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# SEBI moots new rules to issue subordinate REIT, InvIT units

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Regulator Consultation paper from the regulator suggests capping such instruments to 10% of ordinary units

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The Securities and Exchange Board of India (SEBI) has made additional proposals for the issuance of subordinate units for REITs and InvITs.

The regulator has said that the amount of subordinate units that can be issued at the time of acquisition of an asset will not exceed 10 per cent of the asset's

acquisition price. At any point of time, the total number of such outstanding units shall not exceed 10 per cent of the outstanding ordinary units.

### **To bridge valuation gap**

Subordinate units are intended to bridge the valuation gaps that may arise as a result of difference in the valuation of an asset perceived by the sponsor and the REIT/InvIT. These units will be issued to the sponsor depending on the valuation gap. Such gaps could potentially disappear if pre-agreed performance benchmarks are met, reflecting in increased value of the asset. This can, in turn, result in the conversion or reclassification of the subordinate units to ordinary units.

The regulator has proposed that the subordinate units will only carry inferior voting rights or inferior distribution rights or both.

Accordingly, the subordinate units will carry no distribution and voting rights, or inferior distribution and inferior voting rights to the extent of 10 per cent of the corresponding rights conferred on ordinary units, or a range may be specified on the extent of inferior distribution rights and inferior voting rights which can be offered on the subordinate units vis-à-vis ordinary units.

### **Uniformity**

To bring uniformity in the nature of rights conferred by the subordinate units, it is proposed to provide that inferior rights on all subordinate units issued by a REIT or InvIT will be similar — there will not be multiple classes of subordinate units.

The performance benchmark, defined and specified in the offer document, for the conversion or the reclassification of subordinate units to ordinary units should not be subject to any change post the issuance of subordinate units.

The recent SEBI consultation papers on subordinate units of REITs and InvITs, demonstrate SEBI's concern for retail investors investing in these assets, said Ratnadeep Roychowdhury, Co-Head, Private Equity and Sovereign Wealth Funds, Nishith Desai Associates.

“The objective appears to be uniformity and clarity in the regulatory framework. However, since rules and restrictions are being introduced... we hope that SEBI also enacts grandfathering provisions for all subordinate units already issued and in existence,” Roychowdhury added.

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