

GOVERNMENT OF PAKISTAN
SECURITIES AND EXCHANGE COMMISSION OF PAKISTAN

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Islamabad the 10th August, 2018

NOTIFICATIONS

S.R.O. 995 (I)/2018.- The following amendments to Real Estate Investment Trust Regulations, 2015, proposed to be made by Securities and Exchange Commission of Pakistan in exercise of the powers conferred by sub-section (2) of section 282B of the Companies Ordinance, 1984 (XLVII of 1984), are hereby published, as required by proviso to the said sub-section (2) of section 282B of the said Ordinance, for information of all the persons likely to be effected thereby and notice is hereby given that suggestions or objections, if any, received within a period of fourteen days from the date of its publication in the official Gazette and placement on the website of the Commission, shall be taken in to consideration by the Securities and Exchange Commission of Pakistan, namely:-

DRAFT AMENDMENTS

In the aforesaid Regulations,-

1. In regulation 2, sub-regulation (1),-

(a) for clause (xx), the following shall be substituted, namely:-

“(xx) “Pre-IPO Investors” for the purpose of these regulations means:

- (a) Financial institutions as defined in the Companies Act, 2017 (XIX of 2017) ;
 - (b) Securities broker as defined in the Securities Act, 2017 (III of 2015);
 - (c) High net worth individuals investing an amount not less than Rupees three (3) million;
 - (d) Corporate entities whose memoranda allow such investment;”;
- and

(b) for clause (xxvii), the following shall be substituted, namely:-

“(xxvii) “REIT Scheme” means a closed end fund registered under these regulations, to be listed on the securities exchange(s), for investment in real estate projects;”;

2. in regulation 3, after sub-regulation (2), the following sub-regulations shall be inserted, namely:-

“(3) An RMC may identify and arrange transfer of real estate to a REIT scheme before or after public offer:

Provided that an RMC shall take approval of the Commission for real estate to be transferred to a REIT Scheme.

(4) An RMC shall not raise money by any manner whatsoever before registration of a REIT Scheme.”;

3. after regulation 3, amended as aforesaid, the following new heading and regulations shall be inserted, namely:-

“Chapter-III

Eligibility and Appointment of Trustee and Registration of REIT scheme

3A. Eligibility criteria for trustee. - The following persons shall be eligible to be considered for appointment as Trustee of a REIT scheme,-

- (i) a scheduled bank licensed under the Banking Companies Ordinance, 1962 (LVII of 1962) having minimum long term AA- or equivalent rating from a rating company registered with the Commission;
- (ii) a foreign bank operating as a scheduled bank in Pakistan and operating as trustee internationally; and
- (iii) a central depository company registered with the Commission.

3B. Appointment of trustee. - (1) The Trustee for the REIT Scheme shall be appointed by the RMC subject to the provisions of these Regulations.

(2) The RMC shall apply to the Commission for approval of appointment of Trustee along with consent of proposed Trustee and copy of the Trust deed and the Commission may approve appointment of Trustee with or without any terms and conditions as it may deem fit.

(3) The RMC may appoint one or more trustees for such duties as agreed between the parties.

3C. Trust Deed.- RMC shall file the Trust deed with the Commission and if the Commission is satisfied that the purpose for which REIT Scheme is lawful and none of its objects are inappropriate or deceptive and that all requirements of the applicable laws, rules and regulations have been complied with, the Commission shall accord its consent.

3D. Registration of a REIT Scheme. - (1) An RMC shall submit following documents to the Commission for registration of a REIT scheme:

- (i) application along with copy of the registered trust deed containing information as provided in Schedule I
- (ii) an affidavit stating that no funds or investments whatsoever have been received from any person on account of the proposed REIT scheme;

- (iii) fee as per Schedule III;
- (iv) an undertaking that RMC shall comply with the requirements relating to identification, acquisition and transfer of real estate to a REIT scheme as specified in these Regulations;
- (v) latest audited balance sheet and profit and loss statement of the RMC, wherever applicable, or an auditor certificate verifying equity of the RMC;
- (vi) an undertaking that the RMC itself and the strategic investor(s) shall hold minimum number of units of REIT scheme till its winding up as specified in these Regulations;
- (vii) an affidavit by the Board of Directors of the RMC that they accept responsibility for all submissions to the Commission as being accurate; and
- (viii) any other document as may be required by the Commission.

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

(3) Acceptance of any document, information, valuation or projection or any approvals or any permissions granted based on such documents, information, valuation or projection shall not be construed as an endorsement by the Commission of the accuracy of such document, information, valuation or projection.

Chapter-III A **Pre-IPO and Public Offering**

3E. Pre IPO.- (1) The RMC may solicit funds from Pre IPO investors, after sharing business plan and valuation report where applicable as per Schedule VI annexed to these Regulations.

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

3F. Minimum holding by RMC and Strategic Investor.- (1) RMC shall hold or arrange through strategic investor, minimum twenty five (25) per cent units of the REIT scheme in an account marked as blocked throughout the life of the REIT scheme till its winding up and these units shall not be sold, or encumbered, provided that the same can be transferred with the same conditions, as specified in these Regulations.

(2) In case, there are more than one strategic investors, each one of them shall hold not less than five percent (5%) units of the REIT scheme at all times.

Provided that the strategic investor and the RMC may, after three (3) years of launch of REIT scheme, transfer their holding of the REIT scheme to another strategic investor with the approval of the Commission.

3G. Public offer of units.- (1) An RMC shall not offer units of a REIT scheme for subscription to public unless the Offering document has been approved by the Commission and the Commission may approve the Offering Document, with or without any conditions.

(2) An RMC shall disclose all material information in the offering document as specified in Schedule IV including values of real estate, where applicable.

(3) An RMC shall ensure that the size of the REIT fund and public offer of units are in line with the requirements prescribed in the listing regulations of the relevant securities exchange.

(4) Par value of a unit of a REIT scheme shall be ten (10) rupees each.

(5) An RMC shall keep subscription money received from IPO investors in an account in the name of Trustee of the REIT scheme.

(6) An RMC shall issue units against cash except those issued in lieu of real estate.

(7) An RMC shall acquire and transfer real estate free from all encumbrances including any outstanding debt in the name of trustee.

(8) Where the transfer of Real Estate does not take place for any reason within 90 days after the IPO the Trustee shall return total subscription money to retail investors along with profit, if any:.

Provided that the period of 90 days time period may be extended by the Commission up to a maximum of 180 days, on request of the RMC.

(9) In case the transfer of real estate does not take place as referred in sub-regulation (9), the Costs and losses shall be borne by the RMC and investors other than retail investors in proportion to their investment in the REIT scheme.”;

4. for heading “Chapter-III” and regulation 4, the following shall be substituted, namely:-

“Chapter-IV Approval of Real Estate

4. Real Estate.- (1) The Real Estate shall be within the territorial limits of Islamabad, Rawalpindi, Karachi, Lahore, Peshawar, Quetta, or any other city as may be approved by the Commission.

(2) In case of Developmental REIT, the proposed construction period shall be part of all relevant marketing material.

(3) An RMC shall submit to the Trustee,--

- (i) documents which show exact location, area along with dimensions of the Real Estate;
- (ii) feasibility plan containing intended use of Real Estate for the purposes of a REIT scheme;

- (iii) due diligence certificate, from a lawyer who is amongst the panel of lawyers approved for the said purposes by the Commission,
expressly confirming that:
 - (a) the title of the Real Estate which is the subject matter of the REIT Scheme is free from all litigation with respect to title and no case is pending on any account including outstanding dues, duties, taxes, or permissible use before any court or authority and the Real Estate does not have any defect which may render it ineligible for rent or subsequent sale by the REIT scheme;
 - (b) in the case of a Rental REIT,-
 - (I) the Real Estate is not in conflict with any applicable environmental laws and all approvals/No objection etc. in this respect are duly procured and the Real Estate is not protected as a special or heritage property;
 - (II) In the case of a Rental REIT, all necessary approvals, permissions, NOCs of the concerned local authorities required as per applicable general, special and local laws have been obtained, as specifically may apply to a REIT Scheme.
 - (c) Real Estate is free from all encroachments and encumbrances except for charges created by any Financial Institution(s) as defined in the Companies Act, 2017 (XIX of 2017) and to the extent specified in these Regulations;
 - (d) legal opinion with respect to the validity and legitimacy of terms and conditions governing the transferability, duration, continuation, cancellation of the underlying lease arrangement and legitimacy of the lease agreements with tenants of the Real Estate, wherever relevant; and
- (iv) for lease hold Real Estate, documentary proof confirming that the remaining
validity of the lease period is not be less than 15 years over and above the life of the proposed REIT Scheme and where life of the Scheme has not been proposed the remaining lease period shall not be less than 30 years; provided that the Commission may relax the requirement of remaining lease period.
- (v) an undertaking confirming that there is no litigation and encroachment related to the Real Estate,-
 - (a) In the case of a Rental REIT the confirmation issued by the concerned authorities that no injunction orders have been passed against the proposed Real Estate;
 - (b) an undertaking to retire the full outstanding debt against the Real Estate before transferring Real Estate in the name of the Trustee of the REIT Scheme;
- (vi) details of charges created by Financial Institution(s) against Real Estate along with loan repayment schedule as agreed with the lenders;

- (vii) copies of title documents, and in the case of a Rental REIT, completion certificate, permissions, NOCs of the concerned local authorities required under applicable general, special and local laws;
 - (viii) business Plan containing the value of the real estate, a set of detailed workings (principally driven by the Project specific cash flow) determining the viability parameters, business, financial, legal aspects, arrangement of capital for implementation of the plan, possible eventualities defining critical stages, risks, exit strategies and basis for computing settlement values at various stages of project development and highlighting amount of customer advances including mode of sale or partial sale of property along with timeline: Provided that the business plan shall be updated whenever there is any material change in underlying assumptions and workings.
 - (ix) in case of a Developmental REIT Scheme or Developmental Component of Hybrid REIT Scheme, preliminary engineering design for the development Project to be undertaken in execution of the REIT Scheme;
 - (x) valuation report of the proposed property, prepared by two Valuers jointly, appointed by RMC in consultation with the Trustee; and(xii) such other documents or information as may be required.
- (4) The RMC shall disclose the value at which the Real Estate shall be transferred to the REIT Scheme which may be the values as determined by Valuers or any other value and the reasons for doing so.
- (5) Trustee shall, in the case of a Development REIT Scheme ensure that an RMC,-
- (i) has obtained all requisite approvals from the concerned authorities to carry out the project and the same shall be confirmed by the lawyer who is amongst the panel of lawyers approved by the Commission;
 - (ii) has all necessary approvals, permissions, NOCs of the concerned local authorities required as per applicable general, special and local laws, as specifically may apply to a REIT scheme to carry out the project;
 - (iii) has confirmed that the real estate is not in conflict with any applicable environmental laws and all approvals/no objection certificates etc. in this respect are duly procured and the real estate is not protected as a special and heritage property;
 - (iv) has the confirmation issued by the concerned authorities including the revenue authorities that no injunction orders have been passed against the proposed real estate;
- (6) Trustee shall, in the case of a Rental REIT Scheme ensure that:
- (i) real estate, if vacant, has not been abandoned, is not illegally possessed or sieged, and does not have any structural defects;
 - (ii) if the real estate has occupancy,-
 - (a) the tenancies are backed by signed lease agreements, the record of which are verifiable from a bank statement and books of accounts wherever applicable;
 - (b) relevant documents including tenant lease agreements are provided;
 - (iii) for vacant or partially occupied real estate, proper rationale for existing vacancies and future occupancy plan is stated in the business plan.

(7) If the RMC intends to convert a Developmental REIT Scheme into a Rental REIT Scheme, the RMC shall submit revised Business Plan duly approved by the unitholders through a special resolution as defined in the Companies Act, 2017 (XIX of 2017).

(8) The RMC shall submit application along with following documents for approval of real estate to the Commission:

(i) undertaking from the trustee stating that the proposed real estate fulfills the criteria laid down in the Regulations for transfer to the REIT scheme; and

(ii) copies of the documents submitted by the RMC, duly certified by the trustee.

(9) The Commission may approve the Real Estate for the proposed REIT scheme on such terms and conditions as it may deem fit:

Provided that such sanction of the Commission shall not be deemed to grant or extinguish any right of any person and no suit, prosecution or other legal proceedings can be initiated against the Commission or employee of the Commission with respect to approval given to RMC based on documents provided to the Commission under these Regulations.

(10) The Commission shall refuse to grant approval of the Real Estate where in its opinion, for reasons to be recorded in writing, the title is defective or there are impediments to sale or partial sale or transfer or renewal of lease of the Real Estate or the outstanding debt cannot be retired from funds generated through issue of units or there is any other defect or the approval of the Real Estate is not in the interest of public or capital market.

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

5. regulation 5 along with heading “Chapter-IV Trustee” shall be omitted;

6. in regulation 7, sub-regulation (4) shall be omitted;

7. regulation 8, 9 and 10 shall be omitted;

8. for regulation 11, the following shall be substituted, namely:-

“11. “Minimum holding by RMC and Strategic Investor-. (1) RMC shall hold or arrange through Strategic Investor, minimum twenty five (25)per cent units of the REIT Scheme in an account marked as blocked throughout the life of the REIT Scheme till its winding up and these units shall not be sold, transferred or encumbered, provided that the same can be transferred with the same conditions, as specified in these Regulations.

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

9. regulation 12 along with the heading of the Chapter-VII “Public offer” shall be omitted;

10. in regulation 14,

(i) in sub-regulation (1)-

(a) in clause (i), after the word “encumbrances” the word “and litigation” shall be inserted;

(b) for clause (v) the following shall be substituted, namely:-

“(v) ensure that the real estate transferred to a REIT scheme meets the requirements specified in these regulations;”;

(c) in clause (xxi) after the word “valuation report” the word “where applicable” shall be inserted;

(d) in clause (xxv), after the word “the” the word “remuneration,” shall be inserted;

(e) for clause (xxvii) the following shall be substituted, namely:-

“(xxvii) within one hundred and twenty days of close of the financial year prepare, and transmit or make available on its website to the Unit Holders, the Trustee, the Commission and the securities exchange(s) on which the Units of a REIT Scheme are listed, the balance sheet, profit and loss statement, cash flow statement and statement of the movement in NAV along with the report of the Trustee, the report of the auditor, report of Shariah Adviser (wherever relevant) the valuation report of the Real Estate and any other document as specified by the Commission; the REIT Management Company shall make the printed copy of the said accounts available to any unit holder, free of cost, as and when requested;”;

(f) for clause (xxviii) the following shall be substituted, namely:-

“(xxviii) prepare and transmit to the Unit Holders, the Trustee, the Commission and the securities exchange(s) on which the Units are listed, within thirty (30) days of the close of the first and third quarter and two (2) months of the close of second quarter of the financial year

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

Provided that the RMCs may transmit or make available the said quarterly accounts to the unit holders by placing them on its website and the RMC shall make the printed copy of the said accounts available to any unit holder, free of cost, as and when requested;”;

- (g) in clause (xxix), for the expression “five (5) years” the expression “ten (10) year” shall be substituted;
 - (h) in clause (xxxvi) for the word “quarterly” the words “six monthly” shall be substituted;
 - (i) in clause (xli), in the beginning the words “where applicable” shall be inserted;
 - (j) in clause (xlili) after the word “REITs Scheme” the words “at the time of IPO” shall be inserted;
- (ii) after sub-regulation (4), the following new sub-regulation shall be inserted, namely:-
- “(5) An RMC shall not borrow in excess of thirty (30) percent of net assets of the REIT scheme.”;

11. in regulation 15,-

- (a) for clause (xii), the following shall be substituted, namely:-

“(xii) carry out instructions of the RMC with respect to the payments of bills counter-signed by RMC and verified by the project accountant in case of a Developmental REIT Scheme;”;

- (b) after clause (xvii) the following new clause shall be inserted, namely:-

“(xviii) Ensure that the real estate proposed by an RMC for a REIT scheme meets the requirements of these Regulations.”;

12. in regulation 16, in sub-regulation (1),-

- (a) for the words “Valuer shall” in the beginning, the words “An RMC shall ensure that a Valuer shall” shall be substituted;

- (b) for clause (ii), the following shall be substituted, namely:-

“(ii) at least once in every half year, value the Real Estate in accordance with Schedule VI and produce a Valuation Report on Real Estate belonging to the REIT Scheme;”;

13. for regulation 17, the following shall be substituted, namely:-

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

14. in regulation 18,-

(a) sub-regulation (1) shall be omitted; and

(b) in sub-regulation (4), after the words “Offering documents” at the end the words “where applicable” shall be inserted;

15. regulation 19 shall be omitted;

16. in regulation 20, after the word “IPO” the words “or transfer of Real Estate to” shall be inserted;

17. in regulation 24, after the words “stable outlook” at the end, the words “or money market fund, or invest in real estate meeting criteria provided in these regulations” shall be inserted;

18. in regulation 25, for sub-regulation (4) the following shall be substituted, namely:-

“ (4) Dividends shall be paid in cash.”;

19. in regulation 26, for sub-regulation (4), the following shall be substituted, namely:-

“(4) An RMC shall obtain consent of the trustee for all marketing material, advertisements and invitations soliciting Customer Advances after obtaining the consent from the Trustee and ensuring compliance with the minimum disclosures as mentioned in regulation 26 (3) of these Regulations and trustee shall ensure that such material is not misleading, fictitious or deceptive.”;

20. for regulation 28, the following shall be substituted, namely:-

“28. **“Borrowing policy.** - (1) An RMC may arrange borrowing with the approval of the board of directors and consent of the trustee.

(2) An RMC shall utilize the borrowing for the purposes of capital expenditure on construction, development, renovation and refurbishment to increase earning capacity of the REIT scheme.

(3) The RMC may arrange borrowing or financing by encumbering up to a maximum of thirty percent of the REIT assets, based on last reported net assets value at the time of borrowing.”;

21. after regulation 28, substituted as aforesaid, the following new regulation shall be inserted, namely:-

“**28A. Right issue policy.** - REIT scheme shall not issue right units.” ;

22. in regulation 33,-

(a) sub-regulation (1) and (2) shall be omitted;

(b) in sub-regulation (4) for the expression “fifteen (15)” the expression “twenty (20)” shall be substituted; and

(c) after sub-regulation (4) amended as aforesaid, the following new sub-regulation shall be inserted, namely:-

“(5) An RMC shall be entitled to a management fee which shall be clearly stated in the offering document along with the basis and quantum of fee to be charged to a REIT scheme and certificate from the auditor of REIT Scheme confirming the management fee has been charged in accordance with offering document.”;

23. in regulation 39, sub-regulation (2), for the expression “within 30 days” the expression “at least 30 days before the next due valuation date” shall be substituted;

24. in regulation 40, after clause (vi), the following new clause shall be inserted, namely:-

“(vii) in case the transfer of real estate does not take place for any reason within the time specified under these regulations.”;

25. in regulation 41, in sub-regulation (6), the words and brackets “ (with the exception of borrowing, if any) shall be omitted;

26. in schedule II,-

(a) for clause (vii) the following shall be substituted, namely:-

“(vii) Legal fee, tax, accounting, financial charges and other relating expenses of the REIT Scheme.”;

(b) for clause (xii) the following shall be substituted, namely:-

“(xii) Fees and charges of the civil works contractor, construction and capital refurbishment costs.”;

(c) for clause (xxv), the following shall be substituted, namely:-

“(xxv) Expenses incurred on sale of real estate (plots, built up units, apartments etc.”;

(d) after clause (xxv), the following new clause shall be inserted, namely:-

“(xxvi) Any other expenses which are agreed between RMC and trustee and allowed by Commission;”;

27. in schedule III, in the table first row shall be omitted;

28. in schedule VI,-

(a) in clause (4), paragraph (i), after the words “Real Estate,” the words “where applicable” shall be inserted;

(b) in clause (7), after the word “Assets,” the words “where identified” shall be inserted;

29. in schedule V, for clause (1), the following shall be substituted, namely:-

“1. An RMC may delegate to a third party (“Service Provider”) any of its functions in relation to a REIT Scheme under its management, except investment decision making. Provided that a service provider meets the criteria specified and approved by the Board of Directors of the RMC.”; and

30. In schedule VIII, in clause (4), in Annexure A, for the table, the following shall be substituted, namely:-

“

1.	Curriculum Vitae/Resume containing:
A	Name: (former name if any):
B	Father’s or Husband Name:
C	C.N.I.C # / Passport # (In case of foreign nationals) -(attach copy)
D	Latest photograph
E	Nationality:
f	Age:
G	Contact details: i) Residential address: ii) Business address: iii) Tel: iv) Mobile: v) Fax: vi) E-mail:
G	National Tax Number:

h	Present occupation:
i	Qualification(s): Details of Academic and Professional Qualifications: (Attach Copy). Board of Directors of RMC shall ensure verification of credentials and degrees of the Chief Executive”;
J	Trainings
K	Experience: (Positions held during the last 10 years along with name and address of company/ institution) (Position held during the last ten years (along with name and address of company/institution/ body where appointment held, nature of the company/institution/body and dates of appointment))
2.	Status of directorship Shareholder <input type="checkbox"/> Nominee <input type="checkbox"/> Name of the shareholders/ Group of shareholders he is representing Nature of directorship Executive <input type="checkbox"/> Non-executive <input type="checkbox"/> Independent <input type="checkbox"/> Non-independent <input type="checkbox"/> Status of directorship Nominee director <input type="checkbox"/> Number of shares subscribed or held Nominated by (name of shareholder) Personal net worth (copy of wealth statement for other than nominee directors of body corporate and independent directors)
3.	Names of companies, firms, sole proprietorships and other organizations of which the proposed person is a chief executive, director, partner, owner, office holder or major shareholder.
4.	CIB report issued by SBP for the companies, firms, sole proprietorships, etc. where the applicant is interested as director (sponsor or major shareholder), chief executive, partner or owner each company of which he has been a director (attach original CIB reports)
	An undertaking providing details of the following: I. Any write off availed from any financial institution during the last five years II. Any default of Finance obtained from any financial institution during the last five years.

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

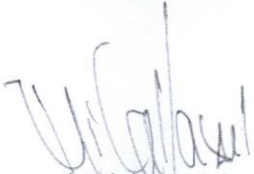
Signature

***use additional sheets if required**

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

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

[File No. SY/SECP/8/13]


 (Bilal Rasul)
 Secretary to the Commission