

# **GUIDELINES ON REAL ESTATE INVESTMENT TRUSTS**

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# GUIDELINES ON REAL ESTATE INVESTMENT TRUSTS

## Chapter 1

### INTRODUCTION

- 1.01 The *Guidelines on Real Estate Investment Trusts* is issued by the SC under section 377 of the *Capital Markets and Services Act 2007* (CMSA). These guidelines set out requirements to be complied with by any person intending to establish a real estate investment trust in Malaysia and issue, offer or invite any person to subscribe for or purchase units of the real estate investment trust.
- 1.02 These guidelines replace and supersede the *Guidelines on Real Estate Investment Trusts* issued on 3 January 2005 and all guidance notes and circulars issued following those guidelines.
- 1.03 These guidelines are aimed at providing a regulatory environment that will protect the interests of the investing public and facilitate the orderly development of the real estate investment trust industry in Malaysia. In addition, these guidelines are also drawn up to govern the operation of real estate investment trusts established in Malaysia.
- 1.04 These guidelines and the securities laws form the regulatory framework for real estate investment trusts in Malaysia, and should be read together. All parties to a real estate investment trust are expected to be guided by the letter and spirit of the regulatory requirements.
- 1.05 The SC may take action against persons who fail to comply with and/or observe any of the provisions in these guidelines, as are permitted under section 354 of the CMSA and/or other relevant provisions under the CMSA.
- 1.06 The SC may exempt where it deems appropriate or, upon application, grant exemptions or variations from compliance with any requirement in these guidelines.
- 1.07 The SC may, from time to time, issue practice notes to further provide greater clarity and guidance on any of the provisions in these guidelines. The practice notes must be complied with in the same manner as these guidelines.
- 1.08 These guidelines (including practice notes) may be reviewed as and when necessary.

- 1.09 For the establishment of an Islamic real estate investment trust, a person should also observe and ensure compliance with the requirements under the *Guidelines for Islamic Real Estate Investment Trusts*, in addition to the requirements in these guidelines.
- 1.10 Any person engaged in dealing, marketing and distribution activities (including issuance of advertisements and promotional materials) or online transactions/activities relating to real estate investment trusts, should observe and ensure compliance with relevant securities laws and the following guidelines (where applicable):
- (a) *Guidelines on Marketing and Distribution of Unit Trust Funds;*
  - (b) *Guidelines on Unit Trust Advertisements and Promotional Materials;* and
  - (c) *Guidelines on Online Transactions of, and Online Activities in Relation to, Unit Trusts.*
- 1.11 Under section 232(1) of the CMSA, a person should not issue, offer for subscription or purchase, make an invitation to subscribe for or purchase, any securities unless a prospectus has been registered by the SC and the prospectus complies with the requirements or provisions of the CMSA. In addition, under section 235(1)(f) of the CMSA, the SC has issued the *Prospectus Guidelines for Collective Investment Schemes* which sets out the minimum information required by the SC in a real estate investment trust's prospectus.

## Chapter 2

## DEFINITIONS

2.01 In these guidelines, the following words have the following meanings, unless the context otherwise requires:

accounting records	includes invoices, receipts, orders for payment of money, bills of exchange, cheques, promissory notes, vouchers, and other documents of prime entry. They also include working papers and other documents necessary to explain the methods and calculations by which the accounts are made up.
accounts and consolidated accounts	means the statement of profit or loss and other comprehensive income and statement of financial position, and includes the statement of cash flows, other statements and notes (other than auditors' reports or directors' reports), attached or intended to be read with the statement of comprehensive income or statement of financial position. <i>(Amended on 28 December 2012)</i>
adviser	means a Malaysian incorporated—  (a) investment bank/merchant bank;  (b) universal broker; or  (c) such other person who provides advice/information to the applicant where such advice/information is submitted to the SC with any proposal.
auditor	has the same meaning as given under the CMSA.
associated person	means the person within the meaning of section 3 of the CMSA.
assets of the fund	includes assets of the fund and all amounts due to the fund.

Bursa Securities	means Bursa Malaysia Securities Bhd.
cancellation price for units	means the price payable by the real estate investment trust for the cancellation of a unit in the fund.
close-ended fund	means a fund with limited number of units in issue and has a limited offer period.
CMSA	means the <i>Capital Markets and Services Act 2007</i> .
collective investment schemes	<p>means, for the purpose of these guidelines, any arrangement where–</p> <ul style="list-style-type: none"><li>(a) it is made for the purpose, or having the effect, of providing facilities for persons to participate in or receive profits or income arising from the acquisition, holding, management or disposal of securities, futures contracts or any other property (referred to as “scheme’s assets”) or sums paid out of such profits or income;</li><li>(b) the persons who participate in the arrangements do not have day-to-day control over the management of the scheme’s assets; and</li><li>(c) the scheme’s assets is managed by an entity who is responsible for the management of the scheme’s assets and is approved/authorised/licensed by a relevant regulator to conduct fund management activities;</li></ul> <p>and includes among others unit trust funds, real estate investment trusts, exchange-traded funds, restricted investment schemes and closed-end funds.</p>

creation price for units	means the price payable to the real estate investment trust for the creation of a unit in the fund.
debenture	has the same meaning as given under the CMSA.
deed	has the same meaning as given under the CMSA.
eligible market	means a market that–  (a) is regulated by a regulatory authority;  (b) operates regularly;  (c) is open to the public; and  (d) has adequate liquidity for the purposes of the fund in question.
Equity Guidelines	<i>(Deleted on 13 July 2011)</i>
financial statements	includes the accounts or consolidated accounts of a fund and such other statements which describe the financial position or performance of the fund.  <i>(Amended on 28 December 2012)</i>
fund	means a real estate investment trust.
fund's property	means assets of the fund.
fund manager	means a person who holds a Capital Markets Services Representative's Licence to carry on the regulated activity of fund management.

fund management	has the same meaning as given under the CMSA.
fund reports	means the annual and interim reports of the real estate investment trust.
general public	means the general public within Malaysia.
independent member	<p>in relation to the board of directors of a management company, the investment committee of a real estate investment trust and the Shariah adviser, refers to a person who is free of any relationship with the management company or the controlling or significant shareholder(s) of the management company that would otherwise interfere with the member's exercise of independent judgement. In any case, a period of six months must elapse before a person who was previously connected to the management company or controlling/significant shareholder(s) can be deemed to be independent. The following is a non-exhaustive list of persons that would not be considered as an "independent member":</p> <ul style="list-style-type: none"><li>(a) Officer of the management company;</li><li>(b) Officer of the trustee of the fund;</li><li>(c) Officer of any body corporate or unincorporate that has power to appoint or make recommendations towards the appointment of board of directors of the management company, members of the investment committee and the Shariah adviser of the real estate investment trust;</li><li>(d) Person related to an officer of the management company or trustee of the fund;</li></ul>

- (e) Person representing or seen to be representing any body corporate or unincorporate with a controlling interest in the management company; or
- (f) Person who, within six months prior to his appointment as independent member, has derived any remuneration or benefit (other than retirement benefit) from the management company or any body corporate or unincorporate that has power to appoint or make recommendations towards the appointment of board of directors of the management company, members of the investment committee and the Shariah adviser of the real estate investment trust.

interested persons	includes directors, major shareholders and chief executive officer of the management company.
Islamic securities	has the same meaning as given under the <i>Guidelines on the Offering of Islamic Securities</i> .
liabilities of the fund	include all amounts payable by the fund, accrued expenses and taxes, and any appropriate provisions for contingencies.
licensed institution	means any institution licensed or deemed to be licensed under the <i>Banking and Financial Institutions Act 1989</i> and <i>Islamic Banking Act 1983</i> .
major shareholder/ unit holder	means a person who has an interest or interests in one or, more voting shares/units in a company/fund and the nominal amount of that share/unit, or the aggregate of the nominal amounts of those shares/units, is:

- (a) equal to or more than 10% of the aggregate of the nominal amounts of all voting shares/units in the company/fund; or
- (b) equal to or more than 5% of the aggregate of the nominal amounts of all voting shares/units in the company/fund where such person is the largest shareholder/unit holder of the company/fund.

*For the purpose of this definition, "interest in a unit" has the meaning given in section 4 of the CMSA.*

management company has the same meaning as given under the CMSA.

management expense ratio (MER) means the ratio of the sum of fees and the recovered expenses of the fund to the average value of the fund calculated on a daily basis, i.e.

$$\frac{\text{Fees of the fund + Recovered expenses of the fund}}{\text{Average value of the fund calculated on a daily basis}} \times 100$$

Where:

Fees = All ongoing fees deducted/deductible directly from the fund in respect of the period covered by the management expense ratio, expressed as a fixed amount, calculated on a daily basis. This would include the annual management fee,

the annual trustee fee and any other fees deducted/deductible directly from the fund;

Recovered = All expenses recovered from/ expenses charged to the fund, as a result of the expenses incurred by the operation of the fund, expressed as a fixed amount. This should not include expenses that would otherwise be incurred by an individual investor (e.g. brokerage, taxes and levies); and

Average = The NAV of the fund, including value of net income value of the fund, the unit less expenses on an accrued basis, in respect of the period covered by the management expense ratio, calculated on a daily basis.

NAV per unit means the NAV of the fund divided by the number of units in circulation, at the valuation point.

net asset value (NAV) means the value of all the fund's assets less the value of all the fund's liabilities at the valuation point.

*For the purpose of computing the annual management fee and annual trustee fee, the NAV of the fund should be inclusive of the management fee and trustee fee for the relevant day.*

non-real estate-related assets means:

- (a) Listed shares issued by non-property companies;

- (b) Debt securities issued by, or fully guaranteed by the government of Malaysia; and
- (c) Commercial papers or other debt securities issued by companies or institutions with credit rating of not less than–
  - (i) A/P1 by RAM Holdings (*Amended on 13 July 2011*); and
  - (ii) A/MARC-1 by Malaysian Rating Corporation Bhd.

offer for sale	means an invitation by, or on behalf of, an existing holder to purchase units of the fund already in issue or allotted.
offer for subscription	means an invitation by, or on behalf of, the fund to subscribe for units of the fund not yet in issue or allotted.
offering to the general public	means an offer for sale and/or an offer for subscription.
officer	has the same meaning as given under the CMSA.
ordinary resolution	means a resolution passed by a simple majority of votes validly cast at a meeting of unit holders.
partner	in relation to a director, chief executive officer or major shareholder of the management company, the management company, trustee or major unit holder of the fund or person connected with a director, chief executive officer or major shareholder of the management company, the management company, trustee or major unit holder of the fund, means such person who falls within any of the following categories:

- (a) A person with whom the director, chief executive officer or major shareholder of the management company, the management company, trustee or major unit holder of the fund or person connected with a director, chief executive officer or major shareholder of the management company, the management company, trustee or major unit holder of the fund, is in or proposes to enter into partnership with. "Partnership" for this purpose is given the meaning under section 3 of the *Partnership Act 1963*; and
- (b) A person with whom the director, chief executive officer or major shareholder of the management company, the management company trustee or major unit holder of the fund or person connected with a director, chief executive officer or major shareholder of the management company, the management company, trustee or major unit holder of the fund, has entered into or proposes to enter into a joint venture, whether incorporated into or not.

person connected

in relation to a director, chief executive officer or major shareholder of the management company, the management company, trustee or major unit holder of the fund, means such person who falls under any of the following categories:

- (a) A family member of the director, chief executive officer, major shareholder of the management company, or major unit holder of the fund;
- (b) A trustee of a trust (other than a trustee for an employee share scheme or

pension scheme) under which the director, chief executive officer or major shareholder of the management company, the management company, trustee or major unit holder of the fund; or a family member of the director, chief executive officer or major shareholder of the management company or major unit holder, is the sole beneficiary;

- (c) A partner of the director, chief executive officer or major shareholder of the management company, the management company, trustee or major unit holder of the fund; or a partner of a person connected with that director, chief executive officer or major shareholder of the management company, the management company, trustee or major unit holder of the fund,
- (d) A person who is accustomed or under obligation, whether formal or informal, to act in accordance with the directions, instructions or wishes of the director, chief executive officer or major shareholder of the management company, the management company, trustee or major unit holder of the fund;
- (e) A person in accordance with whose directions, instructions or wishes the director, chief executive officer or major shareholder of the management company, the management company, trustee or major unit holder of the fund, is accustomed or is under obligation, whether formal or informal, to act;
- (f) A body corporate or its directors which/ who is/are accustomed or under obligation, whether formal or informal,

to act in accordance with the directions, instructions or wishes of the director, chief executive officer or major shareholder of the management company, the management company, trustee or major unit holder of the fund;

- (g) A body corporate or its directors whose directions, instructions or wishes the director, chief executive officer or major shareholder of the management company, the management company, trustee or major unit holder of the fund, is accustomed or under obligation, whether formal or informal, to act;
- (h) a body corporate in which the director, chief executive officer or major shareholder of the management company, the management company, trustee or major unit holder of the fund; and/or persons connected to him are entitled to exercise or control the exercise of, not less than 15% of the votes attached to the voting shares in the body corporate; or
- (i) A body corporate which is a related corporation.

principal adviser	means the adviser responsible for making submissions to the SC for proposals under these guidelines.
property companies	mean companies whose core activities are real estate-related.
prospectus	has the same meaning as given under the CMSA.
real estate investment trust	or “property trust fund” means unit trust scheme that invests or proposes to invest primarily in income-generating real estate.

real estate	means land and all things that are a natural part of the land as well as things attached to the land both below and above the ground.
real estate-related assets	includes units of other real estate investment trusts, listed securities of and issued by property companies, listed or unlisted debt securities of and issued by property companies, and real estate-related asset-backed securities.
related corporation	has the same meaning as given under the CMSA.
related party	means—  (a) the management company of the fund;  (b) the trustee of the fund;  (c) a major unit holder of the fund;  (d) a director, chief executive officer or major shareholder of the management company; or  (e) a person connected with any director, chief executive officer, or major shareholder of the management company, or a person connected with the management company, trustee or a major unit holder of the fund.
restricted offer for sale	means an invitation to an identifiable group/pool of investors by, or on behalf of, an existing unit holder to purchase units of the fund already in issue or allotted.
restricted offer for subscription	means an invitation to an identifiable group/pool of investors by, or on behalf of, an existing unit holder to subscribe for units of the fund not yet in issue or allotted.

SC	means the Securities Commission established under the SCA.
SCA	means the <i>Securities Commission Act 1993</i> .
securities	has the same meaning as given under the CMSA.
securities laws	has the same meaning as given under the SCA.
single-purpose companies	mean unlisted companies whose principal assets comprise real estate.
special resolution	means a resolution passed by a majority of not less than 3/4 of unit holders voting at a meeting of unit holders.  <i>For the purpose of terminating or winding up a fund, a special resolution is passed by a majority in number representing at least 3/4 of the value of the units held by unit holders voting at the meeting.</i>
total asset value	means the value of all the fund's assets based on the latest valuation.
unit	has the same meaning as given under the CMSA.
unit trust fund	has the same meaning as the expression "unit trust scheme" in the CMSA and shall include real estate investment trusts.

## Calculation of Time Period

- 2.02 Reference to "days" in these guidelines will be taken to mean calendar days unless otherwise stated. Furthermore, any time period stated in these guidelines where no specific method for determining the time period is set out, the period starts on the day after the day of the event.

## Chapter 3

### THE MANAGEMENT COMPANY

#### Appointment of Management Company

- 3.01 As prescribed under sections 288(2) and 289(1) of the CMSA, only a management company approved by the SC can act as a management company to a real estate investment trust.
- 3.02 A management company is a company that–
- (a) establishes a real estate investment trust;
  - (b) issues, offers for subscription, makes an invitation to subscribe for or purchase units of the real estate investment trust; and
  - (c) operates and administers the real estate investment trust.
- 3.03 Where a management company carries on any regulated activity specified in Schedule 2 of the CMSA, the management company should be a holder of a Capital Markets Services Licence to carry on the regulated activity, and should observe and comply with the relevant guidelines issued by the SC for licence holders.

#### Eligibility Requirements

- 3.04 A management company must–
- (a) be an entity incorporated in Malaysia;
  - (b) (except where the management company is licensed by the SC) be a subsidiary of–
    - (i) a company involved in the financial services industry in Malaysia;
    - (ii) a property-development company;
    - (iii) a property-investment holding company; or

- (iv) any other institution which the SC may permit;
- (c) have a minimum of 30% local equity; and (*Amended on 13 July 2011*)
- (d) have a minimum shareholders' funds of RM1 million at all times.

## **Reconstruction, Amalgamation and Change in Shareholding**

- 3.05 Any scheme of reconstruction or amalgamation in which the management company is a party, or any change in the shareholding of the management company, requires the SC's prior approval vis-à-vis its continuing eligibility to be a management company of a real estate investment trust.

## **Directors**

- 3.06 The board of directors of a management company should comprise at least two independent members, while maintaining a minimum ratio of at least one-third independent members at all times. The independent directors of a management company should, in addition to their duties and responsibilities as directors, represent and safeguard the interests of unit holders.
- 3.07 The persons appointed should–
- (a) be of good repute and character;
  - (b) observe high standards of integrity and fair dealing in carrying out their duties and responsibilities;
  - (c) act with due skill, care and diligence in carrying out their duties and functions in accordance with these guidelines; and
  - (d) possess the necessary qualifications, expertise and experience, particularly in the respective fields to perform their duties and responsibilities in a fit and proper manner.
- 3.08 The persons should not have been involved in any unethical/ inappropriate practice. Among others, the persons could be subject to a disqualification in any of the following events:

- (a) A petition filed under bankruptcy laws or the persons are declared bankrupt;
  - (b) A criminal proceeding for the conviction for fraud, dishonesty or any other offences punishable with imprisonment of one year or more, anywhere in the world;
  - (c) Any inquiry/investigation carried out by any government/statutory authority or body, in which an adverse finding was found; or
  - (d) Any unethical practice and activity which would render the persons unfit to be a director of a management company.
- 3.09 It is the responsibility of the management company to assess the ability of the persons to carry out the duties and responsibilities required of them. In the case of a newly established management company, this responsibility lies with the holding company and/or promoter and its board of directors.
- 3.10 Where any person becomes subject to any disqualification or becomes otherwise unfit to hold office, the management company should ensure that the person vacates the position immediately. The management company should notify the SC immediately of any disqualification and when the position becomes vacant.
- 3.11 A director of a management company should not—
- (a) hold office as a director of more than one management company at any one time; and
  - (b) hold office as a member of the investment committee of funds operated by another management company.

## **Key Personnel**

### ***Chief Executive Officer***

- 3.12 A management company should appoint a chief executive officer who is a full-time officer.

- 3.13 The person appointed should comply with the fit and proper criteria stipulated under clauses 3.07 and 3.08.
- 3.14 Where the chief executive officer becomes subject to any disqualification or becomes otherwise unfit to hold office, the management company should ensure that the person vacates the position immediately. The management company should notify the SC immediately of any disqualification and when the position becomes vacant.

### ***Designated Person Responsible for the Fund***

- 3.15 A management company should appoint an individual as a designated person responsible for the real estate portfolio management of the fund, who should possess the necessary experience and expertise in real estate investment.
- 3.16 Where the fund's investment strategy includes investments in real estate-related assets or non-real estate-related assets, the management company should also ensure that a designated person responsible for the fund management function is appointed, whether the function is undertaken internally within the management company or externally. Where the function is delegated to an external party, the management company should ensure that the delegate appoints a designated person for the fund.
- 3.17 For the purpose of clause 3.16, the designated person must be a holder of a Capital Market Services Representative's Licence to carry on the regulated activity of fund management. Where the designated person is in a foreign-incorporated fund management company, the designated person must be licensed/registered/approved/authorised to carry on the activity of fund management by the relevant regulator in his home jurisdiction.

### ***Compliance Person***

- 3.18 A management company should appoint a person responsible for ensuring compliance with the deed, prospectus, these guidelines, and securities laws.

- 3.19 The compliance person should report to the board of directors.
- 3.20 Where a management company manages a fund expressed to be managed and administered in accordance with Shariah principles, the compliance person should have a basic knowledge of Shariah laws/principles.

### ***Property Manager***

- 3.21 A management company should appoint a property manager approved by the trustee to manage the real estates of the fund.
- 3.22 The property manager appointed should possess the necessary experience and expertise in real estate management.

### **Internal Audit**

- 3.23 A management company should maintain an internal audit function to report on the adequacy, effectiveness and efficiency of the management, operations, risk management, and internal controls.
- 3.24 The internal audit must, among others–
  - (a) follow clearly defined terms of the internal audit framework which sets out the scope, objectives, approach, and reporting requirements;
  - (b) adequately plan, control and record all audit work performed, and record the findings, conclusions, and recommendations; and
  - (c) highlight matters in the audit report, which should be resolved satisfactorily in a timely manner.

### **Roles and Responsibilities of a Management Company**

- 3.25 In addition to the duties stipulated under the CMSA, a management company should observe, act and carry out its duties in accordance with the prescribed roles and responsibilities set out in this chapter.

## **General**

- 3.26 A management company should operate the fund and exercise its responsibilities according to the deed and prospectus, these guidelines, securities laws, and acceptable and efficacious business practices within the real estate investment trust industry.
- 3.27 A management company should—
- (a) exercise the degree of care and diligence that a reasonable person would exercise in the position of a management company;
  - (b) act in the best interests of unit holders and, if there is a conflict between unit holders' interests and its own interests, give priority to unit holders' interests;
  - (c) observe high standards of integrity and fair dealing in managing the fund to the best and exclusive interest of unit holders;
  - (d) not improperly make use of information acquired through being the management company to—
    - (i) gain an advantage for itself or other person; or
    - (ii) cause detriment to unit holders in the fund;
  - (e) ensure that the fund's property is—
    - (i) clearly identified as the fund's property; and
    - (ii) held separately from the assets of the management company and any other fund managed by the management company; and
  - (f) comply with any other duty, not inconsistent with the CMSA and these guidelines, that is conferred on the management company by the deed.
- 3.28 A management company should, among others—
- (a) establish and maintain risk management systems and controls

- to enable it to identify, assess, mitigate, control and monitor risks in relation to the fund it operates and manages;
- (b) have adequate human resource with the necessary qualification, expertise and experience to carry on business as a management company; and
  - (c) have adequate and appropriate systems, procedures, and processes to undertake the business in a proper and efficient manner.
- 3.29 A management company should account to the trustee for any loss suffered by the fund as a result of the management company's failure to exercise the degree of care and diligence required in operating and managing the fund.
- 3.30 A management company should ensure that its officers and delegates—
- (a) do not make improper use of information acquired through being such an officer or delegate of the management company to—
    - (i) gain an advantage for himself or another person; or
    - (ii) cause detriment to unit holders in the fund;
  - (b) do not make improper use of their position as such officers or delegates to gain, directly or indirectly, an advantage for themselves or for any other person or to cause detriment to unit holders in the fund; and
  - (c) comply with any other duty or obligation as may be prescribed under the securities laws, trust laws or these guidelines.

### ***Foreign Investments***

- 3.31 Where investments involve real estates located outside Malaysia, the management company should ensure that it has the necessary experience, capability, resources, and competence to deal with the legal, regulatory, and other requirements of foreign real estate investments.

- 3.32 A management company must, at a minimum, be able to demonstrate that it has the requisite competence, experience, and resources to—
- (a) analyse the issues and risks involved in foreign investments;
  - (b) develop, implement, and keep up-to-date a set of effective internal controls and risk management systems to deal with existing and foreseeable risks involved in foreign investments; and
  - (c) inform investors in a clear, concise, and timely manner of the investment profile and risk to the fund.
- 3.33 A management company should have a contingency plan that enables it to proactively respond to any urgent need that may arise in the course of its investment and management of foreign real estates and its divestment of such real estates.

### ***Valuation***

- 3.34 A management company should take all reasonable steps and exercise due diligence to ensure that the fund's property is correctly valued in line with the provisions of Chapter 10 and Schedule C of these guidelines, the deed, and the prospectus.
- 3.35 For the purpose of valuing the fund's property, a management company should not do or omit anything that would, or might confer on itself a benefit or advantage at the expense of unit holders or potential unit holders.

### ***Pricing (for Unlisted Fund)***

- 3.36 A management company should take all reasonable steps and exercise due diligence to ensure that the fund's units are correctly priced, in line with the provisions of Chapter 12 of these guidelines, the deed, and the prospectus.
- 3.37 For the purpose of pricing the units, a management company should not do or omit anything that would, or might confer on itself a benefit or advantage at the expense of unit holders or potential unit holders.

### ***Transactions***

- 3.38 A management company should conduct all transactions for a fund at arm's length.
- 3.39 A management company should not act or conduct transactions in any manner that would result in unnecessary cost or risk to the fund.

### ***Maintenance of Records***

- 3.40 A management company should maintain proper accounting records and other records as are necessary—
  - (a) to enable a complete and accurate view of the fund to be formed; and
  - (b) to comply with the deed, these guidelines, securities laws, and any other relevant law.
- 3.41 A management company should ensure that the financial statements of the fund give a true and fair view of the fund's financial position as at the end of the fund's financial period.
- 3.42 A management company should prepare and present, or cause to be prepared and presented, its financial statements in accordance with approved accounting standards, the deed, these guidelines, and securities laws.

### ***Provision of Information***

- 3.43 A management company must submit or make available any information relating to the fund, its business and any other information as may be required by the SC and the trustee from time to time.

## Chapter 4

### THE TRUSTEE

#### Appointment of Trustee

4.01 As prescribed under sections 288(1)(a) and 289(1) of the CMSA, a trustee must be appointed for a real estate investment trust and the appointment must be approved by the SC.

#### Eligibility Requirements

4.02 A trustee must–

- (a) be a trust company registered under the *Trust Companies Act 1949* or incorporated under the *Public Trust Corporation Act 1995*;
- (b) be registered with the SC; and
- (c) have a minimum issued and paid-up capital of not less than RM500,000.

#### Roles and Responsibilities of Trustee

4.03 In addition to the duties stipulated under the CMSA, the trustee should observe, act, and carry out its duties in accordance with the prescribed roles and responsibilities set out in this chapter.

#### *General*

4.04 A trustee should–

- (a) act honestly and in accordance with the deed and prospectus, these guidelines, trust laws, and securities laws;
- (b) exercise the degree of care and diligence that a reasonable person would exercise in the position of a trustee;

- (c) act in the best interests of unit holders and, if there is a conflict between unit holders' interests and its own interests, give priority to unit holders' interests;
- (d) not improperly make use of information acquired through being the trustee in order to—
  - (i) gain an advantage for itself or another person; or
  - (ii) cause detriment to unit holders of the fund; and
- (e) comply with any other duty, not inconsistent with the CMSA and these guidelines, that is conferred on the trustee by the deed.

4.05 A trustee should, among others—

- (a) have adequate human resources with the necessary qualification, expertise, and experience to carry on business as a trustee to real estate investment trusts; and
- (b) have adequate and appropriate systems, procedures, and processes, to carry out its duties and responsibilities in a proper and efficient manner.

4.06 A trustee should ensure that its officers and delegates—

- (a) do not make improper use of information acquired through being such an officer or delegate of the trustee to—
  - (i) gain an advantage for him or another person; or
  - (ii) cause detriment to unit holders of the fund;
- (b) do not make improper use of their position as officers or delegates to gain, directly or indirectly, an advantage for themselves or for any other person or to cause detriment to unit holders of the fund; and
- (c) comply with any other duty or obligation as may be prescribed under the securities laws, trust laws or these guidelines.

### ***Holding of the Fund's Property***

- 4.07 As prescribed under section 300(1) of the CMSA, a trustee should take custody and control of the fund's property and hold it in trust for the unit holders in accordance with the deed, these guidelines, and securities laws.
- 4.08 A trustee should ensure that a fund's property is–
- (a) clearly identified as the fund's property;
  - (b) held separately from any other asset/property held by or entrusted to the trustee; and
  - (c) registered in the name of, or to the order of, the fund.

### ***Trustee's Obligations on Oversight Functions***

- 4.09 A trustee should actively monitor the operation and management of the fund by the management company to safeguard the interests of unit holders.
- 4.10 A trustee should, at all times, through proper and adequate supervision, ensure that the fund is operated and managed by the management company, in accordance with–
- (a) the deed;
  - (b) the prospectus;
  - (c) these guidelines and securities laws; and
  - (d) acceptable and efficacious business practices within the real estate investment trust industry.

#### **Guidance**

To safeguard the interests of unit holders, the trustee should conduct independent reviews and not only depend on information submitted by the management company.

- 4.11 Where a fund is expressed to be managed in accordance with specific principles, the trustee should ensure that the fund is managed in accordance with those principles.
- 4.12 A trustee should ensure that it is fully informed of the investment policies of the fund set by the management company, and of changes made. If the trustee is of the opinion that the policies are not in the interests of unit holders, it should, after considering any representation made by the management company, instruct the management company to take appropriate action as the trustee deems fit and/or summon a unit holders' meeting to give such instructions to the trustee as the meeting thinks proper.
- 4.13 A trustee should exercise reasonable diligence in monitoring functions of the management company and do everything in its power to ensure that the management company remedies any breach known to the trustee of the provisions or covenants of the deed, disclosures in prospectus, requirements of these guidelines and provisions of the CMSA, unless the trustee is satisfied that the breach will not materially prejudice unit holders' interests.

### ***Trustee's Reporting and Disclosure Obligations***

- 4.14 As prescribed under the CMSA, the trustee should notify the SC as soon as practicable of any irregularity, any breach of the provisions or covenants of the deed, any contravention of securities laws or any inconsistency between the disclosures in the prospectus and the provisions or covenants of the deed, which in the trustee's opinion, may indicate that the interests of unit holders are not being served.
- 4.15 Where a fund is to be managed in accordance with Shariah principles, a trustee should provide transaction report(s) of the fund to the Shariah adviser. If the transaction report is prepared by the management company, the trustee should approve the report prior to it being submitted to the adviser.

### ***Dealings in Fund's Property***

- 4.16 A trustee should take all steps to effect any instruction properly given by the management company, or its fund management delegate (if

any), relating to acquisition or disposals of, or the exercise of the rights attaching to, a fund's property.

- 4.17 Where the real estate acquired is occupied partly or wholly by related parties, the trustee should ensure that the terms and conditions of the tenancy agreements are reasonable under prevailing market conditions. In determining rental rates for related tenants, the trustee should be guided by the recommendation of at least one independent valuer appointed by the trustee.

### ***Creation, Cancellation, and Dealing in Units of the Fund***

- 4.18 A trustee should take all steps to effect any instruction properly given by the management company under Chapter 12 of these guidelines.
- 4.19 A trustee should ensure that the systems, procedures and processes employed by the management company are adequate to ensure that—
- (b) the fund's property is correctly valued in line with provisions of Chapter 10 and Schedule C of these guidelines, the deed and prospectus; and
  - (c) (for unlisted funds) the fund's units are priced in line with provisions of Chapter 12 of these guidelines, the deed, and prospectus.

### ***Provision of Information***

- 4.20 A trustee must submit or make available any statement, document, book, record, and other information relating to the fund and the business of the trustee, as may be required by the SC from time to time.

### ***Maintenance of Records***

- 4.21 A trustee should maintain and also ensure that the management company maintains proper accounting records and other records as are necessary—
- (a) to enable a complete and accurate view of the fund to be formed; and

- (b) to ensure that the fund is operated and managed in compliance with the deed, prospectus, these guidelines, and securities laws.

### **Holdings of Units by Trustee**

4.22 A trustee should not hold units or other interests in the fund.

## Chapter 5

### DELEGATION AND OUTSOURCING

#### General

- 5.01 A management company or trustee may delegate and outsource its functions to third parties.
- 5.02 Delegating and outsourcing to third parties do not relieve a management company or trustee from the responsibility for proper conduct of the delegated and outsourced activities. A management company or trustee remains responsible for the actions and omissions of the delegate or service providers as though they were its own actions and omissions.
- 5.03 A management company or trustee should ensure that—
- (a) adequate procedures are in place to monitor the conduct of its delegate or service provider and to ensure that the function delegated or outsourced is performed in a proper and efficient manner; and
  - (b) there are controls in place to ensure compliance with the deed, prospectus, these guidelines, and securities laws.
- 5.04 A management company or trustee should also ensure that its delegate or service provider is suitable to undertake the particular functions, including that it—
- (a) is duly licensed or authorised by a relevant authority, (where applicable);
  - (b) has adequate financial resources;
  - (c) has an adequate track record in the performance of the functions; and
  - (d) has adequate and appropriate human resources, systems, procedures, and processes to carry out the function (including on compliance with applicable requirements, and policies and procedures on internal controls).

- 5.05 The service agreement between the management company or trustee and its delegate or service provider should, among others, contain clear provisions on–
- (a) the services to be provided;
  - (b) the fees, remuneration, and other charges of the delegate;
  - (c) any restriction or prohibition regarding the performance of the function to be delegated; and
  - (d) reporting requirements, including the line of reporting between the delegate and the management company or trustee and means of evaluating the performance of the delegate.

### **Delegation of Function by the Management Company**

- 5.06 Any delegation of a management company's function requires the SC's prior approval.
- 5.07 Clause 5.06 does not apply to delegation of function to a holder of a Capital Markets Services Licence.
- 5.08 Where a management company appoints a foreign delegate, the agreement between the management company and its foreign delegate should include, in addition to the requirements set out in clause 5.05, the following provisions:
- (a) Adequate training arrangements between the foreign delegate and the management company; and
  - (b) Powers of examination and/or inspection by the management company and/or the trustee and/or the SC to ensure that the foreign delegate is in compliance with the applicable requirements of the deed, prospectus, these guidelines, and securities laws.
- 5.09 An officer of the delegate (whether foreign or otherwise) should not hold office as member of–
- (a) the investment committee of any fund for which the fund

- manager is appointed to manage; and
  - (b) the Shariah adviser of any fund for which the delegate is appointed to manage.
- 5.10 The delegate's remuneration must be paid by the management company and not be charged to the fund.

### **Delegation of Function by the Trustee**

- 5.11 A trustee may delegate the custodial function for the fund's property.
- 5.12 Where the function is delegated, the trustee should ensure that—
- (a) it retains control of the fund's property at all times; and
  - (b) there are adequate arrangements to prevent the delegate from releasing the custody or control of the fund's property without its prior consent.

### **Outsourcing of Functions**

- 5.13 A management company may outsource its back office functions to external parties.
- 5.14 For the purpose of clause 5.13, a management company should observe and ensure compliance with the requirements in the *Guiding Principles for Outsourcing of Back Office Functions for Capital Market Intermediaries* and *Guidelines on Performance of Supervision Functions at Group Level for Capital Market Intermediaries* issued by the SC.

## Chapter 6

### OVERSIGHT ARRANGEMENT

- 6.01 In addition to the appointment of a trustee, a management company is encouraged to establish and maintain additional arrangements to provide an oversight over the operation and management of the fund, such as appointing an investment committee for the fund.
- 6.02 Where the fund is established as an Islamic real estate investment trust, a management company must appoint a Shariah adviser for the fund.

### Investment Committee

#### *General*

- 6.03 Where an investment committee is appointed, the investment committee should comprise–
- (a) at least three individual members; and
  - (b) at least two independent members, while maintaining a minimum ratio of at least one-third independent members at all times.
- 6.04 A member of the investment committee should not hold office as–
- (a) member of an investment committee of funds managed and administered by another management company;
  - (b) director of another management company;
  - (c) Shariah adviser for the same fund; and
  - (d) an officer of the delegate that carry on the fund management function of the fund.
- 6.05 The investment committee of an Islamic real estate investment trust should comprise at least two Muslim members. A quorum is not present for the purpose of holding an investment committee meeting unless one Muslim member is present at the meeting.

## ***Roles and Responsibilities***

- 6.06 An investment committee should ensure that the fund is managed in accordance with—
- (a) the fund's investment objective;
  - (b) the deed;
  - (c) the prospectus;
  - (d) these guidelines and securities laws;
  - (e) the internal investment restrictions and policies; and
  - (f) acceptable and efficacious investment management practices within the real estate investment trust industry.
- 6.07 An investment committee's roles and responsibilities include the following:
- (a) Select appropriate strategies to achieve the proper performance of the fund in accordance with the investment policies;
  - (b) Ensure that the strategies selected are properly and efficiently implemented by the management company or its fund management delegate (if any); and
  - (c) Actively monitor, measure and evaluate the performance of the management company or its fund management delegate (if any).

## **Shariah Adviser**

### ***General***

- 6.08 A Shariah adviser should—
- (a) be independent of the management company;
  - (b) be registered with the SC;

- (c) (where individuals are appointed) comprise at least three individuals; and/or
  - (d) (where a corporation is appointed) engage at least one Shariah expert who meets the fit and proper criteria in clauses 6.13 and 6.14.
- 6.09 Clauses 6.08(a) and (b) do not apply to a corporation which is an Islamic bank or a licensed institution approved by Bank Negara Malaysia to carry on an Islamic banking business.
- 6.10 Individuals appointed under clause 6.08(c) and (d) should not hold office as member of the investment committee of funds managed and administered by the same management company.

## **Roles and Responsibilities**

- 6.11 The roles of a Shariah adviser include the following:
- (a) To advise on all aspects of real estate investment and fund management business in accordance with Shariah principles;
  - (b) To provide Shariah expertise and guidance in all matters, particularly on the fund's deed and prospectus, fund structure, investments, and other operational matters;
  - (c) To ensure that the fund is operated and managed in accordance with Shariah principles, relevant SC regulations and/or standards, including resolutions issued by the SC's Shariah Advisory Council.
  - (d) To review the fund's compliance report and investment transaction report to ensure that the fund's investments are in line with Shariah principles; and
  - (e) To prepare a report to be included in the fund's annual and interim reports stating its opinion whether the fund has been operated and managed in accordance with Shariah principles for the financial period concerned.
- 6.12 Where there is ambiguity or uncertainty as to an investment, instrument,

system, procedure and/or process, the Shariah adviser should consult the SC.

## **Fit and Proper Criteria**

- 6.13 The persons appointed should–
- (a) be of good repute and character;
  - (b) observe high standards of integrity and fair dealing in carrying out their duties and responsibilities;
  - (c) act with due skill, care, and diligence in carrying out their duties and responsibilities;
  - (d) take reasonable care to ensure that they carry out their duties and functions in accordance with these guidelines; and
  - (e) possess the necessary qualifications, expertise, and experience, particularly in the respective fields to perform their duties and responsibilities in a fit and proper manner.
- 6.14 The persons should not have been involved in any unethical and/or inappropriate practice. Among others, the persons could be subject to a disqualification in any of the following events:
- (a) A petition filed under bankruptcy laws or the persons have been declared bankrupt;
  - (b) A criminal proceeding for the conviction for fraud, dishonesty or any other offence punishable with imprisonment of one year or more, anywhere in the world;
  - (c) Any inquiry/investigation carried out by any government/ statutory authority or body, in which an adverse finding was found; and
  - (d) Any unethical practice and activity which would render the persons unfit to perform an oversight function.

- 6.15 It is the responsibility of the management company to assess the ability of the person to carry out the duties and responsibilities required of him. In the case of an establishment of a new management company, this responsibility lies with the holding company and/or promoter and its board of directors.
- 6.16 Where any person becomes subject to any disqualification or becomes otherwise unfit to hold office, the management company must ensure that the person vacates the position immediately. The management company must notify the SC immediately of any disqualification and when the position becomes vacant.
- 6.17 Where an individual is appointed as a member for more than one committee of funds operated and managed by the same management company, he should act separately and independently for each of the fund he is appointed for.

## Chapter 7

### CONSTITUTION OF A REAL ESTATE INVESTMENT TRUST

#### Instrument Constituting the Fund

- 7.01 As prescribed under section 288(1)(b) of the CMSA, a management company should ensure that there is a deed in force for a fund. The deed should contain the minimum requirements prescribed in Schedule A of these guidelines and those specified under securities laws.
- 7.02 A management company and trustee should ensure that the requirements of clause 7.01 are met at all times.
- 7.03 A management company and trustee are responsible for maintaining the deed and making necessary amendments to the deed in accordance with applicable guidelines and securities laws.

#### Name of Fund

- 7.04 A management company and trustee should ensure that the name of the fund is not inappropriate, misleading or conflicts with the name of another fund.
- 7.05 The SC may direct the management company to change the name of the fund if, in the opinion of the SC, the name of the fund is inappropriate, misleading or conflicts with the name of another fund.
- 7.06 When deciding whether to make a direction under clause 7.05, the SC will take into account, among other matters, whether the name of the fund—
  - (a) implies that the fund has merits which are not justified;
  - (b) is inconsistent with the fund's investment objective or policy;
  - (c) might mislead investors into thinking that a person other than the management company is responsible for the fund or part of the fund;

- (d) is substantially similar to the name of another fund in Malaysia or elsewhere; or
- (g) is, in the opinion of the SC, likely to offend the public.

### **Investment Objective of the Fund**

- 7.07 The investment objective of the fund must be clear, specific, and sufficiently stipulated in the deed.
- 7.08 Where the strategies adopted to meet the investment objective of the fund involve investment in a particular type of real estates, market or geographic area, it is the management company's duty to ensure that an appropriate portion of the fund is invested in accordance with that intention.

### **Modifications to the Deed**

- 7.09 Any modification to a fund's deed must be made in accordance with the provisions of the deed and section 295 of the CMSA.
- 7.10 Unless otherwise provided by the securities laws, any modification to the deed, including any material change to the investment objective set out for the fund, must be approved by the unit holders of the fund by way of a resolution of not less than two-thirds of all unit holders at a unit holders' meeting duly convened and held in accordance with the deed.

## Chapter 8

### INVESTMENTS OF THE REAL ESTATE INVESTMENT TRUST

#### General

- 8.01 The fund's property should be relevant and consistent with the investment objective of the fund.
- 8.02 Reasonable steps should be taken to ensure that, taking into account the investment objective and policy of the fund, the fund's property provides a prudent spread of risk.
- 8.03 The provisions in this chapter apply to all real estate investment trusts constituted in Malaysia.

#### Dealings in the Fund's Property

- 8.04 All dealings in the fund's property should be appropriate to the fund and consistent with—
  - (a) the deed;
  - (b) the prospectus;
  - (c) these guidelines and securities laws; and
  - (d) acceptable and efficacious practices within the real estate investment trust industry.
- 8.05 A management company should—
  - (a) notify the trustee in writing and keep them updated on any proposal relating to acquisitions or disposals of real estates;
  - (b) notify the trustee in writing of any acquisition or disposal of real estate-related assets and non-real estate-related assets within one business day after which the acquisition or disposal was effected;

- (c) ensure that the fund's property has adequate proof of title or ownership to allow proper custodial arrangements to be made; and
- (d) cancel a transaction or make a corresponding acquisition or disposal at its own expense to secure restoration of the previous position where the trustee conveyed an opinion that a particular acquisition or disposal exceeds the powers conferred on it, or is otherwise contrary to the interests of the unit holders.

## **Authorised Investments**

- 8.06 A real estate investment trust may only invest in the following:
- (a) Real estates;
  - (b) Single-purpose companies;
  - (c) Real estate-related assets;
  - (d) Non-real estate-related assets; and
  - (e) Cash, deposits, and money market instruments.
- 8.07 At least 50% of a fund's total asset value must be invested in real estate and/or single-purpose companies at all times.
- 8.08 A fund's investment in non-real estate-related assets and/or cash, deposits and money market instruments must not exceed 25% of a fund's total asset value.

## **Investments in Real Estates**

### ***Acquisitions***

- 8.09 A management company should ensure that the real estate to be acquired by the fund—
- (a) is tenanted;

- (b) has a good track record and/or a good prospects of future net rental income of reasonable levels;
  - (c) is competitive and located within good catchment areas, as evidenced by market studies; and
  - (d) is free from encumbrances at the time of acquisition, except for charges entered by financial institutions, trustee or management company in relation to loan facilities.
- 8.10 For the purpose of clause 8.09(a), a fund may acquire a real estate that is not fully tenanted, provided that–
- (a) there is good potential to secure tenants;
  - (b) any capital expenditure to be incurred to enhance the real estate would not materially affect the yield to unit holders; and
  - (c) the acquisition would be able to yield a reasonable return within a reasonable period of time.
- 8.11 A management company should ensure that–
- (a) an acquisition of a real estate includes the ownership of all rights, interests, and benefits related to the ownership of the real estate; and
  - (b) the fund has majority ownership and control in the real estate acquired to enable the fund to exercise all rights and interests over the real estate without any hindrance.
- 8.12 Notwithstanding clause 8.11(b), a fund may acquire real estates where it does not have a majority ownership and control provided that–
- (a) the total value of these real estates does not exceed 25% of the fund's total asset value (after the acquisition);
  - (b) the acquisition of these real estates is in the best interest of the unit holders;
  - (c) the fund has legal title and beneficial interest in these real estates; and

- (d) there are clear disclosures in the fund's prospectus or announcement/notification to unit holders (where applicable) of risks associated with holding real estates with no majority control.
- 8.13 For leasehold real estates, a management company should ensure that—
  - (a) the consent of the relevant authority to transfer the lease has been obtained before the fund's prospectus is registered with the SC (or where it is an excluded offer, the information memorandum is deposited with the SC), or prior to the acquisition of the leasehold property (in the case of an existing fund); and
  - (b) the lease must be a registered lease.
- 8.14 For real estates under construction, a fund may enter into an arrangement or agreement at any stage during the construction phase to acquire the real estate, provided that the following criteria are met:
  - (a) Income from real estates within the fund's investment portfolio is sufficient to ensure that there is no substantial dilution to the fund's earnings per unit during the construction period;
  - (b) The purchase agreement is made subject to the completion of the building with sufficient cover for construction risks;
  - (c) The construction of the real estate must be carried out on terms which are the best available for the fund and at arm's length transaction between independent parties;
  - (d) The prospects for the real estate to be acquired upon its completion is reasonably expected to be favourable, and
  - (e) The total value of real estates under construction acquired by the fund does not exceed 10% of the fund's total asset value (after the acquisition).
- 8.15 For real estates located outside Malaysia, the management company must ensure that the relevant rules, guidelines and laws are complied with, and that approvals/authorisations from the relevant authorities

(foreign or domestic) have been obtained prior to the acquisition.

- 8.16 All real estates acquired by a fund must be insured for their full replacement value, including loss of rental, where appropriate, with insurance companies approved by the trustee.

### ***Disposals***

- 8.17 Where the value of real estate(s) to be disposed of exceeds 50% of the fund's total asset value, the disposal must be sanctioned by the unit holders by way of an ordinary resolution, except where the disposal is for the purpose of terminating or winding up the fund.

### ***Acquisition and Disposal Price***

- 8.18 A fund should not acquire real estates at a price more than 110% of the value assessed in a valuation report, provided that the value has not been revised by the SC (where applicable).
- 8.19 A fund should not dispose of real estates at a price lower than 90% of the value assessed in a valuation report.

### **Investments in Single-purpose Companies**

- 8.20 In acquiring a single-purpose company that owns a real estate, a management company should ensure that–
- (a) the acquisition is in the best interests of unit holders;
  - (b) there are valid commercial reasons for acquiring the company instead of the real estate;
  - (c) the real estates owned by the single-purpose company complies with clauses 8.09 to 8.16;
  - (d) the fund should wholly-acquire the single-purpose company. However, where this is not possible, the fund should acquire equities of the single-purpose company that would ensure it has majority ownership and control of the company to enable

it to exercise an effective control over the company and exercise all rights and interests over the real estate without any hindrance;

- (e) the fund should not assume any liability of the single-purpose company it is acquiring, except for the commitments under clause 8.09(d); and
- (f) the value of the single-purpose company is backed by the value of the real estate.

8.21 In disposing of investments in a single-purpose company, the management company should ensure that clause 8.17 is complied with.

## **Investments in Real Estate-related Assets and Non-real Estate-related Assets**

8.22 A fund's property may consist of real estate-related assets and non-real estate-related assets, subject to the following:

### ***General***

- (a) The securities are traded in or under the rules of an eligible market, except for unlisted debt securities;

### ***Spread Limits***

- (b) The value of a fund's investments in securities issued by any single issuer must not exceed 5% of the fund's total asset value; and
- (c) The value of a fund's investments in securities issued by any group of companies must not exceed 10% of the fund's total asset value;

### ***Concentration Limits***

- (d) A fund's investments in any class of securities must not exceed 10% of the securities issued by any single issuer.

- 8.23 The management company should ensure that the investment limits and restrictions are complied with at all times based on the most up-to-date value of the fund's property.
- 8.24 The limits and restrictions in clause 8.22 do not apply to securities issued or guaranteed by the Malaysian government or Bank Negara Malaysia.
- 8.25 In determining compliance with the limits or restrictions, any accrued entitlement on the securities held by the fund may be excluded. The entitlement should not be exercised if the exercise results in the breach of any limit or restriction.
- 8.26 Notwithstanding clause 8.25, the right of convertibility may be exercised if it results in a breach of any limit or restriction, provided there are justifiable reasons and prior approval of the trustee has been obtained. Nonetheless, the management company should, within a time frame of not more than one month from the date of the breach, take all necessary steps and actions to rectify the breach.

### **Guidance**

The use of the fund's latest total asset value, as disclosed in the latest published audited accounts of the fund and adjusted for any subsequent transaction since the publication of such accounts, is acceptable in determining compliance with the limits and restrictions.

- 8.27 The management company or the trustee may not exercise the voting rights at any election for the appointment of a director of a corporation whose shares are so held, unless it is sanctioned by the unit holders of the fund by way of an ordinary resolution.

## **Investments in Deposits**

- 8.28 The fund's property may consist of placement of deposits provided that it is with a licensed institution.

## **Investments in Foreign Real Estates/Markets**

- 8.29 Where a fund proposes to acquire a real estate located outside Malaysia, the management company should ensure that such an acquisition is in the best interests of the fund and its unit holders. The management company should take into account various factors, including but not limited to, the following:
- (a) Entry barriers, such as foreign ownership restrictions, foreign exchange and remittance control, and anti-trust/competition provisions;
  - (b) Economic and political environment, legal, judicial and accounting systems, and the real estate market in the foreign country;
  - (c) Operational barriers, such as enforcement of legal rights as landlord and transparency of accounting and financial reporting systems;
  - (d) Taxation matters that may affect operations of a fund investing in the foreign country concerned;
  - (e) (Where applicable) The existence of a foreign entity to whom functions are delegated, the ability of the management company to maintain sufficient ongoing supervision of such foreign entity and the presence of any constraint or limitation in engaging such an entity;
  - (f) Possible exit strategies or mechanisms for the foreign market and termination arrangements for the fund's foreign investments; and
  - (g) Practical and effective measures that would address any issue or mitigate the risks that may arise out of the foreign investment.
- 8.30 Notwithstanding clause 8.06, a fund which acquires or owns real estates located outside Malaysia may participate in forward sales or purchases of any currency or money, including Malaysian ringgit or any foreign-exchange contract of whatsoever nature.

- 8.31 A fund's participation in forward contracts under clause 8.30 is allowed for the following purposes:
- (a) Hedging for a specific real estate and a specific cash flow; and
  - (b) Risk-management purposes, and is limited to the fund's existing exposure.
- 8.32 For investments in real estate-related assets and non-real estate-related assets in a foreign market, a foreign market is an eligible market where it also has satisfactory provisions relating to—
- (a) the regulation of the foreign market;
  - (b) the general carrying on of business in the market with due regard to the interests of the public;
  - (c) adequacy of market information;
  - (d) corporate governance;
  - (e) disciplining of participants for conduct inconsistent with just and equitable principles in the transaction of business, or for a contravention of, or a failure to comply with, the rules of the market; and
  - (f) arrangements for the unimpeded transmission of income and capital from the foreign market to the fund.
- 8.33 Notwithstanding clause 8.32, investments in real-estate related assets and non-real estate-related assets are limited to foreign markets where the regulatory authority is a member of the International Organization of Securities Commissions (IOSCO).

## **Borrowings**

- 8.34 A fund may use borrowings to acquire real estates and single-purpose companies, and for capital expenditure purposes.
- 8.35 A fund may only borrow from licensed institutions or through the issuance of debentures.

- 8.36 For an unlisted fund, borrowings may also be used to meet repurchase requests for units. For this purpose, the borrowing period should not exceed six months from the date the borrowings are incurred.
- 8.37 The total borrowings of a fund (including borrowings through issuance of debt securities) should not exceed 50% of the total asset value of the fund at the time the borrowings are incurred. Notwithstanding, the fund's total borrowings may exceed this limit with the sanction of the unit holders by way of an ordinary resolution.
- 8.38 In determining the level of borrowings, regard should be given to—
- (a) the risks of borrowings to the fund and its unit holders; and
  - (b) the impact of borrowings on the financial position of the fund.
- 8.39 The management company may, with the consent of the trustee, pledge the fund's property to secure borrowings. Clause 8.19, 9.03(c)(i) and 9.04(b) of these guidelines do not apply to the fund's property which has been pledged.
- 8.40 The trustee should ensure that the fund's borrowings and pledging of the fund's property are not prejudicial to the interests of the unit holders.

## **Breach of Investment Limits**

### ***Real Estates and Single-purpose Companies***

- 8.41 Where a fund fails to comply with clause 8.07 as a result of disposals, divestments or issuance of new units, the management company should, within a period of not more than 12 months from the date of breach, take all necessary steps and actions to rectify the breach.

### ***Real Estate-related Assets and Non-real Estate-related Assets***

- 8.42 Notwithstanding clause 8.23, a 5% allowance in excess of any limit or restriction imposed under these guidelines is permitted where the limit or restriction is breached through an appreciation or depreciation of the fund's total asset value [whether as a result of an appreciation or depreciation in the value of the fund's asset or as a result of a repurchase

of units (for unlisted funds) or payment made out of the fund].

- 8.43 A management company should not make any further investment to which the relevant limit is breached, and the management company should, within reasonable period of not more than three months from the date of the breach, take all necessary steps and actions to rectify the breach.

### **Non-Permissible Activities**

- 8.44 A fund is not permitted to conduct the following activities:
- (a) Extension of loans or any other credit facility;
  - (b) Property development; and
  - (c) Acquisition of a vacant land.

#### **Guidance**

The restriction under clause 8.44(b) does not apply to refurbishment, retrofitting, renovations or extensions carried out on existing real estates within a fund's investment portfolio.

## Chapter 9

### TRANSACTIONS WITH RELATED PARTIES

- 9.01 For the purpose of this chapter, a related-party transaction is any transaction between the fund and its related parties.
- 9.02 If a management company manages more than one fund and a transaction involves two or more of the funds managed by the management company, transactions between these two funds are deemed as related-party transactions for each of the fund involved in the transactions.
- 9.03 All related-party transactions carried out by or on behalf of the fund should be–
- (a) carried out at arm's length;
  - (b) in the best interests of unit holders of the fund;
  - (c) (in relation to a real estate transaction)–
    - (i) transacted at a price that is equivalent to the value assessed in the valuation report;
    - (ii) consented by the trustee; and
    - (iii) consistent with the investment objective and strategy of the fund; and
  - (d) adequately disclosed to unit holders.
- 9.04 A real estate may be transacted at a price other than that specified in clause 9.03(c)(i) provided that–
- (a) the acquisition price is not more than 110% of the value assessed in the valuation report;
  - (b) the disposal price is not less than 90% of the value assessed in the valuation report; and

- (c) the trustee provide a written confirmation that the transaction is based on normal commercial terms, at arm's length, and not prejudicial to unit holders' interest.
- 9.05 Where the transaction value with related parties under clause 9.03(c)–
- (a) is equal to or greater than 5% of the total asset value of the fund (after acquisition), the prior approval of the unit holders by way of an ordinary resolution is required; or
- (b) does not exceed 5% of the total asset value of the fund (after acquisition), the trustee must provide a written confirmation that the transaction is based on normal commercial terms, at arm's length, and not prejudicial to the unit holders' interest.
- 9.06 For the purpose of clause 9.04(c) and 9.05(b), the management company must inform unit holders through an announcement to Bursa Securities (for listed funds) or notification letter (for unlisted funds) of the trustee's written confirmation.

### **Guidance**

For the purpose of clause 9.05:

- The total asset value of the fund should be as disclosed in the latest published audited accounts of the fund, and adjusted for any subsequent transaction since the publication of such accounts (on a per transaction basis).
- Where more than one transaction is conducted with the same related party and the value of this single transaction does not exceed the 5% limit, the limit applies to the aggregate value of all transactions between such person and the fund over a 12-month period preceding the intended transaction. For this purpose, transactions between the fund and related parties who are members of the same group are deemed to be transactions with the same related party.

## Chapter 10

### VALUATION

10.01 This chapter sets out the guidelines for the valuation of real estates, real estate-related assets and non-real estate-related assets. A management company must ensure that a fair and accurate valuation of all assets and liabilities of the fund be conducted.

#### Real Estates

##### *Valuation and Revaluation*

10.02 A valuation should be carried out on all real estates (including those held by single-purpose companies) to be acquired and disposed by the fund.

10.03 A revaluation of all the real estates in the fund's investment portfolio should be carried out once every three years. However, this does not preclude valuations during the interim periods.

10.04 A trustee may, at any time and on its own accord, appoint a valuer to conduct a valuation of the real estates owned by a fund.

##### *Appointment of Valuer*

10.05 All valuations and revaluations of real estates should be conducted by an independent valuer duly appointed by the trustee.

10.06 For circumstances referred to under clause 10.12, the trustee should ensure that the valuer meets the criteria stipulated under the SC's *Asset Valuation Guidelines*. (Amended on 13 July 2011)

10.07 A valuer may only conduct up to two consecutive valuations of any particular real estate of a fund.

#### Valuation Report

10.08 For each valuation of a real estate, the appointed valuer should prepare a valuation report to be given to the management company and trustee.

- 10.09 For circumstances referred to under clause 10.12, the valuation report should comply, and be submitted to the SC in accordance with the *Asset Valuation Guidelines*. (Amended on 13 July 2011)
- 10.10 For all other circumstances, the valuation report should be—
- (a) prepared in accordance with the *Malaysian Valuation Standards* or other applicable valuation standards;
  - (b) prepared for a date of valuation that must not be more than six months before the date of the sales and purchase agreement or balance sheet date, where applicable; and
  - (c) deposited with the SC—
    - (i) within one month from the date of the sales and purchase agreement; or
    - (ii) together with the annual report of the fund in the case of revaluations.
- 10.10A Notwithstanding clause 10.10(a), for circumstances requiring unit holders' approval, the valuation report must be prepared in accordance with the *Asset Valuation Guidelines*. (Added on 13 July 2011)
- 10.11 Where circumstances have arisen that materially affect the value of the real estates, the trustee should ensure that the appointed valuer makes the necessary adjustments in the valuation report.

### ***Regulatory Parameters on Valuation of Real Estates***

- 10.12 Where a real estate (including those held by single-purpose companies) is the subject of an acquisition—
- (a) as part of the establishment of a new fund; or
  - (b) financed, or refinanced within one year, through the issuance of new units,
- the value of the real estate requires SC's approval.
- 10.13 Where the value of the real estate in the valuation report submitted to the SC differs from the value approved by the SC—
- (a) the value approved by the SC must be used as the basis to determine the purchase consideration for the real estate; and

- (b) both values must be disclosed in the prospectus, circular to unit holders or any other offer documents issued for the acquisition.
- 10.14 The SC reserves the right to seek a second opinion on the value of a real estate. If the SC requires a second opinion, the valuer for the second opinion will be appointed by the SC. Any fees and costs incurred will be borne by the fund.

### **Real Estate-related Assets and Non-real Estate-related Assets**

- 10.15 A valuation should be carried out on all real estate-related assets and non-real estate-related assets in accordance with Schedule C of these guidelines.
- 10.16 Valuations of these types of assets should be based on a process which is consistently applied, and leads to objective and independently verifiable valuations.
- 10.17 The valuation points for these types of assets must be–
- (a) (For a listed fund) at the end of each quarter; and
  - (b) (For an unlisted fund) at least once every business day.
- 10.18 For unlisted funds:
- (a) No valuation points are required during the initial offer period of the fund;
  - (b) A management company may have additional valuation points for the fund during the business day, where it considers necessary; and
  - (c) For a fund with limited repurchase arrangements, 10.17(b) would not apply. The valuation points should be clearly disclosed in the prospectus/information memorandum and must be at least once a month.
- 10.19 Upon completion of a valuation, the management company should notify the trustee immediately of the NAV per unit of the fund.

10.20 *This clause is intentionally omitted.*

### **Incorrect Valuation**

10.21 Where incorrect valuation occurs, the management company should—

- (a) notify the trustee; and
- (b) notify the SC, unless the trustee considers the incorrect valuation to be of minimal significance.

10.22 The management company should take immediate remedial action to rectify any incorrect valuation. For an unlisted fund, rectification should be extended to the reimbursement of money—

- (a) by the management company to the fund;
- (b) from the fund to the management company; or
- (c) by the management company to unit holders and/or former unit holders.

10.23 Notwithstanding clause 10.22, rectification need not, unless the trustee otherwise directs, extend to any reimbursement where the trustee considers the incorrect valuation to be of minimal significance.

### **Announcement/Publication of NAV per Unit**

10.24 The management company should—

- (a) (for a listed fund) announce the NAV per unit of the fund to Bursa Securities on a quarterly basis; and
- (b) (for unlisted fund) publish the NAV per unit of the fund daily in at least one national Bahasa Malaysia newspaper and one national English newspaper.

10.25 For an unlisted fund with limited repurchase arrangements, clause 10.24(b) would not apply. Such a fund should publish its NAV per unit at least once a month.

- 10.26 For the purpose of clause 10.24, the NAV per unit announced or published should be rounded to four decimal places.

## Chapter 11

### FEES AND EXPENSES

#### Management Fee and Trustee Fee

- 11.01 A management company and trustee may only be remunerated by way of an annual fee charged to the fund.
- 11.02 The fees may only be charged to the fund if permitted by the deed and are clearly disclosed in the prospectus.
- 11.03 The fees should not be higher than that disclosed in the prospectus of the fund unless–
- (a) (for management fee) the management company has notified the trustee in writing of the new higher rate, and the trustee agrees after considering matters as stated in clause 11.05;
  - (b) (for trustee fee) the trustee has notified the management company in writing of the new higher rate and the management company agrees after considering matters as stated in clause 11.07;
  - (c) (for listed funds) the management company has announced to Bursa Securities of the higher fee rate and its effective date;
  - (d) (for unlisted funds) the management company has notified unit holders of the higher fee rate and its effective date and a supplementary prospectus has been registered and issued; and
  - (e) 90 days have elapsed since the date of the announcement or supplementary prospectus.
- 11.04 Any increase in the maximum rate stated in the deed may only be made by way of a supplementary deed and in accordance with the requirements of the CMSA.

### ***Remuneration of Management Company***

- 11.05 A management company should demonstrate, and the trustee must agree, that the management fee is reasonable, considering–
- (a) the roles, duties, and responsibilities of the management company;
  - (b) the interests of unit holders;
  - (c) the nature, quality, and extent of the services provided by the management company;
  - (d) the size and composition of the fund's property;
  - (e) the success of the management company in meeting the fund's investment objective;
  - (f) the need to maximise returns to unit holders; and
  - (g) the maximum rate stipulated in the deed.
- 11.06 Notwithstanding clause 11.05, if at any time the trustee is of the opinion that the management fee charged to the fund is unreasonable, the trustee should take such necessary actions, which may include convening a unit holders' meeting, to ensure that the fee charged is commensurate with the services provided by the management company.

### ***Remuneration of Trustee***

- 11.07 The trustee fee should be fair and reasonable, considering–
- (a) the roles, duties, and responsibilities of the trustee;
  - (b) the interests of the unit holders;
  - (c) the maximum rate stipulated in the deed; and
  - (d) the size and composition of the fund's property.

## Expenses of the Fund

- 11.08 Only expenses (or part thereof) directly related and necessary in operating and administering a fund may be paid out of the fund. These include the following:
- (a) Maintenance of real estates belonging to the fund;
  - (b) Taxes and other duties charged on the fund by the government and other authorities;
  - (c) Fees and other expenses properly incurred by the auditor appointed for the fund;
  - (d) Fees for the valuation of any investment of the fund by independent valuers for the benefit of the fund;
  - (e) Costs incurred for the modification of the deed of the fund other than those for the benefit of the management company or trustee;
  - (f) Costs incurred for any meeting of the unit holders other than those convened for the benefit of the management company or trustee; and
  - (g) Listing expenses for listing on the stock exchange.

### Guidance

The above list is meant to give some guidance on expenses that are directly related and necessary to the operation of the fund and is not meant to be exhaustive.

- 11.09 General overheads and costs for services expected to be provided by a management company should not be charged to the fund.
- 11.10 A trustee should ensure that all expenses charged to the fund are legitimate. In addition, a trustee should ensure that the quantum of expenses charged to the fund is not excessive or beyond the standard commercial rates. Where uncertainties arise, the trustee should exercise

its discretion carefully and appropriately in determining whether or not to allow the expense (or the quantum of the expense) to be charged to the fund.

- 11.11 A trustee may be reimbursed by the fund for any expenses appropriately incurred in the performance of its duties and responsibilities as a trustee.

## **Chapter 12**

### **PRICING AND DEALING**

#### **Price of a Unit**

##### ***Listed Funds***

- 12.01 The issue price of units offered for subscription or sale, for which a listing is sought, must be at least RM0.50 each.
- 12.02 Where units are offered to related parties in conjunction with the initial public offering, the price of the units must be set at least at the issue price to the public.
- 12.03 Upon listing and quotation of the fund on a stock exchange, the price of the unit should be the price quoted on the exchange.

##### ***Unlisted Funds***

- 12.04 During the initial offer period, the price of a unit (i.e. the initial price) should be determined by the management company.
- 12.05 After the initial offer period, the price of a unit should be the NAV per unit of the fund.
- 12.06 Any dealing in units should be at a price that is the NAV per unit as at the next valuation point after the request for sale or repurchase of units is received by the management company (forward price).

#### **Incorrect Pricing**

##### ***Unlisted Funds***

- 12.07 Where incorrect pricing occurs, the management company should–
  - (a) notify the trustee; and

- (b) notify the SC, unless the trustee considers the incorrect pricing to be of minimal significance.
- 12.08 The management company should take immediate remedial action to rectify any incorrect pricing. Rectification should be extended to the reimbursement of money—
- (a) by the management company to the fund;
  - (b) from the fund to the management company; or
  - (c) by the management company to unit holders and/or former unit holders.
- 12.09 Notwithstanding clause 12.08, rectification need not, unless the trustee otherwise directs, extend to any reimbursement where the trustee considers the incorrect pricing to be of minimal significance.

## **Dealing in Units**

### ***Listed Funds***

- 12.10 Any dealing in units should comply with relevant securities laws, guidelines, and rules.

### ***Unlisted Funds***

- 12.11 A management company must agree to issue and redeem, and effect the sale and repurchase of units upon the proper request of an investor.
- 12.12 A management company should at all times during the business day, deal in units of a fund in accordance with the deed and the prospectus unless it has reasonable grounds to refuse a sale or repurchase.
- 12.13 Where a fund is close-ended, a management company may provide for limited repurchase arrangements appropriate to the fund's investment objective, if permitted by the deed and clearly disclosed in the prospectus/information memorandum.

- 12.14 Notwithstanding clause 12.13, a management company of a close-ended fund must allow for repurchase of units at least once a month.
- 12.15 A management company should only deal in units at a price determined in accordance with clauses 12.04 to 12.06.
- 12.16 A management company should—
- (a) pay the unit holder in cash the proceeds of the repurchase of units as soon as possible, at most within 30 days of receiving the repurchase request; and
  - (b) maintain adequate arrangements to enable it to meet any repurchase request within the stated period of time.

## **Suspension of Dealing in Units**

### ***Listed Funds***

- 12.17 Suspension of dealing in units should comply with relevant securities laws, guidelines, and rules.
- 12.18 Notwithstanding clause 12.17, a trustee should suspend dealing in units of a fund due to exceptional circumstances, where there is good and sufficient reason to do so, considering the interests of unit holders or potential investors.
- 12.19 The suspension under clause 12.18 must cease as soon as practicable after the exceptional circumstances have ceased, and in any event, within 21 days of the commencement of the suspension.
- 12.20 A trustee should immediately notify the SC in writing—
- (a) of suspension of dealing in units, stating the reasons for suspension; and
  - (b) of the proposed resumption of dealing in units and the date of the proposed resumption.

## ***Unlisted Funds***

- 12.21 A trustee should suspend dealing in units of a fund—
- (a) where requests are made by the management company to cancel units to satisfy a repurchase request and the trustee considers that it is not in the best interests of unit holders to permit the fund's property to be sold or that the fund's property cannot be liquidated at an appropriate price or on adequate terms; or
  - (b) due to exceptional circumstances, where there is good and sufficient reason to do so, considering the interests of unit holders or potential investors.
- 12.22 A suspension under clause 12.21(a) should only be carried out where the interests of unit holders or potential investors would be materially affected if the dealing in units were not suspended. In such a case, the trustee should immediately call for a unit holders' meeting to decide on the next course of action.
- 12.23 A suspension under clause 12.21(b) must cease as soon as practicable after the exceptional circumstances have ceased, and in any event, within 21 days of the commencement of the suspension.
- 12.24 A trustee should not create and/or cancel units when dealing in units is suspended.
- 12.25 A trustee should ensure that clause 12.20 is complied with.
- 12.26 A management company may deal in units at a price calculated by reference to the first valuation point after restart of dealing in units.

## **Creation and Cancellation of Units**

- 12.27 A management company should instruct the trustee in writing to create or cancel units of a fund.
- 12.28 A trustee should create or cancel units immediately on receipt of, and in accordance with, the instructions given by the management company.

- 12.29 A management company should not, when giving instructions to the trustee for the creation or cancellation of units, do or omit to do, anything which would confer on itself or a delegate a benefit at the expense of a unit holder or a potential unit holder.
- 12.30 Any instruction for the creation or cancellation of units may be modified but only if the trustee agrees and has taken reasonable care to determine that—
- (a) the modification corrects an error in the instruction; and
  - (b) the error is an isolated one.
- 12.31 Any error referred to in clause 12.30 should be corrected within the payment period stated under clauses 12.32 and 12.33.
- 12.32 A management company should pay the trustee the value of units created within 10 days of giving instructions to the trustee to create units.
- 12.33 A trustee should pay the management company the value of units cancelled within 10 days of receiving instructions from the management company to cancel units. However, the trustee may extend the period where the fund does not have sufficient cash or liquid assets, and the trustee considers that payment within 10 days is not in the best interests of unit holders.
- 12.34 Clauses 12.32 and 12.33 are not applicable for non-cash transactions.

### **Trustee May Refuse to Create or Cancel Units**

- 12.35 Notwithstanding any other provision under these guidelines, a trustee may by notice to the management company refuse to—
- (a) create units;
  - (b) cancel units; or
  - (c) create or cancel units in the number instructed by the management company,

where the trustee considers the creation or cancellation is not in the best interests of unit holders or it would result in a breach of the deed, these guidelines or securities laws.

### **Publication of Price of a Unit (for Unlisted Fund)**

- 12.36 The price of a fund's unit should be published daily in at least one national Bahasa Malaysia newspaper and one national English newspaper.
- 12.37 The unit price published should be the latest price per unit of the day, before the relevant newspaper ceases to accept material for publication in the next edition.
- 12.38 The unit price published in the newspaper should be rounded to four decimal places.

## Chapter 13

### PUBLIC OFFERINGS AND LISTINGS

13.01 This chapter sets out the requirements for the public offerings and primary listing of a real estate investment trust on Bursa Securities.

#### Methods of Offering of Units

##### *General*

13.02 The methods of offering of units chosen should enable the fund to have a broad base of unit holders and comply with the shareholding spread requirements of Bursa Securities. The SC reserves the discretion to vary the methods of offering chosen by the fund in the interests of the securities market and the public.

13.03 A real estate investment trust is required to, as part of its listing scheme, undertake an offering of units to the general public. In relation to this, the units offered under the (balloted) public offer portion should constitute at least—

- (a) 5% of the approved fund size for a fund with total asset value of up to RM200 million; or
- (b) 2% of the approved fund size, or an aggregate of 10 million units, whichever is higher, for a fund with total asset value of above RM200 million.

13.04 Expenses incurred relating to an offer for sale or restricted offer for sale of units must be borne by the offeror.

##### *Placement of Units*

13.05 The principal adviser must act as the placement agent (or joint placement agent, where applicable) for any placement of units under an initial public offering.

13.06 Neither the principal adviser nor any other placement agent may retain any unit being placed for its own account, except under the following circumstances:

- (a) Where such units are taken up following an underwriting agreement (in the event of an under-subscription); or
  - (b) Where such units being retained are over and above the total number of units required to be in the hands of public unit holders, to meet the unit holding spread requirement of Bursa Securities. The retention of units for the purposes of this paragraph must not result in the principal adviser or placement agent holding, whether directly or indirectly, 5% or more of the approved fund size.
- 13.07 Units may not be placed with persons connected to the placement agent, except under the following circumstances:
- (a) Where such persons connected to the placement agent are–
    - (i) statutory institutions managing funds belonging to contributors or investors who are members of the public; or
    - (ii) entities established as collective investment schemes which are considered to represent public investors; ; or
  - (b) Where the placement is made following a book-building exercise, in which case–
    - (i) the placement agent/book-runner must establish internal arrangements to prevent the persons connected to it from accessing the book;
    - (ii) the placement agent/book-runner must fully inform the management company and obtain the management company's consent before inviting persons connected to it to bid for the units;
    - (iii) the persons connected to the placement agent/book-runner must disclose to the placement agent/book-runner and the management company, the bid amounts which they have put in for their own/proprietary account and/or customer account, as applicable; and

- (iv) the allocation to persons connected to the placement agent/book-runner must be consistent with the allocation policy that has been communicated to and agreed by the management company of the fund, including the number of units to be allocated to a single party.
- 13.08 The aggregate number of units placed with persons connected to the placement agent under clause 13.07 above must not be more than 25% of the total number of units made available for placement by the placement agent.
- 13.09 Placement of units may not be made to–
  - (a) existing unit holders of the fund or persons connected to them, whether in their own names or through nominees, except under restricted offers stated in clause 13.13; and
  - (b) nominee companies unless the names of the ultimate beneficiaries are disclosed.
- 13.10 As soon as practicable after the placement exercise and prior to the listing of the fund, the principal adviser must submit to the SC the following:
  - (a) The final list (by each placement agent) setting out the names, home/business addresses, identity card/passport/company registration numbers, occupations/principal activities and Central Depository System (CDS) account numbers of all the placees and the ultimate beneficial owners of the units placed (in the case where the placees are nominee companies or funds), and the amount and price of units placed to each placee; and
  - (b) A confirmation from the principal adviser that to the best of its knowledge and belief, after having taken all reasonable steps and made all reasonable enquiries, the details set out in the final list of placees in sub-clause (a) above are accurate and the placement exercise complies with the requirements on placement as stated in these guidelines.
- 13.11 The information on the ultimate beneficiaries of the units as required in clause 13.10(a) need not be submitted for the following types of placees:

- (a) Statutory institutions managing funds belonging to contributors or investors who are members of the public;
- (b) Unit trust funds or prescribed investment schemes approved by the SC; and
- (c) Collective investment schemes which are authorised, approved or registered investment schemes incorporated, constituted or domiciled in a jurisdiction other than Malaysia and regulated by the relevant regulatory authority in that jurisdiction, subject to the principal adviser confirming to the SC that such schemes have been duly authorised, approved or registered.

13.12 The SC reserves the discretion to require submission of further information on the placement exercise and the placees as it may consider necessary for the purpose of establishing the propriety of the exercise or the independence of the placees.

### ***Restricted Offers***

13.13 Restricted offers for sale and restricted offers for subscription which are undertaken as part of the listing scheme may only be made to the following groups of persons:

- (a) Directors and employees of the management company;
- (b) Directors and employees of the subsidiary/holding company of the management company;
- (c) Other persons who have contributed to the success of the real estate, such as long-term tenants. If the persons who have contributed to the success of the real estate are business entities, the management company must ensure that the fund's units are allocated to those business entities rather than their officers and employees, except where the business entities are sole proprietorships or partnerships (in which case the units may be allocated to the sole proprietor or partners); and
- (d) Shareholders of the holding company of the management company, if the holding company is listed.

- 13.14 The aggregate amount of units which may be offered to the groups of persons under clauses 13.13 (a), (b) and (c) should not be more than 10% of the approved fund size upon listing or 25% of the units offered, whichever is lower.

## **Underwriting**

- 13.15 Underwriting arrangements must be in place before the offering of units is made, except for which–
- (a) certain unit holders or investors have given written irrevocable undertakings to subscribe; or
  - (b) the offering is made via a book-building exercise.
- 13.16 Underwriting may be arranged on a minimum level of subscription basis as determined by the management company based on factors such as the level of funding needed by the fund and the extent of the shareholding spread required.
- 13.17 The minimum level of subscription together with the basis for its determination must be disclosed in the submission to the SC and in the prospectus issued for the initial public offering.
- 13.18 The principal adviser must be part of the syndicate of underwriters for the units offered under the initial public offering and must submit the full list of underwriters, together with their respective underwriting commitments, to the SC prior to the issuance of the prospectus.

## Chapter 14

### ISSUES OF SECURITIES BY A REAL ESTATE INVESTMENT TRUST

- 14.01 Any issuance of new units requires–
- (a) (listed fund) unit holders' approval; and
  - (b) (listed and unlisted fund) SC's approval under section 212 of the CMSA.

#### PART A: LISTED FUNDS

##### Issues of Units for Cash (Other than Rights Issues)

- 14.02 Part A sets out the requirements for issues and listings of units by a listed real estate investment trust.
- 14.03 Where the unit holders of a fund have, via a resolution in a general meeting, given a general mandate to the management company to issue units, any issue of units under such general mandate must comply with the following requirements:
- (a) The number of units to be issued, when aggregated with the number of units issued during the preceding 12 months, must not exceed 20% of the approved fund size;
  - (b) Placement to one single placee for the number of units to be issued under subclause (a) must not exceed 10% of the approved fund size;
  - (c) Units must not be placed at more than 10% discount to the weighted average market price of the units for the five market days immediately prior to the price-fixing date;
  - (d) The principal adviser must act as the placement agent for the placement of units; and
  - (e) Units must not be placed to–
    - (i) interested persons of the management company,

whether in their own names or through nominees;

- (ii) persons connected to the interested persons mentioned in sub-clause (i) above; or
- (iii) nominee companies, unless the names of the ultimate beneficiaries are disclosed.

14.04 Where an issue of units departs from any of the applicable requirements stipulated in clause 14.03, the following requirements must be complied with:

- (a) The management company must obtain unit holders' approval by way of an ordinary resolution for the precise terms and conditions of the issue, in particular on–
  - (i) the persons to whom the units will be issued (hereafter referred to as "places");
  - (ii) the amount of units to be placed to each place;
  - (iii) the issue prices of the units or, in a situation where such prices are to be determined after the date of the unit holders' approval, the basis or formula of determining such prices; and
  - (iv) the purposes of the issue and utilisation of proceeds.
- (b) where units are issued to interested persons or persons connected to them as mentioned in sub-clauses 14.03(e)(i) and (ii), such persons must abstain from voting on the resolution approving the issue; and
- (c) where a placement agent is appointed for a placement of units, the principal adviser must act as the placement agent.

14.05 Subject to compliance with the stated requirements, a management company proposing to undertake an issue and placement of units in stages over a period of time must state its intention to do so and the rationale/justification in the submission to the SC.

- 14.06 The allotment and issuance of units must be effected as soon as possible after the price-fixing date. In any event, payment for units issued must be made by placees to the fund within five market days from price-fixing date. For issue of units under clause 14.04, the price-fixing date will be taken as the date of the unit holders' approval, except in instances where the price is determined on a date subsequent to the unit holders' approval.
- 14.07 As soon as practicable after the issue and prior to the listing of the new units arising from the issue, the principal adviser must submit to the SC the following:
- (a) The final list setting out the names, home/business addresses, identity card/passport/company registration numbers, occupations/principal activities and Central Depository System (CDS) account numbers of all the placees and the ultimate beneficial owners of the units issued/placed (in the case where the placees are nominee companies or funds), and the amount and price of units issued/placed to each placee;
  - (b) For issues of units which departs from any of the applicable requirements stipulated in paragraph 14.03, a copy of the circular to unit holders; and
  - (c) A confirmation from the principal adviser that to the best of its knowledge and belief, after having taken all reasonable steps and made all reasonable enquiries, the details set out in the final list of placees in sub-clause (a) above are accurate and the issue/placement exercise complies with the requirements as stated.
- 14.08 The information on the ultimate beneficiaries of the units as required in clause 14.07(a) need not be submitted for the following types of placees:
- (a) Statutory institutions managing funds belonging to contributors or investors who are members of the public;
  - (b) Unit trust funds or prescribed investment schemes approved by the SC; and

- (c) Collective investment schemes which are authorised, approved or registered investment schemes incorporated, constituted or domiciled in a jurisdiction other than Malaysia and regulated by the relevant regulatory authority in that jurisdiction, subject to the principal adviser confirming to the SC that such schemes have been duly authorised, approved or registered.
- 14.09 The SC reserves the discretion to require submission of further information on the issue/placement exercise and the places if necessary, for establishing the propriety of the exercise and independence of the places.

### **Rights Issues of Units**

- 14.10 Underwriting arrangements must be in place before the offering of units is made to existing unit holders, other than those units for which certain unit holders have given written irrevocable undertakings to subscribe.
- 14.11 Underwriting and/or undertakings to subscribe by the unit holders are allowed to be arranged on a minimum level of subscription basis.
- 14.12 The following requirements are applicable if certain unit holders wish to irrevocably undertake to subscribe for the units offered under the rights issue:
- (a) The unit holders must confirm to the SC that they have sufficient resources to take up the units. The confirmation must be verified by an acceptable independent party, preferably the principal adviser making the application to the SC for the rights issue; and
  - (b) The unit holders must submit on how they will comply with the *Malaysian Code on Take-overs and Mergers 2010*, if applicable. (*Amended on 13 July 2011*)
- 14.13 Where underwriting is arranged for the units offered under the rights issue, the principal adviser making the application to the SC must be part of the syndicate of underwriters. The full list of underwriters, together with their respective commitments, must be submitted by the principal adviser to the SC for its records. The SC should be informed immediately if there are any subsequent changes.

## **PART B: LISTED AND UNLISTED FUNDS**

### **Issues of Units to Finance Acquisitions of Real Estate**

- 14.14 A management company proposing to issue units to finance a proposed acquisition of real estates, or refinance an acquisition of real estates which is completed within one year prior to the submission to the SC, must ensure the following requirements are met:
- (a) Compliance with Chapter 8 of these guidelines on investments in real estates;
  - (b) Adequate justification of the benefits of the acquisition must be provided; and
  - (c) Subject to Chapter 10, valuation of the real estates and purchase consideration for the acquisition must be appropriately justified and adequately substantiated.
- 14.15 The principal adviser or the management company (as the case may be) must comment on the reasonableness of the terms and conditions of the acquisition, including the purchase consideration, in the submission to the SC.
- 14.16 Where the assets are to be acquired from a related party, the management company must ensure compliance with the applicable requirements under Chapter 9 of these guidelines

### **Issues of Debentures to Finance Acquisitions of Real Estates**

- 14.17 A management company may, through a special purpose vehicle wholly owned by the fund, issue debentures (including Islamic securities) to finance acquisition of real estate and single-purpose companies.
- 14.18 The issues of debentures must comply with the *Guidelines on the Offering of Private Debt Securities* and/or the *Guidelines on the Offering of Islamic Securities* issued by the SC.
- 14.19 The total amount raised from the issues of debentures is subject to the total borrowing limit of the fund stipulated under clause 8.37.

## **Issues of Bonus Units**

- 14.20 Where a revaluation surplus is to be utilised for the issuance of bonus units, only up to 90% of such surplus may be capitalised as bonus units.

## Chapter 15

### OPERATIONAL MATTERS

#### Size of Real Estate Investment Trusts

- 15.01 The initial size of a real estate investment trust should be at least RM100 million.
- 15.02 In determining the size of the fund, a management company should take into account its resources, expertise, experience, and overall capability to carry out its duties in accordance with–
- (a) the deed;
  - (b) these guidelines and securities laws; and
  - (c) acceptable and efficacious business practices within the real estate investment trust industry.
- 15.03 The SC reserves the right to review the reasonableness of the size of the fund, taking into consideration the resources, expertise, experience, and overall capability of the management company.

#### Register of Unit Holders

- 15.04 As prescribed under section 308(1) of the CMSA, a management company must keep and maintain an up-to-date register of unit holders at the registered office of the management company.
- 15.05 For the purpose of clause 15.04, a management company should–
- (a) ensure that the information required under section 308(2) of the CMSA is entered into the register;
  - (b) take reasonable steps to alter the register upon receiving written notice of a change of name or address of any unit holder; and
  - (c) supply to any unit holder an extract of the register relating to that unit holder on request.

- 15.06 As prescribed under section 310(1) of the CMSA, a management company may, on giving not less than 14 days notice to the SC, close the register of unit holders at any time, but no part of the register should be closed for more than 30 days in aggregate in any calendar year.
- 15.07 Section 311 of the CMSA also prescribes that any unit holder, trustee or other person aggrieved by the inclusion or exclusion, or the manner of inclusion or exclusion of any name in the register may seek legal recourse for the rectification of the register.

### ***Branch Register***

- 15.08 A management company may keep a branch register of unit holders anywhere outside Malaysia which should be deemed to be part of the register of unit holders, as prescribed under section 312 of the CMSA.
- 15.09 A management company should notify the SC in writing of the location of the office where any branch register is kept.

### **Distribution of Income**

- 15.10 Distribution of income should only be made from realised gains or realised income.
- 15.11 Distribution of income should be made after the management company has taken into consideration the following:
- (a) Total returns for the period;
  - (b) Income for the period;
  - (c) Cash flow for distribution;
  - (d) Stability and sustainability of distribution of income; and
  - (e) The investment objective and distribution policy of the fund.
- 15.12 Where a distribution is made, the management company should send to every unit holder a statement detailing relevant information on the

income distribution. The statement should also include the following information:

- (a) Total returns of the fund; and
  - (b) NAV per unit prior to, and subsequent to, the distribution.
- 15.13 For interim distribution, a management company may, instead of sending a statement required under clause 15.12, choose to publish the same information in an advertisement in at least one national Bahasa Malaysia newspaper and one national English newspaper.

### **Conflict of Interest**

- 15.14 A management company, a trustee, and any delegate or service provider should avoid conflicts of interest arising, or if conflicts arise, should ensure that the fund is not disadvantaged by the transaction concerned.
- 15.15 Any related-party transaction, dealing, investment, and appointments involving parties to a fund must be made on terms which are the best available for the fund and which are no less favourable to the fund than an arm's length transaction between independent parties.
- 15.16 The appointment or renewal of appointment of any delegate or service provider who is a related party of the management company must be approved by the independent directors of the management company.

### **Rebates and Soft Commission**

- 15.17 A management company, a trustee or its delegates should not retain any rebate from, or otherwise share in any commission with, any broker/dealer in consideration for directing dealings in a fund's property. Accordingly, any rebate or shared commission should be directed to the account of the fund concerned.
- 15.18 Notwithstanding 15.17, a management company or its delegate may retain goods and services (soft commission) provided by any broker/dealer if they are of demonstrable benefit to unit holders and–
- (a) dealings with the broker/dealer are executed on terms which are the best available for the fund; and

- (b) the management company's or delegate's soft commission practices are adequately disclosed in the prospectus and fund reports (including a description of the goods and services received by the management company or delegate).

### **Guidance**

Soft commissions which are not allowed include, among others, entertainment allowance, travel, accommodation, and membership fee.

- 15.19 Where clause 15.18 applies, the compliance officer should verify and inform the management company's board of directors (or audit and compliance committee, if any) that any goods or services received by the management company or its delegate, comply with the guidelines' requirements.

## **Documents for Inspection by Unit Holders**

- 15.20 A management company and a trustee should make available at their principal place of business the following documents:
- (a) The deed and the supplementary deed(s) of the fund (if any);
  - (b) The current prospectus and the supplementary/replacement prospectuses of the fund (if any);
  - (c) The latest annual and interim reports of the fund (if any);
  - (d) Each material contract or document referred to in the prospectus;
  - (e) All reports, letters or other documents, valuations and statements by any expert, any part of which is extracted or referred to in the prospectus;
  - (f) The audited accounts of the management company and the fund for the last three financial years or from the date of incorporation/commencement (if less than three years);

- (g) Latest audited accounts of the management company and the fund for the current financial year (where applicable); and
- (h) Any consent given by experts or persons named in the prospectus as having made a statement that is included in the prospectus or on which a statement made in the prospectus is based,

for inspection by investors and unit holders at all times (without charge) during the ordinary business hours of the management company and the trustee.

### **Terminating/Winding Up a Fund**

15.21 A fund may be terminated or wound up upon the occurrence of any of the following events:

- (a) The SC's approval is revoked under section 212(7)(A) of the CMSA;
- (b) A special resolution is passed at a unit holders' meeting to terminate or wind up the fund, following occurrence of events stipulated under section 301(1) of the CMSA and the court has confirmed the resolution, as required under 301(2) of the CMSA;
- (c) A special resolution is passed at a unit holders' meeting to terminate or wind up the fund;
- (d) The fund has reached its maturity date as specified in the deed; and
- (e) The effective date of an approved transfer scheme has resulted in the fund, which is the subject of the transfer scheme, being left with no asset/property.

15.22 Upon the occurrence of any of the events under clause 15.21–

- (a) Chapter 12 (Pricing and Dealing) and Chapter 8 (Investments of the Real Estate Investment Trust) cease to apply to the fund;

- (b) the trustee should cease to create and cancel units;
  - (c) dealing in units should cease; and
  - (d) the trustee should proceed to wind up the fund in accordance with clauses 15.23 and 15.24.
- 15.23 If an event under clause 15.21(e) occurs, the trustee should proceed to wind up the fund in accordance with the approved transfer scheme.
- 15.24 In any other event under clause 15.21, the trustee should–
  - (a) sell all the fund's property remaining in its hands;
  - (b) after paying or retaining adequate amount for all liabilities payable and cost of winding up, distribute to unit holders the net cash proceeds available for the purpose of such distribution in proportion to the number of units held by unit holders respectively; and
  - (c) pay any unclaimed net proceed or other cash held by the trustee that remains unclaimed after 12 months from the date on which it became payable to the Registrar of Unclaimed Monies, in accordance with the provisions of the *Unclaimed Monies Act 1965*.
- 15.25 The management company or trustee should as soon as practicable after the termination or winding up of the fund–
  - (a) (where unit holders' resolution for the termination/winding up is not obtained) inform unit holders of the termination or winding up of the fund; and
  - (b) publish a notice on the termination or winding up of the fund in one national Bahasa Malaysia newspaper and one national English newspaper.
- 15.26 The management company and trustee should notify the SC in writing–
  - (a) upon the passing of a resolution to terminate or wind up the fund, or upon the court confirming the unit holders' resolution to terminate or wind up the fund; and

- (b) upon the completion of the termination and winding up of the fund.
- 15.27 Where a fund is being terminated or wound up, the trustee must also arrange for the auditor of the fund to conduct a final review and audit of the fund's accounts.

### ***Accounting and Reports During Termination/Winding Up***

- 15.28 While a fund is being terminated/wound up–
- (a) the accounting period continues to run; and
  - (b) annual and interim reports (where applicable) continue to be required, unless after consulting the auditor and the SC, the management company has taken reasonable care to determine that timely production of an annual or interim report is not required in the interests of unit holders.

### **Transfer Schemes**

- 15.29 A transfer scheme is an arrangement to transfer fund property from a fund (transferor fund) to another fund (transferee fund).
- 15.30 A management company should ensure that the unit holders of the transferor fund do not become unit holders of a fund other than a fund approved by the SC.
- 15.31 A transfer scheme should not be implemented without the sanction of–
- (a) a special resolution of unit holders of the transferor fund; and
  - (b) a special resolution of unit holders of the transferee fund.
- 15.32 If the management company and trustee or other persons providing oversight functions for the transferee fund or the auditor of the transferee fund agree that the receipt of the property concerned for the account of the transferee fund–

- (a) is not likely to result in any material prejudice to the interest of unit holders of the transferee fund;
- (b) is consistent with the investment objective of the transferee fund; and
- (c) could be effected without any breach of Chapter 8 (Investments of the Real Estate Investment Trust);

then, the transfer scheme may be implemented and the issue of units in exchange for the transferor fund's property may be undertaken.

### Meetings of Unit Holders

15.33 A management company and trustee may convene a meeting of the unit holders at any time.

15.33A In addition, a management company shall—

- (a) call a general meeting of the unit holders of the fund, to be called “annual general meeting”, within 18 months of the approval/authorisation of the fund and thereafter once in every calendar year and not more than 15 months after the holding of the last preceding annual general meeting;
- (b) at the annual general meeting, lay before the unit holders of the fund the financial statements of the fund for the period since the preceding statement (or in the case of the first statement, since the establishment of the fund) made up to a date not more than four months before the date of the said meeting; and
- (c) before the financial statements are laid before the unit holders of the fund at the annual general meeting, cause—
  - (i) the financial statements to be duly audited;
  - (ii) a statutory declaration by a director of the management company (or where that director is not primarily responsible for the financial management of the fund by the person so responsible) stating his opinion as to the correctness or otherwise of the financial statements to be attached to the financial statements; and
  - (iii) the auditor's report to be attached to the financial statements.

*(Added on 28 December 2012)*

- 15.34 Section 305(1) of the CMSA further provides that a management company must call for a meeting of unit holders upon the written request of not less than 50 unit holders or one-tenth of all unit holders; the request is given at the management company's registered office; and for specific purposes stipulated under the same section of the CMSA.

### Notice of Meetings

- 15.35 Where a management company or trustee decides to convene a unit holders' meeting, it must—
- (a) give at least 14 days written notice to unit holders
  - (b) specify in the notice, the place, time, and terms of the resolutions to be proposed; and
  - (c) publish an advertisement giving the relevant notice of the unit holders' meeting in the national language or English daily newspapers circulating in Malaysia.  
*(Amended on 28 December 2012)*
- 15.35A For the annual general meeting or a general meeting for the passing of a special resolution, the management company must—
- (a) give at least 21 days written notice to unit holders;
  - (b) specify in the notice the place, time and the terms of the resolutions to be proposed; and
  - (c) publish an advertisement giving the relevant notice of the annual general meeting in the national language or English daily newspapers circulating in Malaysia.  
*(Added on 28 December 2012)*
- 15.36 Where a meeting is requested by the unit holders under section 305(1) of the CMSA, the management company must—
- (a) call the meeting within 21 days after receiving the request from unit holders;
  - (b) give notice to unit holders in accordance with section 305(3) of the CMSA; and
  - (c) specify in the notice the place, time and the terms of the resolutions to be proposed.
  - (c) specify in the notice the place, time and the terms of the resolutions to be proposed.
- 15.37 A copy of the notice referred to under clauses 15.35(a), 15.35A(a) and 15.36(b) must be delivered to the SC and the trustee.  
*(Amended on 28 December 2012)*

## Chairman

- 15.38 A unit holders' meeting should be chaired by–
- (a) (if the meeting is requested by unit holders or trustee) a person appointed on their behalf by unit holders who are present at the meeting or (where no such appointment is made) by a nominee of the trustee; or
  - (b) (if the meeting is called by the management company) a person appointed by the management company.

## Quorum

- 15.39 The quorum required for a meeting is five unit holders, whether present in person or by proxy, provided always that the quorum for a meeting which requires a special resolution is five unit holders holding in aggregate at least 25% of the units in issue at the time of the meeting.
- 15.40 If after a reasonable time from the start of the meeting, a quorum is not present, the meeting–
- (a) (if convened at the request of the unit holders) should be dissolved; and
  - (b) (in any other case) should stand adjourned to–
    - (i) a day and time which is seven or more days after the day and time of the meeting; and
    - (ii) a place appointed by the chairman.
- 15.41 Notice of an adjourned meeting must be given to unit holders, stating that while five unit holders present in person or by proxy, and holding the minimum aggregate number of units (as the case may be) are required to constitute a quorum at the adjourned meeting, whatever the number of unit holders or number of units held (as the case may be) present in person or by proxy at the adjourned meeting will form a quorum after a reasonable time has passed from the convening of the meeting.

## Resolutions

- 15.42 Except where a special resolution is specifically required or permitted, any resolution is passed by a simple majority.

- 15.43 Resolutions passed at a meeting of unit holders bind all unit holders, whether or not they were present at the meeting. No objection may be made as to any vote cast unless such objection is made at the meeting.
- 15.44 A copy of the resolution should be delivered to the SC and the trustee.

### **Voting Rights**

- 15.45 On a show of hands, every unit holder who is present in person or by proxy has one vote.
- 15.46 A poll may be demanded on any resolution. On a poll–
- (a) votes may be given either personally or by proxy; and
  - (b) every unit holder who is present in person or by proxy shall have one vote for every unit held by him.
- 15.47 In the case of joint unit holders, any one of such joint unit holders may vote either personally or by proxy, but if the joint unit holders are present at the meeting either personally or by proxy, only the vote of the first named in the register of unit holders can be taken.
- 15.48 A management company must not exercise the voting rights for the units it or its nominees hold in any unit holders' meeting, regardless of the party who requested for the meeting and the matter or matters that are laid before the meeting.
- 15.49 Related parties of the management company should not vote or be counted in the quorum at a meeting if they have interest in the outcome of a transaction tabled for approval which is different from the interests of other unit holders.

### **Right to Demand Poll**

- 15.50 A resolution put to the vote at a unit holders' meeting should be determined by a show of hands unless a poll is demanded (before or immediately after any question is put to the show of hands) by–
- (a) the chairman;
  - (b) the trustee;
  - (c) the management company; or
  - (d) unit holders present (or represented by proxy) who hold between them not less than one-tenth of the total number of units in issue.
- 15.51 Unless a poll is demanded, a declaration by the chairman as to the result of the resolution is conclusive evidence of the fact.

## Proxies

- 15.52 A unit holder may appoint another person to attend a unit holders' meeting and vote in the unit holder's place.
- 15.53 Every notice calling a unit holders' meeting should contain a statement that a unit holder is entitled to attend and vote, or may appoint a proxy.
- 15.54 The document appointing a proxy should be deposited at the office of the management company not less than 48 hours before the meeting or adjourned meeting.

## Adjournment and Minutes

- 15.55 The chairman—
- (a) may, with the consent of any meeting of unit holders at which a quorum is present; and
  - (b) should, if so directed by the meeting;
- adjourn the meeting.
- 15.56 A management company should ensure that—
- (a) minutes of all resolutions and proceedings at every unit holders' meeting are made and kept; and
  - (b) any minute made in (a) is signed by the chairman of the unit holders' meeting.

## Corporate Governance

- 15.57 A management company of a fund should adhere to good corporate governance principles and best industry standards for all activities conducted in relation to the fund and any matter arising out of its listing or trading on any stock exchange.
- 15.58 The trustee, property manager, independent qualified valuer, and any other delegates or service provider of the fund should observe the best of corporate governance standards.

## Chapter 16

### REPORTING AND AUDIT

#### Reporting Requirements

- 16.01 A management company should prepare–
- (a) (for listed fund) an annual report of the fund; and
  - (b) (for unlisted fund) an annual report and interim report of the fund,  
  
to provide all necessary information to enable unit holders to evaluate the performance of the fund.
- 16.02 For the purpose of clause 16.01(b), an interim report of an unlisted fund need not be prepared for a new fund where the first accounting period is less than 12 months.
- 16.03 If a management company intends to change a fund's annual or interim financial period (where applicable), the management company should obtain–
- (a) a written confirmation from the fund's auditor that the change would not result in any significant distortion to the financial position of the fund; and
  - (b) the SC's prior consent before implementing the change.

#### *Contents of Fund Reports*

- 16.04 An annual report of a fund should contain at least the following:
- (a) Fund information;
  - (b) Report on fund performance;
  - (c) Manager's report;

- (d) Trustee's report;
  - (e) Shariah adviser's report (where applicable);
  - (f) Audited financial statements for the accounting period; and
  - (g) Auditor's report.
- 16.05 An interim report of an unlisted fund should contain at least the following:
- (a) Fund information;
  - (b) Report on fund performance;
  - (c) Manager's report;
  - (d) Trustee's report;
  - (e) Shariah adviser's interim review report (where applicable); and
  - (f) Financial statements for the interim accounting period.
- 16.06 The minimum and detailed information to be included in the fund's reports are stipulated in Schedule B of these guidelines.

### ***Publication of Reports***

- 16.07 A management company should—
- (a) prepare and publish the annual and interim reports (where applicable) of the fund;
  - (b) send the annual report without charge to unit holders;
  - (c) send the interim report (where applicable) without charge to the unit holders; and
  - (d) lodge the annual report and deliver the interim report (where applicable) to the SC;

within two months after the end of the financial period the report covers.

- 16.08 Notwithstanding clause 16.07(c), a management company may choose to send a short interim report to unit holders.
- 16.09 A short interim report should contain at least the following:
- (a) Report on fund performance;
  - (b) Manager's report; and
  - (c) A statement that states that the full interim report is available upon request and without charge (to appear in bold and in a prominent position).

## **Audit**

- 16.10 A management company and trustee should ensure that the financial statements of the fund are audited annually by an auditor appointed under clause 16.11.
- 16.11 A trustee must appoint an auditor for the fund that is independent of the management company and the trustee.
- 16.12 Where the SC is of the opinion that the auditor appointed by the trustee is not suitable, or where an auditor has not been appointed, the SC may direct the trustee to replace or appoint an auditor to the fund in accordance with the requirements of this chapter.
- 16.13 A trustee may, from time to time, if it deems appropriate, remove the auditor of the fund and appoint another in its place. In addition, unit holders may by way of an ordinary resolution request the trustee to replace the auditor.

## ***Co-operation with Auditors***

- 16.14 A management company should take reasonable steps to ensure that its employees–

- (a) provide such assistance as the auditor reasonably requires to discharge its duties;
- (b) give the auditor right of access at all reasonable times to relevant records and information;
- (c) do not interfere with the auditor's ability to discharge its duties;
- (d) do not provide false or misleading information to the auditor; and
- (e) report to the auditor any matter which may significantly affect the financial position of the fund.

16.15 A management company should, in writing, require any person to whom the management company has delegated or outsourced any function to co-operate with the fund's auditor in accordance with the provisions specified in clause 16.14.

## Chapter 17

### APPLICATIONS, NOTIFICATIONS, AND REPORTING TO THE SECURITIES COMMISSION

#### Application for SC Approval

- 17.01 The CMSA requires that the SC's approval be obtained for the following proposals:
- (a) Issuance or offer of units of a real estate investment trust;
  - (b) Listing or quotation of units on a stock market of a stock exchange;
  - (c) A company to act as management company for a fund; and
  - (d) A company to act as trustee for a fund.
- 17.02 The SC may—
- (a) approve proposals subject to certain terms and conditions as it deems fit;
  - (b) approve proposals with revisions and subject to certain terms and conditions as it deems fit; or
  - (c) reject proposals.
- 17.03 In addition to clause 17.01, the following proposals are required to be submitted for the SC's approval:
- (a) Valuation of real estates (including real estates held by single-purpose companies) to be acquired by the fund for purposes set out under clause 10.12;
  - (b) Exemption or variation from provisions in these guidelines;
  - (c) Extension of time to comply with the requirements of these guidelines and terms and conditions of approval;

- (d) Appointment of a delegate that is not a holder of a Capital Markets Services Licence;
- (e) Appointment of a trustee under section 290(1) of the CMSA;
- (f) Reconstruction, amalgamation or any change in the shareholding of a management company vis-à-vis its eligibility to be a management company of a real estate investment trust; and
- (g) Notices to be issued or published before the registration of a prospectus, under section 241(4) of the CMSA.

### **Application for SC Registration**

- 17.04 The following proposals are required to be submitted for the SC's registration:
- (a) Registration of a trustee for a real estate investment trust; and
  - (b) Renewal of a trustee's registration.

### **Application to Register and Lodge Documents with SC**

- 17.05 Under sections 232(1), 238(2), 293(1) and 295(1) of the CMSA, the following documents must be registered with the SC:
- (a) Deed and supplementary deed of the fund; and
  - (b) Prospectus and supplementary/replacement prospectus of the fund.
- 17.06 The documents referred to in clause 17.05 must, subsequent to registration, be lodged with the SC as required under sections 234, 238(3) and 296 of the CMSA.

## Submission of Applications to SC

- 17.07 Applications must be submitted in accordance with the requirements stipulated under Schedule D of these guidelines.
- 17.08 Submission of valuation reports to the SC for proposal referred to under clause 17.03(a) must be made in accordance with the *Asset Valuation Guidelines*. (Amended on 13 July 2011)
- 17.09 Submission of applications/valuation reports should be addressed to:

Pengerusi  
Suruhanjaya Sekuriti Malaysia  
3 Persiaran Bukit Kiara  
Bukit Kiara  
50490 Kuala Lumpur

## Notifications to SC

- 17.10 A management company must notify the SC of, among others, the following:
- (a) Appointment and resignation of directors<sup>1</sup>;
  - (b) Appointment and resignation of chief executive officer;
  - (c) Appointment and resignation of an investment committee member, if any;
  - (d) Appointment and resignation of the Shariah adviser;
  - (e) Appointment of a delegate that is a holder of a Capital Markets Services Licence;
  - (f) Appointment and resignation of the property manager and any delegates;

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<sup>1</sup> For any new appointment, notification should be accompanied with a declaration as per the specimen in Schedule D, Appendix II(c).

- (g) Acquisition of real estates;
- (h) Disposal of real estates;
- (i) Foreign markets in which the fund invest in;
- (j) A resolution passed (and court confirming where applicable) to terminate/wind up a fund; and
- (k) Completion of the termination/winding up of a fund.

### **Documents Required to be Lodged/Delivered/Deposited to SC**

- 17.11 Under sections 298(1) and 229(4) of the CMSA, a management company must–
- (a) lodge the annual report of the fund and the management company;
  - (b) deliver the interim report of the unlisted fund;
  - (c) deliver notices/circulars issued to unit holders; and
  - (d) deposit an information memorandum for excluded offers.

### **Submission of Notifications/Documents to SC**

- 17.12 Notifications and documents referred to in clauses 17.10 and 17.11 must be submitted in accordance with the requirements stipulated under Schedule D of these guidelines (where applicable).
- 17.13 Submissions of notifications and documents should be addressed to–

Ketua Jabatan  
Jabatan Skim Pelaburan Terurus  
Kewangan Korporat dan Pelaburan  
Suruhanjaya Sekuriti Malaysia  
3 Persiaran Bukit Kiara  
Bukit Kiara 50490 Kuala Lumpur  
(Amended on 13 July 2011)

## Reporting to the SC

- 17.14 Under section 298(1)(b) of the CMSA, a management company is required to submit a Statistical and Compliance Return (collectively referred to as “REIT Returns”) of the fund to the SC.
- 17.15 The REIT Returns should be submitted in accordance with the requirements set out under Schedule E of these guidelines.
- 17.16 Submissions of the REIT Returns should be addressed to–

Ketua Jabatan  
Jabatan Skim Pelaburan Terurus  
Kewangan Korporat dan Pelaburan  
Suruhanjaya Sekuriti Malaysia  
3 Persiaran Bukit Kiara  
Bukit Kiara 50490 Kuala Lumpur  
*(Amended on 13 July 2011)*

# SCHEDULES

## Schedule A

### DEED OF A REAL ESTATE INVESTMENT TRUST

- (1) Under section 294 of the CMSA, a deed must contain such provisions, covenants, requirements, information, and particulars specified by the SC.
- (2) The requirements stipulated in this schedule are in addition to requirements imposed on a management company and trustee under the law. The contents of this schedule are in addition to and not in derogation of any other duty imposed by any other law.
- (3) A management company, or its adviser, should submit an application to register and lodge the deeds in accordance with the requirements and procedures set out in Appendix III of Schedule D.

### Minimum Contents for a Deed

#### *Covenants of the Management Company*

- (4) A deed of a real estate investment trust should contain duties of a management company which are prescribed under the CMSA and also include, but not limited to, the following covenants:
  - (a) It should ensure that the fund has, at all times, an appointed trustee;
  - (b) It should pay the trustee, within 10 days after receipt by the management company, any money which, under the deed, is payable to the trustee;
  - (c) It should make available, or ensure that there is made available, to the trustee such information as the trustee requires on all matters relating to the fund to which the deed relates;
  - (d) It should not exercise the voting rights for the units it holds in any unit holders' meeting, regardless of the party who requested for and called the meeting and the matter or matters that are laid before unit holders;

- (e) It should attach the trustee's report together with the annual report required under section 298(3) of the CMSA to be sent to unit holders;
- (f) It should ensure that it carries on and conducts its business in a proper, diligent and efficient manner in accordance with the deed, the guidelines, and securities laws, and efficacious business practices within the real estate investment trust industry;
- (g) It should act with due care, skills and diligence in managing the fund and effectively employ the resources and procedures necessary for the proper performance of the fund;
- (h) It should observe high standards of integrity and fair dealing in managing the fund to the best and exclusive interest of the unit holders;
- (i) It should not take on, lease or otherwise acquire any immovable property or any interest therein, except for the purposes of operating real estate investment trusts and those entered into in the ordinary course of business;
- (j) It should ensure that all real estates acquired is insured in the name of the trustee and upon request by the trustee to produce for inspection all relevant insurance policies;
- (k) It should take all necessary steps to ensure that the assets of the fund are adequately protected and properly segregated;
- (l) It should keep proper accounting records and other records relevant to the fund;
- (m) It should take all reasonable steps and exercise due diligence to ensure that the fund's assets or the units of the fund are correctly valued in accordance with the deed, relevant guidelines, securities laws or valuation standards;
- (n) It should appoint a property manager approved by the trustee to manage real estates held by the fund that possess adequate human resource with necessary qualifications, expertise, and experience in real estate management; and

- (o) It should inform the trustee in writing of any acquisition or disposal of investments of the fund within one day after the acquisition or disposal was effected.
- (5) In addition to paragraph (4) above, the deed of an unlisted real estate investment trust should also contain the following covenants:
- (a) It should not sell any unit of the fund to which the deed relates, other than at a price calculated in accordance with the deed;
  - (b) It should, at the request of a unit holder, purchase units held by the unit holder, and the purchase price will be a price calculated in accordance with the deed; and
  - (c) It should take all reasonable steps and exercise due diligence to ensure that the units of the fund are correctly priced.

### ***Covenants of the Trustee***

- (6) A deed of a real estate investment trust should contain duties of a trustee that is prescribed under the CMSA and also include, but not be limited to, the following covenants:
- (a) It should ensure that the fund has, at all times, an appointed management company;
  - (b) It should exercise all due care, skill, diligence, and vigilance in carrying out its functions and duties, and in safeguarding the rights and interests of unit holders to which the deed relates;
  - (c) It should ensure that the management company does not use its position improperly in managing the fund to gain, directly or indirectly, an advantage for itself or for any other person or to cause detriment to the interests of unit holders of such a fund;
  - (d) It should keep or cause to be kept, proper books of account for all investments and properties of the fund;
  - (e) It should ensure that proper records are kept of all transactions, dividends, interests, rental, and income received and distributed for the fund to which the deed relates;

- (f) It should cause the accounts referred to in (6)(d) to be audited at the end of each financial year by an auditor appointed by the trustee;
- (g) It should act as the custodian of the assets of the fund and actively monitor the administration of the fund by the management company to ensure that the interest of unit holders are upheld at all times;
- (h) It should retain control of the assets of the fund at all times in the event the function of custody of the investment of the fund is being delegated to any person (where applicable);
- (i) It should immediately notify the SC of any irregularity, breach of the deed, the guidelines or securities laws, and any other matter properly regarded by the trustee as not being in the interests of unit holders;
- (j) It should at all times, through proper and adequate supervision, ensure that the fund is managed and administered by the management company in accordance with the objectives of the fund, deed, guidelines, and relevant laws and requirements, and acceptable and efficacious business practices within the real estate investment trust industry;
- (k) It should take all reasonable steps to ensure that the fund's assets are correctly valued and is valued in accordance with the deed, relevant guidelines, securities laws or valuation standards; and
- (l) It should ensure that sale, repurchase, creation, and cancellation of units of the fund is in accordance with the deed, the guidelines and securities laws.

### ***Joint Covenants of the Management Company and Trustee***

- (7) A deed of a real estate investment trust should contain covenants of the management company and trustee including, but not be limited to, the following:
  - (a) The management company and the trustee should safeguard the interests of unit holders;

- (b) The management company and the trustee should ensure that for the duration of the fund, there is a registered deed in force at all times;
- (c) The management company or the trustee may not exercise the voting rights at any election for the appointment of a director of a corporation whose shares are so held, unless it is sanctioned by the unit holders of the fund by way of an ordinary resolution;
- (d) The management company and the trustee should at all times use its best endeavours to list and maintain the listing of the fund on Bursa Securities and to comply with the listing requirements; and
- (e) The management company, the trustee and any delegate should avoid a conflict of interest and ensure that the fund is not disadvantaged by the transaction concerned.

### ***Other Provisions***

- (8) A deed of a real estate investment trust should also contain provisions for the following:
  - (a) Creation of the fund or declaration of trust, which also sets out full particulars of the trust, including precise information as to the circumstances in which the money, securities, investments, and properties subject to the fund are or will be vested in that trustee, and the duties and obligations of the trustee towards;
  - (b) That the deed—
    - (i) is binding on each unit holder as if it had been a party to it and that it is bound by its provisions;
    - (ii) authorises and requires the management company and the trustee to do the things required or permitted of them by the terms of the deed; and
    - (iii) is made and governed under the laws of Malaysia;

- (c) Appointment of a trustee to the fund;
- (d) Full particulars of the fund including, but not limited to—
  - (i) name of the fund;
  - (ii) investment objective of the fund;
  - (iii) permitted investments, limits, and restrictions;
  - (iv) basis for the valuation of the assets of the fund;
  - (v) if the fund has a limited duration, a statement to that effect;
  - (vi) the fund's distribution policy;
  - (vii) accounting period of the fund; and
  - (viii) if classes of units are issued, a provision specifying the classes, differences between the classes and rights attached to each class;
- (e) Full particulars on circumstances in which, and methods by which, all or any of the investments may be varied;
- (f) Full particulars on the provision to be made for investments in property that depreciates in value, including the source from which the replacement is to be made or from which the cost of replacement is to be met. If no provision is made, a statement to that fact must be clearly stated;
- (g) For unlisted funds, full particulars on the circumstances in which the management company may be required to repurchase any unit which the unit holder has purchased, and the method of calculation of the repurchase price of the unit;
- (h) For unlisted funds, full particulars on its pricing policy, including the method of calculation of the unit price;
- (i) Full particulars on the conditions governing the transfer of any unit;

- (j) Full particulars on the remuneration of the management company and trustee respectively, including dealing charges (if any) and expenses that are allowed to be paid out of the fund;
- (k) Where the deed requires, or confers a right on, unit holders to enter into an agreement in connection with the fund, a provision incorporating the terms and conditions of that agreement;
- (l) A declaration that unless the conditions of issue of any unit expressly provide that a certificate not be issued, a certificate should be issued by the trustee to a purchaser of any unit purchased or subscribed for, not more than two months after the issue of the unit;
- (m) Circumstances under which the dealing in units can be deferred or suspended;
- (n) Circumstances, procedures and processes for termination or winding up of the fund;
- (o) Circumstances, procedures and processes for convening of meetings of unit holders, including the manner in which votes may be given at a meeting of unit holders;
- (p) Circumstances, procedures and processes for retirement, removal and replacement of the management company and the trustee;
- (q) Circumstances, procedures and processes for the appointment, retirement, removal, and replacement of the auditor for the fund;
- (r) Specific provisions whereby the management company undertakes to keep and maintain an up-to-date register of unit holders and to make that register available for inspection, free of charge, to any unit holder at any time during ordinary business hours of the management company;
- (s) The extent of the indemnity provided by the management company;

- (t) Full particulars relating to unit holders' rights and the extent of their liability; and
- (u) Provisions governing the modification of the deed.

## Schedule B

### CONTENTS OF A FUND'S REPORT

- (1) The purpose of a fund's report is to provide information to enable unit holders evaluate the performance of the fund.
- (2) The information required by the SC under this schedule is the minimum that must be included in a fund's report.
- (3) A fund's report need not adopt the terms used under this schedule. Where possible, the report should avoid unnecessary jargon and use terms which are easily understood by unit holders.

### Fund Information

- (4) This section should disclose the following information:
  - (a) Name, type, and category of the fund;
  - (b) The fund's investment objective;
  - (c) Duration of the fund and its termination date (where applicable);
  - (d) The fund's performance benchmark;
  - (e) The fund's distribution policy;
  - (f) Composition of the fund's investment portfolio grouped in appropriate categories, e.g. real estate (listed by types e.g. residential, commercial, industrial, etc.), real estate-related assets, and non-real estate related-assets (e.g. stocks, debentures, other real estate investment trusts, etc.), including the respective percentages;

(g) Breakdown of unit holding as follows:

No. of Holders	Holdings	Total Holdings	%
	less than 100		
	100 to 1,000		
	1,001 to 10,000		
	10,001 to 100,000		
	100,001 to less than 5% of approved fund size		
	5% and above the approved fund size		

(h) Disclosure of information regarding the real estates (including those held via single-purpose companies) of the fund, including but not limited to, the following:

(i) Details of the real estates owned by the fund (to be disclosed separately for each real estate unless the details are disclosed in the financial statements) such as–

- name and address of the real estates;
- description, property type, and age of the real estates;
- title details, encumbrances or limitations in title/ interests (if any);
- tenure of real estate. For a leasehold property, the remaining lease period and date of approval for transfer of lease should be stated;
- net lettable area, existing use, occupancy rates, and number of parking spaces;

- brief particulars of tenancies highlighting the major tenants, tenancy/lease periods, average lease period etc;
  - date of acquisition of real estates;
  - acquisition price;
  - market value of the real estate, date of latest valuation, and name of independent valuer that carried out the valuation; and
  - net book value of the real estate.
- (ii) Where a real estate is acquired or disposed during the period, the following information must be disclosed:
- Identity of vendor/purchaser of the real estate;
  - (For acquisitions) Information required in (i) above; and
  - (For disposal) Date of disposal, disposal price, market value of the real estate, date of latest valuation, name of independent valuer that carried out the valuation, and gain/loss on disposal; and
- (iii) Where a real estate is acquired from, or disposed to, a related party during the period, the following details must be disclosed:
- Information required in (ii) above;
  - Relationship between the vendor/purchaser with the fund or management company; and
  - Where unit holders' approval is required and a resolution has been obtained, details of the meeting (such as the date of meeting, number of attendees etc.), and the resolution; and

- (iv) Name and address of the property manager for each real estate.
- (5) There should also be disclosure of the following information:
- (a) Name, address, telephone, and facsimile numbers of the registered office of the management company and trustee;
  - (b) Name, address, telephone, and facsimile numbers of each office at which a register of unit holders is kept;
  - (c) Particulars of each director of the management company including the following information:
    - (i) Name, age, nationality, qualification, and whether the position is an executive or non-executive one, and whether such director is an independent director;
    - (ii) Working experience and occupation;
    - (iii) Date he was first appointed to the board;
    - (iv) Details of any board committee to which he belongs;
    - (v) Other directorship of public companies;
    - (vi) Family relationship with any director and/or major unit holder of the fund;
    - (vii) Conflict of interest that he has with the fund;
    - (viii) List of convictions for offences within the past 10 years other than traffic offences, if any; and
    - (ix) Number of board meetings attended in the financial year;
  - (d) Particulars of the chief executive officer and where the chief executive officer is not a director, the following particulars:
    - (i) Name, age, nationality, and qualification;

- (ii) Working experience;
  - (iii) Date he was first appointed by the management company;
  - (iv) Details of any interest in the fund;
  - (v) Other directorship of public companies;
  - (vi) Family relationship with any director and/or substantial unit holder of the fund;
  - (vii) Conflict of interest that he has with the fund; and
  - (viii) List of convictions for offences within the past 10 years other than traffic offences, if any;
- (e) Particulars of each investment committee member of the fund (where applicable) including the following information:
- (i) Name, age, nationality, qualification, and whether he is an independent member;
  - (ii) Working experience and occupation;
  - (iii) Date he was first appointed to the Committee;
  - (iv) Conflict of interest that he has with the fund;
  - (v) List of convictions for offences within the past 10 years other than traffic offences, if any; and
  - (vi) Number of Committee meetings attended in the financial year.
- (f) Particulars of the Shariah adviser of the fund (where applicable) including the following information:

***If Individuals are appointed***

- (i) Name, age, nationality, and qualification;

- (ii) Working experience and occupation;
- (iii) Date he was first appointed;
- (iv) List of convictions for offences within the past 10 years other than traffic offences, if any; and
- (v) Number of meetings attended in the financial year.

***If a company is appointed***

- (i) Name, address, telephone, and facsimile numbers of the registered office of the Shariah adviser;
  - (ii) Corporate information of the company;
  - (iii) Experience relevant to its appointment as Shariah adviser; and
  - (iv) The name, qualifications, and experience of the designated person responsible for Shariah matters of the fund.
- (g) Name and address of any delegates, including the functions delegated to them.
  - (h) Name and address of the company secretary of the management company;
  - (i) Total number of board meetings in relation to the fund held during the financial year by the management company;
  - (j) Particulars of all sanctions and/or penalties imposed on the fund, directors of the management company or the management company by the relevant regulatory bodies;
  - (k) Amount of non-audit fees incurred for services rendered to the fund for the financial year by the fund's auditors, or a firm or company affiliated to the auditors' firm;
  - (l) Particulars of material contracts of the fund involving the management company and major unit holders' interests, either

still subsisting at the end of the financial year or, if not then subsisting, entered into since the end of the previous financial year, providing the following particulars for each contract:

- (i) The date;
- (ii) The parties;
- (iii) The general nature;
- (iv) The consideration passing to or from the fund;
- (v) The mode of satisfaction of the consideration; and
- (vi) The relationship between the director or major unit holder and the contracting party (if the director or major unit holder is not the contracting party).

**Note**

*If no material contract has been entered into, a statement to that effect must be clearly disclosed.*

- (m) Where the above contract relates to a loan [e.g bank loan or loan from a special purpose vehicle (SPV) that issues debentures], the following particulars:
  - (i) Names of the lender and the borrower;
  - (ii) Relationship between the borrower and the director or major shareholder (if the director or the major shareholder is not the borrower);
  - (iii) Purpose of the loan;
  - (iv) Amount of the loan;
  - (v) Interest rate;
  - (vi) Terms as to payment of interest and repayment of principal;

- (vii) Security/collateral provided; and
  - (viii) Fund's gearing ratio.
- (n) A statement (indicating the date of such statement) that sets out–
- (i) the names of the major unit holders (excluding bare trustees) and their direct and deemed interests, stating the number and percentage of units in which they have an interest;
  - (ii) the number of holders of each class of units and the voting rights attached to each class (where applicable); and
  - (iii) the names of the 30 unit holders having the largest number of units according to the Record of Depositors (without aggregating the securities from different securities accounts belonging to the same person) and the number and percentage of units held. In the case of securities account holders which are authorised nominees as defined under the *Securities Industry (Central Depositories) Act 1991*, information in the account qualifier field of the securities account must also be stated.

## Fund Performance

- (6) The following information should be disclosed in this section:
- (a) A comparative table covering the last three financial years, or since inception if shorter, showing for the end of each financial year–
    - (i) the total asset value of the fund;
    - (ii) the NAV of the fund;
    - (iii) the NAV per unit of the fund;

- (iv) the highest and lowest NAV per unit;  

(The figures referred to in (ii) to (iv) should be shown as ex-distribution.)
  - (v) the highest and lowest price per unit (for listed funds);
  - (vi) the number of units listed or in circulation;
  - (vii) the distribution per unit (interim and final) and the date for each distribution. The effects of the income distribution on the NAV per unit before and after distribution should be clearly disclosed;
  - (viii) the distribution yield of the fund; and
  - (ix) the management expense ratio (MER) of the fund. If applicable, provide an explanation for the difference in MER.
- (b) Average total return of the fund measured over the following periods to the date of the report:
- (i) One year, or since inception if shorter;
  - (ii) Three years; and
  - (iii) Five years.
- (c) Annual total return of the fund for each of the last five financial years, or since inception if shorter.
- (7) A fund report may include other performance data aside from those mentioned in (6) above. However, all performance data presented must comply with the following requirements:
- (a) The bases of calculation and any assumptions made should be consistently applied, adequately disclosed and independently verified; and
  - (b) The data used must be obtained from independent sources.

- (8) It must be clearly stated that past performance is not necessarily indicative of future performance and that unit prices and investment returns may fluctuate.

## **Manager's Report**

- (9) A management company must prepare a report containing an operational review of the fund, the result of those operations and details of significant changes in the state of affairs of the fund during the financial period.
- (10) In selecting a format for the presentation of the manager's report, consideration should be given, not only to its completeness and accuracy, but also to the clarity of the overall presentation.
- (11) The manager's report should include, but not be limited to, the following:
- (a) Explanation on whether the fund has achieved its investment objective. The explanation should be stated upfront and clearly. For an unlisted fund, this is not compulsory for interim reports.
  - (b) Comparison between the fund's performance and the performance benchmark stated in the prospectus. This should cover the last five financial years, or since inception if shorter, and should be illustrated in graphical form;
  - (c) Description of the strategies and policies employed during the period under review. To state any change in strategy adopted which was not in line with the strategy disclosed in prospectus;
  - (d) Description and explanation of significant changes in the state of affairs of the fund during the period and up to the date of the manager's report, not otherwise disclosed in the financial statements;
  - (e) An explanation on any differences in portfolio composition between the period under review and previous year (where applicable);

- (f) An analysis of the fund's performance based on changes in total NAV and NAV per unit since the last review period or since commencement (for newly established funds);
- (g) (For a listed fund) An analysis of the fund's performance based on changes in prices since the last review period or since commencement (for newly established funds);
- (h) Review of the market(s) (including foreign markets) in which the fund invests in during the period and analysis by each real estate/property sector (e.g. industrial or commercial);
- (i) General assessment of the future prospects of the market(s) the fund invests in, and the proposed strategies of the fund based on the assessment;
- (j) A brief explanation of the status of utilisation of proceeds raised from any issuance of new units (where applicable);
- (k) Any circumstances which materially affect any interests of the unit holders;
- (l) Changes in material litigation (including status of any pending material litigation) since the last annual balance sheet, which should be made up at a date not earlier than seven days from the date of the report;
- (m) Explanation on any maintenance costs and major capital expenditure incurred during the period;
- (n) A statement whether any soft commission has or has not been received by the management company and/or its delegate during the period under review from its brokers/dealers by virtue of transactions conducted for the fund. If soft commission (i.e. goods and services) is received, the following should be disclosed:
  - (i) Identification of the goods/services received; and
  - (ii) Manner in which the goods/services received were utilised;

- (o) Statement explaining the management company's responsibility for preparing the annual audited accounts; and
- (p) Where the audited results for the full financial year differ by 10% or more from any profit estimate, forecast or projection previously made or released by the fund for that period, an explanation of the difference and a reconciliation.

## **Trustee's Report**

- (12) A trustee should prepare a report stating in its opinion whether the management company has managed the fund in accordance with the following:
  - (a) Limitations imposed on the investment powers of the management company and the trustee under the deed, these guidelines, the CMSA, and other applicable laws;
  - (b) Valuation/pricing is carried out in accordance with the deed and any regulatory requirement; and
  - (c) Creation and cancellation of units are carried out in accordance with the deed and any regulatory requirement.
- (13) If the trustee is of the opinion that the management company has not done so, the trustee should disclose the shortcoming(s) which may have an impact on the decision of the existing or the potential unit holders to remain invested or to invest in the fund. The trustee should highlight steps taken to address the shortcoming(s) and/or to prevent the recurrence of the shortcoming(s).
- (14) The report prepared by the trustee under (12) should include a further statement stating in its opinion whether the distribution of returns by the fund is relevant and reflects the investment objective(s) of the fund.

## **Shariah Adviser's Report**

- (15) The Shariah adviser should prepare a report stating its opinion whether the fund has been operated and managed in accordance with the

specific principles set out for the fund. If it has not been operated and managed accordingly, then the steps taken to address the situation and/or to prevent the recurrence of the situation should be highlighted.

- (16) For a Shariah-compliant fund, the report by the Shariah adviser must also include:
- (a) Its opinion whether the fund has been managed in accordance with applicable guidelines, ruling or decision issued by the SC pertaining to Shariah matters; and
  - (b) a statement to the effect that the investment portfolio of the fund comprises securities classified as Shariah compliant by the Shariah Advisory Council (SAC) of the SC. For securities not certified by the SAC, a statement stating that the status of the securities has been determined in accordance with the ruling issued by the Shariah adviser.

### **Auditor's Report**

- (17) An annual report should be accompanied by an auditor's report.
- (18) An auditor's report should state an opinion on the accounts of the fund. Where the auditor's report is qualified, details of the qualification should be noted in the comment section.

### **Financial Statements**

- (19) The financial statement should give a true and fair view of the financial position, financial performance and cash flows of a fund. The financial statements should be prepared in accordance with applicable approved accounting standards and applicable statutory and regulatory requirements.
- (20) For interim reports, it should be clearly stated whether the financial statements in the interim report are audited or unaudited.
- (21) For the purpose of (20) where unaudited financial statements are used, the financial statements should include a declaration by the director(s) of the management company stating that the financial statements

give a true and fair view of the financial position, financial performance and cash flows of the fund. A signed copy of the declaration, which must be identical to the declaration printed in the report, must be submitted to the SC.

- (22) There should be additional information disclosed in the financial statements as follows:

**Balance Sheet**

- (a) NAV of the fund;
- (b) Number of units listed or in circulation;
- (c) NAV per unit (ex-distribution, where applicable);
- (d) Net assets/liabilities attributable to unit holders; and
- (e) NAV backing at book value of each unit as at balance sheet date of the accounts.

**Note**

The carrying amounts of investments (where applicable) should be categorised as follows:

- (i) Real estate;
- (ii) Real estate-related assets;
- (iii) Non-real estate-related assets;
- (iv) Other real estate investment trusts;
- (v) Fixed income and other debt securities;
- (vi) All foreign investments;
- (vii) Cash and cash equivalents; and
- (viii) Any other investments, with significant items to be disclosed separately.

***Income Statement***

- (f) Fees and charges paid to the management company, with each type of fee and charge shown separately;
- (g) Fee paid to trustee and any reimbursement of trustee's expenses;
- (h) Valuation fees;
- (i) Payment made to charitable bodies (for Shariah funds);
- (j) Total amount available for distribution and distribution per unit (interim and final); and
- (k) The net income after tax to be shown separately between realised and unrealised portions.

***Notes to the Financial Statements***

- (l) Income recognition basis in the income statement;
- (m) Basis for the fees and charges paid to the management company and trustee;
- (n) Movements in the number of units with the following items shown separately:
  - (i) Maximum issuable under the provisions of the deed and any subsequent increase as approved by the SC; and
  - (ii) Units created/cancelled during the period, highlighting the number of units created as additional distribution, if any;
- (o) (For investments in real estate-related asset and non-real estate-related asset) information on transactions with brokers/dealers should include the following:
  - (i) Top 10 brokers/dealers by value of trade;

- (ii) The aggregate amount of brokerage fees/commissions paid by the fund as well as the amount of fees/commissions paid to each broker/dealer (highlighting brokers/dealers relating to management company or its delegate) expressed in both value and percentage;
    - (iii) Parties related to the management company and/or its delegate should be clearly highlighted; and
    - (iv) Statement on whether dealings with related parties have been transacted at an arm's length basis;
  - (p) The number of units and value held by the management company and related parties and whether the units are held legally or beneficially;
  - (q) Composition of the investment portfolio of the fund as at the date of the financial report grouped in appropriate categories, e.g. real estate (listed by types e.g. residential, commercial, industrial), real estate-related assets (e.g. stocks, debentures, other real estate investment trusts), that would facilitate a meaningful analysis. For each category, the following must be stated:
    - (i) Quantity held;
    - (ii) Cost of the investment;
    - (iii) Market value of the investment; and
    - (iv) Market value for each holding as a percentage of NAV.
- For investments in real estate-related assets and non-real estate-related assets, a list of suspended counters and non-approved securities (for Shariah-based funds) should be separately identified. Action(s) to be taken on these suspended counters must be disclosed;
- (r) A breakdown of tax charge and an explanation of the variance between the effective and statutory rate for the current reporting period and financial year-to-date; and

- (s) Auditor's verification of management expense ratio and portfolio turnover ratio (applicable only for annual report);
- (t) Sources of distribution made to unit holders must be disclosed (the prescribed format is as follows):

**Distribution to unit holders is from the following sources:**

	<b>20X7</b>	<b>20X8</b>
	<b>RM'000</b>	<b>RM'000</b>
Rental income	XXX	XXX
Dividend income	XXX	XXX
Interest income	XX	XX
Realised gains [less losses] on sale of investments	XXX	XXX
Previous year/period's realised gains	XX	XX
Other income	XXX	XXX
	<hr/> XXXX	<hr/> XXXX
Less:		
Expenses	XX	XX
Taxation	XX	XX
	<hr/> XXX	<hr/> XXX
	<hr/> <hr/>	<hr/> <hr/>
Distribution per unit (sen)	X	X

- (u) Additional statements on distributions are required when–
  - (i) there are unrealised losses (arising during the year/period or brought forward from previous year/ period) within the fund; and/or
  - (ii) distributions are made from previous year's realised gains.

**Schedule C****VALUATION**

<b>Investment Instruments</b>	<b>Valuation Basis</b>
Real estate	Bases and methods as prescribed under the <i>Asset Valuation Guidelines</i> issued by the SC. (Amended on 13 July 2011)
Securities listed on any exchange	<p>Market price.</p> <p>However, if–</p> <p>(a) a valuation based on the market price does not represent the fair value of the securities, for example, during abnormal market conditions; or</p> <p>(b) no market price is available, including in the event of a suspension in the quotation of the securities for a period exceeding 14 days, or such shorter period as agreed by the trustee,</p> <p>then the securities should be valued at fair value, as determined in good faith by the management company or its fund management delegate, based on the methods or bases approved by the trustee after appropriate technical consultation.</p>
Unlisted bonds denominated in ringgit Malaysia	<p>Price quoted by a bond pricing agency (BPA) registered with the SC.</p> <p>Where a management company is of the view that the price quoted by BPA for a specific bond differs from the “market price” by more than 20 basis points, the management company or its fund management delegate may use the</p>

<b>Investment Instruments</b>	<b>Valuation Basis</b>
	<p>“ market price” provided that the management company or its fund management delegate–</p> <ul style="list-style-type: none"> <li>(a) records its basis for using a non-BPA price;</li> <li>(b) obtains necessary internal approvals to use the non-BPA price; and</li> <li>(c) keeps an audit trail of all decisions and basis for adopting the “ market yield” .</li> </ul>
Other unlisted bonds	Fair value by reference to the average indicative yield quoted by three independent and reputable institutions.
Unlisted collective investment schemes	Last published repurchase price.
Any other investments	Fair value as determined in good faith by the management company or its fund management delegate, on methods or bases which have been verified by the auditor of the real estate investment trust and approved by the trustee and, adequately disclosed in the prospectus of the real estate investment trust.

## Schedule D

### SUBMISSION OF APPLICATIONS, NOTIFICATIONS, AND DOCUMENTS

#### General

- (1) Applications may only be submitted to the SC by the following:
  - (a) Adviser, for–
    - (i) proposals involving the establishment, listing, and quotation of a fund on Bursa Securities; and
    - (ii) any other proposals involving a listed fund.
  - (b) Adviser or a management company, for–
    - (i) proposals involving the establishment of an unlisted fund;
    - (ii) any other proposals involving an unlisted fund; and
    - (iii) proposals involving a management company of a fund.
  - (c) A trustee, for–
    - (i) proposals involving appointment to act as a trustee of a fund; and
    - (ii) proposals to register or renew registration of a trustee.
- (2) Applications should be submitted in accordance with the requirements set out under this schedule, unless otherwise specified. Submission of applications which do not comply with the requirements or which are unsatisfactory will be returned.
- (3) The submitting party has a duty of care to ensure that all SC's requirements pertaining to submission of applications/proposals are met and is responsible for dealing with the SC on all matters in connection with the applications.

- (4) The applicant (including directors and/or promoters), advisers, experts and any other person accepting responsibility for all or part of the information and documents submitted to the SC should exercise due diligence for all or any part of the information submitted relating to, or in connection with the proposal. The parties to the submission of a proposal should comply with the relevant guidelines issued by the SC in this regard.
- (5) The information provided in the submission should be correct as at the latest practicable date.
- (6) The SC may, at its discretion, request for additional information and documents not specified in this schedule.
- (7) The SC should be immediately informed of–
  - (a) any material change in circumstances that would affect the SC's consideration of the proposal; and/or
  - (b) any material change/development in circumstances relating to the proposal, occurring subsequent to the SC's approval.
- (8) If certain circumstances are made known to the SC after the proposal has been considered, and the circumstances would have affected the decision made had the SC known about them, the SC may review its decision.
- (9) Any person who is aggrieved by the SC's decision may, within 30 days after the aggrieved person is notified of the decision, make an application to the SC for a review of its decision, which will then be final.
- (10) An application for a revision to the terms and conditions of an SC approval is not subjected to any time limit. The principles adopted by the SC for such applications are as follows:
  - (a) Such applications should be supported by evidence of justifiable grounds or developments beyond the control of the relevant parties; and
  - (b) Such applications which do not comply with (a) above may be considered by the SC at its discretion based on exceptional reasons.

## **Application for the Establishment of a Real Estate Investment Trust**

- (11) Submission to the SC for the establishment of a fund proposed to be listed on Bursa Securities should comprise the following:
  - (a) Application to issue new units of the fund, and subsequent listing of and quotation for the units on Bursa Securities (where applicable);
  - (b) Application for a company to act as management company for the fund;
  - (c) Application for a company to act as trustee for the fund;
  - (d) Application for valuation of real estates (including real estates held by single-purpose companies) to be acquired; and
  - (e) Any other relevant application.
  
- (12) Submission to the SC for the establishment of an unlisted fund should comprise the following:
  - (a) Application to issue new units of the fund;
  - (b) Application for a company to act as management company for the fund;
  - (c) Application for a company to act as trustee for the fund;
  - (d) Application for valuation of real estates (including real estates held by single-purpose companies) to be acquired;
  - (e) Application to register the deed of the fund;
  - (f) Application to register the prospectus of the fund; and
  - (g) Any other relevant application.

## **Application for an Extension of Time/Renewal of Trustee's Registration**

- (13) An application for an extension of time and renewal of trustee's registration must be submitted to the SC at least 30 days before the stipulated expiry date.
- (14) Where an application is submitted less than 30 days before the expiry date, the SC will not be responsible for any delay in considering the application.

## **Fees**

- (15) All applications should be accompanied with the appropriate fee (where applicable). An application is deemed incomplete if the appropriate fee is not submitted.
- (16) The details of fees payable to the SC for the various types of applications are set out in the *Capital Markets and Services (Fees) Regulations 2011*. (Amended on 13 July 2011)
- (17) Payment should be made in the form of a crossed cheque/draft order made in favour of "Suruhanjaya Sekuriti" or "Securities Commission".

## Schedule D - Appendix I (a)

### SUBMISSION OF APPLICATIONS FOR APPROVAL/REGISTRATION

#### Applications for SC's Approval

1. An application submitted for SC's approval should comprise the following–
  - (a) Cover letter, specifying (where applicable)–
    - (i) the approval sought, including particulars of the proposal(s);
    - (ii) particulars of the initial public offering (IPO) proposal;
    - (iii) particulars of other required approvals obtained/pending (if applicable);
    - (iv) details of any departure from these guidelines, together with relevant justifications and waiver/exemption sought for such departure. Where waiver/exemption has been obtained, to provide details of such waiver/exemption; and
    - (v) declaration of conflict of interest, if any, by advisers/experts of the application. If a conflict of interest exists, to provide full disclosure of the nature of conflict and steps to address the conflict;

#### Guidance

For an application to establish a new fund, one cover letter will be accepted for multiple proposals in a single application.

- (b) Declaration letter from the applicant and the principal adviser (if applicable), as per specimen provided in Appendix II of this schedule;

**Guidance**

For multiple applications, a declaration must be submitted by the relevant applicant/adviser responsible for all or any part of the information submitted for the application seeking an approval.

- (c) Supporting documents required for each type of application as follows (application forms are available on the SC website at [www.sc.com.my](http://www.sc.com.my)):

***Application to Establish a New Real Estate Investment Trust***

	<b>Form</b>	<b>Title/Remarks</b>
i	<i>SC/REIT-NEW</i>	Application for the establishment of a new real estate investment trust.
ii	<i>SC/REIT-REAL ESTATE</i>	Information on real estates to be acquired by the fund
iii		<p>For the proposed establishment of a new fund–</p> <p>(a) profit forecast for the first financial year;</p> <p>(b) profit forecast for the second financial year if the first financial year is less than nine months; and</p> <p>(c) commentary on the fund's future performance.</p> <p><i>The above information should be tabulated on a consolidated basis, before and after proposal.</i></p>
iv		Proforma balance sheets after incorporating the effects of the proposal.

v		<p>Letters from the reporting accountants on–</p> <p>(a) profit forecast; and</p> <p>(b) proforma balance sheets.</p>
vi		<p>In the case of an acquisition where the real estates are not transferable at the point of acquisition (i.e. due to charges imposed by financial institution for loan facilities):</p> <p>(a) A declaration from the advisers/directors stating the following:</p> <ul style="list-style-type: none"> <li>• The encumbered real estate is transferable (i.e. all relevant approvals will be obtained); and</li> <li>• Trustee, on behalf of unit holders, will enter a private caveat to protect its interest in the real estate and to prevent other encumbrances being entered by any other party.</li> </ul> <p>(b) An undertaking/confirmation from the existing financial institution that it will withdraw the charge made on the real estate upon full settlement of the loan facilities.</p>
vii		Draft deed.
viii		Draft prospectus.
ix		Any other document to support the application.

**Note**

Items (vii) and (viii) are not required for an application to establish an unlisted fund. For a proposal to establish an unlisted fund, an application to register a deed and a prospectus should be submitted instead.

**Application for a Listing and Quotation of an Existing Unlisted Real Estate Investment Trust on Bursa Securities**

	<b>Form</b>	<b>Title/Remarks</b>
i	<i>SC/REIT-EXISTING FUND</i>	Application for the listing of and quotation for units of an existing fund on Bursa Securities.
ii	<i>SC/REIT-REAL ESTATE</i>	Information on real estates to be acquired/owned by the fund.
iii		<ul style="list-style-type: none"> <li>• An accountant’s report containing–                             <ul style="list-style-type: none"> <li>– historical track record of the fund for the last five financial years (or since inception) including, but not limited to, the fund’s revenue, operating cost, profit before tax, tax expense, profit after tax, NAV, gross dividend rate, distribution yield, total borrowings, gearing ratio; and</li> <li>– commentary on the fund’s past performance;</li> </ul> </li> <li>• Audited financial statements for the last five years (or since inception); and</li> <li>• Latest management accounts.</li> </ul>
iv		<ul style="list-style-type: none"> <li>• Profit forecast for the current financial year;</li> <li>• Profit forecast for the next financial year, if the fund’s prospectus is to be issued in the last three months of the current financial year; and</li> <li>• Commentary on the fund’s future performance.</li> </ul> <p><i>The above information should be tabulated on a consolidated basis, before and after proposal.</i></p>

v		Proforma balance sheets after incorporating the effects of the proposal.
vi		Letters from the reporting accountants on–  (a) profit forecast; and  (b) proforma balance sheets.
vii		In the case of an acquisition where the real estates are not transferable at the point of acquisition (i.e. due to charges imposed by financial institution for loan facilities):  (a) A declaration from the advisers/directors stating the following:  <ul style="list-style-type: none"> <li>• The encumbered real estate is transferable (i.e. all relevant approvals will be obtained); and</li> <li>• Trustee, on behalf of unit holders, will enter a private caveat to protect its interest in the real estate and to prevent other encumbrances being entered by any other party.</li> </ul> (b) An undertaking/confirmation from the existing financial institution that it will withdraw the charge made on the real estate upon full settlement of the loan facilities.
viii		Draft deed.
ix		Draft prospectus.
x		Any other document to support the application.

**Application to Act as Management Company of a New Real Estate Investment Trust**

	<b>Form</b>	<b>Title/Remarks</b>
i	SC/MC	Application for the appointment of a company to act as a management company to a real estate investment trust.
ii		Statutory declaration from the applicant stating that it is independent of the trustee.  Note: This does not apply if the applicant is related to the trustee.
iii		Declaration letter from the directors of the applicant, as per specimen provided in Appendix II(c) of this schedule.
iv		Details on the property manager, including corporate information and track record.

**Application to Act as Trustee of a New Real Estate Investment Trust**

<b>Form</b>	<b>Title/Remarks</b>	
i	SC/TRUSTEE	Application for the appointment of a company to act as a trustee to a real estate investment trust.
ii		Statutory declaration from the applicant stating that it is independent of the management company.  Note: This does not apply if the applicant is related to the trustee.

**Application for Issuance of New Units/Increase in Approved Fund Size by an Existing Fund**

	<b>Form</b>	<b>Title/Remarks</b>
i	<i>SC/REIT- INCREASE</i>	Application for issuance of new units/increase in approved fund size.
ii	<i>SC/REIT-REAL ESTATE</i>	Information on real estates to be acquired by the fund (if applicable).
iii		<p>Where the issuance of new units is to finance an acquisition where the real estates are not transferable at the point of acquisition (i.e. due to charges imposed by financial institution for loan facilities):</p> <p>(b) A declaration from the advisers/directors stating the following:</p> <ul style="list-style-type: none"> <li>• The encumbered real estate is transferable (i.e. all relevant approvals will be obtained); and</li> <li>• Trustee, on behalf of unit holders, will enter a private caveat to protect its interest in the real estate and to prevent other encumbrances being entered by any other party.</li> </ul> <p>(b) An undertaking/confirmation from the existing financial institution that it will withdraw the charge made on the real estate upon full settlement of the loan facilities.</p>

**Application for Valuation of Real Estates (including Real Estates Held by Single-purpose Companies)**

	<b>Form</b>	<b>Title/Remarks</b>
i	SC/REIT-REAL ESTATE	Information on real estates the subject of valuation.
ii		An undertaking/confirmation from the adviser/applicant that the valuer fulfils the requirements set out in the <i>Asset Valuation Guidelines</i> . (Amended on 13 July 2011)
iii		Disclosure of breaches of building by-laws or approved land use.
iv		For related-party transactions, details of the nature of interest of the related parties including direct and indirect shareholdings of the related parties in the management company.
v		Valuation report (2 copies).
vi		Valuation report checklist prepared in accordance with the <i>Asset Valuation Guidelines</i> (2 copies). (Amended on 13 July 2011)
vii		Valuation certificates prepared in accordance with the <i>Asset Valuation Guidelines</i> (2 copies). (Amended on 13 July 2011)
viii		<p>Copies of–</p> <p>(a) sale and purchase agreements (where such agreements are not included in the valuation reports); and</p> <p>(b) (where applicable) sale and leaseback agreements.</p> <p>Note: Where the sales and purchase agreement or sale and leaseback agreement has not been signed, a copy of the draft agreement is to be submitted.</p>

ix		Tentative date for the submission of application for the proposals to the SC.
x		Detailed summary of proposals.
xi		Waiver application, if any.

Note: Submission of the above application should comply with the timeline stipulated in the *Asset Valuation Guidelines*. (Amended on 13 July 2011)

**Application to Appoint a Delegate Not Licensed by the SC**

	Form	Title/Remarks
i	SC/MC-DELEGATE	Application for the appointment of a delegate not licensed by the SC.
ii		An undertaking that the applicant will take responsibility for the actions and omissions of the delegate as though they were its own actions and omissions.
iii		<p>A declaration by the applicant that it–</p> <ul style="list-style-type: none"> <li>• has adequate procedures to monitor the conduct of the delegate to ensure that the delegated function is performed in a proper and efficient manner;</li> <li>• has conducted a review of the operations of the delegate, and is satisfied that the delegate has the capabilities and capacity, and is suitable to undertake the delegated function; and</li> <li>• is satisfied that the delegate will be able to fulfill its duties and responsibilities of the delegated function in a proper and efficient manner.</li> </ul>

## Application to Register with the SC

2. An application submitted to the SC should comprise the following:
  - (a) Cover letter, specifying–
    - (i) the registration/renewal sought; and
    - (ii) particulars of other required approvals obtained/pending (where applicable); and
  - (b) Supporting documents, as follows (application forms are available on the SC website at [www.sc.com.my](http://www.sc.com.my)):

### ***Application to Register/Renew Registration for a Trustee***

	<b>Form</b>	<b>Title/Remarks</b>
i	<i>SC/TRUSTEE-REGISTRATION</i>	Application for the registration/renewal of registration for trustee to a real estate investment trust.
ii		An undertaking by the applicant that it will comply with the trustee requirements under these guidelines before commencing real estate investment trust-related business.

## Application to Register and Lodge Documents with the SC

### ***Deed***

3. An application to register and lodge a fund's deed must be made in accordance with the requirements set out in Appendix III of this schedule.

### ***Prospectus***

4. An application to register and lodge a fund's prospectus must be made in accordance with the requirements set out in the *Prospectus Guidelines for Collective Investment Schemes*.

## Schedule D - Appendix I (b)

### NOTIFICATION AND SUBMISSION OF DOCUMENTS

#### Notification to SC

- (1) A notification to the SC should comprise the following:
  - (i) Notification letter (with details of notification); and
  - (ii) Notification forms (where applicable).
- (2) The notification forms are available on the SC website at [www.sc.com.my](http://www.sc.com.my).

#### Lodgement of Documents with SC

- (3) Under section 298(1)(a)(i) of the CMSA, the annual report of a fund must be lodged with the SC.
- (4) The submission should comprise a cover letter specifying the documents lodged, three printed copies of the annual report, minimum content checklist<sup>1</sup> and a CD-ROM containing the annual report in "pdf" format.

#### Delivery/Deposit of Documents

- (5) Under section 298(1)(b) of the CMSA, the SC requires that the interim report of an unlisted fund be delivered to the SC. The submission should comprise a cover letter specifying the documents delivered, three printed copies of the interim report, minimum content checklist<sup>1a</sup> and a CD-ROM containing the interim report in "pdf" format.
- (6) Under sections 229(4) and 230(4) of the CMSA, an information memorandum of a fund (if any) must be deposited with the SC. The submission should comprise a cover letter specifying the documents deposited, two printed copies of the information memorandum and be deposited with the SC within seven days after it is first issued.

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<sup>1, 1a</sup> The checklist is available at [www.sc.com.my](http://www.sc.com.my).

**Schedule D - Appendix II (a)**

**DECLARATION BY THE APPLICANT**

Chairman  
Securities Commission

Dear Sir

**FUND** *(name of fund)*

**APPLICANT** *(name of management company/trustee)*

**Declaration**

We, .... *(name of applicant)*...., are proposing to undertake the following proposals:

- a. ....
- b. ....
- c. ....

(hereafter referred to as " the Proposal").

2. We confirm that after having made all reasonable inquiries, and to the best of our knowledge and belief, there is no false or misleading statement contained in, or material omission from, the information that is provided to the advisers or to the SC on the Proposal and the *Guidelines on Due Diligence Conduct for Corporate Proposals* have been complied with.

3. We declare that we are satisfied, after having made all reasonable inquiries, that the Proposal is in full compliance with the following:

- (i) The *Guidelines on Real Estate Investment Trusts*;<sup>\*</sup> and
- (ii) Other requirements under the *Capital Markets and Services Act 2007*, as may be applicable.

4. We declare that we will ensure continuous compliance with the requirements and conditions imposed by the SC on the Proposal.

5. We undertake to provide to the SC all information as required on the Proposal.

This declaration has been signed by me as ..... (*designation of director*) ..... of  
... (*name of the applicant*).... pursuant to the authority granted to me by a  
resolution of the Board of Directors on ....(*date of resolution*)....

Yours faithfully

.....(*signature*).....

Name of signatory:

Name of Applicant:

Date:

Note: \* Where exemptions are being sought, to insert the words "except clause(s) .....(refer to clause where exemption is being sought)....  
..where exemption(s) is/are being sought as part of the submission to the SC.

**Schedule D - Appendix II (b)**

**DECLARATION BY THE PRINCIPAL ADVISER**

Chairman  
Securities Commission

Dear Sir

**FUND** *(name of fund)*

**APPLICANT** *(name of management company/trustee)*

**Declaration**

....*(Name of applicant)*.... is proposing to undertake the following proposals:

- (a) .....
- (b) .....
- (c) .....

(hereafter referred to as " the Proposal" ).

We, ....*(name of principal adviser)*....., are advising ....*(name of applicant)*.... on the Proposal.

2. We confirm that after having made all reasonable inquiries, and to the best of our knowledge and belief, there is no false or misleading statement contained in, or material omission from, the information which is provided to the SC on the Proposal and the *Guidelines on Due Diligence Conduct for Corporate Proposals* have been complied with.

3. We declare that we are satisfied, after having made all reasonable inquiries, that the Proposal is in full compliance with the following:

- (i) The *Guidelines on Real Estate Investment Trusts*;<sup>\*</sup> and
- (ii) Other requirements under the *Capital Markets and Services Act 2007*, as may be applicable.

4. We undertake to immediately inform the SC if we come to know that .....(*name of applicant*)..... has breached or failed to comply with such requirements, after submission of this declaration on the Proposal until the implementation of the Proposal.

5. We undertake to provide to the SC all information as required on the Proposal.

Yours faithfully

.....(*signature*).....

Name of signatory:

Name of Principal Adviser:

Date:

Note: \* Where exemptions are being sought, to insert the words "except clause(s) .....(refer to clause where exemption is being sought).... ..where exemption(s) is/are being sought as part of the submission to the SC.

**Schedule D - Appendix II (c)**

**DECLARATION BY A DIRECTOR OF THE APPLICANT**

Chairman  
Securities Commission

Dear Sir

**APPLICANT** (*name of management company/trustee*)

**Declaration**

..... (*Name of applicant*).... is proposing to undertake the following proposals:

- a. ....
- b. ....
- c. ....

(hereafter referred to as " the Proposal").

2. I declare that, save as otherwise disclosed in the attachment accompanying this declaration-

- (a) I am not an undischarged bankrupt nor am I presently subjected to any proceeding under the bankruptcy laws;
- (b) I have never been charged with, convicted for or compounded for any offence under the securities laws, corporation laws or any other law involving fraud or dishonesty in a court of law;
- (c) no action has ever been taken against me for any breach of the listing requirements or rules issued by the stock exchange for the past five years prior to the submission of the Proposal to the SC\*;
- (d) to the best of my knowledge, I have not been subjected to any inquiry of investigation by any government or regulatory authority or body for the past five years prior to the submission of the Proposal to the SC.

3. I make this declaration as part of the application by .....(*name of applicant*).....to the SC for approval to implement or carry out the Proposal.

Yours faithfully

.....(*signature*).....

Name of director:

NRIC No:

Name of Applicant:

Date:

\* To delete if not applicable

## Schedule D - Appendix III

### REGISTRATION AND LODGEMENT OF A DEED

#### *General*

- (1) A deed of a real estate investment trust must be submitted for registration and lodgement according to the requirements under this appendix.
- (2) The SC will not register a deed unless the submission is complete and accompanied by all required materials/documents. The SC reserves the right to refuse registration and return the application if the contents of the deed are inadequate and unsuitable, or if the submission is incomplete, as the case may be.
- (3) As prescribed under section 293(1) of the CMSA, a fund's deed should not have effect unless it is registered with the SC.
- (4) An application to register a deed of a real estate investment trust proposed to be established should be submitted—
  - (a) (for a listed fund) upon receipt of a "no comments letter" from the SC on the draft deed; and
  - (b) (for an unlisted fund) concurrently with the application seeking approval from the SC to establish a new fund under Section 212 of the CMSA.
- (5) An application to register a supplementary deed should be submitted immediately upon the execution of the deed.
- (6) As prescribed under section 296 of the CMSA, a fund's deed should be lodged with the SC within seven days after the deed has been registered by the SC.

## Submission of Application

### *Registration of Deed*

- (7) An application to register a deed should comprise the following:
- (a) Cover letter, signed by at least one of the directors of the management company (for unlisted funds) or head of corporate finance of the principal adviser (for listed funds), specifying the following:
    - (i) Application to register a deed;
    - (ii) A confirmation that the accompanying documents are complete, signed and dated; and
    - (iii) A declaration stating that the deed complies with the requirements of the CMSA and the Minimum Contents Requirement for Deed stipulated under these guidelines.
  - (b) Executed and stamped copy of the deed (two copies);
  - (c) (For supplementary deed) A unit holders' resolution sanctioning the modification to the deed, or a statement from the trustee and the management company, as prescribed under section 295(4)(b) of the CMSA;
  - (d) (For supplementary deed) A list highlighting the original provisions from the principal deed and the amended provisions;
  - (e) Checklist for Minimum Contents for Deeds of Real Estate Investment Trusts;<sup>2</sup>
  - (f) Registration Checklist;<sup>2a</sup> and
  - (g) Registration fee and Fee Checklist.<sup>2b</sup>

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<sup>2, 2a, 2b</sup> The checklists are available at [www.sc.com.my](http://www.sc.com.my).

## Lodgement of Deed

- (8) An application to lodge a deed should comprise the following:
- (a) Cover letter, signed by at least one of the directors of the management company (for listed and unlisted funds) and head of corporate finance of the principal adviser (for listed funds), specifying the following:
    - (i) Application to lodge the deed;
    - (ii) A declaration that the copy of the deed lodged with the SC is identical to the deed registered by the SC; and
    - (iii) A declaration that the copy of the deed in CD-ROM is identical to the printed deed.
  - (b) Printed copies of the deed (two copies);
  - (c) A CD-ROM containing the deed in "pdf" format. The CD-ROM should be labelled with a description of the content and the date of lodgement;
  - (d) Lodgement Checklist<sup>3</sup>; and
  - (e) Lodgement fee and Fee Checklist<sup>3a</sup>

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<sup>3, 3a</sup> The checklists are available at [www.sc.com.my](http://www.sc.com.my).

## Schedule E

### REPORTING TO THE SC

#### General

- (1) For the purpose of reporting to the SC, a management company must submit a Statistical and Compliance Returns (collectively referred to as “REIT Returns”) of the fund.
- (2) The REIT Returns should be submitted to the SC on a quarterly basis.
- (3) The reporting period should cover the period starting from the first day until the last day of the respective quarter. For information required at a certain cut-off, it must be as at the last day of the quarter.
- (4) For a newly-established fund, the REIT Returns should commence from the quarter in which the fund is listed (for listed funds) or the quarter its initial offer period ends (for unlisted funds). For example, if an unlisted fund was launched on 28 May and the initial offer period ends on 18 June, the first REIT Returns should be submitted for the first quarter ending September. In this instance, the REIT Returns should consist of data for more than one quarter, i.e. from 28 May to 30 September.
- (5) A management company must take all necessary precautions to ensure that the information provided in the REIT Returns is accurate.
- (6) The chief executive officer is ultimately responsible for all information submitted to the SC. The chief executive officer is expected to ensure that the necessary policies and procedures are in place and the information submitted to the SC is true and accurate.
- (7) For the Compliance Return, it should be submitted to the trustee for verification that it is complete, true and accurate to the best of the trustee’s knowledge and belief prior to submitting it to the SC.

#### Submission of REIT Returns

- (8) The REIT Returns should be submitted to the SC within seven business days (by 5.00 pm on a weekday) of the quarter following the end of the period of reporting.

- (9) In submitting the REIT Returns, the management company is required to deliver to the SC one set of the following:
- (a) Cover letter, specifying–
    - (i) the documents delivered to the SC; and
    - (ii) details of the contact person with whom the SC can contact to clarify any matters pertaining to the REIT Returns.
  - (b) A declaration by the designated person responsible for all compliance matters that the REIT Returns are complete, true and accurate to the best of his/her knowledge and belief. The next officer-in-line in the compliance unit can make the declaration only in the absence of the designated person; and
  - (c) The REIT Returns.<sup>1</sup>
- (10) Should there be errors and/or omissions discovered after the submission has been made, the management company should immediately make the rectification and submit the amended REIT Returns to SC.

### **Submission of REIT Returns During Termination/Winding Up**

- (11) While a fund is being terminated/wound up, a management company should continue to submit REIT Returns until the termination/winding up is complete.

### **Submission of Compliance Review Report**

- (12) Where there are non-compliances detected in the Compliance Return, the management company must provide an explanation for the non-compliances and action to be taken to rectify the matter in a Compliance Review Report.
- (13) The Compliance Review Report should be submitted to the SC not later than seven business days from the date of submission of the REIT Returns.

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<sup>1</sup> The REIT Returns forms are available at [www.sc.com.my](http://www.sc.com.my)

# PRACTICE NOTES

## Practice Note 1

### ACCEPTABLE GROUP STRUCTURE

#### Issued Under Chapter 3 (The Management Company) of the Guidelines on Real Estate Investment Trusts

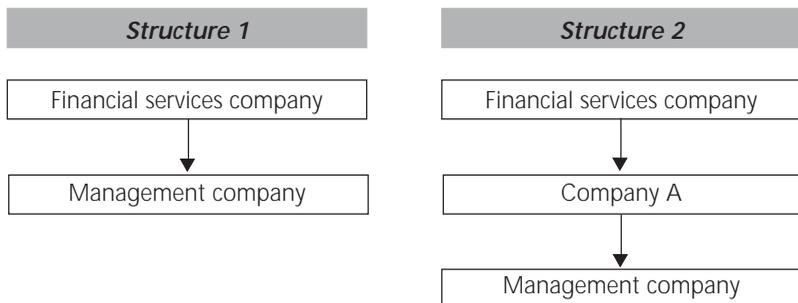
#### Introduction

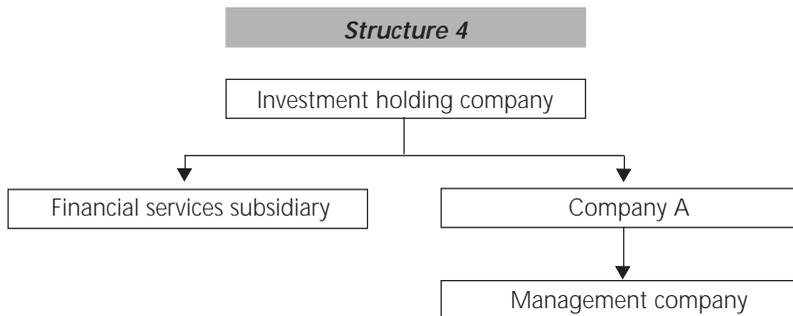
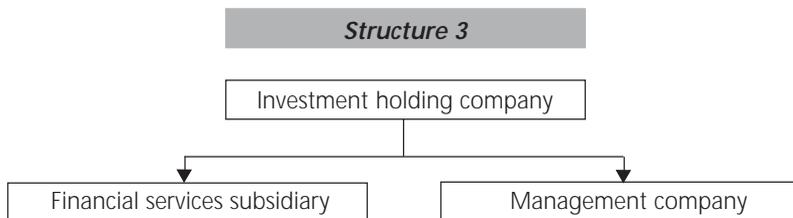
This practice note is issued to clarify the group structure where a subsidiary of a company involved in the financial services industry in Malaysia is eligible to be appointed as a management company under clause 3.04(b)(i) of these guidelines.

#### Acceptable Group Structure

A management company is a subsidiary of a company involved in the financial services industry under clause 3.04(b)(i) of these guidelines where the—

- (a) direct holding company is involved in the financial services industry (see Structure 1);
- (b) direct holding company (Company A) is the subsidiary of a financial services company (see Structure 2);
- (c) direct holding company is an investment holding company which has other subsidiaries involved in the financial services industry (see Structure 3); or
- (d) direct holding company is the subsidiary of an investment holding company which has other subsidiaries involved in the financial services industry (see "Structure 4").





## The Holding Company

The holding company is deemed to be involved in the financial services industry where the holding company or its subsidiaries are substantially involved in the business/activities, including, but not limited to—

- (a) deposit-taking and provision of loans (including commercial/retail banking and finance company activities);
- (b) fund management;
- (c) investment/merchant banking activities;
- (d) broking and dealing in securities; and
- (e) insurance activities.

### Note

For all intents and purposes, the term “subsidiary” has the same meaning as given under section 5 of the *Companies Act 1965*.