

## PART II

### Statutory Notifications (S. R. O.)

GOVERNMENT OF PAKISTAN

### SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

#### NOTIFICATIONS

*Islamabad the 16<sup>th</sup> April, 2015*

**S.R.O. 328(I)/2015.-** In exercise of the powers conferred by sub-section (2) of section 282B of the Companies Ordinance, 1984 (XLVII of 1984), the Securities and Exchange Commission of Pakistan hereby makes the following Regulations, the same having been previously published for eliciting public opinion on the website of the Commission, namely:-

#### Chapter - I

#### Preliminary

**1. Short title and commencement.** - (1) These Regulations shall be called the Real Estate Investment Trust Regulations, 2015.

(2) They shall come into force at once.

**2. Definitions.** - (1) In these Regulations, unless there is anything repugnant in the subject or context,-

- (i) “Business Plan” means a detailed working outlining the key business and financial aspects for setting up a REIT Scheme along with disclosure of values of Real Estate as determined by the Valuer applying all the approaches as defined in Schedule VI annexed to these Regulations;
- (ii) “Commission” means the Securities and Exchange Commission of Pakistan established under section 3 of the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997);
- (iii) “Customer Advances” mean the sale value to be received by the Trustee in advance for booking against the sale of the Real Estate or a part thereof;
- (iv) “Developmental REIT Scheme” means a REIT Scheme established for investment in Real Estate with the object of development, construction and refurbishment of such real estate for industrial, commercial, residential purpose or a combination thereof;
- (v) “Development Advisor” means a single entity or a consortium of entities (duly registered or licensed with their respective professional body/association/council, etc.)

- that can undertake the planning, design, costing, scheduling, contract preparation, coordination and supervision of a Developmental REIT Scheme;
- (vi) “Property Manager” means a person appointed by the RMC to manage and maintain the Real Estate;
  - (vii) “Fit and Proper Criteria” means the criteria as provided in Schedule VIII to these Regulations for promoters of an RMC, directors and Key Executives as specified by the Commission from time to time;
  - (viii) “Form” means forms annexed to these Regulations;
  - (ix) “Hybrid REIT Scheme” means a REIT Scheme, which has a Developmental component as well as a Rental component;
  - (x) “IPO” means initial public offering of units of a REIT Scheme;
  - (xi) “Key Executives” includes the chief executive officer, chief operating officer, chief financial officer, chief accounting officer, company secretary, internal auditor and the compliance officer irrespective of their designations;
  - (xii) “Listed” in relation to securities or Units means securities or Units which have been allowed to be traded on a registered stock exchange in Pakistan;
  - (xiii) “NAV of a Unit” means the Net Assets of REIT Scheme divided by the number of Units outstanding at any given date;
  - (xiv) “NBFC” means a non-banking finance company incorporated and licensed by the Commission;
  - (xv) “Net Assets” means difference between value of assets and liabilities of a REIT Scheme as given in the balance sheet at any given date;
  - (xvi) “Offering Document” means a document containing information specified in these Regulations, in order to invite the public to buy Units;
  - (xvii) “Ordinance” means the Companies Ordinance, 1984 (XLVII of 1984);
  - (xviii) “Project” means Real Estate on a single or multiple sites having exclusive ownership, lease, utilities, and easement rights in accordance with law;
  - (xix) “Project Accountant” means an accounting firm appointed by the Trustee, in a Developmental REIT Scheme, to assess and report variance in construction costs;
  - (xx) “Pre-IPO Investors” for the purpose of these regulations means:
    - (a) Financial institutions as defined in the Companies Ordinance 1984;
    - (b) Company registered with the Commission as broker under the Brokers and Agents Registration Rules, 2001;
    - (c) High net worth individuals investing an amount not less than Rupees three (3) million.

- (xxi) “Real Estate” means land and includes; anything fixed, immovable, or permanently attached to it such as buildings, walls, fixtures, improvements, roads, trees, shrubs, fences, sewers, structures, and utility systems, etc. and all rights and interests therein, whether the interests are freehold or leasehold, as specified by the RMC;
- (xxii) “Register” means the register of Unit Holders;
- (xxiii) “Regulations” means the Real Estate Investment Trust Regulations, 2015;
- (xxiv) “REIT Assets” means all Real Estate and other assets moveable or immoveable of a REIT Scheme acquired in the name of Trustee of a Scheme;
- (xxv) “REIT Fund” means -
  - (a) in the case of Rental REIT Scheme, the monetary value of a REIT Scheme, at the time of its establishment, raised through issuance of REIT Units which shall be equal to the acquisition value of Real Estate together with all taxes and charges attached with the transfer of such Real Estate plus all preliminary expenses incurred in the process of establishing and registering the REIT Scheme;
  - (b) in the case of Developmental REIT Scheme, the monetary value of a REIT Scheme, at the time of its establishment, raised through issuance of REIT Units which shall be comprising of the acquisition value of Real Estate together with all taxes and charges attached with the transfer of such Real Estate plus all preliminary expenses incurred in the process of establishing and registering the REIT Scheme and a percentage of construction costs as determined by RMC and disclosed in the Business plan.
- (xxvi) “REIT Management Services” means services provided by an RMC for the management of a REIT Scheme in accordance with these Regulations;
- (xxvii) “REIT Scheme” means a listed closed-end fund registered under these Regulations for investment in a single Real Estate Project;
- (xxviii) “Rent Advance” means the money received by the Trustee in advance on account of rent of a Real Estate;
- (xxix) “Rental REIT Scheme” means a REIT Scheme established with the object of making investment in industrial, commercial or residential Real Estate with the purpose of generating rental income from it;
- (xxx) “RMC” means a duly incorporated public limited company which has been licensed by the Commission under the Rules to undertake REIT Management Services;
- (xxxi) “Rules” mean the Non-Banking Finance Companies (Establishment and Regulation) Rules, 2003;
- (xxxii) “Schedule” means the Schedules annexed to these Regulations;

- (xxxiii) “Strategic Investor” means a person or a group of persons who undertake(s) to hold investment free of encumbrances in a REIT Scheme, as specified in these Regulations till its winding up or any person who replaces him;
- (xxxiv) “Trustee” means a company appointed as trustee of a REIT Scheme in accordance with these Regulations;
- (xxxv) “Trust Deed” means the deed of trust executed between an RMC and a Trustee with respect to a REIT Scheme in accordance with provisions of Trust Act 1882;
- (xxxvi) “Units” mean units of a REIT Scheme;
- (xxxvii) “Unit Holder” means a person who is the legal owner of one or more Units and whose name appears in the Register of Unit Holders;
- (xxxviii) “Valuation Report” means the report prepared by the Valuer in accordance with Schedule VI annexed to these Regulations; and
- (xxxix) “Valuer” means a person appointed to determine the value of the Real Estate under these Regulations and also includes foreign valuer as approved by the Commission.
- (2) Words and expressions used but not defined in these Regulations shall have the same meaning as assigned to them in the Ordinance, the Securities and Exchange Ordinance, 1969 (XVII of 1969), the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997), administered legislation and the rules and regulations made under these laws.

## **Chapter-II**

### **Eligibility for Undertaking REIT Management Services**

3. (1) The promoters, directors and key executives of an RMC shall comply with the fit and proper criteria as specified in Schedule VIII annexed to these Regulations.
- (2) An RMC intending to undertake REIT management services shall have paid –up capital not less than fifty (50) million rupees prior to applying for license and submit evidence that it has equity of at least fifty (50) million rupees before seeking approval of the Commission for the offering document of the REIT Scheme.

## **Chapter-III**

### **Approval of Real Estate and Appointment of Trustee**

4. (1) An RMC shall take approval of the Commission for the Real Estate to be transferred to the proposed REIT Scheme.
- (2) Real Estate shall be within the territorial limits of Islamabad, Rawalpindi, Karachi,

Lahore, Peshawar, Quetta, or any other city as may be approved by the Commission.

(3) In case of Developmental REIT, the proposed construction period should not be more than 5 years and the same shall be part of the business plan, offering document and all relevant marketing material.

(4) An RMC shall:-

- (i) submit documents to the Commission which show exact location, area along with dimensions of the Real Estate;
- (ii) submit feasibility plan containing intended use of real estate for the purposes of a REIT scheme;
- (iii) propose name of the REIT Scheme;
- (iv) submit an undertaking to the effect that “RMC understands that clearance or registration or approval granted by the Commission shall not be construed as commitment to grant subsequent clearance(s) or registration(s) or approval(s) under these Regulations and if subsequent clearance(s) or registration(s) or approval(s) is refused by the Commission, expenses incurred by the RMC shall not in any way create any legal right or claim against the Commission whatsoever”;

(5) The Commission, if satisfied with the submissions of RMC may ask the RMC to submit further requisite information and documents;

(6) The RMC shall:

- (i) obtain and submit to the Commission, a due diligence certificate, from a lawyer who is amongst the panel of lawyers approved for the said purposes by the Commission, expressly confirming that:
  - (a) the title of the Real Estate which is the subject matter of the REIT Scheme is free from all legal disputes with respect to title and no case is pending on any account including outstanding dues, duties, taxes, or permissible use before any court or authority;
  - (b) the Real Estate is not in conflict with any applicable environmental laws and all approvals/No objection etc. in this respect are duly procured and the Real Estate is not protected as a special and heritage property;
  - (c) Real Estate is free from all encroachments and encumbrances except for charges created by any Financial Institution(s) as defined in the Ordinance.  
Provided that the outstanding amount of loan against Real Estate including principle and interest does not exceed forty (40) per cent of the value of Real Estate as determined by the concerned Financial Institution(s);
  - (d) legal opinion with respect to the validity and legitimacy of terms and conditions

governing the transferability, duration, continuation, cancelation of the underlying lease arrangement and legitimacy of the lease agreements with tenants of the Real Estate, wherever relevant; and

- (e) all necessary approvals, permissions, NOCs of the concerned local authorities required as per applicable general, special and local laws have been obtained, as specifically may apply to a REIT Scheme.
- (ii) provide affidavit on a stamp paper confirming that RMC has reviewed land record with the relevant custodian of land and that the title of the Real Estate is clear, no dues are outstanding with respect to the Real Estate, that no injunction orders have been passed against the proposed Real Estate by any legal forum;
- (iii) provide, for lease hold Real Estate, documentary proof confirming that the remaining validity of the lease period is not be less than 15 years over and above the life of the proposed REIT Scheme and where life of the Scheme has not been proposed the remaining lease period shall not be less than 30 years;
- (iv) submit an undertaking confirming that there is no litigation and encroachment related to the Real Estate;
- (v) submit the confirmation issued by the concerned authorities including the revenue authorities that no injunction orders have been passed against the proposed Real Estate;
- (vi) submit an undertaking to retire the full outstanding debt against the Real Estate before transferring Real Estate in the name of the Trustee of the REIT Scheme;
- (vii) Submit to the Commission the details of charges created by Financial Institution(s) against Real Estate along with loan repayment schedule as agreed with the lenders
- (viii) submit copies of title documents, permissions, NOCs of the concerned local authorities required as per applicable general, special and local laws;
- (ix) submit to the Commission, such other documents or information as may be required by the Commission, on a case to case basis;
- (x) propose trustee of the REIT Scheme who fulfils eligibility criteria as specified in these Regulations along with its consent.

(7) The Commission shall not grant approval of the Real Estate where in its opinion, for reasons to be recorded in writing, the title is defective or there are impediments to sale or partial sale or transfer or renewal of lease of the Real Estate or there are encumbrances exceeding forty (40) percent of the value of Real Estate as determined by the concerned Financial Institution(s) or there is any other defect or the approval of the Real Estate is not in the interest of public or capital market:

Provided that such sanction of the Commission shall not deem to grant or extinguish any right of

any person and no suit prosecution, prosecution or other legal proceedings can be initiated against the Commission or employee of the Commission with respect to approval given to RMC based on documents provided to the Commission under these Regulations.

(8) The Commission may approve the Real Estate and appointment of Trustee for the proposed REIT Scheme on such terms and conditions as it may deem fit and ask the RMC to submit Business Plan, Preliminary Engineering Design and draft Trust Deed.

(9) The RMC shall not raise money by any manner whatsoever before registration of a REIT Scheme.

(10) RMC shall submit to the Commission:

(i) draft trust deed containing information as provided in Schedule I annexed to these Regulations;

(ii) Business Plan containing a set of detailed workings (principally driven by the Project specific cash flow) determining the viability parameters, business, financial, legal aspects, arrangement of capital for implementation of the plan, possible eventualities defining critical stages, risks, exit strategies and basis for computing settlement values at various stages of project development and highlighting amount of customer advances including mode of sale or partial sale of property along with timeline;

(iii) in case of a Developmental REIT Scheme or Developmental Component of Hybrid REIT Scheme , preliminary engineering design for the development Project to be undertaken in execution of the REIT Scheme; and

(iv) valuation report of the proposed property, prepared by a Valuer appointed by RMC as per the criteria mentioned in these Regulations in consultation with the Trustee.

(11) The RMC shall clearly state the value at which the Real Estate shall be transferred to the REIT Scheme, which may be one of the values as determined by Valuer. However, in case of any other value for transferring the real estate to the REIT Scheme, the RMC shall disclose the reasons for doing so.

(12) The RMC shall disclose all values determined by the Valuer in Business Plan and Offering Document.

(13) The Commission, if it deems fit and necessary, may cause valuation of the proposed Real Estate and in case of any difference in the assessed values, the opinion of the Commission shall prevail.

(14) Any expenses incurred by the Commission on valuation of the proposed Real Estate, shall be defrayed by the Commission and to be claimed from the RMC.

(15) RMC shall file the trust deed with the Commission and if the Commission is satisfied that the purpose for which REIT Scheme is lawful and none of its objects are inappropriate or

deceptive and that all requirements of the applicable laws, rules and regulations have been complied with, the Commission shall accord its consent.

(16) The approval granted at any stage by the Commission before the registration of REIT Scheme shall not be construed as a commitment for further approvals.

## **Chapter-IV**

### **Trustee**

**5. Eligibility criteria for Trustee.** - (1) The following persons shall be eligible to be considered for appointment as Trustee of a REIT scheme:

- (i) a scheduled bank licensed under the Banking Companies Ordinance, 1962 (LVII of 1962) which has minimum long term AA- rating from a credit rating agency registered with the Commission or a wholly owned subsidiary of such a bank;
- (ii) a foreign bank operating as a scheduled bank in Pakistan and operating as trustee internationally;
- (iii) a central depository company registered with the Commission; and
- (iv) such other company as the Commission may time to time notify in the gazette.

(2) Commission shall, before giving approval for appointment of Trustee, consider the availability of appropriate systems, qualification and experience of personnel of the Trustee and such other criteria, as may be specified by the Commission.

## **Chapter-V**

### **Valuer**

**6. Qualification of a Valuer.** - (1) The RMC shall not appoint a valuer of a REIT Scheme unless it fulfils the following criteria:

- (i) it is incorporated as a company limited by shares under the Ordinance;
- (ii) it has employed at least three (3) engineers and/or architects who are registered with the Pakistan Engineering Council or the Pakistan Council of Architects and Town Planners as the case may be, for the purpose of conducting the valuation of the real estate;
- (iii) it is on the list of approved Valuers of Panel-I or Panel-II within the unlimited valuations category maintained by Pakistan Banks Association, until such time that specialized panel of Valuers is approved by the Commission; and
- (iv) its promoters, directors, members or partners, as the case may be, shall have never been



convicted of any offence involving moral turpitude, or financial embezzlement and other conditions specified by the Commission.

(2) Notwithstanding anything contained in this regulation, a foreign Valuer of established international repute may be appointed by the RMC with approval of the Commission subject to the conditions as deemed fit by the Commission, or the Commission itself can appoint a foreign Valuer, provided that the foreign valuer may engage a local valuer to obtain information about local real estate market, building codes and other relevant local information pertaining to the real estate.

**7. Appointment and term of a Valuer.** - (1) The RMC shall with the consent of Trustee appoint a Valuer for preparation of Valuation report in the format prescribed in Schedule VI annexed to these Regulations.

(2) The RMC, within two (2) working days of appointment of the Valuer shall provide a copy of the contract entered into between the Valuer and the RMC to Trustee and the Commission.

(3) The Valuer shall be appointed for a period of three (3) years and shall not be re-appointed as a Valuer for that REIT Scheme until lapse of two (2) years from its last retirement.

(4) An RMC shall appoint a separate Valuer for every REIT Scheme.

## **Chapter-VI**

### **Registration of REIT Scheme**

**8. Conditions for registration of a REIT Scheme.** - (1) An RMC shall:

(i) in the case of a Developmental REIT Scheme:

- (a) ensure that a binding purchase agreement has been executed for transfer of title of the Real Estate in the name of the Trustee of a REIT Scheme.
- (b) have obtained all requisite approvals from the concerned authorities to carry out the Project and the Lawyer's opinion, who is amongst the panel of lawyers approved by the Commission, shall confirm the same.

(ii) in the case of a Rental REIT Scheme:

- (a) ensure that a binding purchase agreement has been executed for transfer of title of the Real Estate in the name of the Trustee of a REIT Scheme
- (b) ensure that all requisite approvals from the concerned authorities including the completion certificate have been obtained, all dues are clear and the Real Estate does not have any defect which may render it ineligible for rent or subsequent

sale by the REIT Scheme and the Lawyer's opinion, who is amongst the panel of lawyers approved by the commission, shall confirm the same;

- (c) ensure that the Real Estate; (i) has at least last twelve months' successful tenant occupancy record, backed by signed lease agreements and verifiable from a bank statement and books of accounts wherever applicable (ii) has at least 80 per cent tenant occupancy at the time of application, (iii) provision of all relevant documents including tenant lease agreements, if required by SECP.

(2) If the RMC intends to convert a Developmental REIT Scheme into a Rental REIT Scheme, the RMC shall submit revised Business Plan duly approved by the unitholders through a special resolution as defined in the Ordinance.

**9. Application for registration of a REIT Scheme.** - (1) An RMC shall submit following documents to the Commission for registration of the REIT Scheme:

- (i) application for registration along with Fee as per Schedule III annexed to these Regulations;
- (ii) provide an undertaking stating that no funds or investments whatsoever have been received from any person on account of the proposed REIT Scheme;
- (iii) copy of the registered trust deed;
- (iv) latest audited balance sheet and profit and loss statement of the RMC, wherever applicable, or an auditor certificate verifying equity of the RMC;
- (v) an undertaking that the RMC itself and the Strategic Investor(s) shall hold minimum number of units of REIT Scheme till its winding up as specified in these Regulations;
- (vi) Certificate from the relevant land authority confirming that there are no dues outstanding against the Real Estate;
- (vii) legal opinion that the Real Estate is free from all defects, encroachments and encumbrances except to the extent specified in these Regulations;
- (viii) a certificate from the Trustee of the REIT Scheme confirming that the binding purchase agreement has been executed;
- (ix) an affidavit by the Board of Directors of the RMC that they accept responsibility for all submissions to the Commission as being accurate; and
- (x) any other document required by the Commission.

(2) The Commission may, if satisfied, register the REIT Scheme with or without any conditions.

(3) Acceptance of any document enumerating the value of the Real Estate or any REIT Assets or any approvals or any permissions granted based on such documents or information or

projections shall not be construed as an endorsement by the Commission of the accuracy of such document, information, valuation or projections.

**10. Pre IPO.** - (1) The RMC may solicit funds from Pre IPO investors, after sharing the detailed Business plan and the Valuation report as per Schedule VI annexed to these Regulations.

(2) The RMC shall make sure that, before the transfer of property to the REIT Scheme, an advertisement inviting objections to the proposed transfer of the Real Estate has been published in a newspaper of wide circulation.

(3) The RMC shall solicit funds from Pre IPO investors in the name of Trustee of the REIT Scheme only after the registration of the REIT Scheme.

(4) An RMC shall not apply for approval of offering document to the Commission unless the Trustee has confirmed that the Real Estate free from all encumbrances including any outstanding debt, has been transferred in the name of Trustee and the units in lieu of Real Estate have been issued excluding those units which are to be offered to public against cash.

(5) The RMC shall return subscription money to pre-IPO investors along with interest in case the transfer of property does not take place within the stipulated time period.

**11. Minimum holding by RMC and Strategic Investor-** (1) RMC shall hold minimum five (5) per cent and Strategic Investor, collectively or individually, shall hold minimum twenty (20) per cent units of the REIT Scheme in an account marked as blocked throughout the life of the REIT Scheme till its winding up and these units shall not be sold, transferred or encumbered.

(2) The RMC after publication of three (3) audited financial statements of the REIT Scheme demonstrating acceptable performance may apply to the Commission for transfer of its holdings to a Strategic Investor.

(3) In case, there are more than one Strategic Investors, each one of them shall hold not less than five percent (5%) units of the REIT Scheme at all times. Provided that the strategic investor may, after (5) years of launch of REIT Scheme, transfer their holding of the REIT Scheme to another Strategic Investor with the approval of the Commission.

## **Chapter-VII**

### **Public Offer**

**12. Public offer of units.** - (1) An RMC shall not apply for approval of offering document to the Commission unless Real Estate free from all encumbrances including any outstanding debt,

has been transferred in the name of Trustee and units have been issued in lieu of Real Estate excluding those units which are to be offered to public against cash.

- (2) An RMC shall not offer Units of a REIT Scheme for subscription to public unless it has obtained approval of the Commission to the Offering Document.
- (3) An RMC shall disclose all material information including that specified in Schedule IV to these Regulations in the Offering Document specifically disclosing values of Real Estate as determined by the Valuer applying all the approaches.
- (4) An RMC shall ensure that the size of the REIT Fund and public offer of Units are in line with the requirements prescribed in the listing regulations of the relevant stock exchange.
- (5) The Units shall be offered to the public after the issue has been underwritten, as per the Ballotters, Transfer Agents and Underwriting Rules 2001, by underwriter(s) not being Connected Person(s) of the RMC, the Trustee or the Valuer.
- (6) The par value of a unit of a REIT Scheme shall be ten (10) rupees each.
- (7) The Commission may approve the Offering Document, with or without any conditions.

**13. Recovery of initial expenses.-** (1) Expenses to be incurred in connection with the establishment and registration of the REIT Scheme as well as the offer for sale, allotment and issuance of Units including commission payable to underwriters, if not included in the public offer, shall be borne by an RMC, and shall be reimbursed to the RMC out of REIT Assets after annual audit of the REIT Scheme in equal instalments paid annually over a period of five (5) years or life of a REIT Scheme, whichever is shorter, and the same shall be stated in the Offering Document.

(2) Fees and costs which can be charged to the REIT Scheme are specified in Schedule II annexed to these Regulations.

## **Chapter-VIII**

### **Obligations of RMC, Trustee and Valuer**

**14. Obligations of an RMC. -** (1) An RMC shall:

- (i) conduct due diligence to certify and ensure that the title to the Real Estate to be acquired for the purposes of the REIT Scheme is free from all defects, encroachments and encumbrances, etc. except to the extent specified in these Regulations;
- (ii) ensure that the REIT assets are vested in the name of Trustee for the benefit of Unit Holders of a REIT Scheme;
- (iii) arrange transfer of Real Estate approved by the Commission in the name of Trustee of

- the REIT Scheme;
- (iv) ensure that all material contracts, including agreement for purchase of Real Estate, rental agreements, service providers' agreements entered into for furtherance of the objects of the REIT Scheme are legitimate, valid, binding and enforceable by or on behalf of the Trustee in accordance with the stipulated terms of such contracts and agreements and wherever relevant are backed by performance bonds and bank guarantees and contingency plans;
  - (v) ensure that a REIT Scheme does not comprise of more than one Project and that the trust deed provides for this restriction;
  - (vi) manage the REIT Scheme in the best interest of Unit Holders, in accordance with the Trust Deed and all applicable laws, rules, regulations including notifications, circulars, guidelines and directives issued thereunder;
  - (vii) with the consent of the Trustee, appoint a Development Advisor in the case of Developmental REIT and a Property Manager in the case of Rental REIT;
  - (viii) ensure that the REIT Scheme is dissolved only after the disposal of the Real Estate;
  - (ix) ensure that the Trust Deed is in accordance with Schedule I and provides for the time and modality of extinguishment of the REIT Scheme and the manner in which the proportionate shares of the sale proceeds shall be transferred to Unit Holders;
  - (x) ensure that profits arising out of the REIT Scheme are distributed to the Unit Holders as dividends and that the Trust Deed and offering document provide for the same;
  - (xi) ensure that Units are listed in accordance with the listing regulations of the stock exchange and the Trust Deed provides for the same;
  - (xii) ensure that running bills in respect of payments made on account of a Project are countersigned by the Development Advisor or the Property Manager, as the case may be;
  - (xiii) carry out all transactions involving REIT Scheme managed by it on an arm's length basis;
  - (xiv) ensure that Customer Advances are received in the name of Trustee of the REIT Scheme;
  - (xv) maintain proper record of Customer Advances received for the purposes of the REIT Scheme;
  - (xvi) arrange insurance / Takaful coverage in relation to the Real Estate and comply with all requirements of the Commission in this behalf;
  - (xvii) be responsible for development, refurbishment, sale and renting of the Real Estate according to the Business Plan;

- (xviii) obtain written approval of the Commission before issuing units and making a public offer of the Units;
- (xix) issue units of the REIT fund under these Regulations;
- (xx) ensure that the issue and transfer of the Units is carried out, after registration of the REIT Scheme, in accordance with provisions of the trust deed and offering document and as per any directions, guidelines and circulars issued by the Commission;
- (xxi) ensure that the Offering Document contains summary information of the valuation report and the Business Plan of the REIT scheme;
- (xxii) maintain the Register of Unit Holders or appoint an agent for the purpose and comply with Schedule V ;
- (xxiii) obtain the written approval of the Commission before delegating one or more of its functions in relation to the REIT Scheme and comply with Schedule V;
- (xxiv) ensure that in cases where the RMC delegates any of its functions, the delegated person has sufficient experience and financial resources to carry out the delegated function and comply with Schedule V;
- (xxv) be responsible for the acts, omissions, defaults and negligence of all persons, along with resultant losses, to whom it delegates any of its functions;
- (xxvi) maintain at its registered office proper books of account and record of the activities undertaken in connection with the REIT Scheme in order to enable a true and fair view to be formed of the,-
  - (a) REIT assets and liabilities;
  - (b) profit and loss accruing on account of operation of the REIT Scheme;
  - (c) transactions undertaken with respect to the REIT Scheme;
  - (d) amounts received in respect of issue of Units;
  - (e) client wise detail of customer advances; and
  - (f) pay-outs, if any, by way of distributions to the Unit Holders;
- (xxvii) within four (4) months of close of the financial year prepare, and transmit to the Unit Holders, the Trustee, the Commission and the stock exchange(s) on which the Units of a REIT Scheme are listed, the balance sheet, profit and loss statement, cash flow statement and statement of the movement in NAV along with the report of the Trustee, the report of the auditor, report of Shariah Adviser (wherever relevant) the valuation report of the Real Estate and any other document as specified by the Commission;
- (xxviii) prepare and transmit to the Unit Holders, the Trustee, the Commission and the stock exchange(s) on which the Units are listed, within one (1) month of the close of the first and third quarter and two (2) months of the close of second quarter of the financial year

of the REIT Scheme, a balance sheet of the REIT Scheme as at the end of that quarter along with profit and loss statement, a cash flow statement and a statement of changes in NAV:

Provided that the Commission may, subject to such conditions as it may consider necessary, allow an RMC to transmit the accounts to the Unit Holders by placing them on its website;

- (xxix) preserve books of account of a REIT Scheme for at least five (5) years after the extinguishment or revocation of the REIT Scheme;
- (xxx) with the consent of the Trustee appoint an auditor for the REIT Scheme;
- (xxxix) obtain rating for itself and for the REIT Scheme as per the rating criteria of a rating company and such rating shall be updated annually, or at such other time as may be specified by the Commission;
- (xxxixii) publish rating of a RMC and REIT Scheme in the annual and quarterly accounts and publish in all advertising and marketing materials of the REIT Scheme;
- (xxxixiii) furnish in respect of a REIT Scheme, to the Commission and the stock exchange(s) on which the Units are listed, such information within such time as the Commission may specify;
- (xxxixiv) ensure that a director immediately vacates his position if he becomes disqualified as per the Fit and Proper Criteria and inform the Commission of such compliance;
- (xxxixv) before making any major change in the Business Plan of the REIT Scheme ensure that it has:
  - (a) informed the Commission in writing and
  - (b) obtained approval of the Unit Holders through a Special Resolution, if directed by the Commission:
- (xxxixvi) cause to happen a determination of the NAV of the REIT Assets on quarterly basis;
- (xxxixvii) ensure that it conforms to the provisions of the Code of Corporate Governance;
- (xxxixviii) maintain adequate financial, technical, organizational and human resources, and employ appropriate systems, procedures, processes and personnel to provide REIT Management Services in a proper and efficient manner on an on-going basis;
- (xxxixix) maintain satisfactory controls and written compliance procedures which address all applicable regulatory requirements;
- (xli) pay or arrange to pay such non-refundable application fees as specified in the relevant Schedule III;
- (xlii) hold units acquired as strategic investment as specified in these Regulations or such higher per cent of units of a REIT Scheme, as the Commission may specify, and such

- units shall be held with the Central Depository Company of Pakistan Limited (CDC) in an account marked as blocked and shall not be sold, transferred or encumbered throughout the life of the REIT Scheme without prior written approval of the Commission;
- (xlii) appoint Valuer in consultation with trustee of the REIT Scheme and inform the Commission within two (2) working days of such appointment;
  - (xliii) prepare marketing material, advertisements and invitations to invest in REIT units with appropriate disclaimers as approved by the Commission in relation to REIT Scheme;
  - (xliv) arrange transfer of real estate to the REIT Scheme as per binding purchase agreement;
  - (xlv) in case of a Shariah compliant REIT Scheme, obtain clearance from the Shariah advisor in respect of all documents, investments, borrowing, trust deed, sub-lease deed, binding purchase agreement, tenancy agreements, etc.;
  - (xlvi) solicit all monies only in the name of Trustee of a REIT Scheme; and
  - (xlvii) issue Units for cash consideration only except for the Units issued in lieu of the Real Estate;
- (2) An RMC shall comply with listing regulations of the stock exchange where the units of the REIT Scheme are listed.
- (3) An RMC shall not obtain, acquire or takeover the management of another REIT Scheme, without prior written approval of the Commission;
- (4) RMC shall not solicit Customer Advances before IPO of the REIT Scheme.

**15. Obligations of Trustee.-** (1)A Trustee shall:

- (i) exercise due diligence and vigilance in carrying out its functions and duties under the trust deed, rules and these Regulations and all other applicable laws;
- (ii) ensure that the REIT Assets are held by it on behalf of the Unit Holders;
- (iii) not legally or beneficially own, either directly or indirectly, any Units of the REIT Scheme in relation to which it is acting as a Trustee;
- (iv) ensure that the title to all REIT Assets is lawfully vested in it;
- (v) deposit the money received by it in a scheduled bank which has a minimum long term 'AA-' rating;
- (vi) confirm to the Commission that the RMC has appointed a Development Advisor or a Property Manager, as the case may be;
- (vii) confirm to the Commission that all insurance premiums have been paid by the RMC and the insurance policies are up to date;



- (viii) not delegate any of its duties unless the Trust Deed allows for the delegation;
- (ix) make payments to the delegatee from its own account, if it has delegated any of its functions;
- (x) be liable for any negligent act or omission, on its part or on the part of any of its delegates;
- (xi) carry out the instructions of the RMC unless such instructions are in conflict with the trust deed, offering document, these Regulations, directions, guidelines, circulars or any other applicable laws;
- (xii) carry out instructions of the RMC with respect to the Project payments after the bills are counter-signed by the Development Advisor and verified by the project accountant in case of a Developmental REIT Scheme or by the Property Manager in case of a Rental REIT Scheme;
- (xiii) ensure that the use of Customer Advances, as set out in these Regulations, the trust deed, the offering document and the conditions of registration of a REIT Scheme, are complied with;
- (xiv) issue a report indicating the level of compliance and the extent of violations, in comparison to Business Plan . The report shall be included in the quarterly and the annual accounts of the REIT Scheme;
- (xv) immediately inform the Commission, of any action of the RMC that contravenes the Ordinance, the Rules, these Regulations, guidelines, codes, circulars, directives or any other applicable laws;
- (xvi) verify the offering document for correctness and authenticity with regard to acquisition of the REIT Assets and agreements;
- (xvii) ensure that the Valuer performs its obligations, prepares and submits valuation reports as per Regulations.

**16. Obligations of the Valuer.** – (1)A Valuer shall:

- (i) not hold Units of the REIT Scheme for which it has been appointed as a Valuer;
- (ii) at least once in every quarter in case of Developmental REIT Scheme and after every six months in case of Rental REIT Scheme, value the Real Estate in accordance with Schedule VI and produce a Valuation Report on Real Estate belonging to the REIT Scheme;
- (iii) ensure that the valuation methodology adopted by it is in line with best practices prevalent in the real estate industry;
- (iv) ensure the valuation is carried objectively and independent of its business or

- commercial relationships;
- (v) immediately inform the RMC and the Trustee of any circumstances or factors that come into the knowledge of the Valuer which can reasonably affect the accuracy of the last Valuation Report submitted by the Valuer;
  - (vi) remain impartial while rendering professional services;
  - (vii) at all times perform its obligation with competence, integrity and professionalism;
  - (viii) will report immediately if any clash of interest arises; and
  - (ix) conform to the valuation standards prescribed by International Valuation Standards Council (IVSC) to the extent possible and shall certify the same in the valuation report.

**17. Declaration by the Valuer.** - The Valuer shall furnish a declaration to the RMC stating that it meets the requirements specified in these Regulations, at the time of initial appointment and at the end of each year.

**18. Basis and Assumptions for Valuation.** – (1) The Valuer shall value the real estate on the basis of market value.

(2) The Valuer shall determine the value of Real Estate by using all valuation approaches as indicated in the Schedule VI of these Regulations.

(3) Any assumptions used in the valuation shall be clearly stated in the Valuation Report, and shall be realistic, relevant and adequately substantiated by reference to physical, functional and market factors.

(4) The RMC shall disclose all values determined by the Valuer in Business Plan and Offering Document.

**19. Power of the Commission to cause valuation.** - (1) The Commission, if it deems necessary, may cause another valuation of any REIT Assets by a Valuer appointed by the Commission.

(2) Fees and costs incurred on valuation after the launch of a REIT Scheme shall be paid by the REIT Scheme.

## **Chapter IX**

### **Project Accountant**

**20. Appointment of Project Accountant.** The Project Accountant shall be appointed by the Trustee within 1 month of IPO of the REIT Scheme and confirm the same to the Commission.

**21. Obligations of Project Accountant.** - (1) The Project Accountant shall be responsible for authorizing and monitoring all payments including countersigning interim payment certificates and reporting variances to the Trustee after comparing them with the project milestones.

(2) The Project Accountant may hire any technical/ professional resource necessary for performance of his duties.

**22. Removal of Project Accountant.** - The Trustee may remove the Project Accountant if the Trustee is not satisfied with the performance of the Project Accountant.

**23. Declaration by Trustee.** - The Trustee shall incorporate a declaration in its report stating that it has appointed a Project Accountant.

## **Chapter-X**

### **Investments, Dividend, Borrowing and Customer Advances Policies**

**24. Investment policy.** - A REIT Scheme shall primarily invest in Real Estate; however, it may invest any surplus funds in government securities or keep such funds as deposit with scheduled commercial banks having not less than 'AA (double A)' Long term rating with stable outlook.

**25. Dividend policy.** - (1) An RMC shall devise dividend policy in the best interest of unit holders.

(2) The dividend policy shall be in consonance with the provision of applicable tax law.

(3) The dividend policy shall be stated in the trust deed and offering documents of a REIT Scheme.

(4) Dividends shall be paid in cash, unless dividend distribution in form of bonus Units is allowed by the Commission.

**26. Customer Advances policy.** - (1) An RMC shall state policy for Customer Advances in the Business plan and the offering document of a REIT scheme.

(2) An RMC may utilize Customer Advances to finance the construction of the project. Provided that such utilization shall not exceed the percentage of construction cost to be financed through Customer Advances as disclosed in the Business plan and offering Document.

(3) An RMC shall ensure that all marketing material, advertisements and invitations soliciting Customer Advances by whatever name called must contain the name of REIT Scheme, name of developer, name of concerned development authority, proposed date of completion and

shall clearly state that payments are to be made through banking channels in the name of Trustee only.

(4) An RMC shall obtain approval of the Commission for all marketing material, advertisements and invitations soliciting Customer Advances after obtaining the consent from the Trustee and ensuring compliance with the minimum disclosures as mentioned in 26 (3) of these Regulations.

**27. Disclosure of Customer Advances and Liabilities.** - An RMC shall disclose customer advances and any other liabilities of a REIT Scheme in quarterly and annual accounts of a REIT Scheme.

**28. Borrowing policy.** - (1) An RMC shall not borrow against any REIT Assets.

(2) RMC may arrange unsecured borrowing not exceeding thirty per cent (30%) of the value at which the land has been transferred to a Developmental REIT Scheme or (30%) of the value of the Real Estate in case of Rental REIT to meet the shortfall arising out of, cost overruns in case of Developmental REIT and for Capex to keep the real estate in working condition in case of a Rental REIT.

## **Chapter-XI**

### **Related Party Transactions and Independence**

**29. Related parties and related party transactions.** - (1) Subject to sub regulation (2) of this Regulation, the persons to be considered “related party” for the purpose of any transaction pertaining to a REIT Scheme shall include the following:

- (i) RMC;
- (ii) Trustee;
- (iii) Valuer;
- (iv) Promoter of RMC;
- (v) Connected Person, associated company or associated undertaking, director or Key Executive of any of the entities stated at (i) to (iv) including their close relatives; and
- (vi) Development Advisor or Property Manager, as the case may be, in relation to a REIT Scheme.
- (vii) Project Accountant

(2) The services provided, under these Regulations or the trust deed or offering document, by the RMC, Trustee, Valuer, Development Advisor or Property Manager shall not be deemed

related party transaction.

**30. Disclosure of related party transactions.** - (1) An RMC shall disclose related party transaction in the Offering Document and subsequently in annual as well as quarterly accounts of a REIT Scheme, highlighting the following:

- (i) potential conflict of interest of the related party with respect to the REIT Scheme and the measures taken to address such conflicts;
- (ii) beneficial interest of related party in a REIT Scheme and any changes therein; and
- (iii) the amount involved in transactions in respect of each related party for the relevant period.

(2) Where the business of a related party is in competition with the activities of a REIT Scheme, the Offering Document, quarterly and annual accounts of the REIT Scheme shall disclose the business of the related party and its management so as to enable the Unit Holders to assess the nature of their business and the reasons why their business may adversely impact the business of the REIT Scheme.

(3) Where a REIT Scheme acquires Real Estate from or sells it to a related party, the Offering Document shall disclose the following:

- (i) Valuation report for the Real Estate that the related party has agreed to sell or buy; and
- (ii) the price to be deposited in or paid out of the REIT Assets or the units issued or to be issued out of the REIT Assets as consideration and other terms of the transaction.

**31. Prerequisites with regard to related party transactions.** - (1) An RMC shall, in relation to a REIT scheme, carry out related party transactions with the prior approval of Trustee:

- (i) on arm's length basis;
- (ii) consistent with investment objectives and strategy of a REIT Scheme;
- (iii) in the interest of Unit Holders; and
- (iv) with proper disclosure to Unit Holders.

(2) The RMC, its delegates, the Valuer or any other related parties shall not receive any benefit, monetary or otherwise, from a property agent, real estate developer or real estate builder in consideration for referring any transaction involving a REIT Scheme to such property agent, real estate developer or real estate builder.

(3) Total value and nature of related party transaction and identity of the related party shall be disclosed in the accounts of a REIT Scheme and where no such transaction is conducted during the financial year, an appropriate statement to that effect shall be made in the annual accounts.

(4) If cash is deposited with the Trustee, being a scheduled commercial bank eligible to accept deposits under these Regulations, the return shall be paid to the REIT Scheme on the deposit at a rate not lower than the rate offered by a comparable bank.

**32. RMC, Trustee and Valuer to be independent.** - The Valuer, the RMC and the Trustee of a REIT Scheme shall not be related to each other in any manner.

## **Chapter-XII**

### **Fees**

**33. Management fee payable to RMC.** - (1) The RMC, in case of a Developmental REIT Scheme, shall be entitled to an annual management fee and /or a performance fee as per Schedule III, which shall be stated in the Offering Document.

(2) The RMC, in case of a Rental REIT Scheme, shall be entitled to an annual management fee not exceeding three (3) per cent of the Net Operating Income of a REIT Scheme.

(3) The management fee shall be payable to RMC quarterly in arrears and shall be chargeable as an expense to the REIT Scheme.

(4) An RMC shall be entitled to performance fee of up to fifteen (15) per cent of the return realised above the benchmark stated in the offering document and the Business Plan of a REIT Scheme and such fee shall be computed and paid to RMC at the time of winding up of a REIT Scheme in case of a Developmental REIT.

**34. Monitoring fee payable to Commission.** - (1) Monitoring fee shall be paid annually to the Commission during the life of a REIT Scheme as per Schedule III annexed to these Regulations.

(2) The monitoring fee shall be paid as arrears within four (4) months of the close of accounting year of a REIT Scheme and shall be chargeable as an expense to the REIT Scheme.

**35. Fee payable to Trustee.** - (1) A Trustee shall be entitled to an annual fee as per relevant Schedule annexed to these Regulations.

(2) The fee payable to Trustee shall be paid as arrears quarterly and shall be chargeable as an expense to the REIT Scheme.

**36. Other Fee.** – (1) The Valuer shall be paid a predetermined amount of fee as determined at the time of his appointment and such fee shall not be contingent upon the value of the Real Estate as determined by the Valuer.

(2) The Fee payable to Development Advisor and Property Manager shall be disclosed in the Offering Document and in the annual accounts.

(3) The fee payable to Valuer, Development Advisor, Project Accountant and Property Manager shall be charged as an expense to a REIT Scheme.

### **Chapter-XIII**

#### **Retirements and Removals**

**37. Transfer of Management Rights of REIT Scheme.** - (1) The management rights of the REIT Scheme may be transferred to another RMC upon the occurrence of any of the following events,-

(i) the RMC goes into liquidation, becomes bankrupt or has a liquidator appointed over its assets, or its license has been cancelled or does not hold valid license; or

(ii) where the unit holders pass a Special Resolution as defined in the Ordinance and fulfil the conditions specified therein to pass such a resolution:

Provided that the RMC shall not vote at such meetings and their presence shall not be counted towards requisite voting for special resolution;

(iii) if in the opinion of the Commission further management of REIT Scheme by the existing RMC is detrimental to the interest of the unit holders or for any other reason to be recorded in writing:

Provided that the RMC managing the REIT scheme shall be given opportunity of hearing before any action is taken against it under this regulation. However, the Commission shall not be restricted from taking any interim measures in the interest of Unit holders.

(2) For the purpose of transfer of management right an RMC shall execute a supplemental Trust Deed subject to the approval of the Commission.

**38. Retirement or removal of trustee.** - (1) The Commission shall remove the Trustee if it goes into liquidation, becomes bankrupt or if a receiver, liquidator or administrator is appointed over its assets and appoint a new Trustee.

(2) The liquidator shall be bound to follow the instructions of the Commission and hand over all necessary records, transfer assets and give effect to the Commission's decision in favour of the new Trustee within three working days.

(3) A trustee may, subject to prior approval of the Commission, retire from his office on appointment of a new trustee and the retirement shall take effect at the same time as the new trustee is appointed with the approval of the Commission or from the date of assumption of assets of the REIT Scheme by the newly appointed trustee, whichever is later.

(4) An RMC may by giving reasons in writing apply to the Commission for change of the trustee and propose a new trustee. The Commission, if satisfied by the reasons given by the RMC and after providing an opportunity of hearing to the trustee, approve the removal of the existing and the appointment of a new trustee.

(5) The Commission, after providing a reasonable opportunity of representation to the trustee, may remove the trustee; if in the opinion of the Commission,-

- (i) Trustee has been in violation of these Regulations or the Trust Deed or any directives, code or guidelines issued by the Commission or is found guilty of misconduct or failed to discharge its obligation under these Regulations or the Trust Deed; or
- (ii) Trustee is guilty of insider trading or fraud or a criminal offence;

**39. Removal of the Valuer.** - (1) The Commission may direct the RMC to remove the Valuer if:

- (i) the Valuer goes into liquidation, becomes bankrupt or if a receiver, liquidator or administrator is appointed over its assets; or
- (ii) for reasonable cause, the RMC or the Trustee states, in writing, that a change in the Valuer is desirable in the interest of the Unitholders; or
- (iii) the Unit Holders pass a resolution requiring removal of the Valuer; or
- (iv) the Valuer contravenes any provision of the Ordinance, the Rules, these Regulations, or any directives, code or guidelines issued by the Commission:

Provided that the Valuer shall be given an opportunity to defend itself.

(2) Upon retirement or removal of the Valuer, the RMC in consultation with the Trustee shall appoint a new Valuer that meets the criteria under these Regulations within 30 days.

## **Chapter-XIV**

### **Extinguishment or Revocation of REIT Scheme**

**40. Extinguishment/Revocation of REIT Scheme.** - (1) A REIT Scheme may be extinguished



by the occurrence of any one or combination of the following events,-

- (i) The REIT Scheme has reached end of its life as specified in the Trust Deed; or
- (ii) where the unit holders pass a special resolution as defined in the Ordinance, demanding revocation of the Trust; or
- (iii) where the RMC goes into liquidation, becomes bankrupt or has a liquidator appointed over its assets, or its license has been cancelled or does not hold valid license unless the management rights have been transferred in conformity with these regulation; or
- (iv) in the opinion of the RMC the REIT Scheme is not commercially viable or the purpose of the scheme cannot be accomplished or its objective cannot be achieved and the unitholders have consented to such an action through a special resolution as defined in the Ordinance:  
Provided that the RMC shall not vote at such meetings and their presence shall not be counted towards requisite voting for special resolution;
- (v) in the opinion of trustee and on occurrence of any event or circumstances which, as per Trust Deed, triggers conditions that require the REIT Scheme to be revoked; or
- (vi) where the Commission deems it necessary to revoke the REIT Scheme and directs so to the Trustee or the RMC in the interest of unit holders.

**41. Procedure and manner of Revocation of REIT Scheme.** - (1) Where a REIT scheme is to be revoked, the Trustee shall immediately apply to the Commission and upon approval by Commission shall give notice to the RMC and in two newspapers having circulation all over Pakistan disclosing the circumstances leading to the revocation of the REIT Scheme.

(2) On the date of publication of the notice under sub-regulation (1) of this regulation the affairs of and all information relating to the REIT Scheme shall be transferred to the Trustee till the completion of the final settlement of the affairs of the REIT Scheme.

(3) From the date of publication of the notice the units of the REIT Scheme shall be delisted, with approval of the Commission, from the relevant Stock Exchange and REIT Scheme shall cease to carry on its business, except so far as may be required for the beneficial revocation thereof.

(4) The RMC, Trustee or any other party as deemed appropriate by the Commission shall be authorized to dispose off the assets of the REIT Scheme in the best interest of the unit holders and any sale, settlement or arrangement executed by the Trustee in pursuance of revocation of the REIT Scheme shall be binding on the RMC and unit holders of the REIT Scheme.

(5) The Trustee upon the commencement of revocation process shall also submit, in addition to specified statutory reports, quarterly reports to the Commission providing details of the

various steps taken by it to finalise settlement of the affairs of the trust.

(6) The proceeds from the sale of the Asset of the REIT Scheme shall be first utilized towards discharge of such liabilities (with the exception of borrowing, if any) as are due and payable by the REIT Scheme and after making appropriate provision for meeting the expenses connected with such revocation and the balance amount shall be paid to the unit holders in proportion to their respective interest in the assets of the REIT Scheme.

(7) On the completion of the revocation process the Trustee shall forward to the Commission and the unit holders a report on the revocation process containing particulars such as circumstances leading to the revocation, the steps taken for disposal of assets of the REIT Scheme before revocation, expenses of the fund for revocation, net assets available for distribution to the unit holders and a certificate from the auditors of the REIT Scheme.

(8) After the receipt of revocation report by the Trustee, if the Commission is satisfied that all measures for revocation of the REIT Scheme have been complied with, the Commission shall cancel the registration of an REIT Scheme and the REIT Scheme shall cease to exist and Trust shall be extinguished as per applicable laws.

## **Chapter XV**

### **Meeting of the Unit Holders of the REIT Scheme**

**42. Meeting of the unit holders.** - (1) The meeting of the unit holders shall be held in accordance with the procedure prescribed in Schedule VII to these Regulations for the following purposes:

- (i) Transfer of management rights of REIT Scheme
- (ii) Extinguishment or revocation of REIT Scheme
- (iii) Removal of Valuer

(2) For the purpose of this regulation, the meeting can be called by:-

- (i) RMC or
- (ii) Trustee or
- (iii) Commission
  - (a) on its own motion in the interest of REIT Scheme or;
  - (b) at the request of Unit Holders having at least 25% units in value of the total outstanding units of the REIT Scheme present either in person or through proxy or represented by Trustee in such meeting;

## **Chapter-XVI**

### **Miscellaneous**

**43. Application of the Ordinance to a REIT Scheme.-** (1) The provisions of the Ordinance governing matters relating to general meetings of a company, notice for meeting to shareholders, issue of right shares, allotment and transfer of shares, prospectus, accounts and audit of listed companies, declaration of dividend, shall as far as may be, *mutatis mutandis* apply unless specified otherwise in these Regulation to the meetings of the unitholders, notice for meeting to unitholders, issue of right or bonus units, allotment and transfer of units, declaration and payment of dividends, prospectus, accounts and audit of the REIT Scheme.

(2) International Accounting Standards notified by the Commission for listed companies shall also apply to a REIT Scheme, where relevant.

## **Chapter – XVII**

### **Repeals and Savings**

**44. Savings and Repeals.** - The Real Estate Investment Trust Regulations, 2008 are hereby repealed.

**45. Transitional provisions.** - Save as otherwise specifically provided, nothing in these Regulations shall affect or be deemed to affect anything done, action taken, investigation or proceedings commenced, order, relaxation granted unless withdrawn, appointment, conveyance, mortgage deed, document or agreement made, fee paid or accrued, resolution passed, direction given, proceedings taken or instrument executed or issued, under the repealed Real Estate Investment Trust Regulations, 2008 and any such thing, action, investigation, proceedings, order, appointment, conveyance, mortgage deed, document, agreement, fee, resolution, direction, proceedings or instrument shall if in force at the coming into force of these Regulations and not inconsistent with any of the provisions of these Regulations, continue to be in force, and have effect as if it were respectively done, taken, commenced, made, directed, passed, given, executed or issued under these Regulations.

**46. Relaxation of Regulations.** - If any difficulty arises in giving effect to any of the provisions of these regulations in a particular case, or class of cases, or if it would be in the interest of capital market so to do, the Commission may, for reasons to be recorded in writing relax such requirements subject to such conditions as it may deem fit.

## SCHEDULE I

### CONTENTS OF THE TRUST DEED OF REIT SCHEME

The Trust Deed must *inter alia* contain the following not necessarily in the sequence given:

- (i) Name of Trust.
- (ii) Creation of Trust.
- (iii) Transfer and grant of REIT Assets.
- (iv) Object of the Trust.
- (v) Authorization/approval of the Commission to constitute the Trust.
- (vi) Parties to the Trust Deed identifying the Trustee as well as the beneficiaries.
- (vii) Registered address of the Trustee along with place and date of creation of Trust.
- (viii) Governing law and jurisdiction.
- (ix) Duration and date of extinction of Trust.
- (x) Circumstances for the revocation of the Trust along with the mechanism specifically stating the power of the Commission to revoke the trust.
- (xi) Duties, powers and rights of the RMC in relation to the trust.
- (xii) Rights of the beneficiaries of the Trust.
- (xiii) Duties, powers, rights and obligations of Trustee.
- (xiv) Retirement or removal of Trustee, specifically giving the Commission the power to remove the Trustee.
- (xv) Mechanism for rectification of Trust Deed.
- (xvi) Duties of the Trustee which may be delegated to third parties.
- (xvii) Appointment of the auditor.
- (xviii) Circumstances and procedure for the change of RMC upon the request of the Unit Holders.
- (xix) Procedure for change of Trustee.
- (xx) Policies for borrowings and issuance of Units.
- (xxi) Provisions that Units shall be listed in accordance with the listing regulations of the stock exchange and shall be freely tradable unless restricted under these Regulations
- (xxii) Specification of the size of REIT Fund.
- (xxiii) Investment policy, specifically authorizing the Trustee to invest the REIT Fund.
- (xxiv) Dividend policy.
- (xxv) Accounting period and audit;
- (xxvi) Mechanism for the distribution of REIT Assets, upon the extinction or revocation of the Trust and the manner in which the beneficiaries shall be transferred their proportionate shares of the sale proceeds specifically stating that creditors shall have the first right at the time of distribution of REIT Assets.
- (xxvii) Arbitration.
- (xxviii) Mechanism for change of Trustee

SCHEDULE II  
COSTS CHARGEABLE TO REIT FUND/ SCHEME

- (i) Management fee of RMC.
- (ii) Reimbursements of expenses to RMC which have been borne by the RMC for setting up the REIT Scheme.
- (iii) Fee to be paid to Trustee.
- (iv) Fee payable to Commission.
- (v) Auditors' fees.
- (vi) Listing fee for the REIT Scheme, including renewals payable to stock exchange;
- (vii) Legal fee and other relating expenses of the REIT Scheme.
- (viii) Underwriting commission and take-up commission.
- (ix) Commissions to the banker to the issue.
- (x) Remuneration of service providers e.g. letting agents, security etc.
- (xi) Fees and charges of the Valuer for valuing REIT Assets.
- (xii) Fees and charges of the civil works contractor.
- (xiii) Fee payable to Project Accountant
- (xiv) Development Advisor, Property Manager fees.
- (xv) Taxes, fees, duties and other charges applicable to the REIT Scheme.
- (xvi) Bank charges & financial cost with respect to the REIT Scheme.
- (xvii) Any printing costs and related expenses for issuing the REIT Scheme's quarterly, half-yearly and annual accounts, etc.
- (xviii) Shariah advisory fee;
- (xix) Annual Project Health Survey fee;
- (xx) Common Area Maintenance (CAM) Vacancy charges;
- (xxi) REIT Scheme rating fee paid to the Rating Agency;
- (xxii) NCCPL annual and clearing fee,
- (xxiii) CDS fee and insurance premiums
- (xxiv) Fee charges payable as per rules and regulations of local administration/authorities
- (xxv) Any other expenses allowed by Commission.

**SCHEDULE III**

**FEES**

A) Application fees under the Rules:

<u>FORM</u>	<u>SUBJECT OF APPLICATION</u>	<u>AMOUNT</u> <u>(RS.)</u>
Form I	Application for permission to form an RMC.	500,000
Form II	Application for licence to undertake or carry out an activity or function.	750,000
Form IV	Application for renewal of licence to carry out an activity or function.	750,000

B) Application Fees

<u>SUBJECT OF APPLICATION</u>	<u>AMOUNT</u> <u>(RS.)</u>
Application for registration of a REIT Scheme	1,000,000

Fee payable by REIT Scheme	Developmental REIT	Rental REIT
Annual Fee payable to RMC	<p><b><u>Base fee as % of initial fund size</u></b></p> <p>Fund size is less than 1 billion Base Fee up to 3%</p> <p>Fund size is more than 1 billion but less than 5 billion Fee up to 2%</p> <p>Fund size is more than 5 billion Fee up to 1%</p> <p>RMC may charge a performance fee at the time of winding up of the REIT Scheme as approved by Commission and disclosed in the Business plan and offering document</p>	<p><b>Up to 3 %</b> of the annual operating income.</p>
Annual Monitoring Fee payable to the Commission	Equal to 0.20% of initial REIT Fund per annum	Equal to 0.10% of initial REIT Fund per annum
Annual Fee payable to Trustee	Up to 0.20% of initial REIT Fund	0.6% of the annual operating income.

Fee for Hybrid REIT Scheme will be a combination of Developmental and Rental portions proportionally

## SCHEDULE IV

### INFORMATION TO BE DISCLOSED IN THE OFFERING DOCUMENT BY THE REIT SCHEME

*Note:* - No offering document shall be issued to the public unless summarised versions of Valuation Report of the Real Estate and the Business Plan of the REIT Scheme is attached to it.

The Offering Document shall in addition to the requirements contained in the Ordinance and guidelines made thereunder also contain the following information:

1. Date of publication of the Offering Document.
2. Stock Exchange's clearance for the Offering Document.
3. Commission's approval for the Offering Document.
4. REIT Scheme
  - (a) Name and registered address of the REIT Scheme.
  - (b) Date and registration number of REIT Scheme.
  - (c) Name and registered address of Trustee.
  - (d) Abridged version of the latest audited accounts of the Trustee not older than six months failing which a certificate from the auditor evidencing the net worth of the company;
  - (e) Summary of the entire REIT Scheme highlighting potential benefits and risks involved.
  - (f) Name of the directors of Trustee.
  - (g) Duration and date of termination of the REIT Scheme.
  - (h) Summary of the substantive provisions of the Trust Deed.
  - (i) Commission's approval of the Real Estate under these Regulations.
  - (j) Beneficial interest of the related parties, if any, with respect to the REIT Scheme.
  - (k) Potential conflicts of interest of the related party, if any, with respect to the REIT Scheme.
  - (l) A description of the business of the related party and its management so as to enable the Unit Holders to assess the nature, scope and size of their business and the reasons as to how their business may be in competition with the Project and activities of the REIT Scheme.
  - (m) Costs of advertisements relating to the REIT Scheme.
  - (n) Fee negotiated with the Development Advisor, Property Manager, Valuer and Project Accountant.
5. RMC
  - (a) Name and Registered address of the RMC.
  - (b) Incorporation certificate of the RMC.
  - (c) Abridged version of audited balance sheet and profit and loss statement of the RMC not older than six months failing which a certificate from the auditor evidencing the net worth of the company.
  - (d) Board of directors, chief executive and company secretary of the RMC and their profile/particulars.

- (e) Names of shareholders along with their shareholding in the RMC.
- (f) Duties and powers of the RMC.
- (g) Certificate from the RMC that the related party is capable of performing its duty in relation to the REIT Scheme independent of its other business, if any.

#### 6. Corporate Directory

The names, registered addresses and contact numbers of the following parties, where applicable:

- (a) Valuer;
- (b) Development Advisor
- (c) Property Manager;
- (d) Consulting engineer/design firm or architect;
- (e) Civil works contractor;
- (f) Auditor of the REIT Scheme;
- (g) Underwriter;
- (h) Bankers to the issue;
- (i) Registrar of the REIT Scheme;
- (j) Legal adviser of the REIT Scheme; and
- (k) Regulatory authorities
- (l) Project Accountant.

#### 7. REIT Assets

- (a) Location map with address of Real Estate along with name of concerned authority/jurisdiction.
- (b) Photographs and drawings of the Real Estate along with accessibility map.
- (c) Type of Real Estate, whether lease hold or free hold.
- (d) Approval for the Project from the concerned regulatory authorities
- (e) Date and value at which the Real Estate has been transferred to Trustee.
- (f) Valuation Report of the Real Estate.
- (g) Copy of the certificate from the auditor of REIT Scheme that Real Estate has been transferred in the name of Trustee.
- (h) A due diligence certificate from a lawyer and all necessary approvals/permissions/ NOCs of the concerned local authorities required prior to start of project as per local byelaws has been obtained.
- (i) In case of Rental REIT Scheme, certificate from auditor of the REIT Scheme that RMC has entered into a binding purchase agreement with the seller of the Real Estate
- (j) Material information regarding the acquisition of Real Estate in the case of a REIT Scheme or execution of a purchase agreement in the case of a Rental REIT Scheme, if any.

#### 8. Fund size

- (a) Total size of the REIT Fund.
- (b) Units taken up by the RMC and pre-IPO investors, if any.
- (c) Names and addresses of pre-IPO investors along with their percentage held.
- (d) Certificate from the auditor of REIT Scheme confirming issue of units in lieu of real estate.
- (e) Certificate from auditor of the REIT Scheme stating whether the subscription



money from pre-IPO investors has been received in the name of Trustee or not.

- (f) Number of Units offered to the public
9. Units
- (a) Face value of Units.
  - (b) Lot size of Units.
  - (c) Opening and closing date of subscription.
10. Detail of Expenses to be borne by the REIT Scheme
- (a) Management fee of RMC.
  - (b) Amount of expenses which have been borne by the RMC for setting up the Trust.
  - (c) Fee to be paid to the Trustee.
  - (d) Fee payable to the Commission.
  - (e) Fee payable to CDC.
  - (f) Auditor' fees of the REIT Scheme.
  - (g) Listing fee, including renewals payable to stock exchange for the listing of Units of the REIT Scheme.
  - (h) Legal fee and other relating expenses of the REIT Scheme.
  - (i) Underwriting commission and take-up commission.
  - (j) Distribution charges, if any.
  - (k) Commissions to the banker to the issue.
  - (l) Fees and charges of the Valuer for valuing REIT Assets.
  - (m) Fees and charges of the civil works contractor.
  - (n) Remuneration of service providers e.g. letting agents, security etc.
  - (o) Fee to be paid to the Development Advisor, Project Accountant and Property Manager.
  - (p) Taxes, fees, duties and other charges applicable to the REIT Scheme on its income or its properties.
  - (q) Bank charges & financial cost with respect to the REIT Scheme.
  - (r) Any printing costs and related expenses for issuing the REIT Scheme's quarterly, half-yearly and annual accounts, etc.
  - (s) Any other expenses allowed by Commission time to time
11. Distribution policy
- The distribution policy, indicating the time period for distribution of dividend.
12. Financial Reports and accounts
- (a) The accounting year of the REIT Scheme.
  - (b) Particulars and frequency of the financial reports to be sent to the Unit Holders.
  - (c) Policy on valuation of the REIT Scheme's assets and determination of the NAV.
  - (d) Financial projections including projected balance sheet, profit and loss and cash flow statements.
  - (e) Borrowing policy, if any.
  - (f) Policy for Customer Advances.
13. Extinction of REIT Scheme
- (a) A summary of the circumstances in which the REIT Scheme may be extinguished and the manner in which the beneficiaries shall be transferred their proportionate shares.

- (b) Rights of creditors, if any.
14. Risks
- A statement that investment in the REIT Scheme is subject to risks and an exhaustive description of the risks involved.
15. General information
- (a) A list of documents concerning the REIT Scheme such as Trust Deed, Business Plan, Valuation Report, audited accounts of the RMC and Trustee, NOCs/approvals etc., shall be placed on the website of the RMC and provided free of cost to the prospective investors.
  - (b) A statement that the RMC accepts responsibility for the information contained in the Offering Document as being accurate at the date of publication.
  - (c) Construction schedule for the Project indicating deadlines and milestones.

## SCHEDULE V

### REQUIREMENTS FOR DELEGATION OF FUNCTIONS BY RMCs IN RELATION TO REIT SCHEMES

#### **A-Definitions**

Service Provider means a company to whom functions related to REIT Scheme are outsourced by an RMC but ultimate responsibility shall remain that of the RMC

#### **B-General**

1. An RMC may delegate to a third party (“Service Provider”) any of its functions in relation to a REIT Scheme under its management, except its core functions including, but not limited to investment decision making, risk management and compliance functions.
2. An RMC may delegate its function in relation to accounting of a REIT Scheme to a Service Provider provided the Service Provider to which such function is delegated has a Chief Accounting Officer / Chief Financial Officer who is compliant with the criteria specified under rule 7(a)(vi)(c) of the Non-banking Finance Companies (Establishment and Regulation) Rules, 2003.
3. An RMC may delegate function(s) to a Service Provider, initially for a period not exceeding three years, and subject to satisfactory performance of such Service Provider, it may extend term of contract for such period as it may deem appropriate. The RMC may cancel a contract earlier as per terms and conditions of the contract.
4. An RMC may delegate function to its associates or group entities provided such associate or group entity has in place systems, infrastructure, manpower, decision-making, record keeping, etc. for avoidance of any conflict of interest and to ensure an arm’s length dealing with the RMC and REIT Scheme under its management.

#### **C-Responsibilities of Board of Directors and Senior Management**

1. An RMC shall obtain prior written approval of its Board of Directors for entering into any material agreement with the Service Provider for delegation of any functions.
2. An RMC shall conduct due diligence of the Service Provider, prior to engaging it, to assess its capabilities and expertise in performing the functions being delegated. Such an assessment shall inter alia, include the following:
  - a) Capacity of the Service Provider to comply with its obligations under the service level agreement;
  - b) Adequacy of the resources and ability of the Service Provider to efficiently undertake the functions, especially in instances where the Service Provider

- performs services for multiple entities along with level of concentration of the outsourced arrangements with a single Service Provider;
- c) Potential conflict of interest especially where the Service Provider operates within the same industry and mechanism to adequately address such conflicts;
  - d) Qualitative and quantitative financial and operational factors;
  - e) Reputation factors;
  - f) Insurance coverage by the Service Provider;
  - g) Ability of the Service Provider to adhere to high standard of care;
3. An RMC's Board of Directors and its management shall be responsible and accountable for effective due diligence and oversight of all delegation decisions, to the regulator, unit holders of the REIT Scheme and other stakeholders.

#### **D-Risk Management and Controls**

- 1) An RMC and its Board of Directors shall be responsible for the effective management of any risks arising from delegation of functions and shall at the minimum ensure the following:
  - a) Comprehensive due diligence of the nature, scope and complexity of the delegation of functions to identify key risks along with risk mitigation strategies;
  - b) Delegation is consistent with the overall business strategy and objectives of the RMC;
  - c) Periodic reviews of delegation arrangements and identification of new material outsourcing risks which arise or may arise;
  - d) Analysis of the impact of the arrangement on the overall risk profile of the RMC, and whether adequate internal expertise and resources are available to mitigate the risks identified; and
  - e) Analysis of the potential benefits of delegation against the weaknesses that may arise, including the impact of disruption or unexpected termination of the delegated services.
- 2) An RMC shall put in place adequate procedures to monitor and maintain overall control of the delegation arrangement in accordance with its Board's approved policy and ensure performance of RMC's primary obligation for the functions that are delegated.
- 3) An RMC shall ensure that the outsourcing of services is reviewed by its internal audit function. An RMC shall have in place a contingency plan, approved by its board of directors, to mitigate any adverse impact arising from the discontinuity and disruption to

the delegated function(s) in the event the service level agreement or part thereof is terminated, or the function cannot be performed by the service provider for any reason whatsoever. Such plan shall specifically cover detailed review of alternatives (i.e. whether the RMC will perform the function itself or appoint a new service provider).

### **E-Service Level Agreement (SLA) with Service Provider**

- 1) An RMC shall enter into a written and binding service level agreement with significant Service Providers to formalize and document the delegation arrangement, which explicitly and carefully defines the roles, responsibilities and obligations of the Service Providers and the RMC.
- 2) An RMC shall ensure that the SLA adequately captures the nature and materiality of the delegation arrangement between the RMC and Service Provider and documents all its components. The terms and conditions governing the SLA shall at the minimum cover provisions dealing with:-
  - a) Firm and client confidentiality
  - b) Payment arrangements with Service Provider
  - c) Liability of the Service Provider to the RMC for unsatisfactory performance or other breach of the agreement
  - d) Guarantees and indemnities
  - e) Mechanisms to resolve disputes that might arise under the arrangement
  - f) Business continuity provisions
  - g) Conditions for termination of contract and exit strategies
  - h) Maintenance of books, records and documents for the time period stipulated in the law, rules and guidelines.
- 3) An RMC shall ensure that the SLA stipulates provisions for proper reporting and monitoring mechanisms from the significant Service Provider to the RMC and trustee of the REIT Scheme, including the RMC's right and access to prompt information and records in relation to the REIT scheme and its delegated functions.
- 4) An RMC shall ensure that the SLA contains appropriate provisions that empower the Commission to have ongoing access to books, records and documents, and it has the right of examination and inspection of the Service Provider, with or without notice.
- 5) An RMC shall endeavour that the material service level contracts are duly reviewed by a competent legal counsel with regards to its legal effect and enforceability.
- 6) An RMC shall ensure that copy of any material service level agreement is shared with

the Trustee of REIT Scheme within seven working days of entering into delegation agreement.

### **F-Confidentiality of Clients**

- 1) An RMC shall procure, from the Service Provider, a written undertaking to maintain the secrecy and confidentiality of the documents and information of clients that the service provider shall have access to, from any intentional or inadvertent disclosure to any unauthorized person(s).
- 2) An RMC shall ensure that any requirements pertaining to the confidentiality of clients' information particularly in terms of the delegated functions, as stipulated under any laws, rules, regulations or guidelines are adhered to at all times.
- 3) An RMC shall review the significant service provider's security policies, procedures and controls to ensure protection of confidentiality and security of clients' information.

### **G-Regulatory Obligations**

- 1) An RMC shall have the primary obligation, accountability and responsibility for complying with any regulatory requirements at all times notwithstanding delegation of any function to a Service Provider.
- 2) An RMC shall ensure that delegation of the functions does not in any way interfere with the ability of the RMC to fulfil its legal and regulatory obligations, or in efficiently performing any of its activities.
- 3) An RMC shall establish internal policies and procedures to ensure compliance with all relevant securities laws, regulations, guidelines, licensing conditions and rules and in this respect shall specifically ensure through service level agreement that the Commission has at all times—
  - a) Access to the books, records and documents of the service provider relating to the outsourced activities;
  - b) Be able to obtain copies of any books, records and documents whether from the RMC or the service provider; and
  - c) Be able to obtain promptly any other information concerning activities that are relevant for the performance of their regulatory oversight or supervisory functions.
  - d) An RMC shall ensure that appropriate measures are in place including specific provisions in the SLA that empower the Commission to:
  - e) Conduct examination and/or inspection at the premises of the Service Provider, by any person appointed in this behalf and to obtain copies of any report and

finding made on the service provider in conjunction with the service performed for the market intermediary; and

- f) Have access to the Service Provider and the RMC's records and documents, data of or information on transactions, and any other information of the RMC given to, stored at or processed by the service provider, and the right to access any report and finding made on the service provider.
- 4) An RMC shall procure a written undertaking from the Service Provider to the effect that the Commission shall, without any hindrance, reserve the right to conduct examination or inspection at the service provider's premises, including examining books and documents and having access to and obtain copies of the relevant books, records and documents as and when required.
- a) The Commission may at any time require or direct an RMC to perform the delegated function(s) itself internally or transfer the function to another Service Provider in the event that the Commission is not satisfied, for any reason whatsoever, with the performance of the service provider or the arrangement between RMC and the Service Provider, without any compensation whatsoever due to the RMC or the service provider.

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## SCHEDULE VI

### VALUATION REPORT

The valuation report shall adequately cover the following and shall be issued within one month of the completion of the valuation assignment:-

1. Name of the Valuer and credentials of the persons who conducted the valuation
2. Date of valuation
3. General Information
  - (a) The Real Estate being valued and the client.
  - (b) The assumptions used.
  - (c) Scope of assignment.
  - (d) Easements associated with the Real Estate.
  - (e) In case of Developmental and Hybrid REITs the following information provided by the RMC to the Valuer:
    - (i) Construction schedule along with milestones and deadlines.
    - (ii) Construction specifications.
    - (iii) Construction drawings.
4. Inspection of the Real Estate
  - (a) The date of inspection, name of the inspector and the site inspected.
  - (b) Details, where inspection of any part of the Real Estate was not possible and its impact on the valuation.
5. Description and Details of Real Estate
  - (a) Location map and the address of the Real Estate along with the name of concerned authority/jurisdiction.
  - (b) Photographs and drawings of the Real Estate along with accessibility map.
  - (c) Custodian of the title record e.g. LDA, CDA etc.
  - (d) In the case of Rental REITs, description of improvements and the present condition of the Real Estate.
  - (e) Floor plan, maps, photos, and other visual aid.
  - (f) For properties generating rental income e.g. shopping complex, office building, etc, details of occupancy rate, tenancy schedule, and types of income and operating costs etc. Any hazards / risks observed in the building and surrounding
6. Market and Neighborhood
  - (a) A description of the surrounding area and developments, if any.



- (b) Availability of communications, amenities and utilities in the surrounding area.
- (c) The supply and demand situations affecting the Real Estate to the best possible extent.

7. Approaches of valuation

- (a) In case of Rental REIT Scheme, value of the Real Estate shall be determined using all of the following three approaches,
  - i. Income Capitalization Approach
  - ii. Sales Comparison Approach
  - iii. Cost Approach

- (b) In case of Developmental REIT Scheme, value of the Real Estate shall be determined using Sales Comparison Approach and Cost Approach.

- (c) Opinion on Relevant Approach

The valuer shall provide an explanation of the relative strengths and weaknesses of various approaches and explicitly state the approach that is most appropriate for the REIT Scheme

8. Declaration by the Valuer

A declaration according to the format attached as Annexure "A".

Annexure “A”

DECLARATION

I,.....(Name of the person conducting the valuation)

of.....(name of the Valuer company)

carried out a valuation of.....(Name and address of the subject Real Estate)

and do solemnly and sincerely, to the best of my knowledge and belief declare:

1. That after an inspection of the Real Estate and a study of pertinent factors, including valuation trends and an analysis of neighbourhood data the market value of the subject Real Estate as on .....(date of valuation) is Rupees .....(amount in Rupee in both words and numbers).
2. That the statements of fact contained in this report are true and correct.
3. That I have not withheld any information.
4. That I have no interest in the Real Estate that is the subject of this report, and I have no personal interest or bias with respect to the parties involved.
5. That I have not been instructed either by my company or the client to report a predetermined value for the subject Real Estate.
6. That I am neither a director nor an employee of the RMC and do not have any financial interest, direct or indirect, in the RMC.
7. That I have personally inspected the Real Estate that is the subject of this report.

Declared by:

.....  
Name and signature:  
Designation:  
Date:

Witnessed by:

.....  
Name and signature:  
CEO of the Valuer Company  
Date:

## SCHEDULE VII

### PROCEDURE FOR CONVENING MEETING OF THE UNIT HOLDERS

#### GENERAL

1. REIT Management Company (RMC) managing the REIT Scheme shall be responsible for conducting and chairing the meeting of the unit holders. The trustee of a REIT Scheme shall attend every meeting of unit holders and ensure that all the requirements as specified by the Regulations for convening the meeting of unit holders are complied with. The unit holders of a REIT Scheme may cast vote on a resolution by physical presence in the meeting or through proxy or by post.

#### NOTICE OF UNIT HOLDERS' MEETING

2. An RMC shall send through registered post or courier service, notice of meeting of unit holders to each unit holder at his / her registered address along with Proxy Form and a voting paper (Annexure A) at least 7 working days prior to the date of such meeting. Such notice of the meeting shall also be published by the RMC in one issue each of daily newspaper in English and Urdu language having circulation all over Pakistan.
3. In case of joint unit holders, the notice shall be sent to the address of the joint holder whose name appears first in the record with the RMC and / or its Registrar / Transfer Agent.
4. The notice of the meeting shall specify complete information about unit holders' meeting such as date / time / venue of the meeting, purpose of the meeting (statement of material facts and other pertinent documents) and requirements for attending unit holders' meeting and voting mechanism. Notice shall also be sent by the RMC to the trustee and the Commission.
5. The notice of the meeting shall also include a postage pre-paid envelope for facilitating the communication of the assent / dissent of the unit holder(s) to the resolution by post. The self-addressed envelope shall bear the complete address of the Trustee (with the name of the REIT Scheme) as scrutinizer.

#### PROXY FORMS

6. Unit holders of REIT scheme shall submit filled and signed Proxy Form to the RMC along with attested copies of their CNICs. Proxy holder may not necessarily need to be a unit holder of the concerned REIT Scheme.
7. Proxy Form shall be witnessed by two persons with their names, addresses and CNIC numbers duly mentioned on the proxy form.

8. In case of other than individuals, the resolution of Board of Directors / power of attorney with specimen signature(s) of authorized person shall be submitted to the RMC along with proxy form.
9. Proxy Forms must be received by the RMC one day prior to the meeting.
10. RMC shall affix receiving stamp (mentioning date and time) and signature on each proxy form. .
11. Proxy form shall not be accepted in case the unit holder has opted to vote by post.

#### **REQUIREMENTS FOR VOTING THROUGH POST**

12. Unit Holder(s) desiring to vote by post, instead of physical presence in the meeting may fill up and complete the voting paper and send it to the Trustee.
13. Voting paper shall be completed and signed by the unit holder(s) as per specimen signature(s) provided to the RMC / its Registrar / Transfer Agent.
14. Original voting paper should reach the trustee of the REIT Scheme not later than one day prior to the meeting to be eligible for consideration by the trustee.
15. The Trustee shall compile the assent/dissent to the resolution received via post mentioning the particulars, i.e. names, folio numbers, number of units held by the unit holder, etc. The Trustee shall finalize its report before the commencement of the unit holders' meeting.

#### **PROCEEDINGS OF UNIT HOLDERS' MEETING**

16. Only those unit holders shall be eligible to attend and vote at the meeting whose names appear in the unit holders' register of the concerned REIT Scheme on the date immediately preceding the date of the unit holders' meeting.
17. An RMC or Registrar / Transfer Agent ("R/TA") shall record attendance of all the unit holders / proxy holders present in the meeting with complete list of unit holders of the scheme and specimen signatures of unit holders or any officer of corporate unit holders.
18. After taking attendance, an RMC or its R/TA shall provide one Voting Paper (Annexure-B) to every unit holder / Proxy holder for his / her filling and signing to cast his / her vote on the proposal. In case of joint holder(s) only one voting paper shall be issued and in case the meeting is attended by more than one joint holder, then the person whose name appears first in the register of unit holders shall be eligible to cast the vote.
19. After completing and signing the voting paper, each unit holder shall hand over duly filled and signed voting papers to the concerned person.
20. RMC or its R/TA shall count the voting papers, verify contents on voting paper including unit holding and shall perform signature verification.

21. Trustee shall scrutinize and consolidate the data including the details compiled by it on the basis of the voting papers received through post.
22. The trustee shall submit its report to chairperson of the meeting. The chairperson shall on the basis of summarized voting results, shall announce the final result of the meeting.

**CRITERIA FOR REJECTION OF PROXY/VOTING PAPERS**

23. The following are the basic criteria for rejection of Proxy/ Voting Papers in meeting:
  - (a) More than one Voting Paper is cast by a single unit holder / Proxy holder.
  - (b) Overwriting / cutting on Voting Paper.
  - (c) Unsigned Voting Paper.
  - (d) Signature of unit holder affixed on proxy form does not match with the specimen signature available in the RMC or its R/TA records.
  - (e) More than one proxy form is lodged by a unit holder in favor of more than one Proxy holder. In this case, all proxies shall stand rejected.
  - (f) More than one proxy form is lodged by a unit holder in favor of one Proxy holder. In this case, only one proxy shall be accepted.
  - (g) Photocopy of CNIC is not provided by Proxy holder.
  - (h) Proxy forms are not witnessed by two persons mentioning their names, addresses and CNIC numbers.
  - (i) Proxy form is received after the given time limit, i.e. not one day prior to the meeting.
  - (j) Proxy form submitted by an institutional investor is not supported by the Board of Directors resolution / power of attorney authorizing their representative to attend and vote in the meeting.
  - (k) Overwriting / corrections on Proxy Form which are not supported by unit holder's / Proxy holder's signature.

**OTHERS**

24. Minutes of the meeting of unit holders shall be prepared and signed jointly by the trustee and the RMC of the concerned scheme.
25. Minutes of the meeting duly signed along with special resolution passed by majority representing three fourths in value of the total outstanding units of the concerned REIT Scheme shall be sent by the trustee to the Commission within seven working days of the meeting.
26. All expenses incurred in convening unit holders' meetings shall be charged to the REIT Scheme .

27. Neither the RMC nor the Trustee shall be liable or responsible in any manner in case a voting paper duly dispatched is not received by the unit holder (s) or the duly filled and signed voting paper is not received by the trustee due to delay on part of the postal department or courier service company or due to any other reason beyond the control of the RMC and / or the Trustee.

**Annexure-A**

**Sample Voting Paper (through post)**

\_\_\_\_\_ Unit Holder's meeting

Date:

Time:

Place:

Name of Unit Holder: \_\_\_\_\_

Folio/Account/CDS Account # of Unit Holder:  
\_\_\_\_\_

**INSTRUCTION FOR VOTING**

PLEASE INDICATE YOUR VOTE BY SIGNING THE RELEVANT BOX OF THE SELECTED OPTION

1. IN FAVOUR OF RESOLUTION:

2. AGAINST RESOLUTION:

**Annexure-B**

**Sample Voting Paper (for physical presence in the meeting)**

_____ Unit Holder's meeting Date: _____ Time: _____ Place: _____
---

Name of Unit Holder: _____			
Folio/Account/CDS Account # of Unit Holder: _____			
Voting in own entitlement: _____	No of Units: _____		
Voting as proxy: _____	No of Units: _____		
Total _____	_____		
<b><u>INSTRUCTION FOR VOTING</u></b>			
PLEASE INDICATE YOUR VOTE BY SIGNING THE RELEVANT BOX OF THE SELECTED OPTION			
1. IN FAVOUR OF RESOLUTION:			
2. AGAINST RESOLUTION:	<table border="1" style="margin: auto;"><tr><td style="width: 150px; height: 20px;"></td></tr><tr><td style="width: 150px; height: 20px;"></td></tr></table>		



Schedule VIII

**FIT AND PROPER CRITERIA**

**DEFINITIONS**

"Key Executive" means key executives of the RMC and includes, inter alia, the persons discharging the following functional responsibilities, -

- a. Any executive or officer acting as second to chief executive officer including chief operating officer or by whatever name called;
- b. any person responsible for heading any specific licensed form of business
- c. chief financial officer, head of accounts or head of finance;
- d. head of internal audit;
- e. head of information technology;
- f. head of credit or risk management;
- g. head of human resource;
- h. head of operations;
- i. head of marketing/sales;
- j. head of research;
- k. head of treasury or
- l. chief investment officer;
- m. head of law, company secretary or compliance officer;
- n. fund manager; and
- o. any other functional responsibility which the Commission may include.

**APPLICATION AND SCOPE**

- (1) The Fit and Proper Criteria in relation to an RMC is applicable to the following persons:
  - (a) promoters and major shareholders of the RMC;
  - (b) director of the RMC;
  - (c) chief executive of the RMC;
  - (d) Key Executives of the RMC.
- (2) A proposed director or chief executive of the RMC shall not assume the charge of office until their appointment has been approved by the Commission.
- (3) The application for seeking approval of the Commission under clause (2) shall be

submitted by the RMC along with the requisite information required under Annexure “A” and an Affidavit as specified in Annexure “B”.

- (4) The appointment of Key Executives of an RMC does not require the approval of the Commission, however an RMC shall ensure at the time of appointing a Key Executive that such person qualifies the Fit and Proper Criteria.
- (5) The fitness and propriety of any person shall be assessed by taking into account all the relevant factors including but not limited to the following:
  - (a) Integrity and track record of such person;
  - (b) Financial soundness of such a person;
  - (c) Competence and capability of the person; and
  - (d) Conflict of interest of such person with the business of the RMC.

Provided that 5(c) and (d) may not be considered while assessing the fitness & propriety of promoters and major shareholder of the RMC.

Provided further that in case the sponsor and major shareholder is a body corporate, in addition to the relevant/ applicable clauses, corporate behaviour of the said body corporate and its sponsors shall be duly considered.

- (6) The Fit and Proper Criteria is perpetual in nature and an RMC shall ensure compliance with the provisions of Fit and Proper Criteria.
- (7) The RMC shall within 30 days of the close of each calendar year submit the following documents with regard to its chief executive and directors:
  - (a) Updated resume;
  - (b) CIB reports of the chief executive and directors and the companies, firms, sole proprietorships, etc where they are interested as directors, chief executives, partners or owners; and
  - (c) Latest tax returns.
- (8) All persons subject to Fit and Proper Criteria must submit any change in the submitted information through the company secretary of the RMC to the Commission and shall report any change with reference to their fitness and propriety to the respective RMCs within three business days of such change taking effect and RMCs shall within a period of seven business days from the date of receipt, report the same to the Commission.
- (9) RMC shall monitor whether any change in the status of its chief executive, directors and key executives is contrary to the requirements of the Fit and Proper Criteria. In case of any change in status result in non-compliance with the Fit and Proper Criteria, the RMC shall immediately stop the person from performing his assigned functions, informs the Commission and initiate the process for replacement of the individual with a fit and

proper individual.

- (10) Any violations or circumvention of the Fit and Proper Criteria shall be dealt with under the provisions of the Ordinance.

## ASSESSMENT OF FITNESS AND PROPRIETY

### **(1) Integrity and Track Record**

A person shall not be considered Fit and Proper if he:

- (i) has been convicted of an offence involving moral turpitude;
- (ii) has been involved in the mismanagement of investments, financial or business misconduct, fraud, etcetera;
- (iii) has been the subject to adverse findings, after conducting an inquiry, by the Commission or any other regulatory or professional body or government agency;
- (iv) has been actively involved in the management of a company or firm whose registration or license has been revoked or cancelled or which has gone into liquidation or other similar proceedings due to mismanagement of affairs, financial misconduct or malpractices;
- (v) is ineligible, under the Ordinance or any other legislation or regulation, from acting as a director or serving in a managerial capacity of an RMC or a company;
- (vi) has entered into a plea bargain arrangement with the National Accountability Bureau
- (vii) in case of promoters or major shareholder of RMC, does not have the requisite disclosed and verifiable financial resources; and
- (viii) in case of promoters or major shareholders of RMC, does not have an established and proven track record of successfully running a business enterprise for 3 to 5 years, preferably a public listed company.

### **(2) Financial soundness**

In determining a person's financial soundness, the following shall be considered:

- (i) whether such person's financial statements or record including wealth statements or income tax returns or assessment orders are available;
- (ii) whether the person has been declared by a court of competent jurisdiction as defaulter in repayment of loan to a financial institution exceeding Rupees one million;
- (iii) whether the latest Credit Information Bureau report of the person shows overdue payments or default to a financial institution;  
whether any instance of overdue payments or default to a financial institution or

write-offs by a financial institution are appearing in the latest Credit Information Bureau report of the person and of the companies, firms, sole proprietorships, etc where the person was a chief executive, director (major shareholder/ sponsor), partner, owner, etc

- (iv) whether the person has applied to be adjudicated as an insolvent and his application is pending;
- (v) whether the person is an un-discharged insolvent; and
- (vi) whether the person has been declared a defaulter by a stock exchange.

### **(3) Competence and Capability**

In determining a person's competence and capability the following shall be considered:

- (i) the directors should be individuals having management or business experience of at least five years at a senior level;
- (ii) the directors shall have experience and knowledge in any profession such as banking, Collective Investment Scheme, accounting, law, internal audit or information technology, etc. and at least one director shall have five years' experience of developing and managing real estate projects;
- (iii) the chief executive should have a minimum experience of seven to ten years in a senior management position, preferably in the regulated financial services sector;
- (iv) the chief executive should have demonstrated, through his qualification and experience, the capacity to successfully undertake the cognate responsibilities of the position; and
- (v) the key executives must be qualified professionals possessing relevant experience and certification relating to the job or assignment.

### **(4) Conflict of interest**

The directors or chief executive of RMC shall not:

- (i) be a director in any other RMC engaged in a similar business in Pakistan.  
Provided that this condition shall not apply to nominees of the Federal or Provincial Governments on the board of any RMC;
- (ii) be a director, chief executive, chief financial officer, chief internal auditor, research analyst or a trader (by whatever name or designation called) in a stock brokerage house or in any company or entity owned and controlled by a member of a stock exchange; and

- (iii) be a member of a stock exchange engaged in the business of brokerage or is a spouse of such member or in control of more than 20% shareholding, directly or indirectly through his close relatives.

Provided that the condition (ii) and (iii) shall not apply to the companies having license to undertake investment advisory services or corporate advisory services and are also engaged in brokerage business.

In case of Key Executives, the RMCs must ensure that no Key Executive shall head more than one functional area that give rise to conflict of interest within the organization. For example, the departments of audit and accounts shall not be headed by the same person. Further, a key executive shall not hold directorship in his or her personal capacity:

- (a) in a business concern which is also a client of the RMC, and
- (b) in any other financial institution.

- (1) Information to be provided by promoters, major shareholders (other than a body corporate), proposed directors and proposed chief executive of the RMC

1.	Curriculum Vitae/Resume containing:
a	Name: (former name if any):
b	Father's or Husband Name:
c	C.N.I.C # / Passport # (In case of foreign nationals) –(attach copy)
d	Latest photograph
e	Nationality:
f	Age:
g	Contact details:
	i) Residential address:
	ii) Business address:
	iii) Tel:
	iv) Mobile:
	v) Fax:
	vi) E-mail:
g	National Tax Number:
h	Present occupation:
i	Qualification(s):
	i) Academic: (Attach copy) (In case of CEO, HEC verification of all degrees)
	ii) Professional: (Attach copy) (In case of CEO, HEC verification of all degrees)
j	Trainings
K	Experience: (Positions held during the last 10 years along with name and address of company/ institution) (Position held during the last ten years (along with name and address of company/institution/ body where appointment held, nature of the company/institution/body and dates of appointment)) In case of CEO, verification of antecedents from all the previous employers
2.	Status of directorship    Shareholder <input type="checkbox"/> Nominee <input type="checkbox"/> Name of the shareholders/ Group of shareholders he is representing Nature of directorship    Executive <input type="checkbox"/> Non-executive <input type="checkbox"/> Independent <input type="checkbox"/> Non-independent <input type="checkbox"/> Status of directorship    Nominee director <input type="checkbox"/> Number of shares subscribed or held _____ Nominated by _____ (name of shareholder) _____ Personal net worth (copy of wealth statement) _____
3.	Names of companies, firms, sole proprietorships and other organizations of which the proposed person is a chief executive, director, partner, owner, office holder or major shareholder.
4.	CIB report issued by SBP for the companies, firms, sole proprietorships, etc. where the applicant is interested as director (sponsor or major shareholder), chief executive, partner or owner each company of which he has been a director (attach original CIB reports)
	An undertaking providing details of the following: I. Any write off availed from any financial institution during the last five years II. Any default of Finance obtained from any financial institution during the last five years.

	<p>III. Placement on ECL during the last five years</p> <p>IV. Any conviction from any Court of Law or any plea bargain with NAB during the last ten years</p> <p>V. Any write off or default by any related or affiliated person or by any company on whom the applicant or anyone closely related to him had an interest as sponsor, major shareholder, director, chief executive, key executives, etc. during the last five years</p>
5.	In the case of appointment of directors the date of board of directors' meeting in which the appointment of proposed director was approved. (Attach copy of the minutes of the meeting of the board of directors. If the director is elected, then attach a copy of the minutes of the general meeting of the company.)
6.	Names of persons on the board of the RMC who are related to the applicant.

Signature \_\_\_\_\_

\*use additional sheets if required

(2) Information to be provided by a body corporate as promoters and major shareholders of the RMC

1. Financial statements for the last three years;
2. Details of business places;
3. Shareholding details;
4. CIB report of the company and its directors and sponsors;
5. Details of any write off availed from any financial institution during the last five years
6. Details of any default of Finance obtained from any financial institution during the last five years.
7. Details of any rescheduling of Finance obtained from any Financial Institution during the last five years.
8. Any substantial adverse verdicts against the Company from any Court of Law during the last ten years
9. Details of associated companies and subsidiaries;
10. Details of any exiting litigation in the name of the company, its sponsors and directors;
11. Details of any inquiry, investigation conducted by the Commission or any other regulatory or professional body or government agency during the last five years; and
12. Any other information as may be required by the Commission.

**Affidavit**

**Before the Securities and Exchange Commission of Pakistan**

**(On Stamp Paper of Appropriate Value)**

I, \_\_\_\_\_ son/daughter/wife of \_\_\_\_\_ adult, resident of \_\_\_\_\_ and holding CNIC/ Passport No. \_\_\_\_\_ do hereby state on solemn affirmation as under:-

1. That I am eligible for the position of \_\_\_\_\_ according to the Fit and Proper Criteria for the position of \_\_\_\_\_, annexed to the Non-Banking Finance Companies (Establishment & Regulation) Rules 2014.
2. That I hereby confirm that the statements made, undertakings provided and the information given by me including that required under Schedule VIII is correct and that there are no facts which have been concealed.
3. That I have no objection if the Securities and Exchange Commission of Pakistan requests or obtains information about me from any third party.
4. That I undertake to bring to the attention of the Securities Exchange Commission of Pakistan any matter which may potentially affect my status for the position of \_\_\_\_\_ as per the Fit and Proper Criteria annexed to the Non-Banking Finance Companies and Notified Entities Regulations, 2008.
5. That all the documents provided to Securities Exchange Commission of Pakistan are true copies of the originals and I have compared the copies with their respective originals and certify them to be true copies thereof..

\_\_\_\_\_  
DEPONENT

The Deponent is identified by me

Signature \_\_\_\_\_  
ADVOCATE  
(Name and Seal)

Solemnly affirmed before me on this \_\_\_\_\_ day of \_\_\_\_\_ at \_\_\_\_\_ by the Deponent above named who is identified to me by \_\_\_\_\_, Advocate, who is known to me personally.

Signature \_\_\_\_\_  
OATH COMMISSIONER FOR TAKING AFFIDAVIT



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( Bushra Aslam )  
Secretary to the Commission