immediately listed on all recognized stock exchanges where the existing units are listed.
- The cash accumulated by the Employee Trust may be used by it for acquiring units of the InvIT/REIT (either from the secondary market or during any fresh issuance of units) and is also permitted to be deployed in liquid assets, which are required to be unencumbered. "**Liquid asset**" means cash, units of overnight or liquid mutual fund schemes, fixed deposits of scheduled commercial banks, government securities, treasury bills, repo on government securities and repo on corporate bonds.
- In case of change in the Manager, the outgoing manager is required to sell the existing units held within six months and not entitled to receive management fees or units in *lieu* of management fees from the REIT and accordingly not offer any fresh Scheme.

Please feel free to address any further questions or request for advice to:

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