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The Bharatmala Pariyojana: Infrastructure Augmentation Towards Socio-Economic Prosperity And Self-Reliant India

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Abstract

The World Development Report in its 1994 annual issue under the auspices of World Bank rightly observed that infrastructure represent, if not the engine, then the wheels of economic activity. Infrastructure development is prerequisite in transforming a slow-moving economy into an advanced one. In the world competitiveness Index, released by IMD, a Swiss foundation tracking and examining four parameters of competitiveness, reported India's overall rank at 37th in 2022 from 43rd in 2021, has witnessed the sharpest rise among the Asian economies, however its performance still ranked at 49 in infrastructure development. India has about 63.72 lakh km of road network, which is the second largest in the world in terms of length. National Highways (NHs) constitute about 2% of the total road network but carry about 40% of the total road traffic. The Bharatmala Pariyojana program envisages a corridor approach in place of the existing package based approach which had, in many cases, resulted in skewed development. The umbrella program of Bharatmala focused on enhanced effectiveness of already built infrastructure, multi–modal integration, bridging infrastructure gaps for seamless movement and integrating National and Economic Corridors. The program was conceptualized to attain optimal resource allocation for a holistic highway development/improvement initiative.

The present study aspires to delve into the details contour of Bhaaratmala Pariyojana undertaken by the Ministry of Road Transport and Highway(MoRTH) under NHDP in order to augment the infrastructural deficiency facing the country. The Ministry is actively pursuing multiple models of monetization of National Highway assets such as: Toll Operate Transfer (TOT) and Infrastructure Investment Trust (InvIT) model besides the existing PPP model. As per the estimates to realise the goal of $ 5 trillion economy by 2025-26 and USD 7 trillion by 2030, India needs huge investment in infrastructure and capacity building. The successful completion of the Bharatmala pariyojana is a great step in the right direction. As the Bharatmala pariyojana Phase-I is almost completed its tenure, the second phase is expected to operationalise by 2024. It has some additional features like Multimodal logistics parks which will provide seamless cargo transfer between Railways cargo, Inland Waterways, Air cargo, Dedicated Freight Corridors, Access-Controlled Expressways, National Highways, State Highways in a Hub and Spoke model. It will make current corridors more effective & will improve connectivity by leveraging synergy with inland waterways.

Key Word: Infrastructure, Bharatmala Pariyojana, ToT, InvIT, NHDP

India is said to be the fastest developing countries today only after China. Although India is doing exceptionally well in fields like education, industrialization and fashion there are still certain areas where the country is lagging behind. India's road network is gigantic and said to be only after the United States of America. Roads play a vital role to facilitate passengers and freight traffic across the country. India has unique and different road structure which has largest road network in the world. It is presently over 3.5 million (35 lacs) KM largest throughout India.But one of the striking underlying facts is the condition of the roads. Since roads indirectly contribute to the economic growth of the country it is extremely essential that the roads are well laid out and strong. India is home to several bad roads be it the metropolitans, the cities or the villages. Bad road conditions are nothing new to India and the problem is being addressed since the last 30 years. Indian roads are divided into 5 categories for better management and administration. These are as follows India is transforming rapidly as one of the fastest growing large economies in the world. As the nation completes 75 years of independence, state and central governments, businesses and local communities are looking ahead to create a land of sustainable, inclusive growth and opportunity. In the run-up to a Century of independence in 2047, how can India target sustainable, inclusive growth? What actions can the industry spearhead to unlock sector-wise growth that boosts GDP, fosters inclusion, and protects the environment? This paper identifies 10 priority sectors and industry-led programmatic interventions towards this vision, building on a cross-disciplinary research collaboration with the Federation of Indian Chambers of Commerce & Industry (FICCI).

Investment in infrastructure is pivotal for accelerated and inclusive socio-economic development of a country. In the absence of adequate and robust infrastructure facilities, the economy operates at a sub-optimal level remaining distant from its potential and frontier growth trajectory. With such imperative–to bridge the existing infrastructure gaps and cater to its future potential and needs–the Government of India (GoI) undertook a first-of-its-kind and a whole-of-government exercise in FY 2019-20, to lay the infrastructure vision for the country. Pursuant to which, the National Infrastructure Pipeline ('NIP'), detailing the infrastructure vision for the country, was released in December 2019. As per the Report of the Task Force for NIP: '..The vision, mission and strategic goals would be towards improving the ease of living or physical quality of life for each individual in the country. And investment in infrastructure would aim to achieve the aspirational standards in consonance with SDG -2030 for same..' Imperativeness of such vision and large-scale infrastructure investment has only been more pronounced with the recent coronavirus (COVID) pandemic. With the crisis taking an unprecedented toll on the economic activity in the country, significantly enhanced level of infrastructure investment is critical for reviving growth. Furthermore, the crisis has emphasised the need for resilient, environmentally sustainable and technologically advanced infrastructure systems, which in turn necessitates targeted approach towards SDG based aspirational standards under NIP.

During the twelfth plan period, infrastructure investment in India aggregated to Rs 36 lakh crore, averaging at ~5.8% of GDP. Further, for FY 2018 and 2019 it has been estimated at ~Rs 10 lakh crore1 . Going forward, the NIP envisions a significant step-up from the current levels. This is largely in view of recommended infrastructure investment levels of 7-8% of GDP2, so as to ensure requisite capacity and quality of infrastructure within the country. NIP envisages infrastructure investment of Rs. 111 lakh crores over five-year period from FY 2020 to FY 2025. With annual average investment of ~Rs. 22 lakh crore, this is a significant step-up (~2.5 times) vis-à-vis historical levels of spending on infrastructure. Achievement of incremental annual investment of 2-3% of GDP3, as envisaged under NIP, has the potential to enable double digit economic growth (for corresponding period) for the country. Which in turn will ensure enhanced economic activity and employment opportunities in a post-crisis economy. Successful and timely implementation of projects planned under NIP, hence, remains a key focus area for both Central and State Governments. One of the major pre-requisites for this, however, is the availability of capital. Under NIP, traditional sources are expected to finance 83–85%4 of the envisaged capital expenditure. This includes ~18-20% financing through Centre's budgetary resources and 24-26% through the States' budgetary resources. Another ~40% is proposed to be raised through extrabudgetary resources/ private sector investment (in form of debt from bond markets/ banks/ non-banking financial companies, by way of equity from private developers/ internal accruals of PSUs and external aid from multilateral/ bilateral agencies). Further, as estimated by the NIP task force report, about 15-17% of the outlay is to be met through innovative and alternative initiatives viz. asset monetisation, funding through a new Development Finance Institution (DFI) etc. Of which asset monetisation has been suggested as a tool to monetise operational assets at both Central and State levels.

Roads are a primary method of transportation, used daily all around the world to transport people and cargo. Roads make a huge contribution to economic development, and bring important social benefits too. India's transport sector is large and diverse; it caters to the needs of 1.3 billion people. India has the second largest road network in the world of about 63.86 lakh Km. This comprises National Highways, Expressways, State Highways, District Roads, Rural Roads, Urban Roads and Project Roads (Table 1.1)

In India, amongst the major modes of transport the road transport remains the dominant mode both in terms of its contribution to gross value added and in terms of its share in passenger and freight transported. As per the National Transport Development Policy Committee, road transport carries about 90 percent of the total passenger traffic and 67 percent freight traffic. It contributes about 3.10 percent of Gross Value Addition (GVA) as against the total transport sector contribution of 4.63 percent to GVA at national level for the year 2018-19, where the share of Railways was at 0.73 per cent, Air Transport at 0.1 per cent and Water Transport at 0.07 percent (Table 1.2). Road transport alone accounted for about more than 64 per cent share in total transport sector contribution to GVA followed by Railways during the period 2014-15 to 2018- 19 (Chart 1.1).

During 2009-2019, National Highways registered CAGR growth of 6.5%, which is the highest decadal growth, followed by Rural Roads with CAGR growth of 5.6% and Urban Roads with CAGR growth of 3.8%. In Table 1.3, the length of National Highways was 70,934 Km in 2010-11 which has increased consistently to 1, 32,499 Km in 2018-19 with growth of about 86.8 percent over 2010-11. 1.10 The proactive policy steps, leveraging of private and public investment, innovative financing models, have resulted in increase in the pace of development of National Highways in recent years. The details of Investment in National Highways are given in Table 1.5. The combined public and private investment has increased during 2012-13 to 2018-19@ CAGR of 24.83% (Table 1.5). The total investment in construction of Highways has increased from Rs. 41998.4 crore in 2012-13 to Rs. 1,58,958.53 crore in 2018-19. The share of public sector investment in Highways has increased from Rs 21,693.74 crore in 2012-13 to Rs 1,37,353.53 crore in 2018- 19 while that of private sector has increased from Rs 20,304.66 crore in 2012-13 to Rs 21,605 crore in 2018-19 (Table 1.5)

Major Initiatives towards Expediting Implementation of Delayed Projects

The road network is the backbone of the transport system in India and it is very well integrated with the multi-modal system of transportation. In the road sector, the National Highways are the predominant mode of transportation with road network of 1, 32,499 Km as on 31st March, 2019. Though National Highways constitute about 2.09% of the Road Network of the country, these NHs carry nearly one third of total traffic on road. National Highways running through the length and breadth of the country connecting capitals of States and UTs, major ports, rail junctions, industrial and tourist centres and link up with border roads and highways of neighbouring countries. Highways facilitate, conveyance of people, goods, rawmaterials, manufactured articles etc. speedily and easily in the different parts of a country. National Highways are also feeders to railways, shipping and air traffic. 2.2 The Ministry of Road Transport and Highways (MORTH) is mandated with the construction, development and maintenance of the National Highways (NH). The Ministry is progressing towards provision of improved service access to citizens with quality and e ffi c i ency in s e rvi c e de live ry, transparency in the system and reduced workload for RTO staff. MORTH implements National Highways projects/flagship schemes through the agency of National Highways Authority of India Ltd (NHAI), National Highways Infrastructure Development Corporation Ltd. (NHIDCL), State PWDs (2 lane NH) & Border Roads Organization etc. Ministry is also responsible for administration of National Highways Act, 1956, National Highways Authority of India Act, 1988, National Highways Fee (Determination of Rates and Collection) Rules, 2008, Motor Vehicles Act. 1988 and Central Motor Vehicles Rules 1989, formulation of broad policies relating to road transport, environmental issues, automotive norms etc. besides arrangements for movement of vehicular traffic with neighbouring countries. 2.3 At present, projects of widening to 4-lane NH configurations or more and Expressways under Bharatmala Pariyojna (Phase-I) and other Schemes have been assigned to the NHAI. The projects of development to 2-lane NH configurations, with or without paved shoulders are primarily being assigned to the State Governments, viz. State PWDs, State Road Construction

Departments/ Corporations, etc. The Projects under 24 Special Accelerated Road Development Programme for North-Eastern Region (SARDP-NE), including Arunachal Pradesh Package of Roads, are primarily assigned to NHIDCL. Further, NHIDCL is also being assigned projects under other Schemes in hill States including States in the North East Region, the three hill States in North-West Region and the Andaman & Nicobar Islands. NATIONAL HIGHWYAS – PROFILE OF 2019 vis-à-vis 2018 2. 4 India's road network (including highways) is one of the most extensive road networks in the world with 63.31 lakh kilometre as on 31st March 2019. With the proactive policy initiatives in the sector, the road network has continuously been expanding in the country. The total road network consists of 1.32 lakh km of National Highways, 1.79 lakh km of State Highways and 60.2 lakh km of Other Roads (which include District Roads, Rural Roads, Urban Roads and Project Roads). In percentage term, National Highways, State Highways and Other Roads constitute 2.09 per cent, 2.83 per cent and 95.08 per cent respectively in total road network. The total length of National Highways has increased from 1,26,350 km in 2018 to 1,32499 km in 2019, recorded an increase of 4.86 percent on an average relative to the corresponding previous period (Table 2.1). For the second consecutive year in 2019, National Highways in the country are fully surfaced (Table 2.1 and Chart 2.1). Major programmes initiated by MoRTH for development of National Highways network in the country is given at Section 8 of this report.

The Ministry of Road Transport and Highways has been making constant efforts to expand and upgrade National Highways (NHs) Network in the country into a road network of international standards for uninterrupted flow of traffic with enhanced safety features. The Ministry implements several Central Sector Schemes such as the Special Accelerated Road Development Programme in the North East (SARDPNE) including Arunachal Package, Development of the Left Wing Extremism, the Vijayawada Ranchi corridor, Bharatmala Pariyojana etc for enhancing connectivity for remote far flung and isolated areas, including NorthEast Region (NER), Left Wing Extremism (LWE) affected areas including Tribal areas. 8.2 The pace of construction of National Highways (NH) ha s inc r e a s ed incrementally from 2014-15 to 2021-22 due to the systematic push and focus of t h e g o v e r nme n t o n tr a n s p o rt infrastructure development. In 2014-15, the NH construction was 12 km/day, which increased to 28 km/day in 2019-20 and subsequently to 37 km/day in 2020- 21. In 2021-22, the ministry has a target to construct NHs of length 12,000 Km (33km/day). The ministry ha s constructed 5,835 km in 2021-22 (till Dec'21) despite the impact of 2nd wave of Covid-19 and monsoons. The ministry is confident of achieving the overall target by the end of 2021-22. 8.3 The Ministry has implemented several reforms and initiatives to address the issues leading to a significant improvement in the pace of construction. These initiatives are (i) Increase in the Total Fund Available and Capital Expenditure by the Ministry, (ii) Increase in Public Private Partnerships, (iii) Promotion of domestic contractor ecosystem under 'Atmanirbhar Bharat', (iv) Providing relief measures from the impact of COVID-19 pandemic to Co n tr a c t o rs/De v e l o p e rs Un d e r 'Atmanirbhar Bharat', (v) Focusing on minimizing project delays, (vi) Decentralization and delegation measures, coupled with digital initiatives, etc. Major Schemes/Initiatives of Ministry of Road Transport and Highways Section – 8 8.4 Comprehensive guidelines regarding delegation of authorities for the procurement, preparation, review and approval of DPRs MoRTH was empowered through a Cabinet decision to decide on mode of delivery of projects –PPP/EPC. It was authorized to appraise projects up to Rs. 1,000 crores – both for PPP and EPC mode in place of earlier Rs. 500 crores. In 60 order to enhance inter-ministerial coordination, an Infrastructure Group has been created under the Ministry headed by the Minister to resolve multistakeholder issues. Processes have been streamlined like online approval of General Arrangement Drawings (GADs) f o r R O B s/ R U B s. F o r e st a n d Environmental Clearances have been delinked. Stage - I Forest Clearance is now considered as deemed approval for cutting of trees. Segregation of Civil Cost from Capital Cost for NH projects for appraisal & approval has been approved by the CCEA to speed up appraisal and approval process leading to faster project award. The Ministry has issued comprehensive guidelines regarding delegation of authorities for the procurement, preparation, review and approval of DPRs For streamlining land acquisition (LA) under NH Act, 1956 and applicability of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilit a tion & Re s e ttl ement (RFCTLARR) Act 2013 for LA of NH projects, the Ministry has issued comprehensive guidelines on 28.12.2017 in supersession of all previous guidelines/ circulars on the issue after obtaining legal advice from learned Attorney General of India. These guidelines have been circulated to all State / UT Governments and all concerned executive agencies of the Ministry. These guidelines cover all possible aspects related to applicability of the RFCTLARR Act, 2013 to the NH Act, 1956, such as determination of market value of land, payment of additional amount, issue regarding multiplication factor, bulk acquisition/ purchase of land through consent of land owners, determination of compensation amount by competent authority, disbursement of compensation amount and possession of land, etc. Further, in continuation to this, the Ministry has circulated Manual of Guidelines on Land Acquisition for NHs under NH Act, 1956 in the Month of December, 2018.

The Ministry / NHAI has taken various steps to stimulate growth and the magnitude of investment in the road sector. Regular meetings are held with project developers, State Governments and contractors in Head Quarter by Ministry with Regional Officers, concessionaires / contractors to make the construction of projects hassle free. To expedite completion of these projects various steps have been taken which include streamlining of land acquisition & environment clearances, exit for equity investors, premium re-schedulement, close coordination with other Ministries, revamping of dispute resolution mechanism frequent reviews at various levels etc. Further, taking a judicious approach in terms of adopting the project implementation mode for approved projects, Hybrid Annuity Model (HAM) vis-à-vis EPC has been adopted. As capital expenditure is deferred under HAM, the Authority requires lesser amount of funds during construction years in comparison to projects on EPC mode. Further, initiatives such as monetization of projects through the Toll-Operate-Transfer (ToT) model, securitization of toll revenue, adopting the 'Infrastructure Investment Trusts (InvITs)' route, other innovative financing options including LIC, Long Term Pension Funds, etc., has been taken to attract fresh capital from the market on the strength of already operational projects. 8.7 Major Initiatives towards Expediting Implementation of Delayed Projects The Ministry and NHAI have been monitoring the languishing projects very rigorously. Wherever feasible one-time fund infusion by NHAI has been done to revive Languishing Projects. For any languishing highway project in BOT Toll/ Annuity mode that has achieved at least 50% physical completion and it is also established that infusion of moderate funding can quickly bring this project to completion, NHAI provided financial assistance to such a project. The assistance is on a loan basis at Bank rate +2%. At present the funds was arranged through the common fund available with NHAI for development of roads. With proactive policy interventions, all of these projects have now been put back on track, or appropriately reengineered and restructured and revived as under:- Resolved through regular monitoring 15 nos. 2,055 km Terminated and repackaged and rebid 48 nos. 5,091 km Projects revived after policy interventions like fund infusion 10 nos. 1,041 km 62 Ministry has issued new EPC Contact documents in December 2018 to ease out the contractual complications in the old documents. Also Ministry is in the process of finalising new Concession document on NBOT(TOLL) to attract private investment in Highways Projects. Great focus is being given on monetisation of completed NH stretches through TOTand InvITModal. So far Rs. 16,954 cr has been realised by monetizing 1,406 km of completed NH stretches in 4 bundles. National Highways Authority of India sponsored one InvIT that will attract international and domestic institutional investors. Target to raise Rs. 10,000 Cr through InvIT in FY 2022. 5 stretches (400 km) identified for raising Rs. 5000 Cr.

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8.8 New Contract / Concession documents for Highways Projects

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8.9 Monetisation of National Highways stretches

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8.10 Amendment in Model Concession Agreement for PPP projects

Ministry has amended the Model Concession Agreements for BOT and HAM Projects by reducing the risk element of the Concessionaire. This has resulted in increased private sector participation and more than 50% of NHAI bids are now being awarded on PPPmode.

8.11 Relief measures towards Atmanirbhar Bharat

As per the relief measures provided under Atmanirbhar Bharat, all out efforts were made to extend all possible help to Contractors, Concessionaires and developers of Road Sectors by way of Time Extensions (3-6 months), relaxation in Contact provisions for ensuring cash flow, direct payment to sub-contractors and release of retention money to augment cash flow, waiver of penalty in case of delay in submission of Performance Security (for new Contracts), and compensation of toll loss. The detailed Circular in this regard was issued by the Ministry vide letter no. COVID-19/RoadMap/JS(H)/2020 dated 03.06.2020.

8.12 Action Plan for Garib Kalyan Rojgar Yojana

Government has identified around 116 Districts of the Country, where majority of migrant workers are expected to be present and process of providing employment is being undertaken. The Ministry has identified ongoing works/new works for the Road Construction in these 116 Districts for which the likely expenditure in next four months would be around Rs. 6,200 Crores (on around 7,000 Kms) in around 177 Road projects. All efforts are being made to employ the locally available skilled, semi-skilled and unskilled manpower on the ongoing projects.

8.13 Developing NH stretches by Securitisation of Toll

Development of NH stretches is being done through the Securitisation of Toll Receipts in SPV mode. Delhi Mumbai Expressways is currently being done through SPV mode. Other Greenfield Expressways are being tried to be executed through SPVmode.

8.14 National Highways development aligned to National Multimodal Logistics Master Plan

Greenfield Corridors (22) enhances connectivity to 750+ Economic & industrial nodes, multimodal logistics terminals planned in National Multimodal Logistics Master Plan Ü Corridors with optimized alignment, improved geometry enables high speed (avg. 80 – 100 km/hr) and safer freight & passenger movement and lower logistics cost Ü Integrated transport corridors being planned Ü Ahmedabad – Dholera (Expressway and Metro), UER II and Dwarka Expressway (LRT/ Metro) Ü Delhi Mumbai Expressway and Delhi Katra Expressway (Feasibility of High Speed Rail being explored by Railways) Ü Right of way earmarked for utilities along all new NH corridors Ü Optic Fiber Cable in NH right of way being piloted in Bengaluru – Hyderabad (NH corridor) and Delhi Mumbai Expressway Ü Additional 8,500 km of Greenfield Economic Corridors and Expressways identified based on National Logistic Masterplan & LEEPstudy of World Bank

8.15 Increasing penetration of Electronic Toll Collection (ETC)

All Toll plazas on NHs made ETC compliant v All new vehicles fitted with FASTag (Dec' 17) v FASTag mandatory for fitness certificate & 3rd party insurance for old vehicles v MoUs signed with 13 States – 138 SH toll plazas integrated with FASTag system v Multiple recharge options (BHIM, BBPS1) v Automated Number Plate Recognition piloted on Delhi Meerut Expressway v GIS for monitoring congestion at toll plaza

8.16 Incident Management System

Ministry recently decided to take up Incident Management Services (with Ambulances) on all National Highways to be implemented through State Government and UTs including all Medium Term Contract maintenance st works effective from 1 April, 2021. This would facilitate timely evacuation of road 8.13 Developing NH stretches by Securitisation of Toll 8.14 National Highways development aligned to National Multimodal Logistics Master Plan 8.15 Increasing penetration of Electronic Toll Collection (ETC) 8.16 Incident Management System 64 accident victims from accident location to nearest Hospitals / Trauma Care Centers and their treatment within Golden Hour

7 Simplification of Reimbursement Procedure in M&R:

It has been observed that States/UTs in general are unable to claim full reimbursements for works done in a Financial Year (FY) as per the funds allocated for OR works for such States/UTs. In most of the occasions, States/UTs do not surrender funds sufficiently in advance leading to eventual surrender of such unutilized funds. In subsequent FYs, many States/UTs have been sending proposals to the Ministry through State Accountant Generals for reimbursements of expenditures incurred for which claims could not be raised in the particular FY. Accordingly, the Ministry has decided to allow booking of expenditure/ reimbursement of Ordinary Repairs (OR) on continuing basis in the next FY. The booking/expenditure of total OR for allocation of funds made in a particular FY is to be allowed in subsequent FY as OR (Continuing) subject to the maximum allocation made under OR during the particular FY. This is applicable from 1.4.2020.

Problem and Challenges being faced by the Ministry and action being taken:

Some National Highway projects have been delayed mainly due to land acquisition, utility shifting, nonavailability of soil/aggregate, poor p e r f o r m a n c e o f c o n t r a c t o rs, environment/forest/wildlife clearances, ROB & RUB issues with Railways, public agitation for additional facilities, arbitration/contractual disputes with contractors etc. ii. In order to ensure timely completion of the projects, regular meetings are held with project developers, State Governments and contractors. Regular review meetings are held in Head Quarter by Ministry/ NHAI with Regional Officers, concessionaires/ contractors to make the construction of projects hassle free. To expedite completion of these projects various steps are taken which include streamlining of land acquisition & environment clearances, exit for equity investors, premium re-scheduling, close coordination with other Ministries, revamping of dispute resolution mechanism, frequent reviews at various levels etc. iii. A real time on line monitoring system, "e-Samiksha" has been set up by the Cabinet Secretariat for monitoring of follow up action on the decisions taken during the presentations made by different Ministries/ Departments to the Hon'ble Prime Minister periodically. iv. Als o , t h e p o rt a l "PRAGATI " (pragati.nic.in), i.e. Pro-Active 8.17 Simplification of Reimbursement Procedure in M&R: 8.18 Problem and Challenges being faced by the Ministry and action being taken: 65 Governance and Timely Implementation, has been set up by the Prime Minister's Office. The portal is aimed at addressing the Common man's grievances and monitoring important programmes and projects. The Hon'ble Prime Minister, himself, reviews the progress of important infrastructure projects periodically with inputs from the nodal Ministries/Departments and State Governments, etc., hosted on the Portal. Both these portals, also, discuss the Centre-Sate Coordination issues within the platform for facilitating better cohesive approach of resolving the outstanding bottlenecks. v. In addition to above, at the behest of Hon'ble Prime Minister, a high level Group of Infrastructure has been constituted under the Chairmanship of Hon'ble Minister of Road Transport and Highways with Hon'ble Ministers of Railways, Civil Aviation, Minister of State (IC) of Environment, Forest and Climate Change, Principal Secretary to Prime Minister, Cabinet Secretary,

Secretary (RT&H), Chairman(Railway Board), Secretary (Environment & Forests), Secretary(Shipping) and Secretary (Civil Aviation) as Members. The Group would meet as often required to review and resolve all pending InterMinisterial matters. 8.19 Details of Central Road Sector Outlay at the RE stage and Expenditure incurred are given in Table 8.1. It may be noted that the total budgetary support provided to MORTH, Market Borrowings by NHAI and Expenditure incurred has been increasing consistently over the years. Private sector Investments have slowed down somewhat due to difficulties in the market conditions i.e. availability of finance from Banks in the face of growing NPAs, uncertainty in returns on account of projected traffic, investors preferring short term investment periods as against roads requiring long term financing etc. 8.20 The Expenditure (Actual) incurred in the Development and Maintenance of National Highways by MORTH by source of financing in the last 8 years is given in table 8.2 which shows that Market Borrowing, Central Road Fund (CRF) Cess, and Permanent Bridge Fee Fund (PBFF) constitute important sources of financing for the maintenance and construction of Highways. 8.22 Development and maintenance of National Highways of 2-lane and below are primarily assigned to State Governments viz. State PWDs for which Ministry provides funds from its budget to the respective States. Table 8.3 provides State-wise allocations and expenditure made by States for the period 2015-16 to 2019-20 and shows an increasing trend in the total allocations and expenditure incurred to States for the construction of National Highways.

Logistics and transportation

Logistics improvement could significantly drive productivity and cost savings in the infrastructure sector. With 45 percent of investments projected under the National Infrastructure Pipeline earmarked for transport and logistics infrastructure, enhancing capacity and efficiencies in this sector is key.193 The government has implemented major initiatives across the board, including augmenting air capacity, boosting rail traffic, easing the export process, and promoting drones. The recently released national logistics policy includes a comprehensive logistics action plan focused on integrated planning, logistics digitisation, human resources, inter-modal transport, and logistic processes.194,195

States vary significantly in terms of transport and logistics infrastructure. Gujarat, Maharashtra, Tamil Nadu, Punjab, Haryana, and Tamil Nadu have good logistics infrastructure such as roads, railways, cargo terminals, and warehousing facilities (Exhibit 18).

INFRASTRUCTURE: AN ENABLER OF GROWTH

Investment in infrastructure is pivotal for accelerated and inclusive socio-economic development of a country. In the absence of adequate and robust infrastructure facilities, the economy operates at a sub-optimal level remaining distant from its potential and frontier growth trajectory.

With such imperative–to bridge the existing infrastructure gaps and cater to its future potential and needs–the Government of India (GoI) undertook a first-of-its-kind and a whole-of-government exercise in FY 2019-20, to lay the infrastructure vision for the country. Pursuant to which, the National Infrastructure Pipeline ('NIP'), detailing the infrastructure vision for the country, was released in December 2019. As per the Report of the Task Force for NIP:

'..The vision, mission and strategic goals would be towards improving the ease of living or physical quality of life for each individual in the country. And investment in infrastructure would aim to achieve the aspirational standards in consonance with SDG -2030 for same..'

Imperativeness of such vision and large-scale infrastructure investment has only been more pronounced with the recent coronavirus (COVID) pandemic. With the crisis taking an unprecedented toll on the economic activity in the country, significantly enhanced level of infrastructure investment is critical for reviving growth. Furthermore, the crisis has emphasised the need for resilient, environmentally sustainable and technologically advanced infrastructure systems, which in turn necessitates targeted approach towards SDG based aspirational standards under NIP. Asset Monetisation being inextricably linked to new infrastructure creation, NMP has been planned to be co-terminus with the remaining four-year period of the National Infrastructure Pipeline (NIP). NMP forms a baseline for the asset owning ministries for monitoring and tracking – investment, performance and data on potential assets, for the 4-year period from FY 22 to FY25. The Report on National Monetisation Pipeline has been structured as a (i) Guidance book for Asset Monetisation (Volume I) and (ii) Medium-term Roadmap including the pipeline of assets (Volume II). NIP and NMP, together, are envisaged to give a comprehensive view on greenfield and brownfield investment avenues in Infrastructure.

CORE ASSET MONETISATION

The assets held by the government/ public sector entities/statutory bodies broadly include operational/ under-construction projects, land, buildings, investment in subsidiaries/ joint ventures etc . From amongst these,

Assets which are central to the business objectives of such entity and are used for delivering infrastructure services to the public/ users are considered as Core Assets for the purposes of monetisation herein.

Infrastructure11 includes asset classes such as transport (roads, rail, ports, airports), power generation, transmission networks, pipelines, warehouses etc. The other assets, which generally include land parcels and buildings, can be categorised as non-core assets. **Of the various Core Assets, assets which are currently generating revenue OR those which have substantially completed facilities and can be suitably augmented for future operations have been considered as potential Core Assets for monetisation herein.**

Core Asset Base

Investment, as measured by Gross Fixed Capital Formation (GFCF), has on an average been 30% as a component of GDP in the previous 5-year period i.e. FY 2017 – FY 202112. This capital formation has been led by mega public investment programmes such as Bharatmala, Sagarmala, Dedicated Freight Corridor, Jal Shakti and Pradhan Mantri Awas Yojana etc.

Owing to several years of such large-scale public investment programmes, a significant public infrastructure asset base has been created at the level of CPSEs, departments andstatutory entities, both within the Central as well as State government. A snapshot of the scale of core assets, managed across key Central Government entities and sectors, is provided in table below.

CORE ASSET MONETISATION FRAMEWORK

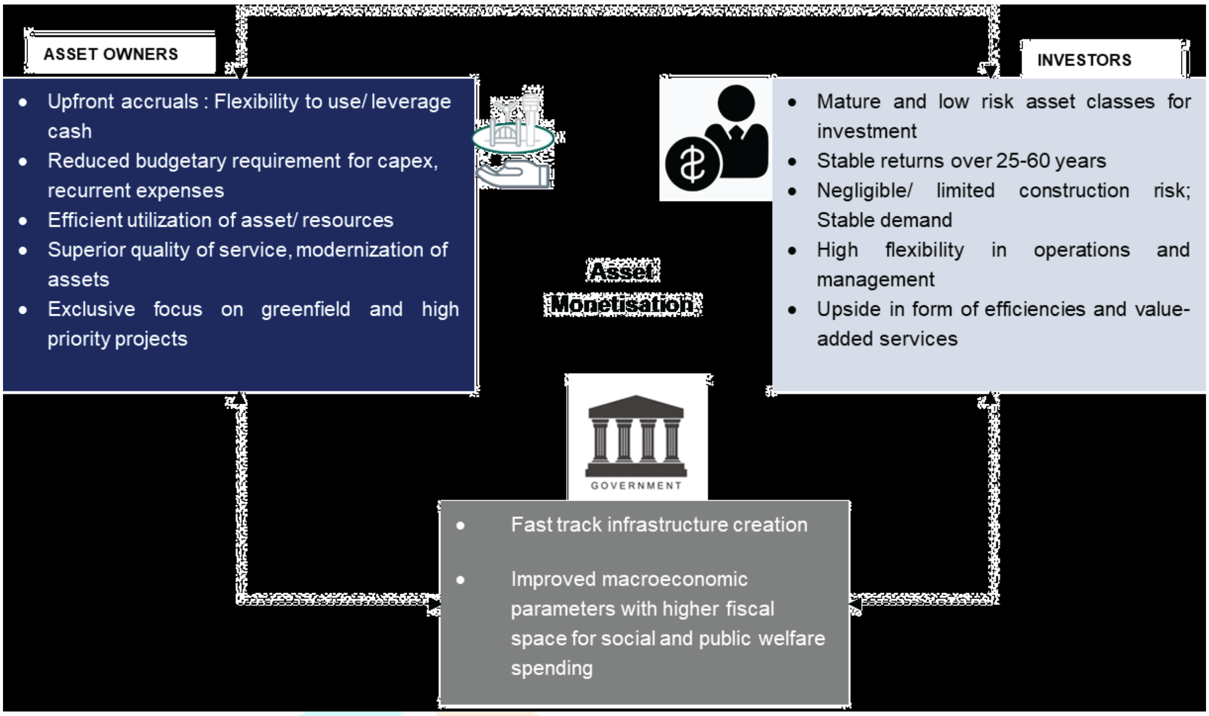
Governments regularly invest in new infrastructure creation by way of budgetary allocations. Asset Monetisation approach for such assets, enables a whole lifecycle and system-wide perspective, combining monetisation and new infrastructure creation into a long-term view. It leverages the capital tied up in existing infrastructure assets and aims to reap potential benefits by monetising these assets and directly reinvesting capital proceeds for creation of new or improvement of existing infrastructure.

Asset monetisation has two inextricably linked facets;

Lease or divestment of rights over existing assets; and

Reinvesting in new infrastructure.

While in the past, divestment of rights over existing assets has been carried out by government and public-sector organizations, the proceeds from such divestment have not necessarily been invested in new infrastructure creation. Further, such divestment has largely been focussed on stakes in companies/ subsidiaries or occasionally in non-core assets such as land or building. Lease or long-term concession of core operational assets, in a manner which garners upfront funds and can thereafter be leveraged/ invested in other infrastructure assets, has rather been occasional/ sector-specific. Given however the benefits of this approach, agencies such as National Highways Authority of India have deployed such mechanisms for upfront fund raising and new infrastructure creation. There is now a need to systematically adopt these initiatives across varied asset classes and streamline the frameworks and modalities of such alternatives in a manner which can be readily absorbed, evaluated and replicated



Asset Monetisation Eco-System and Benefits to Stakeholders

Framework features

The framework for monetisation of core assets has three key imperatives.

Framework features for Core Asset Monetisation

Selection of de-risked and brownfield assets with stable revenue generation profile (or long-term revenue rights) that can be clearly ring-fenced, is of critical importance.
Transaction should be structured around revenue rights as against transfer of full ownership. Towards this, hand back of assets to the original asset owner at the end of transaction life is a key requirement.
Monetisation should be viewed as structured contractual partnerships and not privatization or slump sale of assets. Well-defined contractual frameworks should be adopted which allow government authorities to have clearly laid down KPIs (Key Performance Indicators) and standards for assets.
Selection of private partner should be through a transparent mechanism and the utilization of proceeds received should be towards well-defined uses such as new infrastructure creation etc

Considerations for contractual structuring

Infrastructure assets entail a clear need for the government to retain a degree of oversight and control by way of either contractual mechanisms or regulations. This is because the projects around these assets typically involve25:

i. Transfer of public assets including land;

ii. Delegation of governmental authority to collect and appropriate user charges that are levied by force of law and must therefore be 'reasonable'; Protection of user interests and the need to secure value for public money

iii. Provision of services to users in a monopoly or semi-monopoly situation, which imposes a special obligation on the government to ensure adequate service quality; and

iv. Sharing of risks and contingent liabilities by the government, as applicable.

Because of such pre-requisites and nature of risks, as also involvement of multiple parties – including project sponsors, lenders, government entities, public users and regulatory authorities etc – monetisation of infrastructure assets can be complex. This mandates detailed due diligence, legal and contractual agreements that clearly set forth the risks, rewards and obligations of various participants.

Monetisation of infrastructure assets should hence be structured with a careful consideration to protection of user interests and maximization of value to the public authority (similar to that in case of Public Private Partnerships projects).

MONETISATION MODELS

Asset Monetisation can be undertaken through a range of instruments/ tools. This section summarizes some of the few models, which have been utilized and have proven to be effective in monetising brownfield assets.26 Monetisation models which are currently being explored/ availed may broadly be categorized into two approaches: (i) Direct Contractual Approach and (ii) Structured Financing models.

25 Features of Infrastructure projects as identified under Procedure for Approval of Public Private Partnership
Projects

26 Models, included herein, are only some of the structures adopted/ with potential for adoption; The list is
not comprehensive and will vary based on the features of the assets and the expectations of authority,
investors and users.

'Direct Contractual' Approach

Structured financing models

Concession/ contract between a public entity and identified private sector developer(s)/ investor(s)

Structured instruments for long-term fund generation

via capital markets or through a pool of investors

The aforementioned classification has solely been used, for the purpose of this Guidebook, to delineate the broad principles under various models/ structures. This is only one of the possible and indicative way to classify monetisation models and is not to be treated as prescribed/ formal categorization of monetisation models.

In practical application, adoption of one or the other category of models would depend upon various factors viz. asset profile, objectives for monetisation, expectations of sponsor and investors etc. The most optimal or selected model, could hence very well be one of the above or a hybrid structure (having features of both of the above categories) or possibly an entirely different model

Transaction

Asset OR rights over such asset–Transferred to a single or a consortium of

developers and / or investors, by way of defined contractual frameworks
Consideration Upfront and/or periodic payments
Target Investor
Class
Generally, infrastructure developers, strategic investors with direct involvement / oversight in operations
Selection modes
Through a competitive bidding process and as per prescribed guidelines of Government
Contractual
aspects
Key performance indicators and clearly defined performance regime with commensurate incentive or penalty mechanisms, suitable exit provisions, termination and force majeure provisions
Prevalent
Structures
PPP concessions

DIRECT CONTRACTUAL MODELS – BROWNFIELD PPP CONCESSIONS

In the past, brownfield models have largely been focussed as management contracts – where the obligation to provide service remains with the public authority, but the dayto-day management of the asset is vested with the private sector. These are contractual arrangements, with duration of typically 3-5 years – where the private sector entity is responsible for the O&M of a part or the whole of the asset/ facility or service.
Brownfield PPP models, on the other hand, aim at roping in private sector partner for endto-end operation and maintenance (O&M), provision of service to users and augmentation of asset as necessary. Various potential models for such brownfield PPP of existing infrastructure assets owned by public sector entities/line ministries/ statutory authorities include:
Operate Maintain Transfer (OMT) Operate Maintain Develop (OMD)
Brownfield Public Private Partnership Concessions
Toll Operate Transfer (TOT)
in Roads
Operation Management
Development Agreement
(OMDA) in Airports
Model
Adopted as
Figure 11: Brownfield PPP Models

Operate–Maintain-Transfer Concession

The fundamental principle under the model is to engage private sector partner for undertaking operations and maintenance of projects. This presupposes that construction works have been completed by the asset owner/ government and the project is amenable to immediate revenue collection. As the existing project has established demand/ traffic revenue streams the project structure does not suffer from volatility or unmanageable commercial risks.
From the perspective of bidders, hence, the future revenue potential can be assessed with a fair degree of certainty. Which enables the asset owner to be able to monetise the project for an upfront/ periodic consideration (in form of premium/ revenue share). This not just ensures cash inflows to the public asset owner, but also relieves it of the financial and capacity commitments towards operations and maintenance of the project, thereby reducing expenditure or budgetary support requirement. This is necessary for financial and operational bandwidth to public entities for implementation of greenfield projects, as also higher commercial and operational efficiency.
OMT contracts have seen strong impetus in road sector in India. OMT contracts are a

combination of a tolling contract and a contract for operations & maintenance. Between
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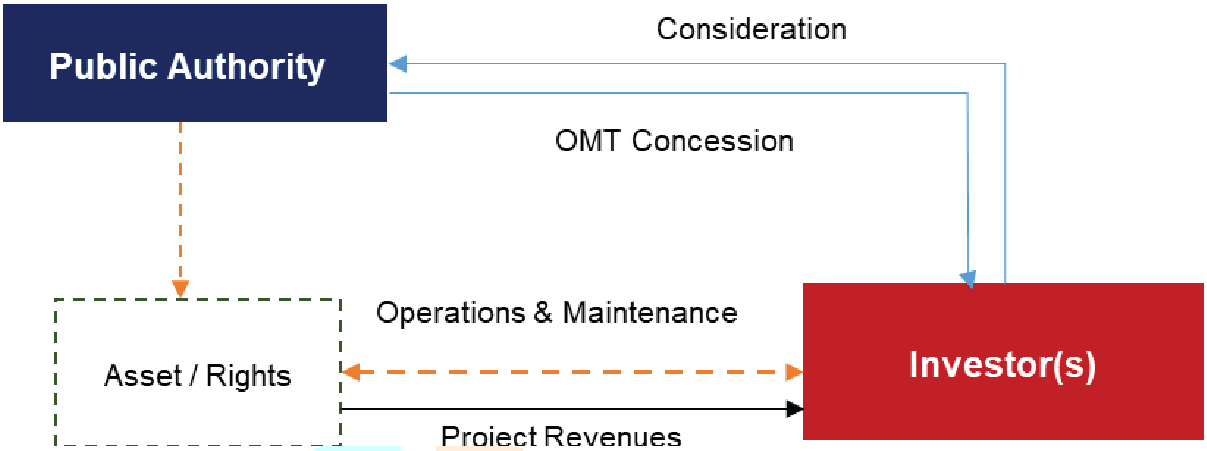
2009-10 and 2014-15, NHAI has awarded a total of around 2,400 km of National Highways to be maintained on OMT basis.27



OMT Broad Structure

Infrastructure Asset Monetisation Cycle

Asset Monetisation needs to be viewed not just as a funding mechanism, but as an overall strategy for bringing about a paradigm shift in infrastructure operations, augmentation and maintenance. This is especially considering the potential for resource and capital efficiencies as also the ability to dynamically adapt to the evolving global and economic reality.
It presents an opportunity for public asset owners to avail new financial structures10 and vehicles for tapping capital from private sector investors (strategic, institutional, retail etc). In the process, it helps public sector authorities/ entities in easing fiscal constraints and freeing up the balance sheets for taking up more greenfield infrastructure creation. This enables deployment of resources by government towards social sector and other competing public priorities.

Figure 5: Infrastructure Asset Monetisation Cycle

10 Simplistic representation for purpose of conceptual understanding

6 Infrastructure

Key Requirement
Operational asset, preferably with one complete cycle/ year of operations

Potential Projects
Projects newly constructed and commissioned by the public asset owner through its own funds (EPC etc.) OR
Project originally tendered out through PPP modes and for which have concession period is complete or termination has occurred28

Key Terms of an OMT Concession

Primary
Obligations
— Operations and Maintenance of assets;
— Provide service to users against a pre-determined/ regulated or market-based fee;

Concession Period
10 years or more, however, depending on the asset category.
*Longer concession periods with pre-defined terms of augmentation preferable*29

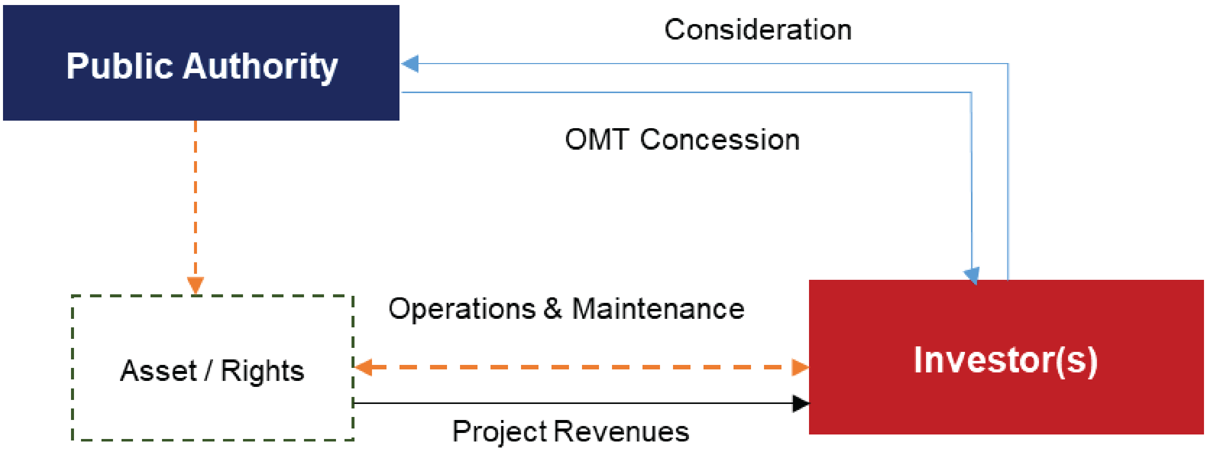
Consideration
Upfront or Annual Premium (Fixed OR in form of revenue share)
*Variation of model where an upfront value is bid and paid by Concessionaire is TOT*30

Investor Class
Strategic investors or Infrastructure developer with direct involvement / oversight in operations

Selection
Through competitive bidding process and as per prescribed guidelines of Government

Other Terms Standard terms as in case of PPP Projects

27



Toll Operate Transfer

Toll Operate Transfer (TOT) is a variant of the OMT model, recently adopted in roads sector, where consideration paid to the Authority is in form of an upfront premium. This is one of the key models for monetisation successfully employed in the roads sector in India both by Central and State entities. Ministry of Road Transport and Highways (MoRTH) introduced the TOT concession framework in 2016 for monetisation of road assets portfolio by National Highways Authority of India (NHAI) to long-term investors

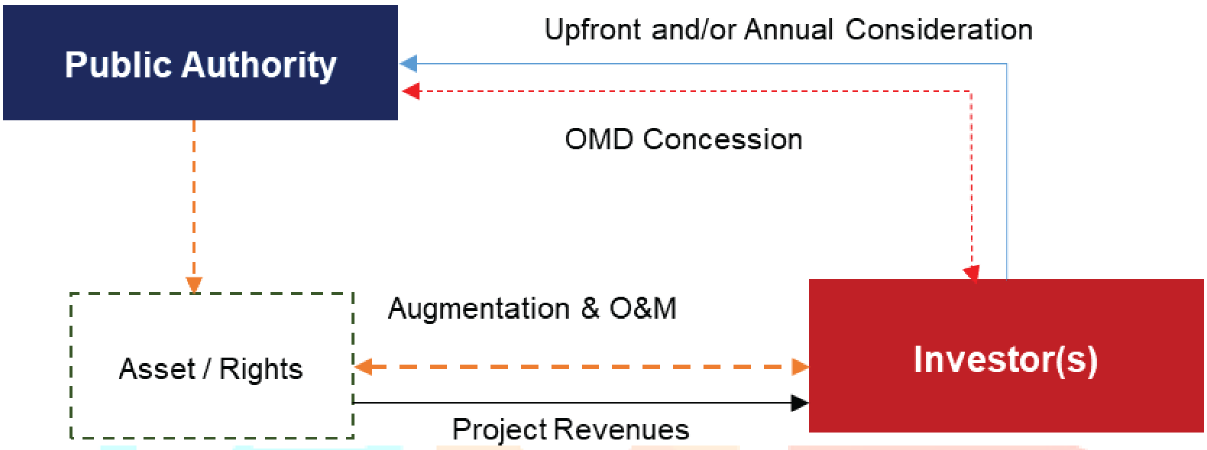
Toll Operate Transfer (TOT) Model
Ensures efficient management of public funded and operational national highway projects through structured contractual partnerships with defined KPIs and O&M standards
Provides upfront proceeds for ploughing back into greenfield national highway development

The TOT model primarily entails securitization of the toll receivables by collecting an upfront concession fee from the selected bidder and determined through a transparent competitive bidding mechanism. The structure involves leasing out of operational national highways (NHs) (ideally constructed under the EPC model) with consideration paid upfront. The road assets are awarded to winning bidders who are granted concession to collect toll and to maintain the roads over the life of the concession which is 15-30 years. The structure also provides for toll rate escalations linked to inflation.
Till date, five rounds of TOT have been undertaken covering a stretch of 2395 km, out of which 3 rounds have been completed – Bundle 1, Bundle 3 and Bundle 5. NHAI has raised ~Rs. 17,000 crores across these three rounds of TOT entailing toll road assets of ~1400 km.

Diversified asset mix, quality of underlying road assets and tenor of the concession period are vital to attract investor interest
The location of the projects i.e. Andhra Pradesh and Gujarat, along with the overall project influence area, and potential traffic growth played a key role in getting a winning bid equal to almost 1.5 times the reserve price. Other contributing factors included long concession period of 30 years, transparency in availability of historical traffic data of project roads.

Adequate project preparation and key changes in the regulatory framework have enhanced investor appetite
Detailed study and consultation were undertaken prior to structuring and rolling out the first TOT transaction by NHAI. Also, before awarding the bundle of projects, authority had conducted robust due diligence of the bundled projects through drone videos and network survey vehicles for ascertaining asset condition of underlying road assets

alon
Operate–Maintain-Develop Concession
Under the *Operate Maintain and Develop* structure, an asset which is operational but due for augmentation is handed over to the private party for augmentation and O&M over the concession period. Usually, the operations of such asset remain uninterrupted with augmentation undertaken while the asset is operational.
The private sector raises finance on the strength of the existing assets and / or obtains project financing along with equity contribution for undertaking such augmentation. The private sector pays an upfront or an annual consideration (in form of a premium and / or revenue share) and earns its returns through revenues from upgraded assetg with current traffic patterns



Key Requirement Operational asset which is due for augmentation
Potential Projects
Projects constructed and completed by public asset owner through their own funds OR
Project originally tendered out through PPP modes and for which concession period is complete32
Primary Obligations
— Augmentation along with ongoing and future Operations and Maintenance of assets;
— Provide service to users against a pre-determined/ regulated or market-based fee;

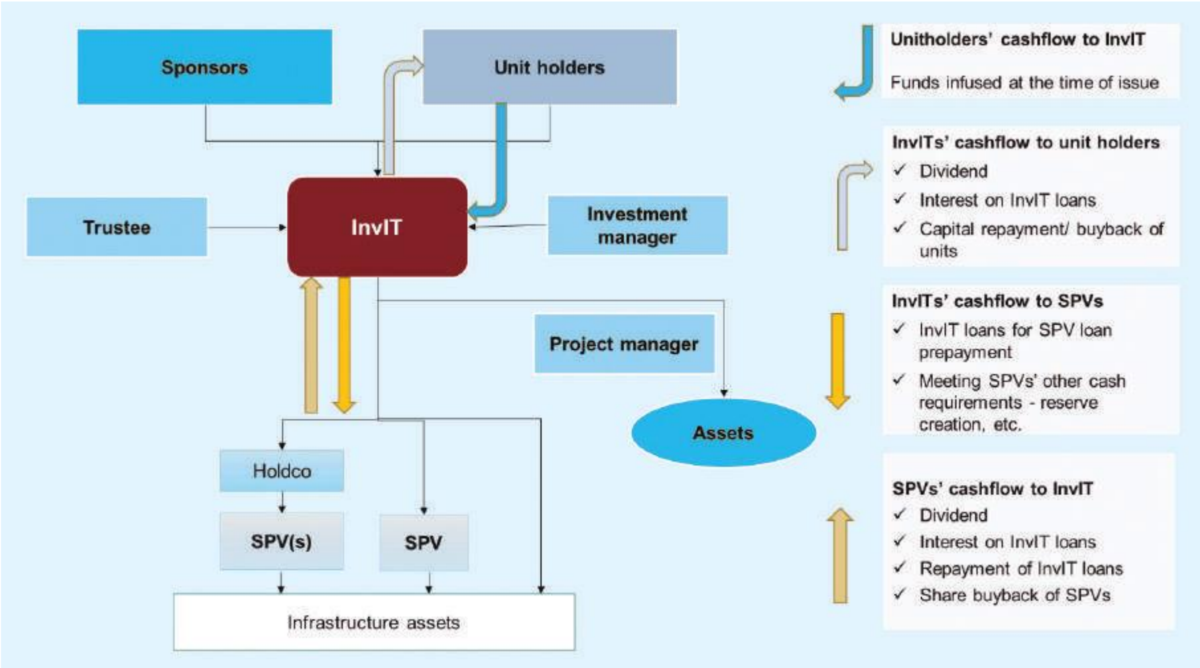
Concession Period 25 years or more, however, depending on the asset category.
Consideration
Annual Premium (Fixed or in form of revenue share)
And/ OR Upfront Premium33
Investor Class Strategic investors with direct or active involvement in operations
Selection
Through a competitive bidding process and as per prescribed guidelines of Government
O A similar structure is the Rehabilitate-Operate-Maintain-Transfer (ROMT) where an existing asset ideally needs to be first upgraded/augmented before the operations and collection of the revenue can be resumed. Here as well, the concession terms are generally similar to OMD contracts with consideration for netting off the cost of rehabilitation to the Authority.
CASE STUDY: OMDA IN AIRPORT SECTORther Terms Standard terms as in case of PPP Projects

INFRASTRUCTURE INVESTMENT TRUST

Infrastructure Investment Trust (InvIT) is an innovative trust-based financial instrument, which enables participation in infrastructure financing through a stable and liquid instrument. InvITs provide an opportunity to invest in infrastructure assets with predictable cash flows and dividends. InvITs have been introduced in India in 2014 and are employed by infrastructure asset owners to pool in money from a diverse set of investors against pay-out of cash flow generated by the assets on a periodic basis.

Under an InvIT transaction, infrastructure asset owners transfer multiple revenue generating asset38 SPVs through holdco or otherwise to a trust which then issues units to investors for raising money. The upfront money so raised is utilized by the developers for creation of new greenfield assets as also for repayment of debt which enables availability of capital with lenders for investment/ lending to new projects. The investors, in lieu of invested money, receive a share of Net Distributable Cash Flows (NDCF – similar to the dividend pay-outs) on a periodic basis, commensurate with their unit holding in the Trust. Improved yields for the unit holders can be insured, by adding revenue-generating projects and expanding its portfolio.

The structure of a typical InvIT transaction and the fund flow across agencies is represented in the figure below.



Key stakeholders

Under this structure, the public asset owner ('Sponsor') creates an independent trust and transfers the ownership/ rights of the public assets to the same. Investors ('Unit Holders') are the beneficiaries39 of the trust.

The key stakeholders under the InvIT structure include:

The Sponsor – The sponsor is the public asset owner (for public-owned assets) which sets up the InvIT with the objective to monetise its assets. In case of PPP projects, the sponsor is the infrastructure developer or a SPV holding the concession agreement.

The Trustee – The trustee means a person who holds the InvIT assets in trust for the benefit of the unit holders, in accordance with extant regulations.

The Unit holders – The unit holders are the investors who subscribe to the units of the InvIT. The unit holders are the eventual beneficiaries of the asset.

The Investment manager – The investment manager is responsible for taking investment decisions in the interest of unit holders including addition of new assets / sale of existing assets, leverage etc.

The Project Manager – The project manager brings in the operational expertise of managing the infrastructure assets as per the interest of the unit holders.

Other key stakeholders incidental to the InvIT registration and issuance process include valuer, auditor(s), merchant banker(s), registrar & transfer agent, banks, registrar to the issue, credit rating agencies, and depository participants.

39 As per the Indian Trust Act, 1882 – the person for whose benefit the confidence is accepted is called the
"beneficiary"

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Table 8: Key Requirements/ Terms of an InvIT

Key
Requirement
— Operational Infrastructure assets, with at least one year of operations for Public InvIT40
— Eligible sub-sectors as per Harmonised Master list of infrastructure subsectors of MoF

Types of InvIT
Public41 Open for participation by all kinds of investors including retail; and
Private: Restricted for participation by Qualified Institutional Buyers and bodies corporate

Minimum Value Assets under InvIT: Rs. 500 crores (*Initial offer size: At least Rs 250 crore*)

Consideration Upfront Consideration against subscription of InvIT units

Investor Class
Financial investors looking for stable yields; sovereign wealth funds and global pension funds, insurance funds, retail investors etc.

Investor
Payment
Not less than 90% of the net distributable cash flows of the InvIT

Table 8: Key Requirements/ Terms of an InvIT

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Consideration Upfront Consideration against subscription of InvIT units

Investor Class
Financial investors looking for stable yields; sovereign wealth funds and global pension funds, insurance funds, retail investors etc.

Investor
Payment
Not less than 90% of the net distributable cash flows of the InvIT
distributed to unit holders

Figure 16: Key Benefits of InvIT

InvITs – Similar instruments globally42

Globally private institutional funds have complemented debt funds in financing infrastructure investment. There has been a global consensus on the potential for tapping large institutional investors (including pension funds, sovereign wealth funds etc.) as well as retail investors towards infrastructure asset class, especially with lowerrisk levels (brownfield assets). Two specific instruments seen in the USA which have

been fairly successful in tapping institutional investors into infrastructure assets are:
Yieldcos and Master Limited Partnerships (MLPs).
40 Potential to add under construction assets in line with SEBI regulations; For private InvITs non-operational
assets, subject to compliance with SEBI regulations may be considered
41 Minimum number of investors is 20; If number of participants is more than 1000, then automatically
public issue
42 The Evolution of the YieldCos Structure in the United States, Mauricio Franco Mitidieri April 13, 2020;
Sean T. Wheeler Latham & Watkins MLP Practice
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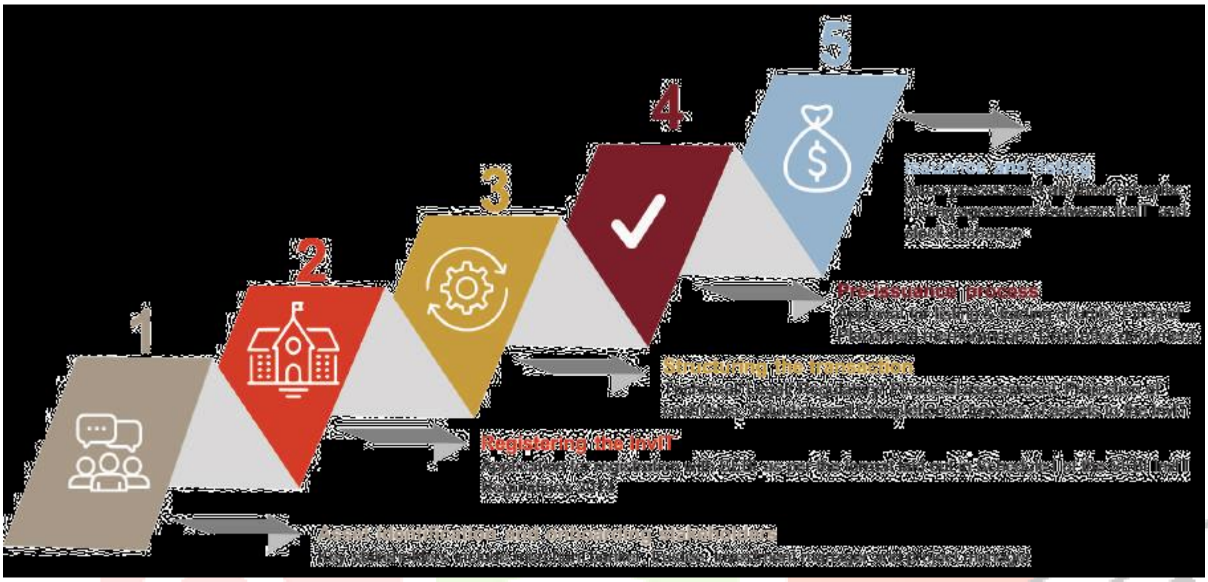

Key takeaways

a. Diversified Asset Mix: The Trust has a diversified asset portfolio comprising 12 inter-state transmission assets across 15 states and 1 Union Territory. These assets have an availability-based payment mechanism, with a credible counterparty – PGCIL with average availability of greater than 99.5% (from COD till Dec 31, 2020).

b. Addition of assets: Starting with 2 project assets with an AUM of Rs. ~3,700 crores in 2017, the InvIT currently holds around 15 project assets with an aggregate AUM of Rs. ~15,000 crores as of Q3 2021. The increase in asset portfolio over time has ensured greater market interest and improved liquidity of InvIT. Active role of Investor and co-sponsor, KKR in management and Governance of InvIT and investment decisions has played a critical in growth journey of the InvIT and value appreciation.

c. Distribution per Unit (DPU) and Distribution yield over the period from FY 2018 to FY 2020 for InvIT is as shown below

FACTORS DETERMINING CHOICE OF MODEL

The key decision-making criteria for monetisation include:
i. Extent of fund raised and potential for upfront receipt for the public sector agency
ii. Tax efficiency and liquidity for investors and target investor class
iii. Operational control for the public sector agency
iv. Valuation potential

It is seen that the capital market instruments have the potential to bring in better value considerations, while the PPP concession may be suitable in sectors where the private

sector brings in improved standards for operation and maintenance with service to users under a defined framework.
34

INVIT – REGULATORY FRAMEWORK AND PROCESS
5.1.1 Regulatory framework and Institutional stakeholders
Regulatory framework
InvITs are independent trusts registered under the Indian Trust Act, 1882. The regulatory framework for an InvIT issuance is guided by the **SEBI (Infrastructure Investment Trusts) Regulations, 2014 (**as updated/amended from time to time)57.
As discussed in Section 2, the key stakeholders with respect to InvIT include the sponsor (usually the asset owner), unit holders (usually the private sector investors), the trustee (one who holds the InvIT assets in trust for the benefit of the unit holders), and project managers (usually developers/ asset managers and may be private sector/ public sector entities) and investment manager (responsible for adding assets to the InvIT / divesting assets from the InvIT / other financing decisions related to the InvIT). The SEBI (InvIT) Regulations, 2014 primarily provide for:

Salient

Salient features of SEBI InvIT Regulations 2014
Head Remarks
Sponsor–
Eligibility
Š Minimum net worth: Rs. 100 crores;
Š At least 5 years of experience as developer and two projects completed
Mode of
Placement
Š Private Placement
Š Public Listing
SPV
shareholding
Š InvIT must hold at least 51% stake in the Project SPV
57 The consolidated amended regulations is as provided on SEBI website.
54 Transaction Stage
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Investment
Š Value of InvIT assets: Minimum Rs. 500 crores
Š Initial offer size of InvIT: At least § 250 crore.
Š For Public Placement:
 Not less than 80% of InvIT value to be invested in “completed and revenue generating projects” in eligible infrastructure projects (directly or through Holdco)
Š For Private Placement:
 Not less than 80% in eligible projects58
Holding Period
Š An InvIT shall hold an infrastructure asset for a period of not less than three years from the date of purchase of such asset by the InvIT
Payment to unit
holders
Š Not less than 90% of net distributable cash flows of the SPV distributed to the InvIT;
Š Not less than 90% of net distributable cash flows of the InvIT distributed to unit holders;
Š Distribution at least twice in a year

Borrowings

Š A listed InvIT may issue debt securities as long as the consolidated borrowings and deferred payments (of InvIT, Holdco and SPV), net of cash and cash equivalents does not exceed 70% of the asset value

Š In case of aggregate borrowings and deferred payment exceeding 49%, the InvIT has to be rated AAA

Other guidelines, circulars, rules of SEBI, RBI related to InvIT are as provided in Annexure 1.

Institutional stakeholders

Sponsor

The sponsor is the entity that sets up the InvIT. In case of traditional procurement route, the public sector agency is usually designated as the sponsor and in case of PPP, the private sector developer/project SPV holding the concession agreement is the sponsor.

Trustee

A trustee is an entity holding the InvIT assets for the benefit of the unitholders and is registered with SEBI under the Securities and Exchange Board of India (Debenture Trustees) Regulations, 1993. The activities of the trustee are regulated under a formal “Trust deed” entered to between the Sponsor, InvIT and the trustee laying out the roles and responsibilities of each members of the trust

Investment Manager

This entity is responsible for the management of assets and investments of the InvIT. The role of the investment manager is detailed under Section 10 of the SEBI InvIT Regulations 2014. Key responsibilities include: (i) investment decisions with respect to the underlying assets or projects of the InvIT including any further investment or divestment of the assets (ii) oversee activities of the project manager with respect to compliance to the relevant agreements (iii) work with the merchant banker and the trustee in the issuance related documentations (iv) ensure investments of InvIT are in accordance with the guidelines. The investment manager needs to have a net worth of at least Rs. 10 crore and an experience in fund management and advisory services of at least 5 years to be eligible.

58 Eligible Projects means In non-PPP projects, the infrastructure project has received all requisite approvals

for commencement of construction In PPP projects, the project has achieved commercial operations with one-year track record, or are in pre-COD stage

Transaction Stage 55

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Project Manager

This entity brings in the necessary technical expertise for better management of assets. The project manager shall undertake operations and management of the InvIT assets including making arrangements for the appropriate maintenance, either directly or through the appointment and supervision of appropriate agents. The activities of the project manager are regulated under a “project implementation agreement” or “project management agreement”. This agreement is between the project manager, the concessionaire SPV, and the trustee which sets out obligations of the project manager with respect to execution of the project.

Other key stakeholders incidental to the InvIT registration and issuance process include Valuer, Auditor(s), Merchant banker(s), Registrar & Transfer agent, Banks, Registrar to the issue, Credit rating agencies, and depository participants.

Issuance Process

The steps in issuance depends on the whether the sponsor envisages to undertake the InvIT issue through private placement or public issue (depending on the number of unit holders offered to). In case of public issue, the issue of units maybe through the following methods: initial public offer (IPO), or follow-on public offer (FPO) or any other issue made to the public as maybe specified. Brief description of the issuance process is as follows:

Selection of assets to be put under InviT
Establishment of Infrastructure Investment trust under the Investment trust act
Engagement of merchant banker
Finalisation of other key stakeholders including trustee, project manager
Registration of InviT with Sebi
Decision on private vs public issue - Depends on size of issuance etc.
Structuring the transaction
Completion of transfer of asset
Completion of other transaction documentation including Investment management, project management agreement
Pre- Issuance process
Issuance process and allotment of units
Listing process

Figure 29: Step by Step Issuance Process
56 Transaction

PPP CONCESSION BASED MODELS – FRAMEWORK AND PROCESS

5.3.1 Regulatory framework and Institutional stakeholders

Key Institutional initiatives for PPP based Projects by Government of India

In 2006, the Government took steps to create an ecosystem for mainstreaming PPPs. This has been helpful to stakeholders in the PPP space, including private developers, financial institutions and governments (at national, state and local levels). The key policy and institutional initiatives undertaken include:
Setting up of the PPP Appraisal Committee (PPPAC)
Extending financing support through the VGF (Viability Gap Funding) Scheme
Preparation of PPP toolkits, guidelines and knowledge dissemination products
Establishment of transparent and competitive bidding processes–through standardized procurement documents

At the central-level, the PPP Appraisal Committee (PPPAC) recommends project for approval of competent authority for central sector projects. Further, line ministries/ public sector agencies have adopted model concession agreements prepared by NITI Aayog (erstwhile Planning Commission). Alternatively, respective sector-specific MCAs have been developed to enable a transparent and streamlined process.

At the state-level, a few states in India have created the regulatory and institutional structure to aid public private partnership. Key states which have a clearly defined legal framework for private investment in public infrastructure are Andhra Pradesh, Gujarat, Karnataka, Tamil Nadu, Uttar Pradesh, Madhya Pradesh, Rajasthan, Orissa, etc.

5.3.2 PPP procurement process

The project preparation activities of the project can be divided into three phases – project identification (covered under Section 3), project development and approval (feasibility studies, detailed technical studies and final approval) and project procurement.

The Project development and approval of PPP Projects has already been covered in the previous section.

The procurement process is the process of selection of private partner. **It is important that the process of selection of the private partner is transparent, non-discriminatory, and timely to ensure project success.** While competitive procurement processes have been the overarching theme for PPP procurement in India, the procurement steps and regulations covering the same vary across agencies.

60 Transaction Stage

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The procedure for PPP procurement may be divided into the following four stage

Request for qualification
Request for proposal
Bid evaluation and award Commercial close

The objective of stage is to gather information on the capacities of Applicants and shortlisting based on requirements to deliver on project outcomes.
Financial bids from qualified applicants (after the RFQ stage) for undertaking the PPP project
Evaluation of the RFP submissions of the private sector bidder and selecting the best proposal based on a pre-determined criteria.
Last stage in procurement process where the private sector partner enters in to a formal contract with the public sector agency for the implementation/ management of the PPP project.

RECENT INITIATIVES BY GOVERNMENT OF INDIA
The Government, over the past few years, has consistently focused on reforms and initiatives for boosting private participation in infrastructure. And with this objective, have been the recent initiatives towards streamlining the process of capital recycling through asset monetisation, by public and private sector entities. Some of the key initiatives, under Budget 2021-22, aimed at increased adoption of financing instruments and for enabling assets monetisation by public sector entities include:
A. Increased adoption of Financing Instruments
Key amendments pertaining to InvIT/ REIT
— **Access to funds**
In order to enable debt financing of InVITs and REITs by Foreign Portfolio Investors (FPIs), Finance Act 2021 has enabled amendments in the Securities Contracts (Regulation) Act, 1956 for recognising InvITs, REITs as “securities”.

Related amendments in SARFAESI Act and Recovery of Debts due to Banks and Financial Institutions Act have also been undertaken under the Finance Act 202163.
This will enable InvITs and REITs to borrow money from FPIs and issue debt securities, thereby enabling replacement of expensive debt with cheaper funds.
— **Streamlining taxation**
Budget 2021-22 has provided clarification with respect to dividend not being taxable at the trust level (dividend distribution tax) but in the hands of the unitholder (dividend withholding tax). Dividend payment to REIT and InVIT will hence be exempt from TDS.

B. Enabling Asset Monetisation by Public Sector Entities

GoI has undertaken several initiatives to address the operational/commercial challenges as also to incentivize State Governments and State level entities undertaking monetisation. The key initiatives include:

Incentive Mechanism for Capital Expenditure by State Governments

— Under the recently institutionalised Scheme for Special Assistance to States for capital expenditure for FY 2021-22, it has been decided that incentives be provided for asset monetisation and disinvestment by State government/ entities. As an incentive for asset monetisation, additional allocation equivalent to 33% of value of assets realised and deposited in State consolidated funds or in account of State public sector enterprises owning the assets. The allocation and disbursement is subject to the realised amount being necessarily used for capital expenditure by States.

63 Provisions under Part IV, Part IX and Part XI of Finance Act 2021

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Stamp duty exemption on asset transfer from one Government-owned entity to another such entity

— At present, assets of key CPSEs reside in their respective balance sheets. However, monetisation may require transfer of such assets from the CPSEs' balance sheet to another entity or an SPV which typically may attract stamp duty implications, ranging between 5%-10% across states, thus significantly reducing monetisation proceeds / benefits accruing to selling CPSEs.

— To address this challenge, GoI through the Finance Act 2021 has provided for exemption of stamp duty towards transfer of asset between Government entities64, subject to certain requirements. This is aimed at creating a level-playing field for asset monetisation (especially through the InvIT/ REIT route where stamp duty cost was a significant impediment to asset transfer and consequent asset monetisation).

Tax neutral provision for demerger

— The Finance Act 2021, has added an explanation to the Section 2 (19AA) of the Income Tax Act, 1961, stating that the reconstruction or splitting up of a public sector company into separate companies shall be deemed to be a demerger provided that the process involves transfer of asset to the resultant company, and the resultant company is a public sector company65.

— The demerger of companies as defined under this Section 2 (19AA) is considered as tax neutral and hence avoids any capital gains tax implication. Besides, set off and carry forward of losses would be allowed if proposed conditions under section 72AA of the Income Tax Act, 1961 are complied with. Benefits of past losses, if any, are also available. In view of loss of carry forward losses, tax holiday benefits etc. no longer being impediments, these changes are expected to ease the asset monetisation process for public sector infra companies

Other Relevant Aspects

Amendments to Regulations for InvIT and REIT by SEBI

— **Increase in borrowing limits for InvIT and Reduction in minimum allotment and trading lot requirements for investors in publicly issued InvITs and REITs**

The limit for consolidated borrowing and deferred payments under SEBI's

regulations for Infrastructure Investment Trust has been enhanced to 70% (from
49%) of the InvIT value; subject to key requirements being fulfilled viz.
64 Excerpt from the Finance Act is as follows: "………any instrument for conveyance or transfer of a business
or asset or right in any immovable property from a Government company, its subsidiary, unit or joint venture, by way of strategic sale or disinvestment or demerger or any other scheme of arrangement, to another Government company or to the Central Government or any State Government, or to the development finance institution by any law made by the…..". , "Government company" shall have the
same meaning as assigned to it in clause (45) of section 2 of the Companies Act, 2013
65 Section 3- Finance Act 2021
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Š Credit rating of AAA of the InvIT debt;
Š Funds be utilized only for acquisition or development of infrastructure
projects;
Š Track record of at least six distributions on a continuous basis, post listing, in
the year preceding the financial year in which the borrowings are proposed
to be availed; and
Š Prior approval of 75% unitholders
— Securities and Exchange Board of India recently made an amendment to InVITs/
REITs regulations for revision in minimum subscription and trading lot. Accordingly,
for publicly issued REITs and InvITs, the revised minimum application value was
brought down within the range of ₹10,000-15,000 and the trading lot to 1 unit.
This is expected to provide a boost to retail participation in InvITs/ REITs. The
decision to cut entry amount is significant, as it will allow small retail investors
to take part in these products.
Amendments to TOT framework
Key reform initiatives to widen the investor base for TOT transactions include:
— ***Flexibility in concession period*** – The concession period of toll projects may now
be between 15-30 years as against the fixed term of 30 years. This is expected to
increase participation from Indian developers in addition to large pension funds,
insurance companies, sovereign wealth funds.
— ***Reduced minimum operating history requirement*** –Minimum operating history of
one year compared to two years of operations post commencement of tolling is
expected to expand the eligible universe of operating toll roads to be considered
under the TOT package
Model Concession Agreements (MCAs)
— MCAs developed by NITI Aayog have been adopted by various sector to enable an
evolved contractual framework, enhanced clarity on loss protection to investors
and lenders, clearly defined obligations of stakeholders, etc. while roads (for
TOT, BOT (toll) and HAM road assets), airports (for OMDA), and ports have
availed and evolved the model concession framework over time, recently MCAs
have been developed across high potential sectors like Railways (Railway station
development, passenger train operations) etc. There is a need to develop model
PPP concession frameworks for various other brownfield asset classes identified
under the NMP for quicker adoption by public asset owners.
6.2 KEY IMPERATIVES
Asset Monetisation initiative has three critical stakeholders, the Government (Centre or
State) which monetises the asset, private investor taking on ownership/ management
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and the general public who are typically the users of the asset. There are considerations
of each of these stakeholder groups which must be met in order to effectively roll out a
successful asset monetisation programme.
The imperatives to give a thrust to asset monetisation are anchored across three
themes – (1) Expansion of the investor base and scaling of monetisation instruments

(2) Strengthening demand-side capacity, and (3) Creating effective frameworks to aid monetisation.

Streamlining investment guidelines

The long-term nature of infrastructure projects requires active participation from investors looking at a similar return profile from their investments. However, the existing investment guidelines for insurance and pension funds limit the exposure of such funds to InvIT/ REIT assets. The investment limit are as follows: (i) Insurance funds – Maximum exposure at lower of 3% of fund size of the Insurer/ 5% of the units issued by a single InvIT/ REIT (ii) Pension funds under EPFO are also regulated to invest up to maximum of 5% of the funds in REIT/ InvIT (iii) Mutual funds can invest up to 10% of their Assets under management in a single InvIT/ REIT. These need to be streamlined to ensure consistency. Moreover, there are also inconsistencies across categories on the level of exposures. For example: IRDA regulations do not permit investment of insurance funds in unlisted InvITs. Hence, a staggered approach for streamlining of investment guidelines and limits is envisaged to keep pace with the growth in the InvIT market starting with the allocation of insurance and pension funds towards unlisted InvITs.

Tax benefits

More tax-efficient and user-friendly mechanisms like allowing tax benefits in InvITs as eligible security to invest under Section 54EC of the Income-Tax Act, 1961, are important starting points for initiating retail participation in the instruments.

Since the trusts are not considered as 'legal person' under the extant regulations, the IBC regulations are not applicable for InvIT loans. Hence, the lenders do not have existing process for recourse to project assets. While the lenders are protected under **Recourse under Insolvency and Bankruptcy Code (IBC)** 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 provision of recourse under IBC regulations will bring in added level of comfort for the investors.

Strengthening demand-side actions

Establish a transparent and independent process for setting costreflective user charges

Development of scalable models for asset monetisation requires a clear and transparent pricing framework for infrastructure services which is commensurate with the risks transferred. Simply put, the developer/ investor would envisage a risk-adjusted return that justifies the investments towards asset development/ maintenance.

Reforming the financial management and accounting practices to aid monetisation

The delineation of the revenue and expenditure specific to the assets is an important pre-requisite for asset monetisation transaction. The public sector agencies should increasingly move towards asset-level financial disclosures and earmarking of specific revenue streams across all the assets, which will help establish investor comfort.

Creating institutional structures for fasttracking asset identification and monetisation transaction

The institutional backbone for scaling up asset monetisation may be anchored at the level of the relevant ministries. With the National Monetisation Pipeline (NMP), each ministry may establish suitably empowered working group with the sole mandate to identify assets, method of monetisation and handhold in the transactions/ procurement process. This pipeline will also form a baseline for the Ministry for monitoring and tracking performance and data on the potential assets.

Pillar 3: Creating effective frameworks to aid monetisation

Standard agreements should be developed across sectors

Robust MCAs have been developed in roads, ports and airport sectors and investors have received these agreements well which has manifested itself through increased investor participation in projects from these sectors. There is a need to develop model PPP concession frameworks for various other brownfield asset classes identified under the NMP for quicker adoption by public asset owners.

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Arrangements for monetisation backed by a robust incentive mechanism

Similar to the National Partnership Agreements on asset recycling in Australia, the Government of India may enter into formal working arrangements with each line ministry/ CPSE/ States to create medium-term road map for asset monetisation in line with the NMP. The agreements shall lay out the timelines, roles and responsibilities of each parties, preparatory actions and financing modalities (including technical assistance support) over a 4-5 year period. A Mechanism to plough back monetisation proceeds in form of incentives to the public sector agency (to the extent that the monetisation proceeds are utilized towards creation of new assets) has already been institutionalised as highlighted above.

Effective contract and dispute resolution mechanisms honoring of contracts

Contract management is a critical element in the monetisation jigsaw. Effective mechanisms for contract management, arbitration and conciliation are important to ensure success of monetisation. In order to boost investor confidence, it is crucial to maintain sanctity of contracts. The provisions should be legally enforceable, such that once parties duly enter into a contract, they must honour their obligations under that contract and, in case they don’t honour, there should be adequate safeguards for other stakeholders. This should be applicable to both public and private sectors. Sensitising state governments and local bodies on honoring of contracts is crucial issue.