

### **Foreign Investment in units issued by REITs, InvITs and AIFs governed by SEBI regulations**

The Reserve Bank of India has vide Circular No. 63 dated April 21, 2016 notified the much-awaited regulations enabling foreign investments under the automatic route in Alternative Investment Funds (“AIF”), Real Estate Investment Trusts (“REIT”), Infrastructure Investment Trusts (“InvIT”) and other entities regulated by the Securities and Exchange Control Board of India (“SEBI”) or any other authority designated for such purpose.

#### **REITs excluded from “Real estate”**

In the FEMA (Permissible Capital Account Transactions) Regulations, 2000, “real estate business” has been regarded as a prohibited sector for foreign investment. These regulations have now been amended to exclude REITs registered and regulated under the SEBI (REITs) Regulations 2014, from the ambit of “real estate business”.

#### **Downstream investment by the Investment Vehicle**

To be regarded as foreign investment, downstream investments shall not be by an Investment Vehicle whose either Sponsor or Manager or Investment Manager is Indian ‘owned and controlled’ as defined in Regulation 14 of the Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2000, as amended recently vide Foreign Exchange Management (Transfer or Issue of Security by a Person Resident outside India) (Second Amendment) Regulations, 2016

Moreover it has also been clarified that the quantum of investment by foreign investors in an Investment Vehicle shall not be a determining factor in considering whether downstream investment by it is foreign investment or not.

#### **Downstream investment in LLP by Investment Vehicle**

Downstream investment in an LLP by an Investment Vehicle that is reckoned as foreign investment has to conform to the provisions of Schedule 9 of the Foreign Exchange Management (Transfer or issue of Security by a Person Resident outside India) Regulations, 2000; as well as the extant FDI policy for foreign investment in LLPs.