

(Legislative Supplement No. 46)

LEGAL NOTICE NO. 116

THE CAPITAL MARKETS (REAL ESTATE INVESTMENT
TRUSTS) (COLLECTIVE INVESTMENT SCHEMES)
REGULATIONS, 2013

ARRANGEMENT OF REGULATIONS

Regulation

PART I - PRELIMINARY

1-Short Title.

2-Interpretation.

PART II - ESTABLISHMENT OF A REAL ESTATE INVESTMENT
TRUST SCHEME

3-Scheme to comply with these Regulations.

4-Requirement for prior consent.

5-Structure of a real estate investment trust.

6-Term of the trust.

7-Assets of the scheme.

8-Types of real estate investment trust schemes.

9-Status of the fund and redemption of units.

10-Objectives of a D-REIT.

11-Objectives of an I-REIT.

12-Restriction on provision of loans or mortgages by REITS.

13-Reference to D-REIT and I-REIT to include a reference to the
trustee.

PART III - AUTHORIZATION OF REAL ESTATE INVESTMENT
TRUST SCHEMES

14-Restriction on offer and promotion.

15-Prohibited activities before an authorization.

16-Application for authorization.

17-Procedure for application.

18-Authoriation of a scheme.

19-Liability of the trustee, REIT manager or auditor.

- 20–Revocation of authorization.
- 21–Winding up of a real estate investment trust scheme.
- 22–Termination of a real estate trust scheme by the promoter, trustee or REIT Manager.
- 23–Power of the court in winding up of a real estate investment trust scheme.
- 24–Restriction on the issue or offer of REIT securities.
- 25–Obligations of a promoter in an initial offer or issue of REITs securities.
- 26–Obligations of a REIT manager in a subsequent offer or issue of REITs securities.

PART IV - OFFERS IN RESPECT OF A D-REIT

- 27–Offers in respect of a D-REIT.
- 28–Listing of D-REIT securities.

PART V - OFFERS IN RESPECT OF AN I-REIT

- 29–Offers in respect of an I-REIT.
- 30–Listing of securities of an I-REIT.

PART VI – PROVISIONS APPLYING TO OFFERS OF BOTH D-REITS AND I-REITS

- 31–Exceptions to limitations on transfers in case of a restricted issue or offer.
- 32–Appointment of a transaction adviser.
- 33–Appointment of a Registrar.
- 34–Publication of a prospectus or an offering memorandum.
- 35–Expert statement.
- 36–Disclosure of financial structuring.
- 37–Approval of prospectus or offering memorandum.
- 38–Liability for a defective prospectus or an offering memorandum.
- 39–Remedy for unfair prejudice or conduct of a scheme.
- 40–Compensation for false or misleading prospectus or offering memorandum.
- 41–Obligation to conduct due diligence.
- 42–Continuing disclosure obligations of trustee and REIT manager.

PART VII - APPOINTMENT, REMOVAL AND OBLIGATIONS OF A TRUSTEE

- 43–Trustee to be licensed by the Authority.
- 44–Eligibility for appointment as a trustee.

45–Powers, obligations and duties of a trustee and any secondary disposition trustee.

46–Instructions from a REIT manager.

47–Change of address of the trustee.

48–Liability of a trustee.

49–Exemption from taking action in respect of REIT assets.

50–Register of REIT securities holders.

51–Voluntary Resignation of trustee.

52–Removal and replacement of a trustee.

53–Notification of contraventions.

PART VIII - APPOINTMENT, REMOVAL AND OBLIGATIONS OF A REIT MANAGER

54–Authorization of a scheme as a self-managed scheme.

55–Appointment of a REIT manager.

56–Duties of a REIT manager.

57–Restrictions on activities of a REIT manager.

58–Connected party transactions.

59–Change of address.

60–Trustee requests to a REIT manager.

61–Removal and replacement of a REIT manager.

PART IX – APPOINTMENT AND ROLE OF STRUCTURAL ENGINEER AND THE PROJECT MANAGER CERTIFIER

62–Appointment and role of the structural engineer.

63–Appointment and role of project manager certifier.

PART X - SPECIFIC REQUIREMENTS FOR I-REITS

64–Investments and objectives of an I-REIT.

65–Eligible investments for an I-REIT and income requirements.

66–Consequences of failure to invest in real estate within one hundred and eighty days.

67–Acquisition and disposal of real estate and price.

68–Partial ownership of properties.

69–I-REIT income requirement.

70–Real estate construction and development activities by an I-REIT.

71–Maximum level of borrowing by an I-REIT.

72–Distribution requirements of an I-REIT.

73–Distribution of realized capital gains by an I-REIT.

74–Minimum retained investment by the promoter and lock-in period.

PART XI - SPECIFIC REQUIREMENTS FOR D-REITS

75–Investments and objectives of a D-REIT.

76–Eligible investments for a D-REIT.

77–Consequences of failure to invest in real estate within one hundred and eighty days.

78–Acquisition and disposal of a real estate and price.

79–Partial ownership of real estate.

80–Construction and development activities by a D-REIT.

81–Maximum levels of borrowings by a D-REIT.

82–Distribution requirements of a D- REIT.

83–Distribution of realized capital gains by a D- REIT.

84–Minimum retained investment by the promoter and lock-in period.

PART XII – CONVERSIONS OF REITs

85–Requirements for conversion from a D-REIT to an I-REIT.

86–Conversion from an open to a closed REIT or from a restricted to an unrestricted REIT.

PART XIII - ADVERTISING

87–Advertising.

88–Inclusion of performance data.

PART XIV- ALTERATION OF SCHEME DOCUMENTS

89–Alterations to REITs documentation.

PART XV - FEES AND TERMS OF THE TRUSTEE THE REIT MANAGER AND OTHER PARTIES

90–Remuneration of the trustee.

91–Remuneration of a REIT manager.

92–Deferment of fees payable to a REIT manager.

93–Basis for remuneration of trustee and REIT manager.

94–Term of the REIT manager of an I-REIT and prohibition on penalties.

95–Recoverable expenses.

PART XVI - MAINTENANCE OF BOOKS, ACCOUNTS AND RECORDS

96–Maintenance of books, accounts and records.

**PART XVII - APPOINTMENT AND REMOVAL OF AN AUDITOR
AND AUDIT OF ACCOUNTS**

97–Appointment of an auditor and audit of accounts.

98–Removal of an auditor.

99–Notification to the Authority.

100–Co-operation with the auditor.

**PART XVIII - PREPARATION OF PERIODIC REPORTS AND
ACCOUNTS BY THE REIT MANAGER AND TRUSTEE**

101–Preparation of semi-annual and annual reports.

102–Failure to prepare reports.

103–Submission of reports to the Authority and REIT securities
holders.

104–Distribution recommendations and statements.

**PART XIX - NOTIFICATIONS AND REPORTING TO THE
AUTHORITY**

105–Notification and compliance report by the trustee.

106–Notification and compliance report by the REIT Manager.

107–Notification and compliance report by the auditor.

108–Availability of reports.

PART XX - ACQUISITION AND DISPOSAL OF ASSETS

109–Acquisition from promoter and connected parties.

110–Additional acquisitions.

**PART XXI - APPOINTMENT OF A VALUER AND VALUATION
OF ASSETS**

111–Appointment of a valuer.

112–Obligations of a valuer.

113–Basis for valuation and conduct of valuation.

114–Fees and remuneration of a valuer.

115–Removal of a valuer.

116–Retirement of a valuer.

117–Power of the Authority to require a valuation.

PART XXII - CONNECTED PARTY TRANSACTIONS

118–Connected party transactions.

**PART XXIII - DOCUMENTS TO BE AVAILABLE FOR
INSPECTION BY REIT SECURITIES HOLDERS**

119–Documents to be availed for inspection.

PART XXIV - ISSUE OF ADDITIONAL REIT SECURITIES

120–Issue of additional REIT securities.

PART XXV – MEETINGS OF REIT SECURITIES HOLDERS

121–Meetings of REIT securities holders.

PART XXVI - ISLAMIC REITS

122–Islamic REITS.

PART XXVII – TAKE-OVER AND MERGERS OF REITS

123–Application of The Capital Markets (Take-Overs and Mergers) Regulations 2002.

PART XXVIII – LICENSING OF TRUSTEE AND REIT MANAGER

125–Application for a licence by a trustee and a REIT Manager.

126–Specific requirements for licensing as a trustee of REIT manager.

127–Financial requirements for a trustee and REIT manager.

128–Records to be maintained by trustee and REIT manager.

129–Conduct of REIT manager and trustee.

130–Reporting by REIT manager and trustee.

131–Application of The Capital Markets (Licensing Requirements)(General) Regulations, 2002.

PART XXIX – APPLICATION OF THE CAPITAL MARKETS
(CORPORATE GOVERNANCE) (MARKET
INTERMEDIARIES) REGULATIONS 2011

132–Application to trustees and REIT managers.

PART XXX - APPLICATION OF THE CAPITAL MARKETS
(SECURITIES) (PUBLIC OFFERS, LISTING AND
DISCLOSURE REGULATIONS, 2002

133–Application of the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002.

PART XXXI – FEES

134–Fees applicable to applications, approvals other filings and to transactions.

SCHEDULES

FIRST SCHEDULE – CONTENTS OF TRUST DEED

SECOND SCHEDULE – APPLICATION FOR AUTHORIZATION
AS A REAL ESTATE INVESTMENT TRUST SCHEME

THIRD SCHEDULE – AUTHORIZATION CERTIFICATE

FOURTH SCHEDULE - CONTENTS OF PROSPECTUS OR
OFFERING MEMORANDUM

FIFTH SCHEDULE – SEONTEENTS OF SEMI-ANNUAL REPORT,
ANNUAL REPORT AND FINANCIAL STATEMENTS

SIXTH SCHEDULE – VALUATIONS

SEVENTH SCHEDULE – MEETING OF HOLDERS OF REIT
SECURITIES

EIGHTH SCHEDULE - APPLICATION FOR LICENCE AS REIT
TRUSTEE O REIT MANAGER

NINTH SCHEDULE - FEES

THE CAPITAL MARKETS ACT

(Cap. 485A)

IN EXERCISE of the powers conferred by section 12 of the Capital Markets Act, Cabinet Secretary for the National Treasury makes the following Regulations-

THE CAPITAL MARKETS (REAL ESTATE INVESTMENT TRUSTS) (COLLECTIVE INVESTMENT SCHEMES) REGULATIONS, 2013

PART I - PRELIMINARY

Citation.

1. These Regulations may be cited as the Capital Markets (Real Estate Investment Trusts) (Collective Investment Scheme) Regulations, 2013.

Interpretation.

2. In these Regulations, unless the context otherwise requires

-
“Act” means the Capital Markets Act;

Cap. 485A

“Authority” means the Capital Markets Authority established under section 5 of the Act;

“borrowing” means any financing arrangement in the nature of a debt, whether secured or unsecured, and includes the equivalent under *Shariah* law;

“closed ended fund” means a fund or trust in which-

- (a) a person invests by subscribing for an issue of REIT securities or by acquiring REIT securities in a secondary market;
- (b) the value of the investment fluctuates over time as determined by market price for the REIT securities;
- (c) the number of the REIT securities issued remains constant over time except where a new issue of REIT securities is made or there is a reduction in the capital of the fund initiated by the trustee or as a consequence of termination or winding up of the trust; and
- (d) the REIT securities holder, except where there is a reduction in the capital of the fund initiated by the trustee or as a consequence of termination or winding up of the trust -
 - (i) is not entitled to require the trustee to redeem the REIT securities; and
 - (ii) may only exit the investment in the REIT securities by selling the units in a secondary market;

L.N. 125 of 2002.

L.N. 144 of 2011.

“compliance officer” means a person designated as such under regulation 53A of the Capital Markets (Licensing Requirements) (General) Regulations, 2002 and whose responsibilities and powers are specified under regulation 30 of the Capital Markets (Corporate Governance) (Market Intermediaries) Regulations, 2011;

“connected person” or “connected party” in relation to a real estate investment trust scheme includes-

- (a) a REIT manager;
- (b) a valuer appointed to undertake a valuation of the scheme;
- (c) the trustee;
- (d) a substantial holder of REIT securities in the scheme;
- (e) a director, a senior executive or an officer of any person under paragraph (a), (b) or (c);
- (f) an associate of any person under paragraph (d) and (e);
- (g) a controlling entity, a holding company, a subsidiary or an associated company of any person under paragraph (a) to (d);

“D-REIT” means a development and construction real estate investment trust which complies with the requirements of these Regulations;

“D-REIT scheme” means a development and construction real estate investment trust scheme authorized as such by the Authority under regulation 18;

“eligible investments” means the assets and other investments specified under regulation 65 in respect of an I-REIT and regulation 76 in respect of a D-REIT in which the trustee may invest;

“eligible real estate” in respect of real estate situate in Kenya means only real estate where the form of tenure which applies to the land is -

- (a) freehold and includes the shares in any management company and any common management company established in respect of the freehold title that have been or are transferred or acquired by the trustee at the same time; or
- (b) leasehold in respect of which either a certificate of title or a certificate of lease has been issued or is a long-term lease, as defined in the Land Act, 2012 which has a registered separate title number and where, in the case of each

No. 6 of 2012.

leasehold title -

- (i) as at the latter of the date on which the leasehold is transferred to or acquired by the trustee, investee company or trustee of the investee trust and the date on which the scheme is authorized by the Authority, the leasehold has an unexpired residual term of at least twenty five years; and
- (ii) the shares in the management company and any common management company established in respect of the leasehold have been or are transferred or acquired by the trustee at the same time; or

No. 21 of 1987.

(c) issued under the Sectional Properties Act -

- (i) as at the date on which it is transferred to or acquired by the trustee, investee company or trustee of the investee trust and the date on which the scheme is authorized by the Authority, there is an unexpired residual term of at least twenty five years; and
- (ii) a Corporation has been constituted under section 17 of the Sectional Properties Act in respect of the sectional plan registered under that Act;

“exempted real estate investment trust” means -

- (a) a collective investment scheme authorized by the Authority other than a real estate investment trust scheme;
- (b) a scheme that is prescribed by the Authority not to be a real estate investment trust scheme; or
- (c) a trust, scheme, syndicate or arrangement which-
 - (i) does not involve an issue or offer to the public or a section of the public which complies with the conditions for a private offer as prescribed by the Authority and in respect of which the issuer which has not sought authorization under these Regulations as a real estate investment trust scheme;
 - (ii) is limited to members of a family group;
 - (iii) is a charitable trust; or

(iv) is established as a consequence of a disposition under a will or other testamentary instrument; and

(d) does not include -

- (i) a statutory fund maintained under any law for the regulation of insurance in Kenya;
- (ii) any pension or retirement fund established under or regulated by the laws of Kenya;
- (iii) an arrangement regulated in Kenya by the law of partnership; or
- (iv) a scheme which is operated as a co-operative and regulated under the laws of Kenya;

“expert” in respect of a matter or an opinion means a person whose profession, occupation, religious standing, expertise or reputation gives authority to a statement made by that person in relation to that matter;

“free float” means REIT securities issued, offered or held by persons who are not connected with or associated with the promoter or the REIT manager;

“fund” means all contributions of money or money’s worth or other income or assets of a real estate investment trust from time to time including money borrowed or raised by the trustee for the purpose of the scheme and includes all amounts due and any rights of a manager or of a trustee to institute an action against any person and the rights of the beneficiaries of the trust to institute an action against any party including a trustee;

“IFRS” means the International Financial Reporting Standards issued from time to time by the International Accounting Standards Board as adopted in Kenya;

“I-REIT” means an income real estate investment trust authorized as such by the Authority under these Regulations;

“income real estate investment trust scheme” or “I-REIT scheme” means a real estate investment trust scheme authorized as such by the Authority under these Regulations;

“independent auditor” means a person who-

- (a) is qualified and registered as an auditor by the Institute of Certified Public Accountants of Kenya;
- (b) holds a valid practicing certificate;

- (c) is not an auditor of the trustee, promoter or the REIT manager;
- (d) is not a director, officer, employee, shareholder or a partner of a person specified under paragraph (c); and
- (e) is qualified for appointment as an auditor of a REIT under the Act or these Regulations;

“initial offer” means the first offer or issue of REIT securities made to persons other than to the promoter or to parties connected to the promoter or the REIT manager;

“investor” means a holder of REIT securities who is a beneficiary under a trust deed;

“initial public offering” in relation to REIT securities means the first unrestricted offering of I-REIT securities which are to be listed on an approved securities exchange;

“investee company” means a company which meets the requirements of regulation 65 in respect of an I-REIT and regulation 76 in respect of a D-REIT;

“investee trust” means a trust which meets the requirements of regulation 65 in respect of an I-REIT and regulation 76 in respect of a D-REIT;

“issuer” means-

- (a) in relation to the first issue of REIT securities made after the authorization of the real estate investment trust scheme, the promoter; and
- (b) in relation to any subsequent issue or offer of REIT securities or in the case of a conversion as provided for under Regulation 86, the REIT manager at the time of issue,

but does not include the trustee;

“lease” includes sub-lease;

“listed” in relation to REIT securities, means REIT securities which are traded on an approved securities exchange in Kenya or any other exchange approved by the Authority;

“lock in period” means a period, if any, in which the promoter is required to retain an investment in REIT securities;

“MER” means the management expense ratio of the sum of fees and recoverable expenses of the real estate investment to the

average value of the fund calculated on a daily basis-

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

where-

Fees = all outgoing fees deducted or 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 and includes any management fee, the annual trustee fee and any other fees deducted or deductible directly from the fund;

Recoverable expenses = all expenses recovered from or charged to the fund as a result of the expenses incurred by the operation of the fund expressed as a fixed amount but should not include expenses that would otherwise have been incurred by an individual investor, for example taxes; and

Average value of the REIT securities = the Net Asset Value of the trust, including net income value, less expenses on an accrued basis, for the period covered by the management expense ratio, calculated on a daily basis;

“net asset value” means the value of all assets of the fund less the value of all liabilities of the trust, including trustee and management fees, as at the day the calculation is made;

“net asset value per unit” or means the net asset value divided by the number of units of REIT securities issued and not redeemed on the day the calculation is made;

“offering memorandum” means any notice, circular, material or advertisement, publication or other invitation issuing or offering for subscription, sale or purchase of any REIT security to a professional investor and includes a conversion offering memorandum or supplemental offering memorandum;

“offeror” means a person who makes an offer of REIT securities and includes the issuer where the issuer makes the offer or requests or authorizes another person to make the offer but does not include the trustee;

“open ended fund” means, subject to any limits on redemption that might be included in the scheme documents, a fund in which a person may invest from time to time by acquiring REIT securities and may dispose of the investment by having the REIT securities redeemed by the trustee and where the value of the investment and the redemption price per unit is determined by the net asset value per unit as calculated from time to time in accordance with the scheme documents and where the size of the fund may expand or contract as investors acquire or dispose REIT securities;

“partial ownership” when used in connection with or in respect of land or real estate includes, any title or ownership or right or purported right to occupy or use land or real estate which is in the form of a co-tenancy as defined under the Land Act, 2012, or where the ownership is in a partnership, a co-operative or other form of co-ownership whether formal or informal including by way of ownership of a share in a company which is not wholly owned and controlled or of a unit in a trust which is not wholly owned pursuant to a licence or easement or other form of joint or co-ownership but does not include

-

- (a) ownership of shares in a common management company where the share is held as a consequence of the holding of a freehold or leasehold title;
- (b) a right in respect of common property arising out of a leasehold held under the Sectional Properties Act;
- (c) a right under a lease, or licence of easement that arises as a consequence of the holding of freehold or leasehold title or which is established for the benefit of that freehold or leasehold title or relates to plant and equipment or the use of a utility or infrastructure or natural resource for use in connection with the freehold or leasehold title; or
- (d) where the assets are held jointly in the name of the trustee and a secondary disposition trustee;

No. 6 of 2012.

“periodic reports” means-

- (a) such reports as may be required to be prepared from time to time under the Act or these Regulations; and
- (b) any other continuous disclosures which are required to be made in connection with or in relation to a real estate investment trust scheme;

“professional investor” means –

- (a) any person licensed under the Act;
- (b) an authorized scheme or collective investment scheme;

- (c) a bank or subsidiary of a bank , insurance company, co-operative, statutory fund, pension or retirement fund; or
- (d) a person including a company, partnership, association or a trustee on behalf of a trust which, either alone, or with any associates on a joint account subscribes for REIT securities with an issue price equal to at least five million shillings.

“promoter” means a person who-

- (a) acts as a promoter;
- (b) is nominated in the application for authorization to act as a promoter,

of a real estate investment trust or a real estate investment trust scheme but does not include an underwriter of an issue or offer of REIT securities who is paid a commission without otherwise taking part in the formation, establishment or organization of the real estate investment trust or scheme;

“property manager” means a person appointed as such under regulation 55;

“project manager certifier” means a person appointed as such under regulation 63;

“prospectus” means any notice, circular, material or advertisement, publication or other invitation issuing or offering for subscription, sale or purchase of any REIT security which is capable of being accepted by any person who is not a professional investor and includes a supplemental prospectus or a conversion prospectus;

“real estate” means land and includes-

- (a) all things which are a natural part of the land or growing on the land;
- (b) attachments above and below the land;
- (c) things which are fixtures or are developed, installed or constructed on the land including buildings and site improvements;
- (d) improvements and permanent building, plant and equipment or attachment including plumbing, heating and cooling systems, electrical wiring and built-in items including elevators which may be used in connection with the land; and

(e) all rights and interests attaching to the land;

“real estate investment trust” means a trust established in Kenya for investment in real estate but does not include an exempted real estate investment trust;

“REIT assets” or “scheme assets” includes all assets of the REIT fund;

“real estate investment trust scheme” or “REIT scheme” means an arrangement made or established for the purpose of collective investment by persons in real estate for the purpose of earning profits or income from real estate as beneficiaries of a trust which is divided into units in which-

- (a) persons contribute money or money’s worth as consideration to acquire rights or interests to gain the benefits from pooling of funds and the investment in real estate;
- (b) the persons investing do not have the day-to-day control over the management of the assets of the real estate investment trust; and
- (c) the assets are managed by an entity,

and includes such other arrangements as may be prescribed by the Authority to be a real estate investment trust scheme but does not include an exempted real estate investment trust;

“register” means the register of REIT securities holders maintained by the trustee under regulation 50;

“REIT” means a real estate investment trust;

“REIT securities” means units in a trust which is a real estate investment trust or a real estate investment trust scheme;

“REIT manager” means a company incorporated in Kenya and licensed by the Authority to provide real estate management services in respect of a REIT;

“restricted offer” means an issue or an offer made to professional investors;

“secondary disposition trustee” means an additional trustee appointed by the Authority, the scheme documents or the trustee as a joint trustee with limited powers pursuant to Regulation 44;

“securities” means any instrument defined as such under the Act and includes REIT securities;

“scheme” means a real estate investment trust scheme;

“scheme documents” include-

- (a) the prospectus and offering memorandum, and includes any conversion or supplementary prospectus or offering memorandum;
- (b) the trust deed and any amending, supplemental or replacement trust deed;
- (c) any document appointing a REIT manager or setting out the terms of appointment and the role or obligations of a REIT manager;
- (d) any document appointing a property manager, project manager certifier or structural engineer or setting out the terms of appointment, the role or obligations of such persons;
- (e) any document described in paragraph (b), (c) or (d) relating to an investee trust; and
- (f) the Memorandum and Articles of Association of any investee company and any shareholders’ agreement including any amending, supplemental or replacement Memorandum and Articles of Association or shareholder’s agreement;

“*Shariah* adviser” means a person appointed as such under regulation 122.

“special resolution” means a resolution passed by a majority of not less than three-fourths of such holders of REIT securities being entitled to do so, vote in person or where proxies are permitted by proxy, at a general meeting of holders of REIT securities of which at least twenty one days written notice specifying the intention to propose the special resolution has been given;

“substantial holder of REIT securities” means a person who holds fifteen percent or more of the issued REIT securities in a scheme, where for the purposes of calculating the fifteen percent, in addition to any REIT securities held by the holder, that person is also considered to be the holder of any REIT securities held by-

- (a) an associate of a holder who is an individual; or
- (b) a director, senior executive, officer, controlling entity, holding company, subsidiary or associated company of the holder, if the holder is an entity.

“structural engineer’s report” means the report prepared and

submitted to the REIT manager and trustees under regulation 62;

“total asset value” or “TAV” means the value of all assets of the fund based on the most recent valuation;

“transaction adviser” means a person appointed as such under regulation 32 and licensed under the Act;

“trust” means a trust established under the laws of Kenya;

“trust deed”, in relation to a real estate investment trust scheme, means the trust deed or other document which establishes or sets out the terms of the trust and includes-

- (a) any instrument that varies the terms of the trust or affects the powers or functions of the trustee or any manager appointed in respect of the trust; and
- (b) any instrument that varies the rights of beneficiaries under the trust including the REIT securities holders;

“trustee” means a person appointed under the trust deed as a trustee of the real estate investment trust and any investee trust and includes any successor but shall not include, except where expressly stated, a secondary disposition trustee;

“unit” means a REIT security being any undivided share, right, interest or entitlement in the assets of the real estate investment trust which is classified as a security under the Act;

“unrestricted offer” means any issue or offer which is not a restricted offer;

“valuation report” in respect of a real estate investment trust scheme, means a report made by a valuer;

“valuer” for the purposes REIT securities, means a person appointed as a valuer under these Regulations to prepare or who is required to prepare a valuation report.

PART II - ESTABLISHMENT OF A REAL ESTATE INVESTMENT TRUST SCHEME

Scheme to comply with these Regulations.

3. (1) A person who intends to establish a trust, a scheme, an arrangement or any form of collective investment scheme as a real estate investment trust scheme shall not refer or call such trust, scheme, arrangement or collective investment scheme a real estate investment trust scheme unless the trust, scheme, arrangement or collective investment scheme-

- (a) is declared, under regulation 18, to be an authorized scheme; and

(b) complies with the requirements of the Act and these Regulations.

Requirement for prior consent.

4. (1) Where a promoter or any person who is or proposes to vest in, sell, assign or transfer real estate to a real estate investment trust is regulated by another body or authority, that promoter or person shall obtain the consent of the body or authority prior to submitting an application for authorization as a real estate investment scheme to the Authority.

(2) A breach of paragraph (1) shall not operate to void any transaction entered into or prevent the trustee from pursuing any remedies the trustee may have against any other person but shall prevent any action by the other promoter or other party against the trustee for non-performance of any contract entered into in contravention of this provision.

Structure of a real estate investment trust.

5. A real estate investment trust scheme shall -

(a) be structured as an unincorporated common law trust which is divided into units;

(b) be established under a trust deed which sets out the matters specified in the First Schedule;

(c) have a trustee who is independent of the REIT manager and the promoter and satisfies the requirements of these Regulations; and

(d) have a REIT manager and a trustee who are licensed persons and satisfy the requirements of these Regulations.

Term of the trust.

6. (1) The trust deed shall specify the term of the trust which term shall not exceed the maximum period specified under the law relating to perpetuities or any other written law.

(2) A real estate investment trust scheme shall not extend beyond the term of the trust.

Assets of the scheme.

7. (1) All assets of the real estate investment trust scheme shall-

(a) be held in the name and under the control of the trustee for the benefit of REIT securities holders as the beneficiaries of the trust in accordance with the terms of the trust deed;

(b) only be invested in eligible investments; and

- (c) be segregated from the assets and liabilities of the trustee and not constitute the assets of the trustee in the event of-
 - (i) a claim by the creditors of the trustee;
 - (ii) the insolvency, winding up, takeover, restructure or amalgamation of the trustee;
 - (iii) the winding up of the scheme;
 - (iv) the dissolution of the scheme; or
 - (v) the amalgamation or restructure of the scheme.

(2) A trustee may, subject to the provisions of these Regulations and the terms of the trust deed, enter into borrowing arrangements for the purpose only of fulfilling the objectives of the trust and may pledge or otherwise give security over the assets of the trust scheme to secure such borrowing.

Types of real estate investment trust schemes.

8. A real estate investment trust scheme may , be structured as a D-REIT or an I-REIT in accordance with these Regulations.

Status of the fund and redemption of units.

9. (1) A D-REIT may be structured as an open ended or a closed ended fund and may be converted from one status to the other in accordance with regulation 86.

(2) An I-REIT which is the subject of an unrestricted offer may only be structured as a closed ended fund and the REIT securities of an unrestricted I-REIT shall be listed.

(3) An I-REIT which is the subject of a restricted offer may be structured as either an open ended or a closed ended fund and may be converted from one status to the other in accordance with regulation 86.

(4) An I-REIT which is the subject of a restricted offer may, subject to these Regulations, be converted to a closed fund and may be converted to an unrestricted offer.

(5) Where a REIT is structured as an open ended fund, the scheme documents shall set out the entitlement of the holders of the REIT securities to require the trustee to redeem the REIT securities, including the procedure and limits on the holder being able to seek redemption and the method of valuation and pricing of issues and redemptions.

(6) Nothing in these Regulations shall be construed to restrict the trustee from offering to acquire units from holders of a D-REIT or an I-REIT on a voluntary basis or from issuing additional units from time to time in accordance with these Regulations.

Objectives of a D-REIT.

10. The objectives of a D-REIT and the powers of the trustee of a D-REIT, as specified in the trust deed, shall be limited to -

(a) the acquisition of eligible real estate, investment in eligible investments and the undertaking of real estate development and construction projects including –

(i) housing projects involving-

(A) the provision of buy to let housing;

(B) tenant purchase schemes and arrangements;

(C) development of to let housing for sale;

(D) development of to hold and let housing;

(E) development of for sale housing; or

(F) any combination of subparagraphs (A) to (E) or any other form of provision of shelter, housing or accommodation;

(ii) commercial and other real estate related development and construction projects;

(b) marketing and sale of real estate;

(c) retention and management of the real estate assets of the trust with the objective of earning income from the assets;

(d) the undertaking of incidental or connected activities and activities related to the assets of the trust; and

(e) such other activities as may be specified under these Regulations.

Objectives of an I-REIT.

11. The objectives of an I-REIT and the powers of the trustee of an I-REIT, as specified in the trust deed, shall be limited to -

(a) the acquisition, for long-term investment, of income generating eligible real estate and eligible investments including housing, commercial and other real estate;

(b) marketing and sale of real estate assets;

(c) retention and management of the real estate assets of the trust with the objective of earning income from the assets;

(d) undertaking incidental and connected activities and activities related to the assets of the trust;

- (e) undertaking of such development and construction activities as may be specified under these Regulations; and
- (f) such other activities as are specified under these Regulations.

Restriction on provision of loans or mortgages by REITS.

12. (1) A D-REIT or an I-REIT shall not engage in the provision of mortgages or any other form of lending or debt finance.

(2) Despite paragraph (1) a D-REIT may, where the D-REIT has developed or constructed housing or other real estate assets, provide –

- (a) a mortgage;
- (b) other forms of secured loan;
- (c) secured finance; or
- (d) any form of lending or finance through a progressive purchase mechanism,

for the purpose of assisting a tenant or purchaser to acquire a housing from the D-REIT.

(3) A D-REIT that provides finance to a purchaser and subsequently converts to an I-REIT, may, as an I-REIT, continue to hold such loans or mortgages as assets but shall not engage in additional lending or provision of mortgages.

Reference to D-REIT and I-REIT to include a reference to the trustee.

13. A reference in these Regulations to a real estate investment trust, a real estate investment trust scheme, a D-REIT or an I-REIT shall, where the regulation imposes a restriction on the powers of, or an obligation on, or requires, empowers or authorizes the real estate investment trust, real estate investment trust scheme, D-REIT or I-REIT to undertake any act or thing, include a reference to the trustee of the REIT and, where the context so permits, a reference to the REIT manager.

PART III - AUTHORIZATION OF REAL ESTATE INVESTMENT TRUST SCHEMES

Restriction on offer and promotion.

14. (1) A person shall not offer or issue REIT securities to any person unless the offer or issue complies with these Regulations.

- (4) A person shall not-
 - (a) issue or cause to be issued an advertisement-

- (i) inviting a person to become or offer to become an investor or a holder of REIT securities; or
 - (ii) containing information which may lead directly or indirectly to a person becoming or offering to become a participant in a scheme; or
- (b) advise or procure a person to become or offer to become an investor or a holder of REIT securities;

unless the REIT securities are for a scheme that has been declared to be an authorized scheme by the Authority under regulation 18.

(3) The provisions of this regulation and regulation 15 shall not apply to an offer or issue to the promoter or any person connected with the promoter or to the procuring of such person to become a holder of REIT securities.

Prohibited activities before an authorization.

15. A person shall not issue REIT securities in a real estate investment trust or in connection with a real estate investment trust scheme unless that person applies to the Authority for, and obtains an authorization for the issue of REIT securities.

Application for authorization.

16. (1) A promoter and the trustee shall submit a joint application in Form 1 prescribed in the Second Schedule, to the Authority for the authorization of a real estate investment trust scheme.

(2) An application made under paragraph (1) shall-

- (a) contain the information specified in Form 1 in the Second Schedule; and
- (b) specify if the application is for the authorization of the scheme as an I-REIT or a D-REIT.

Procedure for application.

17. (1) A promoter and trustee shall, in making an application under regulation 16, submit to the Authority -

- (a) the prescribed application fee;
- (b) a draft trust deed or the trust deed;
- (c) a draft prospectus or an offering memorandum;
- (d) an agreement or draft management services agreement with the REIT manager;
- (e) an agreement or draft agreement with the property manager;
- (f) an agreement or draft agreement with the project

manager certifier;

- (g) certified copies of any other scheme documents and material contracts;
- (h) certified copies of valuation reports of properties vested in or to be vested in, acquired or transferred or to be acquired or transferred to the trustee as assets of the trust;
- (i) reports of experts and consents of experts for inclusion;
- (j) a legal opinion in respect of-
 - (i) the title, encumbrances, terms of contracts and status of registration of the real estate and other assets vested in or set out in the prospectus or offering memorandum that are to be vested in, acquired or transferred to the trustee as assets of the trust; and
 - (ii) the compliance of the trust deed with these Regulations,
- (k) the contract with and certified copy of the report of the structural engineer;
- (l) if it is proposed that the REIT be authorized as an Islamic REIT, a copy of the *Shariah* advisor's report;
- (m) audited financial statements of the REIT manager for the financial year immediately preceding the application for authorization;
- (n) audited financial statements of the trustee for the financial year immediately preceding the application for authorization; and
- (o) such other documents as the Authority may prescribe from time to time.

(2) The Authority may require the applicant to furnish it with such additional information, verification and copies of any additional documentation as the Authority may consider necessary.

Authorization of a scheme.

18. (1) The Authority may, upon considering an application and determining that the scheme does not have a name that is undesirable or misleading, declare a real estate investment trust scheme to be an authorized scheme under these Regulations and issue to it, an authorization certificate in Form 2 of the Third Schedule.

(2) The Authority may, in authorizing a scheme under

paragraph (1), impose such conditions as it may consider necessary.

(3) An order made under paragraph (1) shall not-

- (a) be construed as a recommendation as to the merits of a real estate investment trust scheme; or
- (b) render the Authority liable for any action in damages suffered by any person as a consequence of the authorization.

Liability of the trustee, REIT manager or auditor.

19. (1) Subject to regulations 25, 26, 44, and 48, any provision in the scheme documents of a real estate investment trust scheme which exempts or purports to exempt a REIT manager, a trustee including a secondary disposition trustee or an auditor from liability for any failure to exercise due care and diligence in the discharge of their functions in respect of the real estate investment trust scheme is void:

Provided that any trustee, in undertaking any borrowing or financing arrangement, shall be entitled to limit its liability for any borrowing within the scope of its authority, to the assets of the fund.

(2) Despite any provision in the scheme documents, a trustee including a secondary disposition trustee, a REIT manager or an auditor shall be liable for any loss, damage or depreciation in the market value of the securities or other assets in which the scheme assets are invested where such loss, damage or depreciation arises from-

- (a) in the case of the trustee or the REIT manager, a breach of their fiduciary duties or obligations;
- (b) failure to exercise due care and diligence in the discharge of their functions;
- (c) negligence whether professional or otherwise; or
- (d) wilful default by the trustee, secondary disposition trustee, REIT manager or auditor or their agents, employees or associates.

Revocation of authorization.

20. (1) The Authority may, on its own initiative or at the request of the trustee, revoke an order for the authorization of a real estate investment trust scheme under regulation 18(1).

(2) The Authority shall not revoke an order under paragraph (1) unless it has given the trustee, the REIT manager and any REIT securities holder an opportunity to be heard and the Authority has reason to believe that-

- (a) there has been a breach of a condition of the scheme

has failed to satisfy a requirement for the grant of an authorization;

- (b) it is undesirable in the interests of the REIT securities holders or potential REIT securities holders that the scheme should continue as an authorized scheme;
- (c) any proposal to restructure the scheme including changing the trustee or the REIT manager would not adequately protect the interests of the REIT securities holders; or
- (d) the trustee or REIT manager has-
 - (i) furnished the Authority with false, inaccurate or misleading information; or
 - (ii) contravened a provision of, or failed to satisfy a requirement imposed under the Act or these Regulations.

(3) In revoking an authorization under paragraph (1), the Authority shall take into consideration any matter relating to the scheme, the trustee, the REIT manager or an officer or controller of the trustee or REIT manager or any director of, person employed by, or associated with the trustee or REIT manager in relation to the scheme.

(4) The Authority shall, in revoking an authorization under paragraph (1)-

- (a) issue to the trustee and the REIT manager a written notice of its intention to revoke the authorization; and
- (b) give the trustee and the REIT manager an opportunity to be heard either in person or through submissions.

(5) A notice issued under paragraph (4)(a) shall specify –

- (i) the reasons for which the Authority proposes to revoke the authorization; and
- (ii) the particulars of the rights conferred under paragraph (4)(b); and
- (iii) require the trustee to submit a copy of the notice to the REIT securities holders.

Winding up of a real estate investment trust scheme.

21. (1) The Authority may, where it revokes an authorization under regulation 20, apply to the Court for the appointment of a person to wind up the real estate investment trust scheme.

(2) Where the Authority has made an application under paragraph (1), it shall, -

(a) give a written notice of the application to the trustee and the REIT manager; and

(b) inform the REIT securities holders of the application.

(3) This regulation shall apply subject to any orders of the Court under regulation 23.

Termination of a real estate trust scheme by the promoter, trustee or REIT Manager.

22. (1) The trustee shall, where it initiates the revocation of an authorization under regulation 20(1), apply to the Authority for the termination of the real estate investment trust scheme.

(2) The trustee shall submit, together with the application under paragraph (1), a plan for winding up the scheme.

(3) The Authority shall approve a plan for winding up submitted to it under paragraph (2) if the Authority is satisfied that the interests of the REIT securities holders are properly protected.

(4) This regulation shall apply subject to any orders that may be made by the Court under regulation 23.

Power of the court in winding up of a real estate investment trust scheme.

23. (1) The trustee, the REIT manager or any REIT securities holder may make an application to Court for an order to wind up the operations of an authorized scheme.

(2) Prior to making an application under paragraph (1), the trustee or REIT manager shall give the Authority and REIT security holders notice of the application and the grounds for making the application.

(3) The Authority, the trustee, the REIT manager and any REIT securities holder shall, where an application is made under paragraph (1), be entitled to be heard by the Court on the application.

(4) The Court may make an order under paragraph (1) for the winding up of an authorized scheme if the Court is satisfied that –

(a) the scheme is being operated in contravention of the Act, these Regulations or the scheme documents;

(b) it is in the interest of the REIT securities holders or in the public interest to terminate the scheme; or

(c) it is just and equitable to make the order.

Restriction on the issue or offer of REIT securities.

24.(1) For the purposes of these Regulations, a person who invites another person –

- (a) to enter into an agreement for or with the view to subscribing for or otherwise acquiring or underwriting the issue or offer of any REIT securities; or
- (b) to make an offer under subparagraph (a),

shall be considered to be issuing or offering REIT securities.

(2) A person shall not-

- (a) make an offer of or issue REIT securities or other securities in respect of a real estate investment trust or a real estate investment trust scheme –
 - (i) otherwise than in accordance with the Act, these Regulations and with a prospectus or an offering memorandum that contains the information set out in the Fourth Schedule and has been approved by the Authority; and
 - (ii) in respect of a real estate investment trust scheme which has been authorized by the Authority either as a D-REIT or an I-REIT;
- (b) act as an agent in the sale, issue or offer of REIT securities unless that person is licensed by the Authority and complies with these Regulations; or
- (c) act as a promoter of a real estate investment trust scheme or a real estate investment trust except in accordance with the Act and these Regulations.

(3) The provisions of paragraph (2) shall not apply to -

- (a) an offer of REIT securities to a promoter of a scheme or to connected persons;
- (b) an agreement entered into by a promoter or connected person to acquire REIT securities in exchange for or part exchange of the transfer of real estate into a proposed scheme; or
- (c) an offer or issue of REIT securities to the promoter or connected person which are subject to the restriction that the securities cannot be subsequently transferred by the promoter except as a consequence of the winding up or death of the promoter, or where made pursuant to regulation 27(4) or regulation 29(5).

Obligations of a promoter in an initial offer or issue of REITs securities.

25. (1) A promoter shall be deemed to be the offeror or issuer of the initial offer or issue of REIT securities to a person who is not the promoter or connected with the promoter and shall have

continuing liability for –

- (a) any covenants and warranties contained in the prospectus or offering memorandum;
- (b) any misleading or deceptive statements made in any prospectus or offering memorandum; or
- (c) any omission from the prospectus or offering memorandum.

(2) Despite the provisions of regulation 16 and the role played by the trustee in the issue of REIT securities, the trustee shall not be considered to be the issuer and its liability shall be limited to -

- (a) covenants and warranties made by the trustee; and
- (b) misleading and deceptive statements made by, and included in the prospectus or offering memorandum with the approval of the trustee in its capacity as an expert.

Obligations of a REIT manager in a subsequent offer or issue of REITs securities.

26. (1) A person who is a REIT manager at the time of any subsequent issue or offer of REIT securities made after the initial offer or issue shall be deemed to be the issuer or offeror of any subsequent issue or offer and shall have continuing liability for-

- (a) any covenants or warranties ;
- (b) misleading or deceptive statements in the prospectus or offering memorandum; or
- (c) omissions from the prospectus or offering memorandum,

made or issued by it whilst that person was the REIT manager notwithstanding that that REIT manager subsequently ceases to be the REIT manager.

(2) The liability of the trustee in the case of any subsequent offer shall be limited to liability to -

- (a) covenants and warranties made by the trustee, and
- (b) misleading and deceptive statements made in respect of
 -
 - (i) the trustee that have been included in the prospectus or offering memorandum with its approval in its capacity as an expert; and
 - (ii) those which is aware of or should have been aware of as a consequence of its role as trustee of the

scheme.

PART IV - OFFERS IN RESPECT OF A D-REIT

Offers in respect of a D-REIT.

27. (1) An offer or an issue of REIT securities in a D-REIT shall only-

- (a) be made as a restricted offer to professional investors;
- (b) be offered in minimum subscription or offer parcels of five million shillings; and
- (c) subject to these Regulations, shall only be transferred to a party to whom the REIT securities could have been issued or offered.

(2) A D-REIT shall have a minimum of seven investors.

(3) The minimum value of the initial assets of real estate investment trust in a D-REIT shall be one hundred million shillings.

(4) A minimum of twenty five percent of the total REIT securities in the trust by value shall be free float:

Provided that this provision shall not apply where additional REIT securities are issued to-

- (a) the promoter;
- (b) the REIT manager; or
- (c) parties associated or connected with either of them,

for the funding of an unscheduled cost overrun on a development or construction, in circumstances where such REIT securities during the time that they are held by the promoter, REIT manager or a connected person or associated party shall not be entitled to voting rights in respect of such additional REIT securities but may be entitled to participate in any distribution in respect of such REIT securities.

(5) Subject to the exception under paragraph (4), a minimum free float of twenty five percent of the REIT securities on issue at any time shall be held by investors who are not connected persons or associated with the promoter or the REIT manager.

(6) The trustee shall not register any issue or transfer of a REIT security if the trustee has reasonable grounds to believe that the issue or transfer would result in a breach of this provision in relation to the minimum requirements for the free float.

(7) The trustee may, in registering or declining to register an

issue or a transfer under paragraph (6), rely on a certification issued by the subscriber or transferee that he or she is not a connected person or associated with the promoter or the REIT manager.

Listing of D-REIT securities.

28. REIT securities in a D-REIT, if listed, shall only be listed on a market segment of a securities exchange approved by the Authority which limits-

- (a) trading to a restricted minimum parcel size of five million shillings; and
- (b) investors who may trade on such market segment of the securities exchange to those to whom an offer of the D-REIT securities could have been made.

PART V - OFFERS IN RESPECT OF AN I-REIT

Offers in respect of an I-REIT.

29. (1) An offer or an issue of REIT securities in an I-REIT shall be made either as -

- (a) a restricted offer to professional investors in accordance with an offering memorandum; or
- (b) an unrestricted offer in accordance with a prospectus.

(2) REIT securities in an I-REIT may be offered as a restricted offer in minimum subscription or offer parcels of five million shillings and may, subject to these Regulations, only be transferred to a party to whom they could have been issued or offered.

(3) An I-REIT shall, subject to any greater number as may be required by the listing rules of a securities exchange, have a minimum of seven investors.

(4) The minimum value of the initial assets of a real estate investment trust in an I-REIT shall be three hundred million shillings.

(5) A minimum of twenty five percent of the total of REIT securities in the trust by value shall be free float:

Provided that this provision shall not apply where additional REIT securities are issued to-

- (a) the promoter;
- (b) the REIT manager; or
- (c) any party associated or connected with either of them,

for the funding of an unscheduled cost overrun on a development or construction, provided that such REIT securities during the time that

they are held by the promoter, REIT manager or a connected person or associated party shall not be entitled to voting rights in respect of such additional REIT securities but may be entitled to participate in any distribution in respect of such REIT securities.

(6) Subject to the exception under paragraph (5), a minimum of twenty five percent of the REIT securities on issue at any time shall be free float.

(7) The trustee shall not register any issue or transfer of a REIT security if the trustee believes that the issue or transfer would result in non-compliance with the free float requirements.

(8) The trustee may, in registering or declining to register an issue or a transfer under paragraph (7), rely on a certification given by the subscriber or transferee that that person is not a connected person or associated with the promoter or the REIT manager.

Listing of securities of an I-REIT.

30. Where an issue or an offer of REIT securities in an I-REIT is made as an-

- (a) unrestricted offer, it shall be listed on a market segment of a securities exchange approved by the Authority; or
- (b) a restricted offer, if listed, shall only be listed on a market segment of a securities exchange authorized by the Authority which limits-
 - (i) trading to a restricted minimum parcel size of five million shillings; and
 - (ii) investors who may trade on such market segment of a securities exchange to those to whom an offer of the securities could have been made.

*PART VI – PROVISIONS APPLYING TO OFFERS
OF BOTH D-REITS AND I-REITS*

Exceptions to limitations on transfers in case of a restricted issue or offer.

31. (1) The restrictions on transfers in a D-REIT or an I-REIT shall not operate to restrict-

- (a) a transfer as a consequence of death or insolvency or other *in specie* transfer; or
- (b) prevent the trustee from registering a transfer:

Provided that evidence is submitted together with the request for transfer which sufficiently establishes that the transferee is either a professional investor or a person to whom an exemption applies.

Appointment of a

32. A person who proposes to make an offer or list REIT

transaction adviser. securities shall appoint a transaction adviser for the purpose of ensuring that the offer or listing is made in accordance with the provisions of these Regulations and the Act.

Appointment of a Registrar. 33. (1) An issuer shall, where an offer of REIT securities is to be listed, appoint a note registrar for the offer and listing of the REIT securities.

(2) A registrar appointed under paragraph (1) shall comply with such requirements as may be prescribed by the Authority.

Publication of a prospectus or an offering memorandum. 34. (1) An issuer or an offeror shall, in the case of an offer which is-

(a) an unrestricted offer, publish a prospectus by making it available to the public, free of charge, at an address in Kenya, from the time that the securities are first offered until the end of the period during which the offer remains open; and

(b) a restricted offer, prepare an offering memorandum and make it available to prospective investors.

(2) A person shall not publish or circulate a prospectus or an offering memorandum unless-

(a) the real estate investment trust scheme has been authorized by the Authority; and

(b) the prospectus or offering memorandum, as the case may be, has been approved by the Authority.

(3) Any restriction imposed by these Regulations shall not operate to prevent the issue or offer of REIT securities to a promoter or a connected person or any such person entering into an agreement to acquire REIT securities in exchange for or part exchange for the vesting or transfer of real estate into a proposed real estate investment trust scheme.

(4) A person shall not issue, without the prior written approval of the Authority, an advertisement announcing an issue or offer of REIT securities unless a prospectus has been published and the advertisement specifies an address in Kenya from which the prospectus can be obtained.

(5) Where a real estate investment trust scheme intends to convert the scheme pursuant to regulation 85 and 86, the REIT manager shall prepare and submit a conversion offering memorandum or a conversion prospectus as the case may be for approval by the Authority.

(6) The Authority shall not be liable for any action in damages

suffered by any person as a result of any prospectus or offering memorandum approved by the Authority.

Expert statement.

35. (1) A prospectus or an offering memorandum shall not include a statement purporting to be made by an expert if the expert is or has been, engaged or interested in the formation or promotion of the real estate investment trust scheme or the offer of the REIT securities or in the management of the promoter or the REIT manager or is a person connected with the promoter, the trustee or the REIT manager.

(2) A prospectus or an offering memorandum which includes or is based on a statement made by an expert shall not be issued unless-

- (a) the expert has given, and has not withdrawn, before the issue of the prospectus or offering memorandum, a written consent to the issue of the prospectus or offering memorandum and the inclusion of the statement in the form and context in which it is included; and
- (b) there is a statement in the prospectus or offering memorandum that the expert has given and has not withdrawn the consent.

Disclosure of financial structuring.

36. (1) Any measure proposed in the offering memorandum or subsequently introduced in the funding, structuring, management or operation of the REIT by way of structuring or financial structuring including -

- (a) the deferral of the REIT manager's fees;
- (b) the use of two classes of REIT securities one class of which is entitled, for a limited period, to no or a lower yield than other classes of REIT securities;
- (c) inclusion of tenancies with above market rents or minimum rental; or
- (d) guarantees from the issuer or a connected person,

which is designed to or have the effect of improving the natural or unstructured yield or distribution levels in any financial year by more than five percent above those that would otherwise result from the net income generated from the assets of the fund without the adoption of such measures -

- (i) the prospectus or offering memorandum shall specifically disclose and clearly set out the measures;
- (ii) the implications of the absence of, the removal or expiry of such measures on yield, cash flows, distributions and

the risk profile of the REIT in the short and longer term shall be simply and clearly identified; and

- (iii) a sensitivity table shall be included in the prospectus or offering memorandum which demonstrates the impact of the measures.

(2) Where the measures under paragraph (1) are introduced subsequent to the issue of any prospectus or offering memorandum, the measures shall be clearly identified and their impact reported as part of the continuing disclosure reporting under regulation 42 and in subsequent half yearly and annual reports under regulation 101.

Approval of prospectus or offering memorandum.

37. (1) The Authority may approve a prospectus or offering memorandum if the prospectus or offering memorandum –

- (a) has been signed by-
 - (i) the issuer;
 - (ii) the REIT manager and the trustee;
 - (iii) an expert or other person who consents to the inclusion of a statements made by him or her or to undertake the roles attributed to him or her including, but not limited to the property manager; any project manager certifier; valuer and the structural engineer;
- (b) contains all information which investors and their professional advisers would reasonably require, for the purposes of making an informed assessment of the–
 - (i) assets, liabilities, financial position, profits, losses and prospects of the REIT scheme and the REIT securities; and
 - (ii) rights attaching to those securities;
- (c) contains such information and particulars specified in the Fourth Schedule; and
- (d) complies with such other requirements imposed under the Act and these Regulations.

(2) The Authority may, in approving a prospectus or offering memorandum under paragraph (1) impose such conditions or restrictions as it may consider necessary.

(3) An issuer shall, in seeking the approval of a supplemental prospectus or supplemental offering memorandum by the Authority, ensure that such prospectus or offering memorandum meets

requirements specified under paragraph (1) and the requirements under the Fourth Schedule relating to a supplemental prospectus or supplemental offering memorandum.

(4) A REIT manager shall, in seeking for the approval of a conversion prospectus by the Authority pursuant to regulation 86, ensure that the conversion prospectus meets the requirements of paragraph (1) and the requirements specified under the Fourth Schedule relating to a conversion prospectus.

(5) The Authority may require the applicant, whenever approval is sought under this regulation, to furnish such additional information, verification and copies of additional documentation as it considers necessary.

(6) A prospectus or offering memorandum approved by the Authority shall be valid for a period of six months.

(7) The Authority shall not be liable for any action in damages suffered by any person as a consequence of the Authority approving any prospectus or offering memorandum relating to the scheme.

(8) The approval of a prospectus or an offering memorandum by the Authority shall not operate to waive, relieve or diminish the obligation of any person to make a disclosure or provide a defence to any action under these Regulations or any other law.

Liability for a defective prospectus or an offering memorandum.

38. (1) A person shall not-

- (a) make a false, misleading or deceptive statement in a prospectus or an offering memorandum; or
- (b) omit information or a statement from a prospectus or an offering memorandum which these Regulations requires to be included.

(2) A person who contravenes the provision of paragraph (1) , commits an offence.

Remedy for unfair prejudice or conduct of a scheme.

39. (1) The Authority may issue a direction if it reasonably believes that the affairs of the scheme are being or have been conducted-

- (a) in a manner prejudicial to the interests of-
 - (i) the REIT securities holders;
 - (ii) investors in the securities market; or
 - (iii) some part of REIT securities holders or investors; or
- (b) contrary to the these Regulations or any other written

law.

(1)- (2) The Authority may, in issuing a direction under paragraph

- (a) restrain the carrying out of the act or the conduct;
- (b) require the removal and replacement of the trustee or the REIT manager;
- (c) require the trustee to initiate proceedings in Court, in the name of the trustee for the benefit of REIT securities holders, against any person on such terms as the Authority considers fit;
- (d) impose such conditions on the operations or conduct of affairs of the scheme in future as it may consider necessary;
- (e) specify the manner in which-
 - (i) REIT securities of any REIT securities holder in the scheme may be purchased; and
 - (ii) the REIT securities may be redeemed.

(3) The Authority may, in addition to any direction issued under paragraph (1), apply to Court for an order of appointment of a receiver or manager to wind up the operations of the scheme.

(4) The Court may, upon considering an application under paragraph (2), make an order-

- (a) requiring the appointment of a receiver or manager for the whole or part of the assets of the scheme;
- (b) specifying the powers and duties of the receiver or manager.
- (c) for compensation; and
- (d) for the recovery of assets.

(5) A real estate investment trust scheme shall not, where a direction or an order under this regulation has the effect of altering its trust deed or to the scheme documents, without the approval of the Authority, make any alteration or any addition to the trust deed or any scheme documents which is inconsistent with the direction or the order.

Compensation for false or misleading prospectus or offering

40.(1) This regulation applies-

memorandum.

- (a) to an issuer of REIT securities to which a prospectus or offering memorandum relates;
- (b) where the issuer is a body corporate;
 - (i) to each person who is a director of that body corporate at the time when the prospectus or offering memorandum is published; and
 - (ii) to each person who has consented to be named and is so named in the prospectus or offering memorandum as a director or has agreed to become a director of that body corporate either immediately or at a future time;
- (c) to each person who accepts, and is stated in the prospectus or offering memorandum as accepting responsibility for, or any part of, the prospectus or offering memorandum;
- (d) to the offeror of REIT securities, where the offeror is not the issuer;
- (e) where the offeror is a body corporate, but is not the issuer and does not making the offer in association with the issuer, to each person who is a director of that body corporate at the time when the prospectus or offering memorandum is published; and
- (f) to each person who does not fall within paragraphs (a) to (e) and who has authorized the contents of, or of any part of the prospectus or offering memorandum or any expert who has consented to the inclusion of its report or opinion in the prospectus or offering memorandum.

(2) A person to whom paragraph (1) applies shall be jointly and severally liable to pay compensation to any person who acquires any of the REIT securities in reliance on the prospectus or offering memorandum, including acquisition in the secondary market, to which the prospectus or offering memorandum relates, and suffers loss as a result of -

- (a) any untrue or misleading statement in the prospectus or offering memorandum; or
- (b) the omission of any matter required by the Act or these Regulations to be included in the prospectus or offering memorandum.

(3) Despite the provisions of paragraph (2), a person shall not be responsible for statements or warranties included in a prospectus or an information memorandum or scheme document—

- (a) under paragraph (1)(a), (b) or (c), unless the issuer has made or authorized the offer in relation to which the prospectus or offering memorandum is published; or
- (b) under paragraph (1)(b),(c), (e) or (f), if such statement is included or the prospectus or offering memorandum is published without his knowledge or consent and on becoming aware of its publication, that person gives reasonable notice to the public and to the Authority that the statement was included or prospectus or information memorandum was published without the knowledge or consent of that person.

(4) A person shall, where he or she has accepted responsibility for, or authorized only part of the contents of a prospectus or information memorandum, be liable under paragraph (1)(c) or (f) only for that part if it is included or substantially included in the form and context to which that person agreed.

Obligation to conduct due diligence.

41. (1) An issuer or offeror, a transaction adviser and any person who is-

- (a) appointed or proposed to be appointed as a REIT manager;
- (b) involved in or connected with the issue or offer of REIT securities or the issue of a supplemental offering memorandum or supplemental prospectus or conversion prospectus or conversion offering memorandum; or
- (c) named as an expert in the prospectus or offering memorandum;

shall conduct an independent verification and due diligence of all statements made by or attributed to him or her which he or she has consented to its inclusion in the prospectus or offering memorandum and in respect of any covenants or warranties provided by it which are included, with his or her consent, in the prospectus or offering memorandum or in any scheme document associated or the issue or offer of the REIT securities.

(2) A person shall not be held liable for a statement in or omission from a prospectus or offering memorandum or in respect of a representation, covenant or warranty in a scheme document if that person proves that, prior to making such statement, omission, representation or warranty, that person-

- (a) made all inquiries, if any, that were reasonable in the circumstances; and
- (b) believed on reasonable grounds that the statement,

representation, warranty or omission was not misleading, deceptive or material.

Continuing disclosure obligations of trustee and REIT manager.

42. (1) A trustee and the REIT manager of a real estate investment trust scheme whose securities have been issued in accordance with an approved offer, shall keep the Authority; REIT securities holders, any listing exchange and, in the case of an unrestricted REIT scheme, the general public informed by way of a public announcement, as soon as may reasonably be practicable, but in any event not later than the end of the next working day, of any information which the trustee or the REIT manager becomes aware of relating to the real estate investment trust, the REIT scheme, its assets or the REIT manager which–

- (a) is necessary to enable holders of REIT securities or potential investors appraise-
 - (i) the financial position, performance and the state of corporate governance of the real estate investment trust, the scheme or the REIT manager; or
 - (ii) the valuation of any asset of the real estate investment trust;
- (b) is necessary to avoid the establishment of a false market in the REIT securities; or
- (c) might reasonably be expected to materially affect market activity in the price of the REIT securities.

(2) The REIT Manager shall inform the trustee of any information which is not within the knowledge and control of the trustee and which requires disclosure so as to enable the trustee to fulfil its obligations under paragraph (1).

(3) Without prejudice to paragraph (2), the trustee shall ensure that the REIT manager has in place a mechanism for updating information on a regular basis and shall obtain, if necessary, updated information from any property manager, project manager certifier, valuer, structural engineer or the auditor, and any *Shariah* adviser, who shall, if requested by the REIT manager or the trustee, provide all the necessary information to enable the trustee and the REIT manager to fulfil their obligations under paragraph (1).

(4) The obligation to supply information under paragraph (2) shall be in addition to the obligation to provide periodic reports under regulation 101 and the requirements of any listing exchange.

(5) Without prejudice to paragraph (2), the trustee and the REIT manager shall comply with a request for further information by the Authority.

*PART VII - APPOINTMENT, REMOVAL AND
OBLIGATIONS OF A TRUSTEE*

Trustee to be licensed
by the Authority.

43. (1) The trust deed for every real estate investment trust that applies for authorization as a scheme shall comply with the requirements of the First Schedule and provide for the appointment of a trustee to act as a trustee of a real estate investment trust.

(2) A person who intends to act as a trustee in respect of-

(a) a real estate investment trust scheme for which an authorization is required; or

(b) any real estate investment trust,

shall apply to the Authority to be licensed as such in accordance with regulation 125.

Eligibility for
appointment as a
trustee.

44. (1) A trustee shall be a company or a corporation incorporated or formed or established in Kenya which is-

(a) a bank;

(b) a subsidiary of a bank; or

(c) such other company or corporation as the Authority may license if the Authority is satisfied that the company or corporation has sufficient financial, technical and operational resources and experience necessary to enable it effectively conduct its business and carry out its obligations as a trustee of a real estate investment trust and real estate investment trust scheme.

(2) A trustee shall –

(a) be independent of the promoter, the REIT manager and any property manager, valuer or project manager certifier of the real estate investment trust scheme;

(b) be licensed by the Authority as a REIT trustee;

(c) be independently audited; and

Cap. 167.

(d) have a minimum issued and paid-up capital and non-distributable capital reserves of at least one hundred million shillings.

(3) Where the appointed trustee is the sole trustee and is not a trust corporation as defined under the Trustee Act, the Authority may, at the request of the trustee and if required for the purposes of issuing a valid receipt for the proceeds of sale or other capital money arising

under a disposition on trust for the sale of land as provided for under section 15 of the Trustee Act, appoint the REIT manager as a secondary disposition trustee for the purposes of enabling compliance with section 15 and with powers limited to those necessary to allow execution of documents and undertake any other matters for the purpose of compliance with section 15 of the Trustee Act.

(4) Where the Authority appoints a person as a secondary disposition trustee under paragraph (3), that person may, if necessary, be registered as the co-owner as a second trustee and at the request of the trustee may execute any documentation as a second trustee.

(5) The Authority may appoint the REIT manager to perform the limited role as a secondary disposition trustee despite the fact that the REIT manager is not eligible to be appointed as a trustee and is not licenced as a trustee.

(6) In appointing the REIT manager under paragraph (5), the Authority may limit the powers of the secondary disposition trustee and impose such conditions as it may consider necessary.

Powers, obligations and duties of a trustee and any secondary disposition trustee.

45. (1) The trustee shall, despite being the sole trustee, to the extent permissible by law have power to issue a valid receipt for the proceeds of sale or other capital money arising under a disposition on trust for the sale of land.

(2) The scheme documents may specify the obligations and general duties of a trustee which shall be consistent with the provisions of the Act, these Regulations and any other written law.

(3) The trustee and the employees or officers of the trustee who undertake or supervise the carrying out of the role and functions of the trustee shall-

- (a) perform their duties in accordance with the terms of the trust deed, the scheme documents and these Regulations;
- (b) act honestly and in a fiduciary capacity as trustee in the best interests of the REIT securities holders as beneficiaries of the real estate investment trust;
- (c) fulfil the obligations and duties set out in the scheme documents in conformity with these Regulations;
- (d) act in accordance with any other written law applicable to trustees;
- (e) maintain the custody of, hold and protect all the assets of the real estate investment trust, ensure they are held in the name of and registered, where required, in the name of the trustee and if required in the name of any

secondary disposition trustee;

- (f) ensure that all the necessary filings and registrations are recorded, undertaken and maintained;
- (g) protect the interests of the real estate investment trust in any asset;
- (h) ensure that the assets are-
 - (i) clearly identified as the assets of the trust and the scheme; and
 - (ii) held separately from any other assets of the trustee and of any secondary disposition trustee and any other trust, scheme or person;
- (i) appoint the REIT manager and, if necessary to protect the interests of beneficiaries, remove the REIT manager and appoint a substitute REIT manager;
- (j) act as the REIT manager on a temporary basis in any period where there is no other REIT manager until a new REIT manager is appointed;
- (k) supervise the activities of the REIT manager to ensure that they comply with the terms of the scheme documents, the Act and these Regulations;
- (l) not delegate to the REIT manager except if appointed by the Authority as a secondary disposition trustee or to any other person not being an officer or employee of the trustee any function of or involving-
 - (i) the supervision of the REIT manager; or
 - (ii) the custody or control of the assets of the scheme;
- (m) ensure that-
 - (i) the fund and the assets of the scheme are invested in accordance with the terms of the trust deed, the Act and these Regulations;
 - (ii) the income of the scheme is applied in accordance with the terms of the scheme documents;
 - (iii) the assets of the real estate investment trust which are insurable are insured and valued as required by the scheme documents, the Act and

these Regulations;

(iv) all payments and distributions made out of the assets of the scheme are made in accordance with the terms of the scheme documents, the Act and these Regulations; and

(v) any borrowing limitations set out in the scheme documents, the Act and these Regulations are complied with;

(n) act in the best interests of the beneficiaries and where there is a conflict between the interests of the trustee and those of any beneficiary, give priority and preference to the interest of the beneficiary;

(o) not make use of confidential information acquired when acting as the trustee to gain an improper advantage for itself or for another person or to cause detriment to a beneficiary.

(4) Where a trustee or secondary disposition trustee contravenes an obligation imposed on it by the scheme documents, the Act or these Regulations, any person who-

(a) has been involved materially in;

(b) participated materially in; or

(c) authorized,

such contravention shall also be considered to have contravened these Regulations.

Instructions from a REIT manager.

46. The trustee shall carry out the instructions of the REIT manager unless the trustee has reasonable cause to believe that compliance with such instructions would cause it to breach a duty imposed on it under the scheme documents, the law relating to trustees, the Act or these Regulations.

Change of address of the trustee.

47. A trustee shall, at least twenty eight days before changing its address, registered office or permanent place of business in Kenya, notify the Authority and the REIT securities holders of such change.

Liability of a trustee.

48. (1) In addition to any obligation imposed under regulation 19 or the scheme documents the trustee, shall be liable to the holders of REIT securities as a fiduciary, and to the REIT manager for any loss suffered by them during its period as trustee or as a result of –

(a) any failure by the trustee to perform its obligations; or

(b) the trustee's improper performance of its obligations.

Exemption from taking action in respect of REIT assets.

49. (1) The trustee may refrain from taking any action in respect of the assets of the real estate investment trust or on behalf of the REIT securities holders if the trustee is unable to access sufficient funds to pay the costs and expenses of taking such action:

Provided that –

- (a) the trustee has called a meeting of the beneficiaries or a class of beneficiaries;
- (b) the meeting called under subparagraph (a) has failed to pass a resolution to provide the funds necessary to conduct the action or to provide the necessary funds within thirty days of the passing of such resolution; and
- (c) the trustee had given prior notice of the meeting to the Authority.

Register of REIT securities holders.

50. (1) The trustee shall prepare and maintain a register of REIT securities holders of the scheme in a manner approved by the Authority.

(2) The trustee may, with the prior written approval of the Authority, appoint another person to prepare and maintain the register on behalf of the trustee.

(3) The register shall be conclusive evidence as to the persons entitled to the REIT securities, registered in their name.

Voluntary Resignation of trustee.

51. (1) The scheme documents may provide for the retirement of a trustee in accordance with the Act and these Regulations.

(2) A trustee shall not resign as trustee unless another person eligible to be appointed a trustee has been appointed to act in place of the trustee.

(3) Where the trustee intends to resign, it shall give at least a three months notice in writing to the Authority, the REIT manager and the REIT securities holders of its intention to resign and shall set out in such notice its reasons for wanting to resign.

(4) The REIT manager shall, in consultation with the trustee and within two months of receipt of the notice under paragraph (3) -

- (a) enter into negotiations with alternative parties who are eligible to be appointed as trustee; and
- (b) call a meeting, at the expense of the trustee, of REIT securities holders for the purpose of considering and

passing a special resolution in respect of any recommendation and appointing a new trustee.

(5) The REIT manager shall issue a notice to the REIT securities holders and the trustee calling for a meeting under paragraph (4)(b) which shall include -

- (a) the consent in writing of any proposed trustee or trustees, if a choice of more than one is to be provided, to accept an appointment and to execute the trust deed;
- (b) the terms of the appointment including fees;
- (c) a copy of the supplemental deed; and
- (d) the approval of the Authority to any appointment.

(6) Where the REIT manager is unable to find a replacement trustee or the REIT securities holders fail to consent to the appointment of any proposed replacement trustee then before the expiry of the period specified in the notice given in paragraph (3) the trustee may -

- (a) inform the Authority, the REIT manager and the REIT securities holders of its intention to make an application to the Court for the appointment as replacement trustee of a person who is eligible for appointment under regulation 44; and
- (b) at the expense of the trustee make such application.

(7) The appointment of a new trustee shall take effect in the case of a trustee appointed by -

- (a) the REIT securities holders from the date of execution by the new trustee of a supplemental trust deed and date of the completion of the transfer or vesting in the new trustee of all of the assets of the trust; or
- (b) the Court, from the date specified by the Court.

(8) All costs and expenses incurred in the resignation, change and replacement of the trustee including those of the REIT manager shall be the responsibility of the trustee.

(9) Where there is a conflict between the provisions of this regulation and the scheme documents on the limit of the trustee's right to resign or right to action that a replacement trustee or REIT securities holders may have against the trustee, the provisions of the scheme documents shall prevail.

Removal and
replacement of a trustee.

52. (1) The scheme documents shall provide for the removal and replacement of the trustee in accordance with the Act and these Regulations.

(2) The Authority shall, except where the Court makes an order for the removal of a trustee, approve the removal and replacement of the trustee.

(3) The REIT securities holders may, by way of a special resolution, approve the removal and replacement of the trustee where the removal and replacement of the trustee is not pursuant to an order of the Court or approval of the Authority.

(4) The REIT manager shall convene a meeting of the REIT securities holders within one month of -

- (a) a court of competent jurisdiction making an order for the liquidation of the trustee, except a voluntary liquidation for the purpose of reconstruction or amalgamation under a scheme approved by the Authority;
- (b) a manager or a receiver being appointed over any of the assets of the trustee; or
- (c) the trustee ceasing to be eligible for appointment under regulation 44.

(5) A meeting convened under paragraph (4) shall consider a recommendation by the REIT manager for the appointment of a replacement trustee or for the making of an application by the REIT manager to the Court for the appointment of a replacement trustee.

(6) The REIT manager shall, in convening a meeting under paragraph (4), issue a notice to the REIT securities holders notifying them of the meeting.

(7) A notice issued under paragraph (6) shall include -

- (a) where a recommendation is for the appointment of a replacement trustee -
 - (i) the consent in writing of the proposed trustee to accept the appointment and execute the supplemental trust deed;
 - (ii) the terms of the appointment including fees;
 - (iii) the approval of the Authority to the appointment of a new trustee; and

(iv) the supplemental trust deed; or

(b) an alternative recommendation, in the event that a replacement cannot be found or is not approved by a special resolution at the meeting of REIT security holders and an application is made by the REIT manager to the Court for the appointment of the proposed replacement or temporary trustee.

(8) Where the REIT securities holders fail to approve a recommendation under paragraph (5), the REIT manager shall-

(a) inform the Authority of the decision of the REIT securities holders; and

(b) as soon as possible, make an application to the Court for the appointment of a person eligible for appointment under regulation 44 as a replacement or temporary trustee.

(9) A REIT manager may, with the approval of the Authority remove a trustee where -

(a) the trustee fails or neglects after reasonable notice from the REIT manager or the Authority to carry out its duties under the scheme documents or these Regulations; or

(b) the trustee repeatedly breaches the provisions of the Act, these Regulations or the scheme documents; and

(c) the REIT securities holders, by ordinary resolution resolve -

(i) a notice be issued to the trustee for his removal; and

(ii) approve the appointment of a replacement trustee; or

(iii) approve the making of an application to the Court for the appointment of a replacement trustee or temporary trustee; or

(d) in any other circumstances if the REIT securities holders, by special resolution resolve that such notice be given.

(10) A REIT manager shall not remove a trustee under paragraph (9) unless he has issued to the trustee, a three months notice in writing of the intention to remove the trustee.

(11) Where the trustee is removed and replaced under this regulation the REIT manager shall be entitled to recover any costs or expenses of or related to the appointment of the replacement trustee including the costs of convening any meetings and of any application to the Court from assets of the trust and the replacement trustee shall be entitled to make a claim against the replaced trustee for recovery of such costs and expenses.

(12) The appointment of a replacement trustee shall take effect-

- (a) in the case of a trustee appointed by the REIT securities holders from the date of execution by the new trustee of a supplemental trust deed and date of the completion of the transfer or vesting in the new trustee of all of the assets of the trust; or
- (b) in the case of a trustee appointed pursuant to an order by the Court, from the date specified by the Court.

(13) Where a trustee ceases to be a trustee under this regulation and the appointment of a replacement trustee takes effect, it shall -

- (a) make available to the replacement trustee, all books, records, reports, information and data including access to software and source code which is within the possession or control of the trustee relating to the activities of the scheme or the assets of the trusts; and
- (b) execute such notices to tenants, assignments and novations of contracts as may be required.

Notification of contraventions.

53. The trustee shall, in addition to preparing any periodic reports required under the Act, these Regulations or any listing rule, notify the Authority, in writing,-

- (a) immediately upon becoming aware of any matter or failure, act or omission by the REIT manager or any other party involved in a real estate investment trust scheme, which constitutes a breach of any of the provisions of the Act, these Regulations or the scheme documents; and
- (b) of any steps taken by the trustee or which the trustee proposes to take to rectify the breach as soon as is reasonably practicable.

PART VIII - APPOINTMENT, REMOVAL AND OBLIGATIONS OF A REIT MANAGER

Authorization of a scheme as a self-managed scheme.

54. (1) The scheme documents shall provide for the appointment, resignation and removal of the REIT manager.

(2) The Authority may, on the application of the trustee, authorize a scheme to be self-managed by a company which is wholly owned and controlled by the trustee and is an eligible asset of the real estate investment trust.

(3) In considering whether to authorize a scheme to be self-managed the Authority shall take into consideration-

- (a) the type, objectives, history and performance of the real estate investment trust and the number and type of REIT securities holders;
- (b) the proposed terms of appointment;
- (c) the resources including, human, systems and financial resources that will be available to the company;
- (d) the experience of the directors and senior management of the company;
- (e) the experience and history of performance of the trustee and the resources available to it;
- (f) the potential conflicts of interest and the powers of the trustee and of REIT securities holders to-
 - (i) remove the company as REIT manager;
 - (ii) appoint the directors of the company;
 - (iii) limit the conflicts of interest including the remuneration of directors and employees of the company;
 - (iv) limit the risks to the fund and to the unit holders including the availability of insurance in respect of negligent acts by the company as REIT manager or its directors; and
 - (v) other factors that the Authority considers relevant in the interests of REIT securities holders; and
- (g) the amendments proposed to the trust deed and the scheme documents to recognise the scheme as a self-managed scheme.

(4) Where the Authority authorizes self-management of a

scheme through a wholly owned company the provisions of these Regulations shall, except where expressly provided for, apply to the REIT manager notwithstanding that it is a company that is wholly owned.

(5) An approval by the Authority for a scheme to be self-managed shall be conditional upon the trustee and the REIT securities holders approving the appointment and terms of the appointment of the company.

(6) A REIT manager shall not manage more than one real estate investment trust scheme unless it has applied for and obtained the approval of the Authority.

Appointment of a REIT manager.

55. (7) Every REIT manager shall be appointed by the trustee with the prior approval of the Authority.

(2) The REIT manager shall -

- (a) be a company incorporated in Kenya;
- (b) have a minimum paid up capital of ten million shillings;
- (c) be independently audited; and
- (d) have key personnel with experience and skills to -
 - (i) manage the scheme; and ;
 - (ii) implement the objectives of the scheme and to enable it to undertake the role of and duties as REIT manager; or
- (e) demonstrate that it has access to and shall appoint from time to time, when required, persons having the required skills to enable it to implement the objectives of the scheme and to undertake the role of and duties as REIT manager;

(3) A company shall not operate as a REIT manager of a real estate investment trust scheme or any real estate investment trust unless it is licensed by the Authority as a REIT manager under regulation 125.

(4) Where a REIT manager is associated with the promoter, the board of directors of the REIT manager shall be comprised of at least two independent directors one of whom shall be appointed as the chairperson.

(5) Where a real estate trust investment scheme is, with the approval of the Authority, self-managed, the directors of the REIT manager shall be appointed by and may be removed by the trustee.

(6) A REIT manager may, with the approval of the trustee, appoint a property manager and such other agents as it considers necessary and delegate its functions in relation to the investment to such appointees.

(7) A REIT manager shall -

- (a) be responsible for the actions of any property manager; and
- (b) supervise the property manager to ensure that the property manager complies with the terms of scheme documents, the Act and these Regulations.

Duties of a REIT manager.

56. (1) The scheme documents shall set out the obligations and duties of the REIT manager in accordance with these Regulations.

(2) The REIT manager shall, subject to the terms of the scheme documents and any directions in writing received from the trustee –

- (a) acquire, manage, maintain and dispose assets of the scheme and where authorized by the scheme documents conduct development and construction activities -
 - (i) in accordance with the provisions of the scheme documents, these Regulations and the law applicable to trusts; and
 - (ii) to give effect to the objectives of the scheme;
- (b) take all reasonable steps and exercise due diligence to ensure that the assets of the scheme are invested in accordance with the scheme documents;
- (c) while acting in the capacity as a fiduciary on behalf of the REIT securities holders-
 - (i) exercise the degree of care and diligence that a reasonable and skilled person would exercise in the position of a management company;
 - (ii) act in the best interests of the REIT securities holders and where there is a conflict between the interests of the REIT securities holders and that of the REIT manager, give priority to the interests of REIT securities holders;
 - (iii) observe high standards of integrity and fair dealing in managing the fund to the best and

exclusive interests of the REIT securities holders;

- (iv) not use information acquired in his capacity as REIT manager to gain an unfair advantage for himself or other persons, or to the detriment of the REIT securities holders;
 - (v) ensure that the property of the fund is clearly identified and held separately from the assets of the REIT manager or any other person; and
 - (vi) establish and maintain risk management systems and controls and ensure that it has adequate resources and systems, including suitably qualified and equipped human resources to fulfil the functions and obligations of a REIT manager;
- (d) account to the trustee and the REIT securities holders for any loss suffered by the scheme as a result of failure by the REIT manager, any director of the REIT manager, any officer, employee or agent appointed by the REIT manager to exercise the required standard of care and diligence necessary to operate and manage the fund;
- (e) maintain on behalf of the trustee, proper accounting records and other record to enable an accurate view of the fund to be formed;
- (f) prepare accounts in accordance with regulation 101;
- (g) provide all assistance necessary to enable an audit of the accounts prepared under subparagraph (f) to be carried out in accordance with Regulation 97;
- (h) take all reasonable steps and exercise due diligence to assist and ensure that the assets of the trust are valued as required under regulation 113;
- (i) obtain tenants and manage tenancy arrangements;
- (j) carry out or cause to be carried out all property management functions in compliance with Estate Agents Act;
- (k) obtain quotations for insurance of the assets of the trust and make recommendations to the trustee;
- (l) prepare budgets for capital works and maintenance of the assets of the trust;

- (m) recommend to the trustee for approval, the budgets for capital works and maintenance prepared under subparagraph (l);
- (n) implement approved budgets, capital works and maintenance programmes;
- (o) prepare budgets and work programmes, negotiate contracts for recommendation to the trustee for approval in relation to the development and construction works including the appointment of contractors and professional and expert advisors;
- (p) implement any budgets, work programmes and contracts approved by the trustee in relation to development and construction works, update budgets and work programmes as required and recommend changes to the trustee;
- (q) prepare and submit to the trustee recommendations on distributions;
- (r) undertake all calculations including calculations of net asset values and ratios required to comply with the terms of the scheme documents and these Regulations;
- (s) arrange and recommend to the trustee for approval any borrowings or other financing arrangements and the entering into of any risk management products or strategies;
- (t) make recommendations to the trustee and manage repayment and compliance with the terms of any borrowing arrangement under subparagraph (r);
- (u) in the case of an unlisted trust, take all reasonable steps and exercise due diligence to ensure that the REIT securities are correctly priced and the provisions of the scheme documents on redemption are complied with;
- (v) prepare and lodge with the Authority, and circulate to the trustee and REIT securities holders, periodic reports as required under the Regulations;
- (w) in the case of an unrestricted issue I-REIT, ensure that the scheme documents are made available for inspection by the public, free of charge, at all times during official working hours and make copies of such documents available upon the payment of a reasonable fee; and
- (x) in the case of a D-REIT, ensure that the scheme

documents are available to any REIT securities holder or person who is potentially qualified to be a REIT securities holder.

(3) A REIT manager shall, in the performance of its duties, act in the best interests of REIT securities holders as beneficiaries of the real estate investment trust and take reasonable care to protect those interests.

Restrictions on activities of a REIT manager.

57. (1) A REIT manager shall not, in relation to a scheme for which it is the REIT manager, engage in any activity other than the management of that scheme.

(2) A REIT manager shall, if the REIT manager intends to act for more than one scheme, apply to the Authority for an approval.

(3) The Authority shall, in considering an application under subparagraph (2), take into consideration-

- (a) the resources, skills and experience of the REIT manager;
- (b) the performance of the REIT manager and of the scheme; and
- (c) potential conflicts of interests that may arise as a result of the company acting as a REIT manager in relation to more than one scheme.

(4) An approval by the Authority for REIT manager to manage more than one scheme shall be conditional upon the trustee and the REIT securities-holders of each scheme approving the appointment and the terms of the appointment.

Connected party transactions.

58. (1) A REIT manager shall conduct all transactions at an arm's length and in an open and transparent manner.

(2) A REIT manager shall not act or conduct transactions in a manner that would result in unnecessary cost or risk to the fund; and

(3) A REIT manager that intends to conduct a transaction with a connected person shall comply with regulation 118.

Change of address.

59. Where a REIT manager intends to change its address, registered office or permanent place of business, it shall notify the Authority and the REIT securities holders at least twenty eight days before such change.

Trustee requests to a REIT manager.

60. A REIT manager shall –

- (a) at the request of the trustee, supply to the trustee such information concerning the administration of the fund and

of the real estate investment trust and the scheme as the trustee may reasonably require;

- (b) comply with any lawful directions issued by the trustee for the purposes of satisfying requirements of paragraph (a);
- (c) prepare and make available on a timely basis, any additional information as may be required from time to time by the Authority, auditor, property manager, project manager certifier or the trustee;
- (d) grant to the trustee and any auditor access to the books of accounts and records of the REIT manager, the trust, the scheme or the fund; and
- (e) submit to the trustee on a timely basis, such information as may be necessary to ensure that the continuing disclosure obligations under these Regulations are complied with.

Removal and replacement of a REIT manager.

61.(1) The Authority shall, except where the removal is ordered by the Court, approve any removal and replacement of a REIT manager including the appointment of a replacement REIT manager where the REIT manager resigns or is not reappointed by the trustee.

(2) The trustee shall convene a meeting of REIT securities holders for purposes of approving the removal of the REIT manager and the appointment of a replacement REIT manager if-

- (a) the Court makes an order for the liquidation of the REIT manager, except a voluntary liquidation for the purpose of reconstruction or amalgamation under a scheme approved by the Authority;
- (b) a manager or a receiver is appointed over any of the assets of the REIT manager;
- (c) the REIT manager ceases to be eligible for appointment under regulation 55.
- (d) the REIT manager is in repeated breach the provisions of the Act, these Regulations or the scheme documents; or
- (e) the trustee is of the opinion that the replacement of the REIT manager is in the interests of the REIT securities holders or is necessary to protect the assets of the trust.

(3) The REIT manager shall bear the costs and expenses incurred in the replacement of the REIT manager under this Regulation.

(4) The resignation of a REIT manager shall not take effect until a replacement is appointed by the trustee and the appointment is approved by the Authority.

(5) Where a company ceases to be a REIT manager and the appointment of a replacement REIT manager takes effect, it shall -

- (a) make available to the trustee and to the replacement REIT manager, all books, records, reports, information and data including access to software and source code which is within the possession or control of that REIT manager relating to the activities of the scheme or the assets of the trusts; and
- (b) execute such notices to tenants, assignments and novations of contracts as may be required by the trustee.

*PART IX – APPOINTMENT AND ROLE OF
STRUCTURAL ENGINEER AND THE PROJECT
MANAGER CERTIFIER*

Appointment and role
of the structural
engineer.

62. (1) A trustee shall, in consultation with the REIT manager, appoint a structural engineer and have access at all times to the services of a structural engineer in relation to the REIT.

(2) The trustee shall appoint the structural engineer under paragraph (1) prior to-

- (a) an application being made for authorization of the scheme;
- (b) the issue of a prospectus or an offering memorandum;
- (c) the entering into any binding contract or a contract that can only be terminated on the payment of a penalty, for the acquisition or disposal of any additional properties by the trustee; and
- (d) any initial public offering.

(3) The structural engineer shall ensure that the state of repair of the specific real estate property, including the services, systems and material plant and equipment, is independently assessed, latent defects identified and that these factors are-

- (a) taken into consideration in any valuation; and
- (b) disclosed in any prospectus or offering memorandum.

(4) The structural engineer shall, in the performance of his duties under paragraph (3)-

- (a) conduct an appraisal of a specific real estate property which is proposed to be acquired; and
- (b) prepare and submit to the REIT manager and the trustee a report on-
 - (i) the state of repair of the proposed property, services, systems and material plant and equipment;
 - (ii) any latent defects and the cost, if any, which is likely to be incurred in remedying such defects or in bringing the property to a reasonable state of repair; and
 - (iii) any limitation in the engineer's ability to make a full assessment and whether additional professional assessment, input or reports are required.

(5) The structural engineer shall, in performing his duties, be independent of, and shall not be subject to the direction or control of-

- (a) the REIT manager and any property manager;
- (b) the project manager certifier;
- (c) the trustee;
- (d) any valuer appointed to conduct a valuation in respect of a specific property; or
- (e) any person from whom the I-REIT has or is proposing to acquire real estate assets.

(6) The REIT manager shall-

- (a) make available a copy of any report of the structural engineer to the property manager, project manager certifier, and to the valuer; and
- (b) ensure the details of the report are included in any prospectus or offering memorandum and where appropriate, disclosed as part of the continuing disclosure obligation under these Regulations.

Appointment and role of project manager certifier.

63.(1) The trustee of a D-REIT shall, in consultation with the REIT manager, appoint a project manager certifier prior to entering into any binding contract or a contract that can only be terminated on the payment of a penalty and which is relates to the development and construction

(2) The trustee of an I-REIT shall, in consultation with the REIT manager, where any construction or development activity specified under regulation 65 or 70 forms part of the activities of an I-REIT, appoint a project manager certifier prior to entering into any binding contracts or a contract that can only be terminated on the payment of a penalty which relate to or are connected with development and construction.

(3) The project manager certifier appointed under paragraph (1) shall report to the trustee and provide copies of all reports to the REIT manager.

(4) The project manager certifier shall be-

- (a) a company incorporated in Kenya; or
- (b) a person residing in Kenya. and
- (c) have in place an appropriate level of professional indemnity insurance.

(5) The trustee shall not appoint a person or company as a project manager certifier unless that person, or if a company, its key personnel one of whom shall be nominated as the person responsible to the trustee for the work undertaken is a member of -

- (i) the Institution of Surveyors of Kenya;
- (ii) the Architectural Association of Kenya;
- (iii) the Institute of Quantity Surveyors of Kenya;
- (iv) the Institution of Construction and Project Managers of Kenya; or
- (v) an international body recognised by an institution under subparagraph (i) to (iv).

(6) The project manager certifier shall, in the performance of his or its duties under this Regulation, be independent of, and not subject to the direction or control of -

- (i) the REIT manager and any property manager;
- (ii) the structural engineer;
- (iii) the trustee;
- (iv) any valuer appointed to conduct a valuation in respect of a specific property; and
- (v) any person from whom the I-REIT may acquire

real estate assets.

(7) The project manager certifier shall have the requisite project management and quantity surveying skills and expertise to enable the project manager certifier to-

- (a) monitor and report to the trustee and the REIT manager on the progress of the development or construction work being planned or undertaken;
- (b) report on the cost of work undertaken or to be undertaken to complete the development or construction;
- (c) monitor and report on the cost of scheduled plant and equipment to be acquired; and
- (d) ensure that the costs under subparagraph (c) are included in the development or construction works budget.

(8) The trustee may, with the consent of the lender to the REIT, appoint, as a project manager certifier, a person who is qualified to be appointed as such despite the fact that the person is also acting in a similar role for the lender to the REIT or in respect of the financing of development and construction works being undertaken by the REIT:

Provided that such person shall report directly to the trustee and the REIT manager and shall not be subject to any obligation or duty of confidentiality to the other party that has not been waived as could result in a conflict.

(9) The project manager certifier shall monitor and submit a report to the trustee and the REIT manager on a monthly basis on-

- (a) whether or not the work has been completed in accordance with the budget, project plan and payment schedule or any variations prepared by the REIT manager and approved by the trustee;
- (b) whether scheduled payments should be disbursed by the trustee to meet the work undertaken, costs of or connected with the development or construction;
- (c) the costs of any proposed variation of scheduled works or proposed acquisition of plant and equipment, and
- (d) the estimate of the cost and time required to complete the development and construction work relative to the budget and project plan.

(10) The trustee shall disburse funds as requested by the REIT manager and recommended by the project manager certifier -

- (a) where such payments –
 - (i) are in accordance with the budget, project plan and payment schedule approved by the trustee: or
 - (ii) are varied and approved by a meeting of the REIT securities holders where the total cost of variation is more than fifteen percent of the budgeted costs; or
- (b) where the trustee is -
 - (i) of the opinion that disbursement is necessary to protect the assets of the fund and the interests of REIT securities holders; and
 - (ii) satisfied with the action which the REIT manager proposes to implement to rectify any problem.

PART X - SPECIFIC REQUIREMENTS FOR I-REITS

Investments and objectives of an I-REIT.

64. The investments of an I-REIT scheme shall-

- (a) comply with the provisions of the Act and these Regulations; and
- (b) be relevant, appropriate and consistent with the investment objectives of the real estate investment trust and scheme as set out in the prospectus or offering memorandum and other scheme documents.

Eligible investments for an I-REIT and income requirements.

65. (1) The trustee of an I-REIT may, subject to any limitations which may be specified in the scheme documents and if requested by the REIT manager-

- (a) invest directly in eligible real estate in accordance with these Regulations;
- (b) invest in eligible real estate assets through investment in an investee company incorporated in Kenya which directly owns the eligible real estate and which is wholly beneficially owned and controlled by the trustee in its capacity as the trustee of the I-REIT where -
 - (i) the I-REIT trustee has the absolute power at any time to appoint and, without incurring any liability, to remove the directors;

- (ii) the trustee of the I-REIT, the company, the directors and the shareholders have entered into a shareholders agreement;
 - (iii) the REIT manager of the I-REIT is appointed as the manager of the investments of the investee company;
 - (iv) the Memorandum and Articles of Association of the investee company and the terms of the shareholders agreement limit the objectives of the investee company and the powers of the company and directors and impose the same obligations on the company, its directors and the manager of the trust as if the investee company was an I-REIT and an authorized scheme under these Regulations and was subject to the same obligations and restrictions as are imposed by these Regulations;
 - (v) the provisions of these Regulations on the carrying out of a valuation, reporting and audit apply to the investee company as if the investee company was an I-REIT and an authorized scheme under these Regulations;
 - (vi) the investee company invests directly in the eligible real estate and is recorded on the certificate of title or certificate of lease or register as the sole owner;
- (c) invest in eligible real estate assets through an investee trust in which the trustee of the I-REIT in its capacity as trustee is the sole beneficiary and has absolute control of voting and right to appoint and remove the trustee of the investee trust and where -
- (i) the investee trust is formed under the laws of Kenya as an unincorporated common law trust;
 - (ii) the I-REIT trustee is also the trustee of the investee trust;
 - (iii) the REIT manager of the I-REIT is also the manager of the investee trust;
 - (iv) the terms of the trust deed for the investee trust limit the objectives of the investee trust, the trustee's powers and impose the same obligations on the trustee and the manager of the trust as if the investee trust was an I-REIT and an authorized scheme under these Regulations and subject to the same obligations and restrictions as are imposed

under these Regulations;

- (v) the provisions of these Regulations on the carrying out of a valuation, reporting and audit apply to the investee trust as if the investee trust was an I-REIT and an authorized scheme under these Regulations;
 - (vi) the trustee as trustee for the investee trust invests directly in the eligible real estate and is recorded on the certificate of title or certificate of lease or register as the sole owner.
- (d) invest in cash, deposits, bonds, securities and money market instruments;
 - (e) invest in a wholly beneficially owned and controlled company subsidiary which conducts real estate related activities; and
 - (f) invest in other income producing assets including shares in property companies incorporated in Kenya whose principal business is real estate related or REIT securities in other Kenyan I-REITS:

Provided that the shares or REIT securities are listed on an approved securities exchange.

(2) The requirement for the appointment of a sole trustee shall not be applicable where a secondary disposition trustee is appointed.

(3) The trustee and the REIT manager shall only invest in accordance with these Regulations.

(4) The promoter of an I-REIT and the REIT manager shall propose and specify, in the prospectus or offering memorandum, at least one real estate asset that is already vested in or proposed to be acquired and vested in the trust and for which all legal registration requirements will have been completed within one hundred and eighty days of the closing of the initial offer.

(5) Where –

- (a) the promoter, trustee and REIT manager fail to comply with the requirements of paragraph (4) during the intervening period from the close of the initial offer or issue referred to in paragraph (4); and
- (b) the registration requirements are not complete and the proposed real estate asset are not vested in the trust,

the funds raised by the initial offer and issue of REIT securities shall only be invested in bank deposits or other liquid investments with a

duration not exceeding one hundred and eighty days.

(6) An I-REIT shall invest, within two years of the date of its authorization as a real estate investment trust scheme, at least seventy five percent of the total net asset value in income producing real estate.

(7) The trustee and the REIT manager shall, in complying with the requirements under paragraph (6), ensure that the real estate acquired or to be acquired as an asset of the I-REIT is -

- (a) rented on a commercial basis to commercial rent paying tenants;
- (b) has good prospects for future net rental income and is competitively located as evidenced by market studies;
- (c) free from encumbrances at the time of acquisition except for any charges entered into by the trustee as authorized by the trust deed, the Act and these Regulations; and
- (d) in a good state of repair or if requiring redevelopment or capital expenditure, this has been factored into the purchase price as reflected in the-
 - (i) valuation obtained prior to the acquisition;
 - (ii) the budget prepared by the REIT manager; and
 - (iii) disclosures in the report of the structural engineer obtained on the condition of the real estate to be acquired.

(8) Despite paragraph (7), an I-REIT may acquire a real estate which is not fully rented at the time of acquisition where -

- (a) the REIT manager reasonably believes that there is good potential to secure tenants within a reasonable period of time at a commercial rate;
- (b) any capital expenditure required to be incurred to enhance the real estate and secure tenants would not materially affect the level of distributions or the yield to REIT securities holders; and
- (c) the REIT manager has provided a certification for the purposes of paragraph (a) and (b) to the trustee prior to the acquisition.

(9) The trustee and the REIT manager shall, where the real estate acquired is leasehold, ensure that-

- (a) at the time of entering into the lease, the lease has a remaining term of at least twenty five years;
- (b) prior to entering into the lease, a certificate by a structural engineer has been obtained in respect of the real estate;
- (c) the real estate has been valued as a leasehold; and
- (d) the documentation to record the lease or transfer of lease is lodged for registration.

(10) Where a real estate asset is disposed by the trustee of an I-REIT or a new issue of REIT securities has been made, such disposal or acquisition shall not constitute a breach of obligations under paragraph (6) if within a period of one year from the completion of the disposal or from the issue of REIT securities, the trustee on behalf of the I-REIT and at the request of the REIT manager either acquires additional or substitute real estate assets or makes an additional distribution to REIT securities holders so as to reduce its total assets.

(11) Subject to paragraph (12), the trustee of an I-REIT and the REIT manager shall ensure that investments in cash, deposits, bonds and money market instruments are spread across a number of issuers, securities and instruments to ensure that not more than five percent of the total asset value is exposed to any one issuer or institution or to members of the same group.

(12) The restriction under paragraph (11) shall not apply to deposits, bonds or securities issued by or guaranteed by the Government or to deposits with a banking institution licensed in Kenya.

(13) Failure by the trustee and the REIT manager to spread the investments in accordance with paragraph (11) shall not, where the limit is exceeded but rectified within a period of thirty days from the day on which the limit was exceeded, constitute a breach.

(14) The REIT-manager may subject to the terms of the trust deed and where not specifically authorized by the trust deed, with the consent of the REIT securities holders request that the trustee of an I-REIT invest up to a maximum of ten percent of the total asset value in a wholly owned and controlled company of the REIT manager carrying out real estate related activities including-

- (a) property management;
- (b) REIT management;
- (c) property maintenance or design or the provision of

services to tenants or to the I-REIT;

but shall not include the provision of mortgages or finance.

(15) For the purpose of determining the level of the investment that can be made under this regulation, the percentage shall be calculated by reference to the amount of the proposed investment and the total asset value at the date on which the investment is made.

Consequences of failure to invest in real estate within one hundred and eighty days.

66. (1) Where an investment in real estate has not been completed in accordance with regulation 65(4) within one hundred and eighty days, the trustee shall, within fourteen days after the expiry of the period for investment refund in full all monies paid into the fund by investors in the REIT securities together with any interest or earnings on the amount subscribed and without any deductions except the amounts required by law in respect of interest or other income.

(2) Failure to complete the nominated investment in real estate shall not constitute an offence but failure to refund monies within the specified period shall constitute an offence on the part of the promoter, the trustee and the REIT manager.

Acquisition and disposal of real estate and price.

67. (1) The trustee of an I-REIT shall not -

- (a) acquire a real estate at a price which exceeds the price in the valuation report by more than ten percent unless the acquisition is approved by a special resolution of the REIT securities holders; or
- (b) dispose of a real estate at a price lower than ninety percent of the value assessed in the valuation report unless the disposal is approved by a special resolution of the REIT securities holders.

(2) Except where the disposal of an asset is for the purpose of terminating or winding up an I-REIT, the trustee shall not enter into a contract for the disposal of an asset where such disposal would exceed fifty percent of the total asset value, unless it has been approved by an ordinary resolution of REIT securities holders.

(3) A REIT manager shall not recommend and the trustee of an I-REIT shall not enter into a binding contract or a contract which may only be terminated on the payment of penalties in connection with a transaction to which paragraph 1(a) or (b) unless the trustee has obtained the approval of the REIT securities holders in accordance with paragraph (1).

Partial ownership of properties.

68 (1) Interests in a real estate acquired as an asset by the trustee of an I-REIT including where the investment by the REIT is held through its investment in investee companies or investee trusts

shall-

- (a) not consist of partial ownership of real estate assets; and
- (b) in the case of a real estate which is on freehold land, be wholly owned and controlled, from the time of acquisition, by the trustee who shall exercise all rights, interests and benefits normally enjoyed by an owner without interference.

(2) In the case of a real estate asset which is on leasehold land, the trustee shall, from the time of entering into the lease, have the sole rights, interests or benefits normally enjoyed by a lessee subject to the terms of the lease and the rights of the lessor.

(3) The provisions of paragraphs (1) and (2) shall not apply to assets acquired through the purchase of shares in a property company or REIT securities of other I-REITS permitted under these Regulations and which are not investee companies or investee trusts.

(4) Total investments by an I-REIT in shares in property company shares or REIT securities of other I-REITS which are not investee companies or investee trusts shall not in total exceed ten percent of the total asset value where the percentage is calculated based on the value of the investment and the total net asset value as at the time of acquisition of the shares or REIT securities.

I-REIT income requirement.

69. (1) An I-REIT shall in each financial year after the second anniversary of its authorization, earn at least seventy percent of its income from rent, licence fees or access or usage rights or other income streams of a similar nature generated by eligible investments in income producing real estate.

(2) Any profits or capital gains from the sale of real estate shall be excluded in determining the income under paragraph (1).

(3) An I-REIT shall not be in breach of the income requirements under paragraph (1) if the I-REIT disposes off a real estate asset that has been an asset of the real estate investment trust for at least three years and -

- (a) reinvests the funds received from disposal of the income producing real estate assets within a period of two years from the completion of the disposition; or
- (b) makes a distribution to REIT securities holders to reduce its assets.

Real estate construction and development activities by an I-REIT.

70. The trustee of an I-REIT may, on the recommendation of the REIT manager and subject to any limitations in its scheme documents and meeting the requirements of these Regulations, acquire a real estate under construction, vacant land for development

or carry out construction on vacant land acquired for the purposes of development:

Provided that:

- (a) the total acquisition value of all the land on which the construction is to be undertaken by the trust together with the cost of the construction on that land and the acquisition of real estate under construction at any time does not exceed fifteen percent of the total asset value;
- (b) the total value at acquisition, cost of vacant land held for development and construction by the I-REIT and the value of real estate which is not producing a commercial income at any time does not exceed ten percent of total asset value;
- (c) vacant land acquired for the purpose of development by the I-REIT shall only be held for a maximum period of three years at the conclusion of which it shall be developed and generate commercial income or sold;
- (d) income from other assets are sufficient to ensure that the earnings of the fund per unit during the construction or development period are not substantially diluted as shall be, determined by the Authority;
- (e) the contract for any acquisition of property under construction is subject to the completion of the building and for an agreed fixed price;
- (f) the REIT manager reasonably believes that the prospects for obtaining tenants for any property being constructed or developed at a commercial rent are good; and
- (g) development contracts are carried out on the best available terms and at arm's length transactions.

Maximum level of borrowing by an I-REIT.

71. (1) The trustee may, subject to any restriction or lesser limit imposed under the scheme documents, enter into a borrowing arrangement -

- (a) on the initiative of the trustee, where such borrowing is required to preserve the value of the assets of the trust and is in the best interests of the REIT securities holders; or
- (b) if requested to do so by the REIT manager to give

effect to the objectives of the scheme, to acquire real estate assets or to undertake capital expenditure or refinance an existing borrowing.

(2) The trustee may provide security over the assets of the trust to secure the borrowings under paragraph (1).

(3) Despite paragraphs (1) and (2), the trustee shall ensure that any borrowing or provision of security is not prejudicial to the interests of the REIT securities holders.

(4) The total borrowings entered into by the trustee on behalf of an I-REIT or by any investee company or investee trust shall not exceed, in aggregate, at the time the liability is incurred, thirty five percent of the total asset value:

Provided that the limit of the total borrowing shall not operate to prevent the rolling over or refinancing of any debt and the amount rolled over or refinanced is not more than the amount originally borrowed.

(5) Despite paragraph (4), the trustee may, on its own initiative or on the recommendation of the REIT manager and with the approval of REIT securities holders by way of an ordinary resolution, borrow up to a maximum of forty percent of the total asset value for a temporary purpose for a term not exceeding six months.

(6) Failure by the trustee to comply with the borrowing limitation set out in the scheme documents or this regulation shall not constitute an offence.

(7) Despite paragraph (6) and where the trustee exceeds the borrowing limits specified in this regulation, -

- (a) the I-REIT may cease to be classified as a real estate investment trust scheme for taxation purposes;
- (b) subject to the scheme documents, the REIT securities holders may institute a cause of action against the trustee or the REIT manager; and
- (c) the Authority may revoke the authorisation issued to the REIT under regulation 18.

Distribution requirements of an I-REIT.

72. (1) The REIT manager shall only recommend and the trustee may only make distributions to REIT securities holders from realized gains, realized income or from cash held in the fund which is surplus to the investment requirements of the trust.

(2) A trustee of an I-REIT shall, on the recommendation of the REIT manager, subject to a higher minimum being specified in the scheme documents and to the provisions of these Regulations,

distribute, within four months after the end of each financial year, a minimum of eighty percent of the net after tax income, if any, of the fund from sources other than from realized capital gains on the disposal of real estate assets.

(3) Net after tax income under paragraph (2) shall be calculated in accordance with the IFRS and tax standards applying in Kenya based on the assumption that, for calculation purposes only, the REIT is subject to the general income tax provisions applicable generally to trusts and the REIT is entitled to similar deductions and allowances, including depreciation.

(4) The trustee shall make the distribution of income on the basis proposed by the REIT manager after the trustee has taken into consideration the-

- (a) income for the period;
- (b) total returns for the period;
- (c) liabilities and financial obligations;
- (d) cash flow available for distribution;
- (e) need to preserve and maintain the condition of the assets of the real estate investment trust and scheme and to provide for asset replacement;
- (f) stability and sustainability of distribution of income;
- (g) investment objective of the I-REIT;
- (h) distribution policy of the I-REIT; and
- (i) requirements of the scheme documents.

(5) The trustee may, where the distribution is proposed other than on an annual basis based on audited financial accounts, require an audit to be undertaken for the purpose of determining the matters to be considered under paragraph (4) or paragraph (10).

(6) Where the trustee is of the opinion that the level of distribution recommended by the REIT manager is not in the interests of REIT securities holders, the trustee shall call a meeting of REIT securities holders for the purposes of approving, by way of ordinary resolution, a lower distribution.

(7) The REIT manager shall, where it recommends a distribution lower than eighty percent, submit to the trustee a statement of-

- (a) the reasons for proposing a lower distribution; and

(b) when that minimum distribution level of eighty percent is likely to be restored.

(8) Failure by trustee to distribute the income under this regulation as a consequence of the REIT manager not proposing or REIT securities holders not voting to receive a distribution which is below eighty percent, shall not constitute in a breach of these Regulations.

(9) Despite paragraph (8) and where the trustee fails to distribute income under this regulation,-

- (a) the I-REIT may cease to be classified as a real estate investment trust scheme for taxation purposes;
- (b) subject to the scheme documents, the REIT securities holders may institute a cause of action against the trustee or the REIT manager; and
- (c) the Authority may revoke the authorization issued by it under these Regulations,

(10) The REIT manager may propose and the trustee may pay a distribution in excess of the current income where the REIT manager, after consultation with the trustee, certifies on reasonable grounds that-

- (a) immediately after making such distribution, the I-REIT shall be able to pay, out of the assets of the fund, the liabilities incurred on behalf of the trust as and when they fall due and the projected liabilities for at least the next year; and
- (b) the payment will not adversely affect the capacity to maintain and preserve the assets.

(11) The REIT manager shall-

- (a) disclose to the trustee, the basis of calculation of the distribution of income proposed under paragraph (10); and
- (b) report such proposal as part of the continuing disclosure requirements under these Regulations.

(12) Nothing in these Regulations shall be construed as preventing the proposal or making of distributions, or the trust deed from providing for the making of distributions more than once as in each financial year..

capital gains by an I-REIT.

the REIT manager may, and subject to the provisions of the scheme documents, distribute realized capital gains.

(2) Any realized capital gains may be retained and invested in income producing real estate:

Provided that any realized capital gains which have not been invested within a period of two years from the date of realization shall be distributed to REIT securities holders within two months of the second year of such realization.

(3) Failure by the trustee to make the minimum distribution specified in paragraph (2) shall not constitute an offence.

(4) Despite paragraph (3), where the trustee or REIT manager fails to make a distribution under paragraph (2) -

- (a) the I-REIT may cease to be classified as a real estate investment trust scheme for taxation purposes;
- (b) subject to the scheme documents, the REIT securities holders may institute a cause of action against the trustee or the REIT manager; and
- (c) the Authority may revoke the authorization issued by it under these Regulations.

Minimum retained investment by the promoter and lock-in period.

74. (1) A promoter of an I-REIT who sells or transfers any real estate or proposes to transfer or sell any real estate to the trustee of the I-REIT within a period one year of the establishment of the I-REIT shall maintain an investment in the I-REIT of at least twenty percent of the net asset value as at the date of the initial offer of REIT securities in the I-REIT for the first year from the latter of the close of the offer or, if the issue is to be listed, from the date of the first listing of the REIT securities and the date of transfer of the real estate to the I-REIT:

Provided that where a D-REIT converts to an I-REIT such restriction shall not apply where the requirements of regulation 84 have been or are being complied with.

(2) The REIT securities held by the promoter shall not be sold or transferred during the lock in period except where the transfer is as a result of the death or insolvency of the promoter.

(3) The promoter may, after the -

- (a) first year of the close or listing, reduce its holding to a minimum of ten percent; and
- (b) second anniversary of the close or listing, reduce its holdings to zero percent.

(4) The trustee shall not register any transfer by the promoter if the transfer would result in the holding of REIT securities by the promoter below the minimum level which the promoter is required to retain in the relevant period.

PART XI - SPECIFIC REQUIREMENTS FOR D-REITS

Investments and objectives of a D-REIT. 75. The investments of a D-REIT scheme shall be relevant, appropriate and consistent with the investment objectives of the real estate investment trust and scheme as set out in the offering memorandum and the scheme documents.

Eligible investments for a D-REIT. 76. (1) The trustee of a D-REIT may, subject to any limitations specified in the scheme documents and if requested by the REIT manager -

- (a) invest directly in eligible real estate in accordance with these Regulations;
- (b) invest in eligible real estate assets through investment in an investee company incorporated in Kenya which directly owns the eligible real estate and which is wholly beneficially owned and controlled by the trustee in its capacity as the trustee of the D-REIT where -
 - (i) the D-REIT trustee has the absolute power at any time to appoint and, without incurring any liability, to remove the directors;
 - (ii) the trustee of the REIT, the company, the directors and the shareholders have entered into a shareholders agreement;
 - (iii) the REIT manager of the D-REIT is appointed as the manager of the investments of the investee company;
 - (iv) the Memorandum and Articles of Association of the investee company and the terms of the shareholders agreement limit the objectives of the investee company and the powers of the company and directors and impose the same obligations on the company, its directors and the manager of the trust as if the investee company was a D-REIT and an authorized scheme under the Act and these Regulations and was subject to the same obligations and restrictions as are imposed by these Regulations;
 - (v) the provisions of these Regulations on the carrying

out of a valuation, reporting and audit apply to the investee company as if the investee company was a D-REIT and an authorized scheme under these Regulations;

- (vi) the investee company invests directly in the eligible real estate and is recorded on the certificate of title or certificate of lease or register as the sole owner;
- (c) invest in eligible real estate assets through an investee trust in which the trustee of the D-REIT in its capacity as trustee is the sole beneficiary and has absolute control of voting and right to appoint and remove the trustee of the investee trust and where -
- (i) the investee trust is formed under the laws of Kenya as an unincorporated common law trust;
 - (ii) the D-REIT trustee is also the trustee of the investee trust;
 - (iii) the REIT manager of the D-Reit is also the manager of the investee trust;
 - (iv) the terms of the trust deed for the investee trust limit the objectives of the investee trust, the trustee's powers and impose the same obligations on the trustee and the manager of the trust as if the investee trust was a D-REIT and an authorized scheme under these Regulations and subject to the same obligations and restrictions as are imposed under these Regulations;
 - (v) the provisions of these Regulations on the carrying out of a valuation, reporting and audit apply to the investee trust as if the investee trust was a D-REIT and an authorized scheme under the Act and these Regulations;
 - (vi) the trustee as trustee for the investee trust invests directly in the eligible real estate and is recorded on the certificate of title or certificate of lease or register as the sole owner.
- (d) invest in cash, deposits, bonds or securities and money market instruments;
- (e) invest in a wholly beneficially owned and controlled company which conducts real estate related activities; and
- (f) invest in income producing assets including shares in

property companies incorporated in Kenya whose principal business is real estate related or REIT securities in other Kenyan real estate investment trust schemes.

(2) The requirement for the appointment of a sole trustee shall not be applicable where a secondary disposition trustee is appointed.

(3) The trustee and the REIT manager shall only invest in accordance these Regulations.

(4) The promoter of a D-REIT and the REIT manager shall-

- (a) propose and specify, in the offering memorandum, at least one real estate asset that is already vested in or proposed to be acquired and vested in the trust and for which all legal registration requirements will have been completed within one hundred and eighty days of the closing of the initial offer.
- (b) specify in the offering memorandum, the initial development or construction project which the D-REIT proposes to undertake; and
- (c) include a timetable, budget and a project plan for the initial development or construction the D-REIT proposes to undertake.

(5) Where -

- (a) the promoter and REIT manager fail to comply with the requirements of paragraph (4)(a) during the intervening period from the close of the initial offer or issue referred to in paragraph (4)(a); and
- (b) the registration requirements are not complete and the proposed real estate asset are not vested in the trust,

the funds raised by the initial offer and issue of REIT securities shall only be invested in bank deposits or other liquid investments for a duration not exceeding one hundred and eighty days.

(6) A D-REIT shall, within one year of the date of its authorization, invest at least thirty percent of the total asset value directly in-

- (a) development and construction projects; or
- (b) income producing real estate which the D-REIT has developed or constructed.

(7) A D-REIT shall not be in breach of paragraph (6) if the D-REIT disposes the real estate asset and within one year of such disposal, the D-REIT-

- (a) acquires a substitute real estate asset; or
- (b) makes a further distribution to REIT securities holders so as to reduce its assets.

(8) The trustee and the REIT manager shall, for the purposes of giving effect to the requirement for investment predominantly in development and construction projects for either sale, retention or leasing as income producing property, ensure that the real estate acquired or to be acquired as an asset of the D-REIT-

- (a) can be developed in the manner and for the proposed use;
- (b) is free from encumbrances at the time of acquisition except for any charges entered into by the trustee as authorized by the trust deed and these Regulations; and
- (c) has reasonable prospects when the development or construction is completed for sale for a profit or for leasing as income producing real estate.

(9) The trustee and the REIT manager shall, where the real estate acquired is leasehold, ensure that-

- (a) at the time of entering into the lease, the lease has a remaining term of at least twenty five years;
- (b) the real estate has been valued as leasehold; and
- (c) the lease is lodged for registration.

(10) Subject to paragraph (11), the trustee and the REIT manager shall ensure that investments in cash, deposits, bonds, securities and money market instruments shall be spread across a number of issuers, securities and instruments so that not more than five percent of the total asset value is exposed to any one issuer or institution or to members of the same group.

(11) The restriction under paragraph (10) shall not apply to deposits, bonds or securities issued by, or guaranteed by the Government of Kenya or to deposits with a banking institution licensed in Kenya.

(12) Failure by the trustee and the REIT manager to spread the investments in accordance with paragraph (10) shall not, where the limit is exceeded but rectified within a period of thirty days from

the day on which the limit was exceeded, constitute a breach.

(13) Subject to the terms of the trust deed, the REIT manager may, with the consent of the REIT securities holders, request that the trustee of a D-REIT invest up to a maximum of ten percent of the total asset value in a wholly owned and controlled company carrying out real estate related activities including-

- (a) property management;
- (b) REIT management;
- (c) property maintenance or design; or
- (d) the provision of services to tenants or to the D-REIT;

but shall not include the provision of mortgages or finance except to the extent that the D-REIT is authorized by these Regulations to provide mortgages or finance.

(14) For the purposes of determining the level of the investment which can be made under this regulation, the percentage shall be calculated by reference to the amount of the proposed investment and the value of the total asset value at the date that the investment is made.

Consequences of failure to invest in real estate within one hundred and eighty days.

77 (1) Where an investment in real estate has not been completed of the period specified under regulation 76, the trustee shall call a meeting of the REIT securities holders within twenty eight days of the expiry of the period for investment for the purpose of -

- (a) considering the report by the REIT manager on the reason for the delay in completion;
- (b) the implications for the holders of investment in the D-REIT;
- (c) determining, by special resolution whether -
 - (i) the period for registration should be extended and the period of extension; or
 - (ii) all monies paid into the fund together with any interest or earnings should be refunded within fourteen days of the date of the meeting; and
 - (iii) what other action should be taken by the trustee or REIT manager.

(2) Failure by the trustee to -

- (a) complete the proposed investment in real estate

shall not constitute an offence; or

- (b) call the required meeting or to refund monies within the specified period shall constitute an offence on the part of the promoter, the trustee and the REIT manager.

Acquisition and disposal of a real estate and price.

78. (1) A D-REIT shall not-

- (a) acquire real estate at a price which exceeds the price in the valuation report by more than ten percent unless the acquisition is approved by REIT securities holders; or
- (b) dispose real estate at a price lower than ninety percent of the value assessed in the valuation report unless the disposal is approved by REIT securities holders.

(2) Except where the disposal of an asset is for the purpose of terminating or winding up of a D-REIT, the trustee shall not enter into a contract for the disposal of an asset where such disposal exceed fifty percent of the total asset value, unless it has been approved by an ordinary resolution of REIT securities holders.

(3) A REIT manager shall not recommend and the trustee of a D-REIT shall not enter into a contract or a contract which may only be terminated on the payment of penalties in connection with a transaction to which paragraph 1(a) or (b) unless the trustee has obtained the approval of the REIT securities holders in accordance with paragraph (1).

(4) Any contract entered into under paragraph (3) shall be based on a valuation report.

Partial ownership of real estate.

79. (1) Interests in real estate acquired as assets of a D-REIT shall-

- (a) not consist of partial ownership of real estate assets;
- (b) in the case of a real estate which is on freehold land, be wholly owned and controlled, from the time of acquisition, by the trustee who shall exercise all rights, interests and benefits normally enjoyed by an owner without interference.

(2) In the case of real estate which is on leasehold land, then from the time of the commencement of the lease entered into by the trustee on behalf of the scheme, the trustee shall have sole rights, interests or benefits normally enjoyed by a lessee subject only to the terms of the lease and the rights of the lessor,

(3) The provisions of paragraphs (1) and (2) shall not apply to assets acquired through the purchase of shares in a property

company or REIT securities permitted under these Regulations and which are not investee companies or investee trusts.

(4) The limitation on partial ownership of real estate shall not apply to a D-REIT in the case of real estate which the D-REIT -

(a) has developed and constructed and sold part of the interest in the completed project to another person; or

(b) has partial ownership -

(i) as a consequence of the D-REIT entering into a term or instalment sale or other transaction of a similar nature; or

(ii) where in connection with an acquisition or sale, sub-division of the real estate is in progress.

(3) The total investments by a D-REIT in property company shares or REIT securities which are not in investee companies or investee trusts shall not, in total, exceed ten percent of the total asset value where the percentage is calculated based on the value of the investment and the total net asset value at the time of acquisition of the shares or REIT securities.

Construction and development activities by a D-REIT.

80. The trustee of a D-REIT may, subject to any limitations in the scheme documents and on the recommendation of the REIT manager acquire-

(a) vacant land for development;

(b) real estate under construction; or

(c) land for redevelopment; and

enter into contracts for or carry out development and construction.

Maximum levels of borrowings by a D-REIT.

81.(1) The trustee of a D-REIT may, subject to any restriction or lesser limit imposed under the scheme documents, borrow or enter into financing arrangements -

(a) on its own initiative where such borrowing is required to preserve the value of the assets of the trust and is in the best interests of the REIT securities holders; or

(b) if requested to do so by the REIT manager,

to give effect to the objectives of the scheme to acquire real estate assets, to undertake development and construction, to undertake capital expenditure or to refinance any existing borrowing.

(2) The trustee may provide security over the assets of the real

estate investment trust and scheme to secure the borrowings under paragraph (1).

(3) Borrowings entered into by the trustee on behalf of a D-REIT or by any investee company or investee trust shall not exceed, in aggregate, at the time the liability is incurred, sixty percent of the total asset value:

Provided that the limit in borrowings shall not operate to prevent the rolling over or refinancing of any debt where the amount rolled over or refinanced is not more than the amount originally borrowed. and

(4) Despite paragraph (3), the trustee may, with the approval of REIT securities holders by way of an ordinary resolution borrow or enter into a financing arrangement up to a maximum of seventy five percent of the total asset value, for a temporary purpose for a term not exceeding six months.

(5) Failure by the trustee to comply with the borrowing limitation under this regulation shall not constitute an offence.

(6) Despite paragraph (5) and where the trustee exceeds the borrowing limits specified in this regulation -

- (a) D-REIT may cease to be classified as a real estate investment trust scheme for taxation purposes;
- (b) subject to the scheme documents, the REIT securities holders may institute a cause of action against the trustee or the REIT manager; and
- (c) the Authority may revoke the authorization issued to the REIT under regulation 18.

Distribution requirements of a D-REIT.

82. (1) The trustee shall make the distributions of income upon the recommendations of the REIT manager and in accordance with the scheme documents.

(2) In making distributions under paragraph (1), the trustee shall take into consideration the-

- (a) income for the period;
- (b) total returns for the period;
- (c) liabilities and financial obligations;
- (d) cash flow available for distribution;
- (e) need to preserve and maintain the condition of the assets of the fund and to provide for asset replacement;

- (f) stability and sustainability of distribution of income;
- (g) investment objective of the D-REIT;
- (h) distribution policy of the D-REIT; and
- (i) requirements of the scheme documents.

(3) The trustee may where the distribution is proposed other than on an annual basis based on audited financial accounts require an audit to be undertaken for the purpose of determining the matters to be considered paragraph (3) and paragraph (5).

(4) Where the trustee is of the opinion that the level of distribution recommended by the REIT manager is not in the interests of REIT securities holders, the trustee shall call a meeting of REIT securities holders to approve, by way of ordinary resolution, a lower distribution.

(5) A REIT manager may propose and the trustee may make distributions in excess of the current income where the REIT manager, upon consultation with the trustee, certifies, on reasonable grounds that-

- (a) immediately after the making of such distribution the D-REIT shall be able to pay from the assets of the fund, the liabilities incurred on behalf of the trust as and when they fall due and the projected liabilities for at least the next year; and
- (b) the payment shall not adversely affect the capacity to maintain and preserve the assets of the REIT.

(6) The REIT manager shall, if the REIT manager proposes payment of distributions in excess of the current income -

- (a) disclose to the trustee the basis of the calculation of the distribution proposed under paragraph (5); and
- (b) report such proposal as part of the continuing disclosure requirements under these Regulations.

Distribution of realized capital gains by a D-REIT.

83. (1) Subject to the scheme documents, the REIT manager may recommend to the trustee on and the trustee may distribute any realized capital gains.

(2) Any capital gains may be retained and invested in new acquisitions or development and construction or buy to rent housing income producing real estate:

Provided that any realized capital gains which have not been

invested within a period of two years from the date of realization shall be distributed to REIT securities holders within two months of the second year of such realization.

(3) Where the trustee fails to make the distribution under paragraph (2) -

- (a) the D-REIT may cease to be classified as a real estate investment trust scheme for taxation purposes;
- (b) subject to the scheme documents, the REIT securities holders may institute a cause of action against the trustee or the REIT manager; and
- (c) the Authority may revoke the authorization issued to it under these Regulations.

Minimum retained investment by the promoter and lock-in period.

84. (1) A promoter who sells or transfers any real estate or proposes to transfer or sell any real estate to the trustee of the D-REIT within a period one year of the establishment of the D-REIT shall, subject to any requirements in the scheme documents requiring a higher level of investment, maintain an investment, of at least ten percent of the net asset value for two years from the close of initial the offer or if the issue is to be listed from the date of first listing of the REIT securities.

(2) The REIT securities held by the promoter shall not be sold or transferred during the lock in period except where the transfer is as a result of the death or insolvency of the promoter.

(3) A promoter may, after the second anniversary of the close of the initial offer or issue, reduce its holding to zero percent.

(4) The trustee shall not register any transfer by the promoter, if the transfer results in the promoter holding REIT securities which are below the minimum level the promoter is required to retain during the lock in period.

PART XII – CONVERSIONS OF REITs

Requirements for conversion.

85. (1) A REIT manager of a D-REIT may apply to the Authority to convert the D-REIT into an I-REIT.

(2) The REIT manager shall not make an application under paragraph (1) unless -

- (a) a conversion prospectus or offering memorandum, which meets the requirements for an I-REIT, is submitted to and approved by the Authority and distributed to existing REIT securities holders prior to the holding of the meeting of REIT securities holders under paragraph (b);

- (b) the proposed conversion has been approved by the trustee and by a special resolution passed at a meeting of REIT securities holders held not more than six months prior to the proposed conversion date;
- (c) the scheme documents have been amended to comply with the requirements of an I-REIT;
- (d) the REIT manager demonstrates to the Authority that the D-REIT shall, upon conversion, be able to meet the eligible asset requirements for an I-REIT; and
- (e) the REIT manager demonstrates to the Authority that at least fifty percent of the total value of the real estate assets of the fund are-
 - (i) subject to long-term leases; or
 - (ii) where the nature of the real estate asset is such that long term leases are not the norm, the real estate assets have been income producing for at least six months.

(3) Regulation 17 shall apply to the application for conversion as if the application was for the authorization as an I-REIT.

86. (1) Except where the scheme documents provide otherwise a REIT Manager may make an application to the authority for the conversion of -

Conversion from an open to a closed REIT or from a restricted to an unrestricted REIT.

- (a) an open ended fund restricted issue REIT to a closed ended fund;
- (b) a closed ended fund restricted issue REIT to an open ended fund; and
- (c) a restricted issue I- REIT or offer scheme ,to an unrestricted I-REIT.

(2) A REIT manager shall not make an application for conversion under paragraph (1) unless –

- (a) the conversion has been approved by the trustee and by a special resolution passed at a meeting of REIT securities holders held not more than six months prior to the proposed conversion date;
- (b) the scheme documents have been amended to comply with the requirements of the Act and these Regulations as regards the type of fund or REIT to which it is proposed to convert;

(c) a conversion offering memorandum or prospectus, which meets the requirements of these Regulations as regards the type of fund or REIT to which it is proposed to convert, is filed with and approved by the Authority and distributed to existing REIT securities holders prior to the holding of the meeting of REIT securities holders to consider the resolution to approve the conversion.

(3) Regulation 17 and 37 shall apply to the application for conversion under paragraph (1) as if the application was for an authorization as a real estate investment trust scheme and for approval of a prospectus or offering memorandum respectively.

PART XIII - ADVERTISING

Advertising.

87. (1) A REIT manager shall not issue or cause to be issued any advertisement for or in connection with the scheme unless the contents of the advertisement have been approved by the trustee and the Authority.

(2) For the purposes of paragraphs (1), “advertisement” shall not include any publication of the issue, sale, repurchase or redemption prices of REIT securities.

(3) An advertisement in respect of a real estate investment trust scheme shall set out a summary of the rights of the REIT securities holder as provided for in the scheme documents include a warning statement that –

- (a) the price and value of REIT securities and the income from REIT securities, may fluctuate;
- (b) the REIT securities holder in a restricted offer REIT may have limited or no rights to redemption and in certain circumstances the right of a REIT securities holder to redeem the REIT securities may be suspended; and
- (c) if the REIT securities are those of a unrestricted offer I-REIT, a statement that the security holder is not entitled to require the trustee to redeem their REIT securities compulsorily and their exit would in ordinary circumstances be through sale on an exchange at a price determined by the market which may not reflect the net asset value per unit.

(4) A warning statement under paragraph (3) shall be printed in the same font size as the other text in the advertisement.

Inclusion of performance data.

88. (1) The Authority may require a REIT manager to submit to it, a justification of the calculation, if performance data or

estimated yield is quoted in –

- (a) a report;
- (b) an advertisement; or
- (c) any other invitation to the public to invest in a real estate investment trust scheme.

(2) A forecast of the performance of the real estate investment trust scheme shall not be included in any advertisement or in any prospectus or offering memorandum.

(3) For the purposes of this regulation, the publication of a prospective yield shall not constitute a forecast of performance.

*PART XIV- ALTERATION OF SCHEME
DOCUMENTS*

Alterations to REITs
documentation.

89. (1) A person shall not alter the scheme documents of a scheme except-

- (a) by a special resolution of REIT securities holders; and
- (b) with the prior approval of the Authority.

(2) Despite paragraph (1), the REIT manager and the trustee may alter the scheme documents without consulting the REIT securities holders where the trustee certifies, in writing, in respect of each proposed alteration that in the opinion of the trustee, the proposed alteration-

- (a) is necessary to enable compliance with fiscal or other statutory or official requirements;
- (b) does not materially prejudice the interests of the REIT securities holders;
- (c) does not, to any material extent, release the trustee, the REIT manager or any other person from any liability to REIT securities holders;
- (d) does not increase the costs and charges payable from the assets of the real estate investment trust; or
- (e) is necessary to correct a manifest error.

*PART XV - FEES AND TERMS OF THE TRUSTEE
THE REIT MANAGER AND OTHER PARTIES*

Remuneration of the
trustee.

90. (1) The trustee shall be remunerated by an annual fee charged to the fund which may be paid in instalments during the

course of the year.

(2) The trustee shall be entitled to first priority for the payment of the fees and expenses out of the fund.

(3) The scheme documents shall provide for the payment of fees in accordance with these Regulations.

Remuneration of a REIT manager.

91. The REIT manager of a REIT may be remunerated -

- (a) by way of an annual fee charged to the fund;
- (b) through an issue of REIT securities in the REIT;
- (c) by way of a profit share from-
 - (i) the sale of the real estate in the case of a D-REIT;
 - (ii) increase in net earnings of the REIT or achievement of earnings above a minimum specified hurdle rate; or
 - (iii) the realization of value on the conversion to an I-REIT or listing; or

(d) by a combination of paragraphs (a) to (c).

Deferment of fees payable to a REIT manager.

92. A REIT manager may defer some or all the fees payable to it:

Provided that:

- (a) the fees shall be deferred at the rate otherwise payable;
- (b) no interest shall be payable in respect of any deferred payment, and the effect or potential effect of such deferral on returns, distributions and performance of the scheme shall be clearly disclosed in any prospectus or offering memorandum and in the reports prepared under regulation 101; and
- (c) in the case of an unrestricted offer I-REIT the deferral shall not exceed a period of three years.

Basis for remuneration of trustee and REIT manager.

93. (1) The basis of calculating the fees and the fees payable from time to time shall be specified in the-

- (a) scheme documents; and
- (b) reports prepared from time to time.

(2) The fees payable to the REIT manager and the trustee shall, despite the provisions of the scheme documents, be fair, reasonable and based on the-

- (a) roles, duties and responsibilities of the REIT manager or the trustee;
- (b) interests of the REIT securities holders;
- (c) nature of the real estate investment trust;
- (d) extent of the services provided by the REIT manager or trustee;
- (e) size and composition of the assets of the fund;
- (f) success, in the case of a REIT manager, in meeting the investment objectives; and
- (g) need to protect, in the case of a trustee, the interests of REIT securities holders.

(3) Where the trustee is of the opinion that any proposed material increase in fees or change in the method of calculating the fees charged by the REIT manager is not fair and reasonable, the trustee shall convene a meeting of the REIT securities holders.

(4) The trustee shall, at a meeting convened under paragraph (3), require the REIT manager to justify any increase in fee charged by the REIT manager or the basis of calculation.

(5) The REIT manager shall not, where the trustee calls a meeting under paragraph (3), effect an increase or change the basis of calculating its fees unless agreed to by an ordinary resolution of the REIT securities holders.

(6) Despite any provision in the scheme documents, a REIT manager which is removed or dismissed for cause shall not be entitled to-

- (a) any additional fee other than that otherwise payable on an annual or accrued basis up until the time of the removal or dismissal; or
- (b) claim any penalty in respect of the dismissal, removal or otherwise ceasing to act.

Term of the REIT manager of an I-REIT and prohibition on penalties.

94. (1) A REIT manager shall be appointed for a term of three years but may be reappointed for subsequent terms each not exceeding three years.

(2) An appointment or reappointment under paragraph (1)

shall be subject to approval by an ordinary resolution of REIT securities holders.

(3) A REIT manager shall not be paid additional fees or penalty as a consequence of the REIT manager not being reappointed.

(4) For the purposes of paragraph (3), a fee which is payable-

- (a) upon the REIT manager ceasing to act as such; or
- (b) at a higher rate than otherwise payable including where it has been deferred and whether payable in cash, by way of a profit share or other means;

shall be deemed to be a penalty and void.

Recoverable expenses. 95. (1) The right of the trustee or the REIT manager to deduct fees together with-

- (a) a reasonable estimate of the recoverable expenses to be incurred; and
- (b) details of the estimated management expense ratio,

for the first two years following authorization of the real estate investment trust scheme from the date of the prospectus or offering memorandum shall be set out in the prospectus or offering memorandum.

(2) The REIT manager shall, subject to the provisions of the scheme documents, be entitled, in addition to any fee payable, to recover and pay out of or charge to the fund, expenses or an appropriate apportionment thereof, directly related and necessary in operating and administering the real estate investment trust which may include-

- (a) the costs and expenses incurred in-
 - (i) carrying out any capital works or authorized development or construction including the appointment of professional advisers; or
 - (ii) letting, maintaining, refurbishing of, developing, acquiring, investing, incurring income from or disposal of assets;
 - (iii) providing services in relation to the assets of the fund, including electricity, water, cleaning and security services, or services of a similar nature;
 - (iv) the modification of the scheme documents

other than for the benefit of the REIT manager or the trustee;

- (v) any meeting of REIT securities holders other than those convened for the benefit of the REIT manager or the trustee;
 - (vi) the insurance and maintenance of the real estate and other assets belonging to the fund;
 - (vii) the leasing and letting out of properties or otherwise earning income from the assets and related expenses;
- (b) general taxes and other duties, levies or charges on the fund but not taxes levied on the trustee or REIT manager in their personal capacities;
- (c) fees and other expenses properly incurred-
- (i) by the auditor appointed for the fund;
 - (ii) by any project manager certifier appointed for the real estate investment trust or in respect of a particular project;
 - (iii) by the structural engineer appointed for the real estate investment trust or in respect of a particular project;
 - (iv) for the valuation of any investment or proposed investment or asset of the fund by an independent valuer for the benefit of the fund;
 - (v) in defending claims against the fund; or
 - (vi) in respect of any asset or investment or proposed investment of the fund;
- (d) initial and ongoing listing expenses; and
- (e) legal, accounting and the standard underwriting fees and expenses incurred in-
- (i) arranging borrowing or other financing arrangements by the trustee on behalf of the real estate investment trust; or
 - (ii) the issuing of additional REIT securities but not the costs or expenses ordinarily associated with the redemption of REIT securities in an open ended fund or the issue of new or

replacement REIT securities in such a fund.

(3) The overheads and costs of services expected to be provided by a REIT manager in its capacity as REIT manager shall not be charged to the fund.

(4) The trustee and the auditor shall review all expenses charged to the fund and only allow such expenses which they reasonably determine are legitimate and in accordance with standard arm's length commercial rates generally prevailing in Kenya.

(5) The trustee in addition to payment of its fees shall be entitled to reimbursement by the fund, of any costs and expenses reasonably incurred in the performance of its duties and responsibilities as a trustee including defending of the assets of the fund and the interests of the REIT securities holders.

*PART XVI - MAINTENANCE OF BOOKS,
ACCOUNTS AND RECORDS*

Maintenance of books,
accounts and records.

96. (1) The trustee and REIT manager shall cause to be kept proper books, records and accounts in respect of the fund, the scheme and the real estate investment trust in accordance with the law and IFRS.

(2) The books, records and accounts kept under paragraph (1) shall-

- (a) adequately account for the assets and liabilities of the real estate investment trust or incurred by the trustee or the REIT manager in relation to or in connection with real estate investment trust and the scheme; and
- (b) contain sufficient information on all contracts and transactions entered into by the trustee or the REIT manager in relation to or in connection with the real estate investment trust and the scheme.

*PART XVII - APPOINTMENT AND REMOVAL OF
AN AUDITOR AND AUDIT OF ACCOUNTS*

Appointment of an
auditor and audit of
accounts.

97. (1) The trustee shall appoint an independent auditor to audit, at least annually, the accounts and financial statements of the real estate investment trust and the scheme.

(2) The auditor shall report on whether the trustee and the REIT manager have complied with these Regulations.

(3) The Authority may appoint an auditor to carry out an audit required under these Regulations where-

- (a) the Authority is of the opinion that the auditor appointed

by the trustee under paragraph (1) is not suitable; or

(b) the trustee has failed to appoint an auditor.

(4) The Authority may, if it is of the opinion that a special audit is necessary in the interests of the holders of REIT securities, appoint an auditor to conduct an audit.

(5) An auditor appointed under paragraph (2) and (3), shall be remunerated out of the assets of the real estate investment trust.

Removal of an auditor. 98. (1) An auditor appointed under regulation 97 may be removed by the trustee -

(a) on its own instance; or

(b) at the request of the REIT securities holders by way of ordinary resolution passed at a meeting.

(2) The trustee shall, where an auditor is removed under paragraph (1) appoint another auditor in its place in accordance with these Regulations.

Notification to the Authority.

99. The trustee shall -

(a) notify the Authority and the REIT manager within seven days of the removal or appointment of an auditor; and

(b) provide such information as the Authority may require, as to the circumstances of any removal or replacement.

Co-operation with the Auditor.

100. The trustee, REIT manager, valuer, any property manager, any property manager certifier, structural engineer, legal or other adviser or party appointed in relation to the real estate investment trust scheme or by the REIT manager or in respect of a transaction entered into or proposed to be entered into shall-

(a) provide such assistance as the auditor may reasonably require to discharge its duties;

(b) allow the auditor, at all reasonable times, access to premises, documents, records, data and information including, access to software and systems;

(c) not interfere with the ability of the auditor to discharge its duties;

(d) not provide false or misleading information to the auditor;

(e) report to the auditor, any matter which may significantly

affect the financial position of the real estate investment trust, scheme or the fund or the conduct of the audit;

- (f) waive and not claim any right to confidentiality or to privilege, including legal professional privilege, in respect of any information, advice, documents or data provided to or prepared for or on behalf of the trustee or the REIT manager which has been paid for out of the assets of the fund or was obtained for the purposes of inclusion in any prospectus or offering memorandum; and
- (g) take all reasonable steps to ensure that any employee or person appointed by it complies with the same requirements.

*PART XVIII - PREPARATION OF PERIODIC
REPORTS AND ACCOUNTS BY THE REIT
MANAGER AND TRUSTEE*

Preparation of semi-annual and annual reports.

101. (1) A REIT Manager shall prepare or cause to be prepared on behalf of, and present to the trustee for the trustee's consideration, semi-annual and annual reports for the scheme including the accounts for the real estate investment trust during such periods.

(2) The reports prepared under paragraph (1) shall-

- (a) be submitted to the trustee for approval;
- (b) provide all the information necessary to enable the holders of REIT securities and potential investors to evaluate the performance of the real estate investment trust scheme ;and
- (c) be prepared in accordance with IFRS, the Act and these Regulations.

(3) The reports prepared under paragraph (1) shall contain the information specified under the Fifth Schedule and such other information as the Authority may require and shall include -

- (a) in the case of-
 - (i) an annual report, audited financial statements certified by both the trustee and the REIT manager to be true and correct; and
 - (ii) semi-annual report, financial statements which may be audited but shall be certified by both the trustee and the REIT manager to be true and correct;

(b) the auditor's report for annual statements which shall include a compliance report; and

(c) a report of the *Shariah* adviser, where applicable.

(4) Any certification by the trustee and REIT manager shall be signed by the compliance officer of the trustee and in the case of the REIT manager, by the chief executive officer and at least one non-executive director.

Failure to prepare reports.

102. (1) Where the REIT manager fails to prepare or cause the preparation of accounts and reports as required under the Act or these Regulations, the trustee shall, without relieving the REIT manager of any obligation -

(a) advise the Authority of the failure of the REIT manager; and

(b) cause the accounts and reports, other than the REIT manager's report, to be prepared as soon as possible at the expense of the REIT manager.

(2) The REIT Manager, any property manager, and any other person appointed by the REIT manager or the trustee in connection with the real estate investment trust scheme or any person whose fees or costs have been paid out of the fund or are recoverable from the fund, shall provide the trustee and any person appointed by the trustee to prepare the reports and accounts with such information, assistance and access to information and data as the trustee or the person appointed by the trustee may require.

Submission of reports to the Authority and REIT securities holders.

103. (1) A REIT manager shall, in consultation with the trustee -

(a) submit to the Authority, a copy of -

(i) the first half financial year reports and accounts within thirty days of the end of the half year; and

(ii) the annual report and the audited accounts within three months of the end of the financial year;

(b) provide such other information, statements, books, records or other particulars as the Authority may require; and

(c) in the case of an unrestricted I-REIT publish in at least two daily newspapers of national circulation -

(i) the first half financial year and accounts within

thirty days of the end of the first half of the financial year; and

- (ii) the annual report and audited accounts within three months of the end of the financial year.

(2) The REIT manager shall send to every REIT securities holder, free of charge, a copy of-

- (a) the first half financial year reports and accounts within thirty days of the end of the half year; and
- (b) the annual report and the audited accounts within three months of the end of the financial year.

Distribution recommendations and statements.

104. The REIT Manager shall, whenever a distribution, including any interim distribution is made, circulate to the Authority and to the REIT securities holders a notice of distribution and a statement authorized by the trustee which statement shall include details of-

- (a) the source and nature of the distribution;
- (b) the total returns of the real estate investment trust and scheme from income or capital gains;
- (c) in the case of an I-REIT the percentage income distributed as calculated in accordance with Regulation 72 and if less than eighty percent the reasons why the proposed distribution is less than eighty percent; and
- (d) the net asset value per unit prior to, and subsequent to, the making of the distribution.

*PART XIX - NOTIFICATIONS AND REPORTING
TO THE AUTHORITY*

Notification and compliance report by the trustee.

105. The trustee shall, in addition to any other requirement for notification under the Act or these Regulations, notify the Authority, within seven days of -

- (a) its becoming aware of any failure, act or omission by the trustee, REIT manager, property manager including any person appointed by the REIT manager, the valuer or project manager certifier which constitutes or may constitute a breach of any provisions of the Act, these Regulations or the scheme documents and any steps taken by the trustee to rectify the breach as soon as possible;
- (b) the appointment, removal or retirement of the -

- (i) REIT manager;
 - (ii) auditor;
 - (iii) valuer;
 - (iv) project manager certifier;
 - (v) structural engineer; or
 - (vi) *Shariah* adviser;
- (c) amendments to the trust deed;
 - (d) appointment or changes to the compliance officer of the trustee;
 - (e) amendments to any REIT manager agreement or other scheme document;
 - (f) acquisition or disposal of any real estate assets;
 - (g) any resolution passed to wind up the real estate investment trust;
 - (h) any resolution proposed to remove the trustee or the REIT manager; and
 - (i) the completion of the termination or winding up of the real estate investment trust.

Notification and compliance report by the REIT Manager.

106. The REIT manager shall, in addition to any other requirement for notification under these Regulations, notify the trustee and the Authority, within seven days of-

- (a) appointment or changes to the compliance officer of the REIT manager;
- (b) appointment, removal or retirement of-
 - (i) the chief executive officer of the REIT manager; or
 - (ii) a director of the REIT manager; and
- (c) its becoming aware of any failure, act or omission of the trustee, REIT manager including any person appointed by the REIT manager, any property manager, valuer, project manager certifier which constitutes or may constitute a breach of the provisions of the Act, these Regulations or the scheme documents and the steps taken by the REIT manager or any other party to rectify

the breach as soon as possible.

Notification and compliance report by the auditor.

107. An auditor shall, in addition to any other requirement for notification under the Act or these Regulations, notify the trustee and the Authority within seven days of becoming aware of any failure, act or omission of the trustee, REIT manager, including any person appointed by the REIT manager, any property manager, valuer, project manager certifier which constitutes or may constitute a breach of any provision of the Act, these Regulations or the scheme documents and the steps taken by the auditor or which the auditor has recommended be taken to rectify the breach as soon as possible.

Availability of reports.

108. The Authority shall make available, for public inspection as soon as possible after filing, all the reports, notifications and continuing disclosure documents submitted to the Authority which relate to a real estate investment trust or scheme.

PART XX - ACQUISITION AND DISPOSAL OF ASSETS

Acquisition from promoter and connected parties.

109. A trustee may, subject to compliance with the Act and these Regulations and any listing requirements, if authorized by the scheme documents, acquire or dispose real estate and related assets of the real estate investment trust from or to-

- (a) the promoter of the scheme; or
- (b) other connected persons or connected parties.

Additional acquisitions.

110.(1) Upon the initial issue or offer of REIT securities to persons other than the promoter or persons connected with the promoter, the REIT manager shall, where there is an intention to acquire or dispose any real estate assets and prior to entering into any binding contract or any agreement that can only be terminated on the payment of consideration or of a penalty, obtain and submit to the trustee-

- (a) a report from a structural engineer on the condition of the real estate assets, which report shall be made available to each valuer prior to the conduct of any valuation;
- (b) a valuation report; and
- (c) if the total consideration for the proposed acquisition from or disposal to a person who is not the promoter or connected person represents more than fifteen percent of the latest published net asset value, the approval by way of an ordinary resolution, passed in a general meeting, of the holders of REIT securities; or
- (d) if the total consideration for proposed acquisition from

or disposal transaction to the promoter or a connected person represents more than five percent of the latest published net asset value of the trust, the approval by way of an ordinary resolution, passed in a general meeting of the holders of the REIT securities.

(2) Where, as part of the initial offer of REIT securities, it is proposed to acquire or dispose of any real estate assets, then prior to entering into any binding contract or any agreement that can only be terminated on the payment of consideration or of a penalty, the REIT manager shall comply with the requirements of paragraphs 1(a) and 1(b) above but shall not be required to comply with paragraphs 1(c) or 1(d).

*PART XXI - APPOINTMENT OF A VALUER AND
VALUATION OF ASSETS*

Appointment of a
valuer.

111. (1) The trustee shall, in consultation with the REIT manager-

- (a) prior to making an application to the Authority for authorization of a scheme, appoint a valuer to value the real estate assets which have been vested in the trust or acquired or are proposed to be acquired by trustee;
- (b) ensure that, where necessary, an additional, alternative or substitute valuer is appointed on a timely basis in the event of-
 - (i) the retirement, removal or the valuer otherwise ceasing to act;
 - (ii) the valuer not being qualified to act; or
 - (iii) an additional valuation report being required; and
- (c) where the real estate investment trust has assets which are not real estate assets and which are not in the form of cash, bank deposits or listed securities, appoint a suitably qualified specialist independent professional valuer to undertake the valuation of those assets.

(2) The valuer shall be appointed for a term of not more than three years and, except with the prior approval of the Authority, shall not be reappointed as valuer of the scheme at the conclusion of such term or until the lapse of three years from the date of expiry of any prior term.

(3) The trustee shall, in consultation with the REIT Manager and where -

Cap. 532.

- (a) for any reason, or in respect of any acquisition or disposal or a specific transaction, the valuer ceases to be independent; or
- (b) the trustee is of the opinion that, given the nature of the asset the valuer does not have the required skills,

appoint another valuer for the specific purpose of conducting the required valuation.

(4) A person qualifies to be appointed as a valuer of real estate assets if that person -

- (a) is registered and licensed as a valuer under the Valuers Act;
- (b) is independent and does not have a conflict of interest;
- (c) provides real estate and other property valuation services on a regular basis;
- (d) carries on business of valuation of real estate in Kenya;
- (e) has been a member of the Institution of Surveyors, in good standing, for a period of at least of five years; and
- (f) has in place and maintains professional liability insurance to cover its obligations.

(5) Where a specialist valuer is appointed in respect of assets other than real estate, only the provisions of paragraph (4)(a) and (f) shall apply to that valuer.

(6) A valuation report prepared by a valuer under these Regulations shall be addressed to the trustee and expressed to be for the benefit of the trustee as trustee of the real estate investment trust and the REIT securities holders as beneficiaries of the real estate investment trust.

(7) A trustee shall not appoint a valuer in respect of more than one scheme that is managed by the same REIT manager.

(8) A valuer shall not be considered to be independent under paragraph (4)(b) if -

- (a) that valuer falls within the definition of a connected person;
- (b) the valuer or its partners, directors, officers or key personnel hold REIT securities in the scheme;
- (c) the valuer has financial, professional or other interests

that could affect the ability of the valuer to render unbiased professional services to the trustee in relation to the scheme or its assets including any assets that it consider acquiring; or

- (d) in the case of a valuation that is conducted in connection with the disposition, acquisition or proposed disposition or acquisition of an asset, the valuer has, within the two years immediately prior to the date of the valuation, undertaken or been retained to provide a valuation for the counterparty or proposed counterparty to the disposal or acquisition.

(9) A valuer shall-

- (a) include in any valuation undertaken by that valuer, a declaration as to its independence and evidence of its up to-date professional liability insurance; and
- (b) on request, submit to the trustee a declaration and evidence of the up to-date of insurance for inclusion in any periodic report that the trustee is required to prepare.

(10) A valuer shall inform the trustee immediately if the valuer becomes aware of any potential conflict or event that would cause the valuer to cease being independent, or cease to satisfy the requirements of this Regulation generally or in respect of a particular or proposed valuation, disposition or acquisition.

(11) Where any valuer appointed under this regulation-

- (a) ceases to be independent or qualified for appointment, the valuer shall retire and the trustee shall, in consultation with the REIT manager, within a period of thirty days, appoint a new valuer; or
- (b) ceases to be independent in respect of a particular or proposed disposition or acquisition or notifies the trustee that it does not satisfy the requirements of these Regulations, the trustee shall, in consultation with the REIT manager, appoint an alternative valuer to act in respect of that particular transaction and any subsequent valuations required in relation to that particular asset.

Obligations of a valuer.

112. A valuer shall -

- (a) not hold REIT securities in an investment scheme for which it has been appointed to act as valuer;
- (b) comply with the provisions of the Act and these Regulations;

- (c) immediately advise the trustee and the REIT manager if a conflict of interest arises or if it ceases to be independent or qualified for appointment generally or in relation to a specific valuation;
- (d) ensure that its opinion and valuation are objective and independent of its business or commercial relationships; and
- (e) immediately inform the trustee and the REIT manager of any circumstance or factors which come to the knowledge of the valuer which may reasonably affect the accuracy of the last valuation report prepared in respect of any asset.

Basis for valuation and conduct of valuation.

113. (1) The trustee shall cause a valuation of the real estate assets of the trust to be conducted and ensure that other assets of the trust are appropriately valued-

- (a) prior to acquisition or disposal of any asset;
- (b) prior to the issue or offer of any REIT securities except where the issue or offer is made to the promoter or to connected persons;
- (c) on an annual basis or shorter period as may be necessary to enable the trustee and or the REIT manager to prepare the reports required to be prepared under the Act or these Regulations or to fulfil its obligations as trustee;
- (d) upon the request of the auditor or REIT securities holders; and
- (e) at any other time, if the trustee, the REIT manager or the auditor is of the opinion that it is desirable in the interests of the REIT securities holders that a valuation be conducted or that there has been a material change that may result in the current valuation being out-dated.

(2) A valuer shall conduct a full valuation of all the real estate assets -

- (a) based on a full physical inspection of all sites and inspection of all buildings, any facilities erected thereon and connected plant and equipment at least once every three years; and
- (b) based, in each other year, on a desk top review unless the valuer is of the opinion that a full physical inspection is necessary or is requested by the trustee to conduct a full physical inspection.

(3) The trustee and the REIT manager shall, where the assets of the scheme involve-

- (a) land or real estate under development or construction; or
- (b) a contract to acquire assets under construction;

ensure that -

- (i) a project manager certifier prepares an assessment report; and
- (ii) they obtain any structural engineer's report that is required to be obtained,

and avail the reports to the valuer prior to the completion of the valuation.

(4) An assessment report made under paragraph (3) by the project manager certifier shall include –

- (a) the estimate of the cost to complete the development or construction;
- (b) the costs incurred to date in the development or construction;
- (c) the progress against the original and any revised schedule, contract or project plan; and
- (d) a comparison of the costs incurred against the original and any amended budgets.

(5) A valuer may take into consideration, the assessment or reports submitted to the valuer under paragraph (3) in its valuation, and shall disclose the details of the assessment or report and include comments on the impact, if any, the assessment or report has on the valuation.

(6) Unless a specialist valuer is appointed, a REIT manager shall value cash, bank deposits, bonds, other assets of a similar type and listed securities on a daily basis and submit to the trustee at the conclusion of each working day details of such valuations so as to enable the trustee to fulfil its obligations under these Regulations.

(7) Where-

- (a) the trustee, at the request of the REIT manager, proposes to issue new REIT securities for subscription; or

- (b) where redemption is required or permitted, the trustee proposes to redeem REIT securities; and
- (c) the assets were valued more than six months prior to the proposed issue or redemption,

then a desk top valuation, not involving a full physical inspection, shall be conducted by the valuer prior to the issue or redemption:

Provided that the REIT manager and the valuer certifies to the trustee that they are not aware of any fact or condition that would have resulted in values of the real estate assets changing materially.

(8) Valuations shall be conducted on the basis and in accordance with the procedures and methodologies set out in the Sixth Schedule as well as the valuation standards published and adopted by the Institution of Surveyors of Kenya and the Valuers Registration Board.

Fees and remuneration of a valuer.

114. (1) Subject to paragraph (3) and to compliance with any law relating to valuation fees, a valuer shall be paid a pre-determined annual fee.

(2) Except where required by any law the fees payable under paragraph (1) shall not be contingent upon the valuation of the assets as determined by the valuer.

(3) Where as a consequence of the operation of these Regulations, an additional or alternative valuer is appointed to undertake a specific valuation, a fixed fee for conducting the required valuation shall, subject to any law, be agreed prior to appointment of the valuer and such fee shall not be contingent upon the valuation of the assets as determined by the valuer.

(4) The trustee and the REIT manager shall not charge a separate or additional fee in respect of the carrying out of a valuation.

Removal of a valuer

115. (1) The trustee shall remove a valuer if-

- (a) the valuer ceases to be qualified under regulation 111 other than where a valuer has a conflict or is otherwise not qualified only in respect of a particular acquisition or disposition and an alternative valuer has been appointed for the purpose of undertaking such valuation;
- (b) the valuer goes into liquidation, becomes bankrupt or a receiver or administrator is appointed over the assets of the valuer;
- (c) the trustee, on its own initiative or following a request from the REIT manager, is of the opinion that it is desirable in the interests of the REIT securities holders;

- (d) the REIT securities holders pass an ordinary resolution for the removal of the valuer; or
- (e) the valuer has contravened any provisions of the scheme documents, the Act or these Regulations.

(2) The REIT securities holders shall not pass a resolution for the removal of the valuer under paragraph (1)(d) unless -

- (a) it has issued to the Authority, a notice of at least seven days of the intention to hold the meeting;
- (b) the valuer has been given the opportunity to be present at the meeting and to be heard either orally or through written submissions; and
- (c) takes into consideration, the recommendations of the trustee and the REIT manager.

Retirement of a valuer.

116. (1) A valuer shall retire -

- (a) if the valuer ceases to be qualified except where a valuer has a conflict of interest or is otherwise not qualified in respect of a particular acquisition or disposition and an alternative valuer has been appointed for the purpose of undertaking such valuation; or
- (b) as provided for in the scheme documents.

(2) The valuer shall, if the valuer retires before the end of a three year term, provide the Authority with the reasons for his retirement.

Power of the Authority to require a valuation.

117. (1) The Authority may, if it considers it necessary, appoint a valuer to carry out a valuation of any assets of a scheme.

(2) A valuation carried out under paragraph (1) shall be final and binding.

(3) The trustee, REIT manager, property manager, property certifier and valuer including any former valuer or other party acting for them or appointed in connection with the scheme, shall provide such documents, information and assistance to the Authority and any valuer appointed by the Authority to enable that valuer undertake its role in a professional manner.

(4) Any fees, expenses or costs incurred by the Authority in appointing a valuer under this regulation shall be paid by the trustee out of the assets of the real estate investment trust.

*PART XXII - CONNECTED PARTY
TRANSACTIONS*

Connected party transactions.

118. (1) For the purposes of this Part, a “connected party transaction” means a transaction entered into or proposed to be entered into between the trustee or the REIT manager on behalf of the real estate investment trust and a connected person.

(2) If the REIT manager manages more than one scheme and a transaction or proposed transaction involves two or more schemes managed by the REIT manager, then such transactions shall be deemed to be connected party transactions for each of the schemes.

(3) A transaction carried out on behalf of the trust by the trustee, the REIT manager or any party appointed by the trustee or the REIT Manager shall be-

- (a) carried out at arm’s length;
- (b) consistent with the stated objectives and strategy of the scheme;
- (c) in the best interests of the REIT securities holders; and
- (d) properly disclosed to the REIT securities holders.

(4) Where the transaction carried out under paragraph (3) involves real estate, the real estate shall be valued by a valuer in accordance with the requirements of the Act and these Regulations;

(5) Where any monies are deposited with or borrowed from any connected party being a party authorized to accept deposits and to make loans, then the interest to be paid on the deposit shall not be less than that currently applying to deposits of a similar amount and on similar terms and the rate of interest charged on borrowings shall be not greater than that applying to a transaction of a similar amount and on similar terms.

(5) All connected party transactions shall be conducted on terms no less favourable than standard commercial terms and shall be subject to the prior approval of the trustee and where required by the Act or these Regulations by the REIT securities holders.

(6) Where goods or services, other than those for which a fee is charged by the trustee under regulation 90_or by the REIT manager under regulation 91, are to be contracted with a connected party then, unless the goods and services are to be provided pursuant to a transparent open bidding process, if the proposed cost of the goods and services when aggregated with all other transactions conducted with connected persons relating to the provision of goods and services in the immediately preceding twelve months exceeds or would exceed

fifteen percent of the amount spent on connected party provided goods and services, then such a contract shall not be entered into or approved by the trustee unless it has first been approved by-

- (a) an ordinary resolution passed by the REIT securities holders at a duly convened meeting, at which
- (b) no person connected with the person with whom it is proposed to enter into the contract shall be entitled to vote.

(7) Details of all connected party transactions and the value of such transactions on an aggregated basis shall be disclosed in the next published semi-annual or annual report of the real estate investment trust.

*PART XXIII - DOCUMENTS TO BE AVAILABLE
FOR INSPECTION BY REIT SECURITIES
HOLDERS*

Documents to be
availed for inspection.

119. The Trustee and the REIT Manager shall make available, at their principal place of business, the following documents for inspection by REIT securities holders, any prospective investor, free charge during the ordinary business hours of the trustee and the REIT manager -

- (a) the trust deed and any supplemental deeds of the real estate investment trust;
- (b) the first prospectus or offering memorandum issued and any supplemental, replacement or subsequent prospectus or offering memorandum, including a conversion prospectus or conversion offering memorandum;
- (c) the latest annual and semi-annual reports;
- (d) every material contract or document referred to in any prospectus or offering memorandum;
- (e) all reports, letters or other documents, valuations and statements by any expert or where any part of such is extracted or referred to in any prospectus or offering memorandum the complete version of such document and the consent given by such experts for inclusion in the prospectus or offering memorandum;
- (f) copies of any valuation reports undertaken in the previous three years together with assessments or reports by any project manager certifier or structural engineer;
- (g) the audited accounts and any semi-annual unaudited accounts for the real estate investment trust for the past three financial years or if established for a period of less than three

years, then for the period since establishment;

- (h) the audited accounts for the trustee and the REIT Manager for the past three financial years or if established less than three financial years, then for the period since establishment;
- (i) copies of minutes of all the meetings of REIT securities holders; and
- (j) the register of REIT securities holders.

PART XXIV - ISSUE OF ADDITIONAL REIT SECURITIES

Issue of additional REIT securities.

120. (1) Except where otherwise authorized by the Act or these Regulations, all new or additional issues of REIT securities shall be offered to existing holders on a *pro rata* basis to their existing holdings and shall only be offered or issued to other persons to the extent that they have previously been offered on no less attractive terms to and not been taken up by existing holders.

(2) Subject to the provisions of the Act and these Regulations relating to acquisitions and valuations, this regulation shall not apply to issues -

- (a) to a connected person or an independent third party in full or part payment for the acquisition of real estate assets:

Provided that the aggregate number of REIT securities issued in the previous twelve months, other than on a *pro rata* basis, does not exceed twenty percent of the number of REIT securities on issue at the commencement of that period;

- (b) which have been approved by an ordinary resolution passed by the REIT securities holders at a duly convened meeting, and at that meeting no person being a connected person with the person to whom it is proposed to issue the REIT securities shall be entitled to vote; or
- (c) which are made pursuant to regulation 27 or 29 to fund a cost overrun.

PART XXV – MEETINGS OF REIT SECURITIES HOLDERS

Meetings of REIT securities holders

121. (1) The scheme documents shall provide for the calling of meetings of the REIT securities holders, voting and procedures for the conduct of meetings.

(2) The provisions contained in the scheme documents shall -

- (a) include the matters set out in the Seventh Schedule;
- (b) be read in addition to the rights set out in the Act and in these Regulations to call meetings; and
- (c) not conflict with the provisions of the Act or these Regulations.

(3) Where the approval of the REIT securities holders is required, then-

- (a) the promoter and any connected person shall not vote at a general meeting on the resolution if the proposed transaction involves the promoter or any connected person;
- (b) details of the proposed transaction together with any connection to the promoter shall be disclosed;
- (c) a full copy of the valuation report shall be provided to all REIT securities holders at the time when the notice of the meeting is issued; and
- (d) the Authority shall receive prior notification of the intended proposal to seek REIT securities holders approval prior to the circulation of any notice.

PART XXVI - ISLAMIC REITS

Islamic REITS

122. (1) Where it is proposed that REIT securities be issued in respect of a real estate investment trust scheme which is to be offered or in any way represented as an Islamic REIT or Islamic securities, then in addition to complying with the provisions of the Act and these Regulations the trustee shall -

- (a) prior to any offer or issue being made, appoint a *Shariah* adviser to assess the compliance status of the REIT scheme and in the event of the resignation, retirement or termination of such adviser, the trustee shall ensure that a substitute *Shariah* adviser is appointed as soon as is practicable;
- (b) in appointing a *Shariah* adviser, comply with the requirements on any law in Kenya and the views of any Kenyan regulatory authority and may take account of the views of any party whose views are influential or accepted as determining or ruling on *Shariah* principles applicable in Kenya; and
- (c) together with the REIT Manager, ensure that the *Shariah* adviser establishes and updates from time to time *Shariah* guidelines for the assistance of the trustee

and the REIT manager and conducts *Shariah* compliant assessments-

- (i) of the terms of the scheme documents and of the REIT securities;
- (ii) on any real estate asset prior to acquisition or disposition;
- (iii) of the tenants and changes in tenancy arrangements to ensure that only permissible activities and businesses are conducted by the tenants or if some non-permissible activities are conducted, then the level of such activities falls below the acceptable maximum and by how much;
- (iv) on the method and terms of any borrowing or financing to be entered into in respect of the trust;
- (v) of any insurance contracts and the parties with whom such contracts or arrangements are entered into; and
- (vi) of the proposed method and terms of investment in any eligible assets.

(2) The *Shariah* adviser shall, in addition to any other periodical report required to be prepared under regulation 101 and matters to be included in semi-annual and annual reports, prepare and submit to the trustee a report confirming compliance with *Shariah* principles.

(3) In the case of an Islamic REIT the trustee shall request a report from the *Shariah* adviser confirming that any acquisition or disposal shall not affect the compliance of the Islamic REIT with *Shariah* principles.

(4) The trustee and REIT manager shall consult the *Shariah* adviser whenever required and put in place a reporting mechanism and procedures to ensure that the continuing disclosure obligations under regulation 42 are complied with as regards the compliance of an Islamic REIT and Islamic REIT securities with *Shariah* principles.

(5) For the purpose of these Regulations a *Shariah* adviser shall be deemed to be an expert who by virtue of his occupation, religious standing, expertise or reputation combined with his understanding of the Kenyan financial sector, capital markets and *Shariah* requirements as regards finance is accepted by the Authority from time to time as being competent to provide an authoritative statement on the compliance of a real estate investment trust scheme

with *Shariah* law.

PART XXVII – TAKE-OVER AND MERGERS OF REITS

Application of the Capital Markets (Take-Overs and Mergers) Regulations.

123. Where a scheme is an unrestricted listed I-REIT then the provisions of the Capital Markets (Take-Overs and Mergers) Regulations, 2002 shall apply to a scheme as if the I-REIT was a listed public company with such modifications as may be necessary.

PART XXVIII – LICENSING OF TRUSTEE AND REIT MANAGER

Application for a licence by a trustee and a REIT Manager

124. An application for a licence to operate as a REIT manager or as a trustee of a real estate investment trust scheme shall be submitted to the Authority in duplicate in Form 3 set out in the Eighth Schedule.

Specific requirements for licensing as a trustee of REIT manager

125.(1) An applicant under regulation 124 shall submit the application together with -

- (a) its certificate of incorporation;
- (b) its memorandum and articles of association;
- (c) a statement of the unaudited accounts for the period of the accounting year ending not earlier than six months prior to the date of application and the applicant's audited accounts for the preceding two years, or, in the case of entities which, at the time of application, have been in existence for less than six months from the date of their incorporation, submit an opening balance sheet and an auditor's certification of the share capital of the company;
- (d) a business plan containing the particulars on -
 - (i) the management structure;
 - (ii) the directors, including one or more executive directors, their qualifications, addresses and details of other directorships;
 - (iii) the shareholding structure, disclosing whether any of the shareholders will have an executive role to oversee the day-to-day operations of the business;
 - (iv) the evidence of a minimum paid-up share capital of not less than ten million shillings in the case of the REIT managers and not less than one hundred million shillings in the case of the trustees;

- (v) the qualifications, experience and expertise of the chief executive;
- (vi) the proposed management and qualifications of key personnel demonstrating capacity to undertake the designated role or access to such skills and experience;
- (vii) the financial projections for three years for the trustee and the REIT manager in respect of their businesses;
- (viii) the particulars of the proposed operating and information technology system to be utilized in connection with the scheme;
- (ix) one bank reference, where the applicant is a bank the reference shall be given by another bank independent of the applicant;
- (x) two business references;
- (xi) the proposed premises suitably located and equipped to provide satisfactory service to REIT securities holders or evidence acceptable to the Authority that such premises will be available;
- (xii) the staff capable of providing professional services or evidence acceptable to the Authority that such staff will be available;
- (xiii) the independent auditor of or proposed for the trustee or the REIT manager; and

(e) the fees prescribed in the Eighth Schedule.

(2) Every person who is, or is to be, a director, chief executive officer or manager of a REIT manager or a trustee, shall be fit and proper to hold the particular position which he holds or is to hold.

(3) Where the applicant is a bank or an insurance company, it shall obtain and submit to the Authority a no objection letter from its primary regulator.

Financial requirements for a trustee and REIT manager.

126.(1) The level of shareholders' funds (paid up share capital and reserves) for REIT managers or a trustee, shall not fall below ten million shillings in the case of the REIT Managers and not less than one hundred million shillings in the case of the trustees at any time during the licence period.

(2) The paid up share capital of the REIT manager or a trustee shall at all times be unimpaired and shall not be advanced to the directors or associates of the REIT manager or the trustee as the case maybe.

(3) A Trustee and a REIT manager shall maintain a liquid capital of five million shillings or eight percent of its total liabilities, whichever is higher.

(4) Unsecured advances, loans and other amounts to directors or associates of a REIT manager or trustee shall be made out of shareholders' funds which are in excess of the prescribed minimum shareholders' funds provided that such loans shall not exceed ten percent of the shareholders' funds at any time.

Cap. 488.

(5) The ratio of the REIT manager's or trustee's borrowings to the paid-up capital shall not exceed twenty percent, at any time.

Cap. 487.

(6) Where a trustee is a bank licensed under the Banking Act or an insurance company licensed under the Insurance Act, it shall be considered to be in compliance with these financial requirements as long as it holds a valid licence issued by either the Central Bank of Kenya or the Insurance Regulatory Authority.

Records to be maintained by trustee and REIT manager

127. (1) Every REIT manager or trustee shall, where applicable, maintain and preserve for a period of seven years or such later period as is specified from the date of sale or disposal, in the case of the sale or disposal of the asset and from the date of the termination or maturity of the transaction in the case of a borrowing or financing arrangement or risk management transaction, the following records -

- (a) journals, including cash receipts and disbursement records and any other records or original entry, forming the basis of entries in any ledger in respect of the REIT manager or the trustee's business and in respect of the REIT maintain indefinitely;
- (b) general and auxiliary ledgers, or other comparable records reflecting assets, liabilities, reserves, capital, income and expense accounts in respect of the REIT manager or the business of the trustee and in respect of the REIT maintain indefinitely;
- (c) a record or memorandum of each request, direction or instruction given by the REIT manager or the trustee for the purchase or sale of real estate assets or REIT securities, as the case may be, or any other asset or investment, or any request, direction or instruction received by REIT manager from the trustee or REIT securities holders concerning the purchase, sale, receipt or delivery of a particular real estate

asset or REIT securities of other asset or investment, as the case maybe, and of any modification or cancellation or any such order or instruction, and the record shall –

- (i) specify the date and terms and conditions of the request, direction, instruction, modification or cancellation;
 - (ii) identify the person connected with the REIT manager who recommended the transaction to the trustee, as the case maybe;
 - (iii) all valuation reports requested or obtained which shall be maintained indefinitely;
- (d) all cheque books, bank statements, cancelled cheques and cash reconciliations of the REIT manager or the trustee;
- (e) all bills, statements or copies thereof, paid or unpaid relating to the business of the REIT manager or trustee;
- (f) a record or memorandum of all requests, directions or instructions by the REIT manager or the trustee and of any meeting of REIT securities holders to enter into any borrowing or financing arrangement or risk management arrangement together with details of any comparative quotes obtained in respect of such transactions which shall be maintained indefinitely;
- (g) originals of all written communication received from REIT securities holders or trustee, as the case may be, copies of resolutions put to or passed by meetings or REIT securities holders and copies of all written communication sent by the REIT manager or trustee relating to-
- (i) any recommendations made or proposed to be made; including to a meeting of the REIT securities holders;
 - (ii) any receipts, disbursement or delivery of funds, real estate assets, REIT securities or other assets; and
 - (iii) the placing or execution of any request, direction or instruction to purchase or sell any real estate asset, REIT securities or other asset or investment;

Provided, that if the REIT manager sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory

services to more than ten persons, the REIT manager shall not be required to keep a record of the names and addresses of the persons to whom it was sent except that if such notice, circular or advertisement is distributed to persons named on any list, the REIT manager shall retain a copy of such notice, circular or advertisement, a record or memorandum describing the list and the source thereof;

- (h) all written agreements or copies thereof entered into by the REIT manager with any trustee or REIT securities holder or otherwise relating to the business of the REIT manager or the operation of the REIT or the conduct of the REIT managers activities in respect of the REIT which should be retained indefinitely;
- (i) a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication recommending the purchase or sale of REIT securities, which the REIT manager circulates or distributes, directly or indirectly, to ten or more persons, and if such notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication does not state the reasons for such recommendation, a memorandum from the REIT manager indicating the reasons thereof;
- (j) all advertisements by the REIT manager and all records, worksheets and calculations necessary to form the basis for performance data in an advertisement under paragraph (i);
- (k) a record of every transaction in REIT securities in which the REIT manager or trustee or any employee of the REIT manager or trustee acquire any direct or indirect beneficial ownership; specifying the title and amount of the security involved, the date, whether the transaction was a purchase or sale or other acquisition or disposition, the price at which it was effected, and the name of the stockbroker with or through whom the transaction was effected;
- (l) a copy of each written statement, the amendment or revision thereof, given or sent to any REIT securities holder or prospective REIT securities holder of such REIT manager and a record of the dates that the same was given or offered to be given; and
- (m) any other records as may be determined by the Authority.

(2) The records specified under paragraph (1) shall be subject to inspection from time to time and without notice, by the trustee, where are required to be maintained by the REIT manager, or the Authority.

(3) A REIT manager shall preserve and maintain the records of the REIT securities holders' of REIT securities or funds and if required produce for inspection by the Authority such books, records and ledgers, or other accepted accounting and additional records as may be required by the Authority for a period of seven years.

Conduct of REIT manager and trustee

128. (1) A trustee and REIT manager shall comply with the Act and Regulations and failure to do so may constitute a ground for the revocation by the Authority of a licence to operate as a trustee or REIT manager.

(2) A trustee or REIT manager shall not-

- (a) guarantee a REIT securities holder that a specific result will be achieved arising from the advice which will be rendered; or
- (b) publish, circulate or distribute any advertisement which does not comply with the Act.

(3) Any information provided by a REIT manager or the trustee to REIT securities holders through reports, newsletters and advertisements shall be factual and accurate.

(4) A REIT manager or trustee shall not lend money to a REIT securities holder unless the REIT manager or the trustee is a financial institution engaged in the business of loaning funds or the loan is made by the trustee on behalf of the D-REIT pursuant to regulation 12.

Reporting by REIT manager and trustee.

129. (1) All financial statements prepared by a REIT manager and a trustee as a licensee shall be prepared in accordance with IFRS and every trustee or REIT manager shall, in addition to complying with the reporting obligations in respect of the real estate investment trust, submit to the Authority-

- (a) half yearly reports of its own financial performance within thirty days of the end of each half-year; and
- (b) audited annual accounts for its operations within three months following the closure of the financial year, in the form as may be prescribed from time to time.

(2) Despite the provisions of paragraph (1), the Authority may require such other form of reporting as it may from time to time specify.

Application of the Capital Markets (Licensing Requirements)(General) Regulations, 2002

130. Regulation 51 to 55B of the Capital Markets (Licensing Requirements)(General) Regulations, 2002, shall apply to a trustee or REIT manager licenced under these Regulations as if the trustee or REIT manager was licenced under the Capital Markets (Licensing

Requirements)(General) Regulations, 2002, and with such modifications as may be necessary.

PART XXIX – APPLICATION OF THE CAPITAL MARKETS (CORPORATE GOVERNANCE) (MARKET INTERMEDIARIES) REGULATIONS 2011

Application to trustees and REIT managers

131. The Capital Markets (Corporate Governance) (Market Intermediaries) Regulations shall apply to trustees of REITs and REIT managers as market intermediaries with such modifications as shall be necessary.

PART XXX - APPLICATION OF THE CAPITAL MARKETS (SECURITIES) (PUBLIC OFFERS, LISTING AND DISCLOSURE REGULATIONS, 2002

Application of The Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002

132.(1) The provisions of the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations, 2002 (“the Public Offers Regulations”) shall apply to offers, listing and disclosure in relation to REIT securities with such modifications as shall be necessary.

(2) Real estate investment trust schemes shall constitute the real estate investment trust segment of the official list and shall comply with the eligibility and disclosure requirements prescribed by the Authority for that market segment.

(3) Where there is a conflict between the provisions of these Regulations and the Public Offers Regulations, these Regulations shall prevail.

PART XXXI – FEES

Fees applicable to applications, approvals other filings and to transactions

133. The fees set out in the Ninth Schedule shall, where not provided for in the Act, apply to a real estate investment trust.

FIRST SCHEDULE (Regulation 5)

CONTENTS OF TRUST DEED

In addition to the requirements of the Act and these Regulations, a trust deed shall include a list of definitions or glossary of terms, a table of contents and contain the following information -

1. ESTABLISHMENT OF THE TRUST AND VESTING OF PROPERTY

- (a) The trust deed shall be expressly stated to be binding on the promoter, any trustee, any REIT manager and all REIT securities holders and investors in REIT securities and any party to the real estate investment trust and any scheme to which it relates that is authorized by the Authority as if each such party had been a party to the trust deed.
- (b) The trust deed shall be subject to the provisions of the Act and the Regulations and specifically state that, to the extent that provisions of the trust deed conflict with those of the Act or the Regulations, then the provisions of the Act or Regulations shall prevail.
- (c) The trust deed shall provide for -
 - (a) the creation of the trust;
 - (b) the name of the trust;
 - (c) the duration of the trust (subject to the law on perpetuities);
 - (d) a declaration of trust and or initial vesting of assets in the trustee by the promoter as settlor of the trust to constitute the fund to be held on trust for the beneficiaries,
 - (e) the terms of the trust;
 - (f) a statement that the REIT has been authorized by the Authority;
 - (g) particulars of the type of trust; and
 - (h) the trust deed and any other scheme documents to be governed by the laws of Kenya.

2. APPOINTMENT OF TRUSTEE AND DUTY OF TRUSTEE

The trust deed shall include -

- (a) an agreement by the trustee upon establishment of the trust to act as trustee of the real estate investment trust subject to the terms of the deed, the Act and these Regulations;
- (b) a clear and unqualified statement of the trustee's fiduciary role and obligations to the REIT securities holders of REIT securities as beneficiaries of the trust and its discretions; and
- (c) an acknowledgement by the trustee that it is bound by the terms of the trust deed, the Act and the Regulations.

3. REQUIREMENT FOR SEGREGATION OF ASSETS AND ACKNOWLEDGEMENT THAT THE TRUSTEE HAS NO CLAIM ON THE ASSETS

The trust deed shall include an acknowledgement by the trustee of its fiduciary obligations -

- (a) to hold the assets of the trust in a manner which ensure that these are segregated from the assets of the trustee and from the assets of any other trusts administered by the trustee;
- (b) to clearly identify those assets which are held on trust for the REIT securities holders as beneficiaries of the real estate investment trust;
- (c) not to charge or pledge or deal with any asset of the trust except in a manner authorized by the trust deed, the Act and the Regulations; and
- (d) to ensure that the accounts of the trustee do not include any assets of the trust.

4. THE REIT SECURITIES HOLDERS OF REIT SECURITIES AS BENEFICIARIES

The trust deed shall provide for the trust to be constituted as a REIT securities trust and provide for -

- (a) the beneficial interest in the trust to be divided into units called REIT securities;
- (b) the classes of REIT securities and the rights attaching to each class;
- (c) subject to any rights, obligations or restrictions attaching to any particular REIT securities that each of the REIT securities confer a right to an equal undivided interest or share in the assets of the trust as a whole, subject to liabilities, and does not confer an interest in a particular asset;
- (d) the limiting of the issue or offer of REIT securities to persons other than the trustee or parties connected with the promoter
 - (i) until the trust has been authorized as a real estate investment trust scheme, and
 - (ii) pursuant to the issue of a prospectus or offering memorandum.
- (e) the trustee to issue REIT securities and to register REIT securities in the name of the beneficiary;
- (f) provide that the liabilities of REIT securities holders, as investors in REIT securities, are limited to the assets of the trust, and include a clear and prominent statement explaining that the trust deed and the scheme documents:
 - (i) are binding on the REIT securities holders as if each REIT securities holder had been a party to the trust deed; and
 - (ii) that the trust deed, the scheme documents, the Act and Regulations provide the trustee and REIT manager with a range of discretions and powers and authorize and require the trustee and the REIT manager to comply with the trust deed.

5. INITIAL ROLE OF PROMOTER AND OBLIGATIONS

The trust deed shall set out the role of the promoter and the ongoing relationship with the trust including -

- (a) the basis of payment or remuneration for the assets vested, acquired, transferred to or to be vested, transferred to or acquired by the trustee on behalf of the trust;
- (b) the promoter's ongoing role and any relationship with the REIT manager including any arrangement to offer future real estate acquisitions to the trustee and any involvement in development or construction or management of the real estate assets of the trust;
- (c) any leasing arrangement entered into or proposed to be entered into by the promoter or any connected person and the trustee;
- (d) any obligation by the promoter to defer its entitlements or to provide income support;
- (e) any lending or financing arrangement entered into or proposed to be entered into by the promoter or any connected person and the trustee; and
- (f) the lock up period attaching to any REIT securities issued or offered to the promoter including in exchange for or in part exchange for assets vested in, transferred to or acquired by the trustee or to be vested in, transferred to or acquired by the trustee.

6. PROMOTER'S COVENANTS

The trust deed shall contain, as a minimum, the following covenants setting out the obligation by the promoter for the benefit of each the REIT securities holders as beneficiaries (including past and future REIT securities holders), the REIT manager and any subsequent trustee or REIT manager to -

- (a) comply with the Act, Regulations and terms of the trust deed and scheme documents to which it is a party;
- (b) pay the fees, expenses and costs of the trustee associated with the establishment of the trust, the authorization of the scheme; the preparation, approval and issue of any offering memorandum or prospectus including the obtaining of valuations and other expert reports and associated with the listing of the REIT securities;
- (c) if the scheme is to be listed, to use its best endeavours and to provide any required information or support to achieve the listing of the REIT securities in the scheme, and
- (d) to assist and provide any required information or support required by the trustee, REIT manager or any valuer or auditor or other party appointed by the trustee or REIT manager for the purposes of undertaking their roles in connection with the trust or the assets of the trust or in fulfilling their obligations under trust deed, the Act or Regulations.

7. APPOINTMENT OF REIT MANAGER AND DUTIES OF REIT MANAGER

- (a) The trust deed shall provide for the appointment by the trustee of a qualified REIT manager appointed under the terms of the Act and these Regulations.

- (b) The REIT manager is appointed as a contractor and is not the agent of the trustee.
- (c) The REIT manager shall be appointed in a fiduciary capacity to fulfil the role of REIT manager as set out in the Act, the Regulations and the trust deed and to fulfil the objectives of the trust.
- (d) The trust deed shall set out in detail the role of and functions to be undertaken by the REIT Manager so that the roles of the REIT manager and the trustee are clearly delineated.
- (e) The REIT manager shall provide instructions to the trustee to implement the objectives of the trust and may appoint a property manager as its agent and other parties as agents of the REIT manager to assist it in undertaking its functions as REIT manager.
- (f) The REIT manager shall be liable for any acts or omissions of its agents.
- (g) No provision shall be included in the trust deed which exempts or purports to exempt a REIT manager from liability for any failure by it to exercise due care and diligence in the discharge of their functions in respect of the real estate investment scheme.

8. APPOINTMENT, RETIREMENT, REMOVAL AND REPLACEMENT OF REIT MANAGER

The trust deed shall contain provisions for the appointment, removal and retirement of the REIT manager which reflect the requirements of the Act and the Regulations.

9. OBJECTIVES OF THE REAL ESTATE INVESTMENT TRUST AND ELIGIBLE ASSETS

- (a) The trust deed shall set out -
 - (a) the purpose and objectives of the trust;
 - (b) the discretions of the trustee and the REIT manager in giving effect to the stated objectives, and
 - (c) authorized investments and eligible real estate assets in which the trustee can invest.
- (b) The trust deed shall identify the initial real estate assets that have been or are to be vested in acquired by or transferred to the trustee on behalf of the trust and set out clearly the implications of the failure to acquire assets within the period of time required by the scheme documents, the Act or Regulations.
- (c) It shall also set out the requirements of the Act and Regulations as regarding eligible assets, requirements for minimum investment in real estate, etc., and for the generation of income and provide appropriate powers to address these requirements and the implications of non-compliance.

10. TRUSTEE'S POWERS

- (a) The trust deed shall set out in detail the powers of the trustee and clearly delineate between the obligations of the trustee and the REIT manager.
- (b) The powers of the trustee may be limited to it acting in accordance with the directions of the REIT manager provided that the directions are -
 - (i) in accordance with the terms of the trust deed and any prospectus or offering memorandum;
 - (ii) the provisions of the Act or these Regulations and the law relating to trusts and trustees, and
 - (iii) in the trustee's opinion are in the best interests of the REIT securities holders.
- (c) Any provision included in the trust deed which exempts or purports to exempt a trustee from liability for any failure to exercise due care and diligence in the discharge of their functions in respect of the real estate investment scheme is void.
- (d) The trust deed may provide for the trustee to delegate to an agent or officer or employee provided that the trustee remains personally liable for the fraud, negligence or default of its delegates and for the costs, fees and expenses of any delegate.
- (e) The trustee shall also have power to appoint valuers, lawyers, accountants and other professionals for the purpose of permitting the trustee to carry out its duties and perform its obligations and to charge the fees, cost and expenses of such as an expense to the trust.

11. TRUSTEE'S BORROWING CAPACITY AND ABILITY TO CHARGE TRUST ASSETS AS SECURITY AND RIGHT TO INDEMNITY

- (a) The trust deed shall set out the limits of the trustee's capacity to borrow and charge the trust assets as security which comply with the provisions of the Act and Regulations.
- (b) The trustee shall be entitled to limit its exposure or liability for any borrowing to the assets of the trust and subject to the provisions of the Act, Regulations and the laws relating to trusts and trustees shall be entitled to be indemnified out of the assets of the trust for all losses, expenses, fees and charges incurred in the performance of its duties and obligations.

12. TRUSTEE'S COVENANTS

The trust deed in addition to providing for the usual fiduciary obligations of a trustee shall contain, as a minimum, the following covenants by the trustee for the benefit of each of the REIT securities holders as beneficiaries, including past and future REIT securities holders, the REIT manager and any subsequent trustee or REIT manager to –

- (a) act continuously as the trustee until the trust terminates, the trustee retires or is removed in accordance with the trust deed;
- (b) act at all times in the best interests of the REIT securities holders as beneficiaries, to act honestly, prudently and in good faith in the performance of its duties and the exercise of discretions and to exercise all due care, skill, diligence and vigilance in carrying out its functions and duties as a trustee and in safeguarding the rights and interests of the REIT securities holders;
- (c) take custody and control of all assets of the trust and to hold such assets on trust for the REIT securities holders;
- (d) open a separate trust account or accounts in the name of the trustee and designating the real estate investment trust to which it relates, appoint authorized signatories and ensure that the trust accounts are only used for the purposes of the trust and as provided for by the scheme documents;
- (e) take all necessary steps to ensure that the assets of the trust are adequately protected and insured in the name of the trustee;
- (f) comply with the Act, Regulations and terms of the trust deed and scheme documents to which it is a party;
- (g) ensure that the scheme has appointed at all times a suitably authorized REIT manager and in any interim period act itself in the capacity as the REIT manager;
- (h) actively monitor the administration of the assets of the fund and the performance by the REIT manager to ensure compliance with the Act, Regulations and the scheme documents to which it is a party and that the interests of REIT securities holders are being upheld;
- (i) monitor the activities of the REIT manager to guard against the REIT manager using its position to gain directly, or indirectly an advantage for itself or another person or to cause detriment to the interests of REIT securities holders;
- (j) make when due all authorized payments, including distributions, required by the scheme documents or requested to be made by the REIT manager in accordance with the terms of the scheme documents;
- (k) cause to be kept proper books of account and records for all investments and assets of the trust, liabilities or charges incurred (including taxes and imposts), and of transactions entered into by the trustee or the REIT manager and distributions made;
- (l) ensure that reports and accounts are prepared as required by the Act and Regulations and circulated to REIT securities holders and filed with the Authority;
- (m) appoint auditors and ensure that audits are undertaken as required by the Act and the Regulations and as necessary to protect the interests of REIT securities holders;
- (n) appoint valuers as required and to take all reasonable steps to ensure that the assets of the trust are correctly valued and are valued as required by the Act, the Regulations and the trust deed;

- (o) ensure that at all times through proper, adequate and diligent supervision the fund and the scheme are managed and administered by the REIT manager in accordance with the objectives of the trust, the trust deed, the Act and the Regulations;
- (p) notify the Authority as required by the trust deed, the Act and the Regulations and where appropriate to protect the interests of REIT securities holders to call a meeting of REIT securities holders and take such other steps as are necessary to protect the interests of REIT securities holders if it becomes aware of a breach (including by the trustee) of the trust deed, the Act or the Regulations of any other matter that could properly be regarded by a trustee as not being in the interests of REIT securities holders;
- (q) convene or cause the trustee to convene meetings of REIT securities holders whenever required by the Act, the Regulations or the trust deed;
- (r) ensure that the offer, issue, sale or purchase or repurchase, creation, redemption or cancellation of REIT securities is in accordance with the terms of the trust deed, the Act and the Regulations;
- (s) not enter into any contract, agreement or arrangement which is in conflict with or purports to override any term or obligation of the trust deed, the Act or Regulations, and
- (t) to the extent not specified above, where the Act or Regulations impose a specific requirement, obligation or duty on the trustee then this will be reflected in the trust deed by way of a specific covenant by the trustee.

13. APPOINTMENT, RETIREMENT, REMOVAL AND REPLACEMENT OF TRUSTEE

The trust deed shall include provisions which accord with the Act and Regulations for -

- (a) the appointment of the initial trustee and for successor trustees;
- (b) the retirement of the trustee;
- (c) vesting of the assets of the trust in a successor trustee and the transfer of all books, accounts, documents, reports and records including access to all required software and electronic records;
- (d) preserving the rights, obligations and liabilities and any causes of action by or against an outgoing trustee which arose or accrued before the retirement or removal of the outgoing trustee, and
- (e) requiring any outgoing or prior trustee to assist and join in any subsequent action by a trustee or the Authority on behalf of REIT securities holders against any party.

14. REIT MANAGER'S COVENANTS

The trust deed shall, in addition to providing for the usual obligations of a REIT manager to implement and give effect to a real estate investment trust of the designated type, contain, as a minimum, the following covenants by the REIT manager for the benefit of each the REIT securities holders as beneficiaries, including past and future REIT securities holders, the trustee and any subsequent REIT manager to -

- (a) conduct its business and role as the REIT manager in a proper diligent and efficient manner to implement the objectives of the trust in the exclusive, and best, interest of REIT securities holders and in compliance with the terms of the scheme documents, the Act and the Regulations;
- (b) act with due care, skill and diligence in managing the fund and the trust and to effectively employ the resources and procedures necessary for the proper exercise of its duties and role and to achieve the objectives and performance of the scheme;
- (c) comply with the Act, Regulations and terms of the trust deed and scheme documents to which it is a party;
- (d) acquire, invest in, manage, lease and dispose of assets as authorized in the trust deed and in accordance with the stated objectives of the trust to achieve optimum returns for REITS securities holders;
- (e) conduct any construction and development activities in an efficient manner within terms of the objectives of the trust and the risk profile established for the trust;
- (f) take all necessary steps to ensure that the assets of the trust are adequately protected and insured in the name of the trustee and segregated;
- (g) not to enter into or recommend to or otherwise cause the trustee to enter into contracts on behalf of the trust unless the transactions are authorized by the trust deed, are for the purposes of operating a real estate investment trust, and do not contravene the Act and the Regulations and are in the best interests of the REIT securities holders;
- (h) ensure that all payments or monies collected on behalf of the trustee are paid as soon as possible, and in any event no later than the next business day into the trust's designated bank account in the name of the trustee and that payments are only requested to be made from such bank account in accordance with the trust deed, the Act and Regulations;
- (i) ensure that all payments required to be made by the trust, including distributions, are requested from the trustee and are made when payment is due;
- (j) prepare recommendations as to distributions and draft distribution statements when required by the Act;
- (k) ensure that assets are correctly valued and are valued in time and as required by the trust deed, the Act and the Regulations;
- (l) not exercise any voting rights that the REIT manager may hold in respect of REIT securities in the trust except if authorized by the Act or the Regulations and to avoid conflicts of interest;
- (m) prepare and maintain proper accounting records in respect of the REIT manager and deliver a copy to the trustee and to prepare on behalf of the trust reports and accounts for submission to the trustee;
- (n) facilitate and assist in the audit of the accounts and provide access to all accounts, records, documents and reports, access to employees and whatever assistance is required for the preparation of reports and accounts for the trust and their audit;

- (o) notify the Authority as required by the trust deed, the Act and the Regulations and where appropriate to protect the interests of REIT securities holders to call a meeting of REIT securities holders and take such other steps as are necessary to protect the interests of REIT securities holders if it becomes aware of a breach, including by the trustee, of the trust deed, the Act or the Regulations of any other matter that could properly be regarded by a trustee as not being in the interests of REIT securities holders;
- (p) ensure that the offer, issue, sale or purchase or repurchase, creation, redemption or cancellation of REIT securities is in accordance with the terms of the trust deed, the Act and the Regulations and that in respect of an unlisted trust that the REIT securities of the trust are correctly priced;
- (q) not to make improper use of information or knowledge gained in its capacity as a REIT manager or to use its position as REIT manager to gain an improper advantage for itself or another party or to gain a direct or indirect advantage for itself or another person or to otherwise cause detriment to REIT securities holders;
- (r) convene or cause the trustee to convene meetings of REIT securities holders whenever required by the Act, the Regulations or the trust deed;
- (s) not enter into any contract, agreement or arrangement which is in conflict with or purports to override any term or obligation of the trust deed, the Act or Regulations, and
- (t) to the extent not specified above, where the Act of Regulations impose a specific requirement, obligation or duty on the REIT manager then this will be reflected in the trust deed by way of a specific covenant by the REIT manager.

15. JOINT COVENANTS OF TRUSTEE, PROMOTER AND REIT MANAGER

The trust deed shall, as a minimum, contain the following joint covenants by the trustee and REIT Manager for the benefit of each of the REIT securities holders as beneficiaries (including past and future REIT securities holders), the trustee and the REIT manager and any subsequent trustee or REIT manager to -

- (a) comply with and implement the requirements of the trust deed, the Act and the Regulations and to undertake their roles and act in the best interests of the REIT securities holders to fulfil the objectives of the trust deed;
- (b) if the trust is to be listed then to ensure that at all times each of the trustee and the REIT manager individually and jointly use their best endeavours to list and to maintain the listing of the scheme on the designated exchange; and
- (c) comply with the connected persons obligations of the trust deed, the Act and Regulations to avoid any conflict of interest and ensure that neither the REIT securities holders nor the trust are disadvantaged by any transactions entered into.

16. INCOME AND CAPITAL GAINS ENTITLEMENTS AND DISTRIBUTIONS

The trust deed shall set out full particulars of –

- (a) the distribution policy of the scheme;
- (b) the entitlements of various classes of REIT securities holders to distributions of income, profits, capital gains or capital or from other sources;

- (c) the REIT manager and trustees obligations under the Act and the Regulations in relation to distributions and
 - (i) the discretion to vary distribution from the minimum specified under the Regulations; and
 - (ii) the implications of not making a minimum distribution.

17. INITIAL ISSUE OF REIT SECURITIES

In relation to the type of REIT and whether or not the REIT securities are to be listed the, trust deed shall include provisions that accord with the Act and the Regulations in relation to -

- (a) the issue of REIT securities;
- (b) issue of certificates and registration;
- (c) circumstances in which repurchase or redemption may be required or sought and the REIT securities holder's rights, including any period in which repurchase or redemption cannot be sought or the trustee's or REIT manager's right to defer or suspend repurchase or redemption; and
- (d) for unlisted REIT securities full particulars of pricing policy including, basis of calculation and regularity of re-pricing.

18. NEW ISSUES OF REIT SECURITIES

In relation to the type of REIT and whether or not the REIT securities are to be listed, the trust deed shall include provisions that accord with the Act and the Regulations in relation to the -

- (a) powers and procedures to be adopted to issue new REIT securities;
- (b) entitlement of existing REIT securities holders to participate in any new issue, and
- (c) pricing of any new issue.

19. RIGHT TO REDEMPTION OF UNITS OF REIT SECURITIES

- (a) The trust deed shall clearly set out whether or not the holder of REIT securities has any right to request the trustee through the REIT manager to redeem it's holding of REIT securities in whole or in part.
- (b) Where there is no right to request redemption, this fact shall also be stated in bold type and include a caution that the REIT securities' holders are not entitled to seek redemption.
- (c) Where there is no ability to seek redemption then the trust deed should clearly set out the -
 - (i) terms on which redemption can be sought including, deferral periods, preconditions or trigger events, number, notice periods and redemption dates;
 - (ii) process and procedure for seeking redemption;
 - (iii) manner in which units are to be valued and the redemption price is to be calculated, and

- (iv) the ability of the trustee or the REIT manager to limit, suspend or cancel redemptions.

20. APPOINTMENT OF VALUERS AND VALUATION OF ASSETS

The trust deed shall clearly set out, in accordance with the Act and Regulations -

- (a) the requirements to appoint valuers and the obligations to conduct valuations in accordance with the minimum requirements of the Act and Regulations;
- (b) the trustee and REIT manager's powers and obligations in relation to the appointment of valuers and the conduct of valuations; and
- (c) a requirement for the trustee to have discretion to conduct a valuation in the interest of REIT securities holders, and specifically address the requirements in the case of connected person transactions.

21. TRUSTEE'S COSTS, FEES AND EXPENSES

The trust deed shall clearly set out, in accordance with the Act and Regulations the -

- (a) trustee's entitlement to fees and to receive reimbursement or charge expenses and costs to the trust;
- (b) method of calculation of the trustee's fees and basis of payment;
- (c) entitlement of the trustee to be paid fees, costs and expenses in priority to any other payment;
- (d) trustee's entitlement to an indemnity for fees, costs and expenses; and
- (e) the entitlement of the trustee to refrain from taking any action if there are insufficient funds in the trust to pay the trustee's costs and expenses of taking such action and the REIT securities holders at a meeting of REIT securities holders called by the trustee fail to agree to pay the trustee's costs and expenses.

22. REIT MANAGER'S COSTS, FEES AND EXPENSES

The trust deed shall clearly set out, in accordance with the Act and Regulations the -

- (a) REIT manager's entitlement to fees and to receive reimbursement or charge expenses and costs to the trust;
- (b) costs and expenses that the REIT manager is entitled to recover and those which are included within its fee or which it is not entitled to recover from the trust;
- (c) method of calculation of the REIT manager's fees and basis of payment;
- (d) priority, if any, accorded to the payment of the REIT manager's fees, costs and expenses;
- (e) entitlement or obligation of the REIT manager to defer or suspend receipt of fees; and
- (f) any entitlement to an indemnity for fees, costs and expenses.

23. AMENDMENTS TO SCHEME DOCUMENTS

Set out the processes and procedures to be adopted in order for amendments to be made to scheme documents.

24. CONNECTED PERSON TRANSACTIONS

The trust deed shall set out in detail the powers and obligations of the trustee and the REIT manager, subject to the requirements of the Act and Regulations, to enter into transactions with connected persons and the processes and procedures to be adopted including, the requirement to call a meeting of REIT securities holders, the voting arrangements and the limits imposed on the ability of connected persons which are also REIT securities holders or connected persons to vote at such a meeting.

25. MEETINGS OF REIT SECURITIES HOLDERS

The trust deed shall set out the -

- (a) obligations to convene an annual meeting of REIT securities holders and the rights of the REIT securities holders at such meetings; and
- (b) obligations, processes and procedures for the calling of meetings by the Authority, trustee, REIT manager and REIT securities holders;
- (c) the trust deed shall reflect the requirements of the Act and Regulations and incorporate as a minimum the rights, obligations and entitlements set out in the Regulations.

26. TRANSFERS AND RESTRICTIONS ON TRANSFERS

The trust deed shall include the processes and procedures for transfers which reflect the type of REIT and whether or not the REIT securities are to be listed, the trust deed shall include provisions that accord with the Act and the Regulations in relation to -

- (a) rights to transfer units;
- (b) the trustee's obligation to register a transfer; and
- (c) restrictions on transfer, requirements for evidence of qualification and the trustee's obligation and powers not to register a transfer.

27. POSSIBLE FUTURE CONVERSION FROM D-REIT TO I-REIT OR ISSUE OF PROSPECTUS TO PERMIT ISSUE OR OFFER.

- (a) Where the REIT is a D-REIT the trust deed may include provisions relating to the rights or obligations of the REIT manager to request the trustee to exercise the conversion rights contained in the Act and Regulations.
- (b) Where provision is made for conversion. then the trust deed shall set out the processes and procedures to be adopted and the rights of REIT securities holders.

28. TERMINATION AND WINDING UP OF THE TRUST

The trust deed shall contain detailed provisions in relation to the termination and winding up of the trust which reflect the provisions of the Act and Regulations and the laws relating to trusts and include details of the -

- (a) circumstances in which the trust may be terminated or wound up;
- (b) rights of REIT securities holders to call for termination or winding up;
- (c) requirement for calling of meetings and voting rights;
- (d) distribution of the assets and priority of distribution; and
- (e) payment of expenses and provision of indemnities.

SECOND SCHEDULE (Regulation 16(1))

FORM 1

THE CAPITAL MARKETS ACT
(Cap. 485A)

THE CAPITAL MARKETS (REAL ESTATE INVESTMENT TRUSTS)
(COLLECTIVE INVESTMENT SCHEMES) REGULATIONS, 2012

APPLICATION FORM

AUTHORIZATION AS A REAL ESTATE INVESTMENT TRUST SCHEME

An application for authorization of a REIT scheme shall be submitted jointly by the promoter and the trustee. *(The material submitted shall be in two indexed binders. The pages of all documents submitted shall be numbered and a check list provided which cross references the relevant requirement of the Act, the Regulations and the applicable Schedule addressed).*

Please include the information listed below *(separate sheets may be attached where necessary)*:

1. Name of the REIT.
2. State whether:
 - a. authorization is being sought as a D-REIT or an I-REIT
 - b. the REIT is structured as an open ended or closed ended fund), and
 - c. if the REIT is to be an I-REIT it is to be the subject of a restricted offer (Regulation 10)'
3. Set out in summary form the objectives of the REIT.
4. Set out the name, telephone number, facsimile email address and registered office of the following parties and where a party is yet to be appointed, give details of the party proposed for appointment –
 - a. promoter or issuer, including directors and CEO;
 - b. transaction adviser;
 - c. trustee, including the directors, CEO and the designated representative/compliance officer;
 - d. REIT Manager, including directors, CEO and the designated representative/compliance officer;

- e. Property Manager, if any;
- f. Structural Engineer;
- g. Project manager certifier, if any;
- h. Auditor and any reporting accountant;
- i. The valuer;
- j. *Shariah* advisor, if any;
- k. legal adviser.

5. Please attach the following in support of the application –

- a. Prior consents and approvals where these are required by the Act or the Regulations;
- b. The Trust Deed or draft Trust Deed (*please see the First Schedule for the contents of a Trust Deed*);
- c. a draft prospectus or an offering memorandum;
- d. Management services agreement with the REIT manager or the proposed agreement;
- e. Agreements with property manager or the proposed agreement;
- f. Agreements with property manager certifier or the proposed agreement;
- g. Certified copies of valuations of real estate vested in, acquired, transferred or to be vested in, acquired or transferred to the REIT;
- h. Signed and dated legal opinion on the title of the real estate vested in, transferred or to be vested in, acquired or transferred to the REIT;
- i. Certified copy of the report of the structural engineer;
- j. Audited financial statements of the REIT manager for the financial year immediately preceding the application for authorization;
- k. Audited financial statements report of the trustee for the financial year immediately preceding the application for authorization;
- l. Consents of experts to inclusion;
- m. Certified copies of any other scheme documents and material contracts;
- n. In the case of an Islamic REIT a certificate of compliance with *Shariah* principles by the *Shariah* adviser; and
- o. the prescribed application fee.

DATED AT THIS ----- DAY OF ----- 20....

SIGNED BY:

1. _____

PROMOTER

2. _____

TRUSTEE

The application should be accompanied by the following directors' declaration:

AFFIDAVIT

We as directors of Limited and Limited, being the promoter and trustee respectively of the proposed REIT scheme, do depose and say that we have read and understood the requirements of this application form and hereby certify under oath that the foregoing answers, statements and annexures thereto are true and correct to the best of our knowledge, information and belief.

SWORN at ----- this day of ----- 20----- BY:

1. -----
1st Deponent

2. -----
2nd Deponent

BEFORE ME:

COMMISSIONER FOR OATHS

FORM 2

(Regulation 18(1))

THE CAPITAL MARKETS ACT
(CAP 485A)

AUTHORISATION CERTIFICATE

The CAPITAL MARKETS AUTHORITY hereby certifies that

.....

.....
has received authorization as a Real Estate Investment Trust Scheme under the provisions
of the Capital Markets (Real Estate Investment Trusts) (Collective Investment Schemes)
Regulations, 2012 issued under Section 12 of the Capital Markets Act (Cap 485A of the
Laws of Kenya).

CONDITIONS:

.....
.....
.....

Dated this day of
20.....

.....

SEALED with the common
seal of the Capital Markets
Authority in the presence of:

.....

Chairman Chief Executive

*NB: Please note that the above authorization should not be construed as a
recommendation as to the merits of the above scheme and the Authority shall not be
liable for any action as a result of this authorization.*

CONTENTS OF PROSPECTUS OR OFFERING MEMORANDUM

1. APPLICATION

The provisions of this Schedule apply to all issues and offers of REIT securities which fall under the Act or the Regulations and apply irrespective of whether the issue or offer is made pursuant to a prospectus or an offering memorandum.

The assets to be included in real estate investment trust scheme and the activities of the scheme may vary significantly. Consequently there is a need for flexibility in what is required to be disclosed. It is, however, the obligation of the issuer, the trustee and experts whose reports are contained or summarised in the prospectus or offering memorandum to ensure that there is full, adequate and proper disclosure to potential investors and REIT securities holders and that the structure of the transaction and the terms of all the scheme documents comply with the Act and the Regulations.

2. CONSIDERATION OF TYPE AND FINANCIAL EDUCATION OF POTENTIAL INVESTORS

In preparing the prospectus or offering memorandum consideration shall also be given to the type and level of financial education of the persons to whom the issue or offer is to be made; the level of disclosure required; the language used, and the level of explanation provided.

3. POWER OF AUTHORITY TO GRANT EXEMPTIONS OR VARIATIONS

The Authority may grant exemptions or permit variations from the requirements of this Schedule where it is of the opinion that such exemption or variation is required given the particular nature of the assets or the activities of the real estate investment trust or scheme or to address the conversion of a D-REIT to an I-REIT or to permit a restricted I-REIT to be listed provided that such exemption or variation would not disadvantage REIT securities holders or potential investors in REIT securities.

Authority may require inclusion of additional information or material or the omission of information or material or other changes be made to a prospectus or offering memorandum and may impose conditions on its approval.

4. REFERENCE TO ASSETS OF A REIT

A reference in this Schedule to assets being assets of the REIT means assets vested, acquired, transferred or held or to be held by the trustee under the terms of the trust deed for investors in REIT securities as REIT securities holders and as beneficiaries of the real estate investment trust.

5. MINIMUM REQUIREMENTS

The Schedule sets out minimum requirements for matters to be included in a prospectus or offering memorandum. The requirements do not reduce or in any way impact on the overriding obligations to provide disclosure as provided for in the Act, the Regulations and the law of Kenya.

PART 1 GENERAL REQUIREMENTS, ISSUER AND PARTIES RESPONSIBLE

1. The Schedule include at the beginning of the document a –
 - a. Glossary of defined terms and abbreviations
 - b. Table of Contents
 - c. Whether the REIT is a D-REIT or an I-REIT or issued in connection with a D-REIT converting to an I-REIT or a restricted I-REIT becoming unrestricted, etc;
 - d. A clear statement of the persons to whom the offer is made or to whom the issue of REIT securities can be made and of the qualifications, if any, to be met in order for a person to invest.
 - e. The objectives of the REIT.
 - f. Summary of the number, price and class of REIT securities being issued or offered and the rights attaching thereto.
 - g. Summary of the transaction, REIT securities and key risks with a cross reference to the pages of the prospectus or offering memorandum which includes a warning in bold type-face that this is only a Summary and investors should read and understand the whole prospectus or offering memorandum.
 - h. Statement as to whether or not the REIT securities are to be listed or not and whether or not a REIT securities holder can seek redemption, the conditions attached to seeking redemption and include a prominent warning to investors in bold type-face in relation to the potential liquidity of the investment in REIT securities.
 - i. The ongoing role, if any, of the promoter or other issuer and investment in the REIT.
 - j. Structure diagram which summarises the parties, relationship, roles of parties and cash flows.

- k. A statement as to any financial structuring mechanisms utilised or incorporated in the trust structure and the potential impact on performance and on future distributions.
 - l. Summarise the obligations of the trustee and REIT manager under the Act and the Regulations including eligible investments, source of income and minimum distributions and the impact on the taxation of the REIT or on distributions if these requirements are not complied with.
2. All pages shall be consecutively numbered and a type-face of not less than Times New Roman 10 points used.
3. The names, addresses and telephone numbers and email contacts of the promoter or other issuer or offeror, of each person associated with the issue or offer, the prospectus or offering memorandum or any part thereof, and their functions and shall include –
- a. The Promoter or other issuer or offeror responsible for the issue and the offer and where a company or corporation the directors of such a person.
 - b. The transaction adviser.
 - c. The trustee and the trustee's directors, compliance officer and other key personnel.
 - d. The REIT manager and the REIT manager's directors, compliance officer and other key personnel.
 - e. Any property manager appointed or to be appointed by the REIT manager.
 - f. The structural engineer.
 - g. Any project manager certifier.
 - h. The valuer appointed by the trustee.
 - i. The auditor appointed by the trustee.
 - j. The reporting accountant, if any, not the auditor.
 - k. The REIT securities registrar.
 - l. The legal adviser appointed by the trustee.
 - m. Other experts and advisers whose names appear in the prospectus or offering memorandum or who have been appointed.
 - n. For an Islamic REIT details of the *Shariah* advisor.

4. In all cases the prospectus or offering memorandum shall contain on the cover and in a prominent position in the document the words:

“In making your investment decision to invest in REIT Securities you should be aware that there is very limited, if any, recourse to the assets of the issuer or the trustee.

Your investment in REIT securities and as a REIT securities holder in the REIT is as an equity investor. Distributions and return of capital is not guaranteed and are entirely dependent on the performance of the assets of the real estate investment trust.

Your rights in most cases will be limited solely to the assets of the real estate investment trust.

If the trustee is authorized to borrow on behalf of the trust then your rights to distributions and to the assets will rank after the payments to lenders.

The trustee, REIT manager and other parties are also entitled to receive payment of fees and expenses ahead of payments to REIT securities holders who invest in REIT securities.”

5. The date of publication of the prospectus or offering memorandum and the period for which the offer is open and how applications can be made. A statement that no REIT securities can be issued based on this prospectus or offering memorandum more than six months after the stated date of the publication of the prospectus or offering memorandum.
6. A statement that the scheme has been authorized by the Authority but that authorization by the Authority is not a recommendation or a statement by the Authority in relation to the suitability of the REIT for investment or as to the risks AND that the Authority has no liability.
7. A statement that the prospectus or offering memorandum has been approved by the Authority and the limitation on the liability of the Authority but that approval by the Authority is not a recommendation or a statement by the Authority in relation to the suitability of the REIT for investment or as to the risks AND that the Authority has no liability
8. Include a statement in the following words:

“If you are in any doubt about the contents of this document or the nature or the transaction or investment or the risks attached to the investment then you should consult a person licensed under The Capital Markets Act who specialises in advising on investments in or acquisitions of securities, including REIT securities in schemes.”

9. For an Islamic scheme the following statement shall also be included:

“The [] real estate investment trust scheme has been certified as being *Shariah* compliant by the *Shariah* Adviser appointed to the scheme.”

10. A statement as to the full accountability for liability for statements and misrepresentations included in the prospectus or offering memorandum and omissions by the promoter, issuer and the liability of other parties and experts for statements made by them and inclusions, misrepresentations and omissions.
11. Include a statement, signed by each of, the directors of the issuer or offeror, the transaction adviser and the legal adviser appointed by the trustee to act on behalf of REIT securities holders that –
 - a. the prospectus, offering memorandum and the scheme documents comply with the Act and the Regulations, and
 - b. in the case of the issuer and the directors of the issuer that they, collectively and individually, and having made all reasonable enquiries confirm to the best of their knowledge and belief, that there are no false or misleading statements or omissions of other facts which would make any statement in the prospectus or offering memorandum false or misleading.

PART 2

THE STRUCTURE OF THE TRANSACTION, THE TRUST, THE FUND, SCHEME & NATURE OF THE REIT SECURITIES BEING ISSUED OR OFFERED & OBJECTIVES

1. An explanation of the nature of the investment being offered as REIT securities in the form of units in a trust established as a real estate investment trust and an authorized real estate investment trust scheme authorized by the Authority, including –
 - a. An explanation of the nature of a trust and the respective roles of the trustee and the REIT manager.
 - b. Detail of the REIT securities being issued or offered, their class and the rights attached thereto and restrictions on the persons to whom an issue or an offer can be made.
 - c. Details of any restrictions on the transferability of REIT securities.
 - d. The term of the trust.
 - e. Whether the trust is to be open or closed and the implications.
 - f. Listing and redemption rights and entitlements.
 - g. The classification as either a D-REIT or an I-REIT or as a D-REIT converting to an I-REIT or a restricted I-REIT converting to an unrestricted I-REIT.

- h. The objectives of the trust and of the scheme.
 - i. Whether the REIT is an Islamic REIT.
 - j. A brief description of the investment strategy of the REIT manager to meet the objectives of the fund and the scheme.
 - k. The number and price of the REIT securities being issued or offered.
 - l. The use to be made of the proceeds of the issue or offer.
 - m. How an application for REIT securities can be made and the closing date for applications.
 - n. The costs, fees and charges associated with the establishment of the REIT and the scheme and by whom these are to be paid.
2. Include details of the requirements for continuing as an authorized real estate investment trust scheme and the requirements including those relating to investment in eligible assets, income and distribution of the Act and Regulations and the taxation implications for the scheme and on distributions for failure to comply.

PART 3

ELIGIBLE ASSETS OF THE TRUST AND PROPOSED ACTIVITIES OF THE SCHEME

1. Include a summary of the eligible or permitted assets of the specific REIT including restrictions and the focus and objectives of the fund and the scheme. These must comply with the Act and the Regulations but may impose additional restrictions on the sectors or type of assets that the trustee is authorized to invest in and the activities of the scheme, including the trustee's power to borrow and the level of development and construction activities that an I-REIT may engage in.
2. Detail the assets vested in the Trust, when and from whom acquired or transferred and the price paid and if not in cash the consideration paid, including by way of issue of REIT securities or otherwise.
3. Include details of the real estate assets that it is proposed to invest in and/or the initial development and construction activities that it is initially proposed to engage in. These shall be supported by –
 - a. Valuations and structural engineer's reports to be summarised in the prospectus or offering memorandum;
 - b. Full copies of the valuations and reports shall be included in the list of documents available for inspection; and

- c. Summarized details of the legal opinion in relation to transfer or acquisition of the real estate and the title shall be included in the prospectus or offering memorandum with full copies available for inspection.
4. Detail the strategy of the REIT manager in implementing the objectives.
5. Where the REIT is a D-REIT detail -
 - a. The development and construction activities to be undertaken and the budget and estimates for undertaking such activities;
 - b. Consents and approvals to be obtained and the time frame for such;
 - c. The time frame over which the total development and construction activities are intended to be conducted;
 - d. The REIT manager's strategy as to sale or lease of the completed properties or a combination of both and the time frame until it is anticipated that cash flows will be generated;
 - e. Include details of any foreign exchange exposure, for example, as regards the acquisition of any plant or equipment or building materials; and
 - f. Include details of any structural engineer's report or of a quantity surveyor or of any project manager.
6. Details of permitted non-real estate assets and restrictions on investment and REIT manager's strategy as regards such investment.
7. Risk management strategies to be employed by the REIT manager.
8. If the REIT is an I-REIT but proposes undertaking development and construction activities within the limit provided for in the Act and Regulations detail the development and construction activities to be undertaken, consents and approvals required, and the budget and estimates for undertaking such activities and the time frame over which such activities shall be conducted and the time frame until it is anticipated that cash flows will be generated and the potential impact of delays or cost increases on the performance of the scheme and on distributions and the exposure, if any, to foreign exchange risk.
9. Include details of the level of borrowings and the assumed terms and interest rates.
10. Include details of the limitations contained in the Act and Regulations depending on the classification of the REIT, on borrowing levels and on the REIT manager's strategy on borrowings and level of gearing of the assets of the REIT.
11. Include a statement that material changes can only be made to the objectives and eligible assets of the REIT if authorized by the Act and the Regulations and approved by the REIT securities holders.

12. An Islamic REIT shall also include details of the *Shariah* compliance process adopted to ensure compliance and the limits imposed.

PART 4

THE REIT MANAGER AND ANY PROPERTY MANAGER

1. Provide details of the REIT manager including, of directors and key personnel and their experience in the management of property, and resources and experience in the conduct of development and construction activities.
2. Outline the role of the REIT manager and its obligations as a fiduciary to REIT securities holders.
3. Detail how the REIT manager proposes to fulfil its role and obligations and appointments of agents, including a property manager or structural engineer or project manager, or delegations it has made or it proposes to make.
4. Policy on the making of recommendations to the trustee of distributions and the implications of a lower than the prescribed minimum distribution being made.
5. Include details of any property manager and its experience and of the fees to be paid to any property manager by the REIT manager.
6. Include as an Appendix the last audited accounts of the REIT manager and any property manager.
7. Include details of the term of the appointment, rights to reappointment, rights to resign and the rights to remove the REIT manager and its rights to fees and to payment or reimbursement of expenses.
8. Include a statement as to the REIT manager's prior or any ongoing association with the promoter, issuer or any other party associated with the REIT or the real estate assets transferred or to be acquired and its ongoing connections or roles.

PART 5

THE TRUSTEE

1. Details of the trustee including directors, name of its chief executive officer and of the compliance officer.
2. Include details of the trustee's experience, resources and its other key personnel.
3. Include a description of the trustee's role, duties, responsibilities and obligations as a fiduciary and its powers.
4. Disclose the trustee's powers to recommend a lower distribution and the implications of a lower than the prescribed minimum distribution being made.

5. Disclose any potentially conflicting or competing roles and detail any current, pending or threatened litigation against the trustee which might materially affect the resources or financial capacity of the trustee to fulfil its role or responsibilities as the trustee of the REIT.
6. Include as an Appendix the last audited accounts of the trustee.

PART 6

KEY TERMS OF THE TRUST DEED AND SCHEME DOCUMENTS

1. A summary of the key aspects of the trust deed shall be included. This summary shall as a minimum include details of (where the required details have been disclosed elsewhere in the document then a cross reference may be included in this Part) –
 - (a) The trustee's, REIT manager's, valuers', auditor's and structural engineer's and any project manager's roles, responsibilities and obligations.
 - (b) The liabilities of the trustee and REIT manager and the invalidity of any purported limitation on fiduciary liability.
 - (c) The powers of the trustee and REIT manager.
 - (d) The requirement to appoint and provisions relating to the removal, retirement or replacement of –
 - (i) the trustee;
 - (ii) the REIT manager;
 - (iii) an auditor;
 - (iv) valuers;
 - (v) structural engineers; and
 - (vi) project manager.
 - (e) The obligation to conduct valuations and frequency of valuations.
 - (f) The obligation to call meetings and the rights of REIT securities holders to call meetings and receive reports and financial statements.
 - (g) Rights of REIT securities holders, including limitations of those rights and decisions or actions requiring the approval of REIT securities holders.
 - (h) Requirements for listing, if any.

- (i) Rights and limits on the ability to call for or to obtain redemption of REIT securities.
 - (j) Circumstances in which connected persons are not permitted to exercise voting rights in respect of REIT securities held by them.
 - (k) Maximum fees and charges permitted by the trust deed and payable by investors either directly or indirectly or out of the assets of the trust.
 - (l) Permitted expenses, costs and charges payable out of or reimbursable from the assets of the fund.
 - (m) The termination or winding up of the trust and scheme.
 - (n) Where the REIT is an Islamic REIT the requirements relating to maintenance of status and the role of the *Shariah* Adviser and provision of statements of compliance and the obligations of the trustee, REIT manager and any property manager to ensure that the REIT remains *Shariah* compliant including, as regards investment in real estate and non-real estate assets, renting of premises only for permissible uses and within acceptable limits, financing through *Shariah* compliant Islamic instruments and through effecting insurance of the assets with Takaful schemes.
2. Shall include a summary of the material terms of other scheme documents including any documents appointing or governing the relationship with the REIT manager or any other party or adviser or underwriter.

PART 7

THE ASSETS, VALUATIONS & BASIS OF VALUATION & HISTORIC INFORMATION ON THE INCOME & EXPENSES ASSOCIATED WITH THE ASSETS

1. Included shall be full details of the real estate and other assets vested or to be vested in acquired or transferred to the REIT within the first year and the proposed dates of vesting, transfer or acquisition.
2. The implications, under Regulation 66 or 77, of the failure to invest within one hundred and eighty days should clearly be set out.
3. The details required will vary significantly depending on the nature of the assets and the real estate sector. For example, the considerations for investment in office buildings will be largely determined by the market for office accommodation and the state of the economy, this contrasts with real estate investments in, for example, residential housing, hospitals, hotels, retail shopping malls, factories or storage or ports or other sectors. In each case the key drivers will vary and the information disclosed will need to be adapted. By way of an example only the prospectus or offering memorandum shall include –
 - (a) Title particulars of real estate.

- (b) Details of any encumbrances, easements or restrictions on use.
- (c) Confirmation that the REIT owns or will own on completion of the vesting, transfer or acquisition the whole of each real estate asset or if not detail extent and confirm compliance with the requirements of the Act and Regulations.
- (d) Description of any buildings or fixtures erected on any land together including age, with details of the structural engineer's report on the real estate, including details of monies which the structural engineer estimates need to be spent on the real estate assets in order to bring them to a reasonable state of repair together with estimates of ongoing maintenance requirements for and costs.
- (e) Photographs may be included but these shall be not more than six months old.
- (f) Details of the price for which the property was acquired or the value of the consideration and the terms of any vesting, transfer or acquisition or proposed, including the issue of REIT securities and the basis on which the price paid or consideration provided was determined.
- (g) A full copy of the structural engineer's report shall be included in the documents available for inspection.
- (h) Details of current usage and permitted usage for each property and lettable area or other relevant metric.
- (i) If the real estate vested in or to be acquired by or transferred to the REIT is currently leased then, details of –
 - (i) existing and contracted tenancies including, area tenanted, number of leases, term for each lease, an expiry profile for leases as a whole, gross rental income and concentrations, details of rent reviews and occupancy rates for prior three years (where applicable);
 - (ii) historic vacancy factors;
 - (iii) the levels of rent relative to the current market;
 - (iv) revenues received for the past three years where available;
 - (v) rents in arrears or written off;
 - (vi) the operating costs including, maintenance;

(vii) provision of depreciation, amortization of assets or for replacement of capital; and

(viii) profit before and after tax.

(j) Where the transaction involves a sale and lease back or there is a lease to the promoter or other connected party then details of the basis of ascertaining the rental and an estimate from the principal valuer of the market rent.

(k) If the real estate vested in or to be acquired by or transferred to the REIT is not currently leased is proposed to be leased then details of the estimated gross rental and terms and an estimate from the principal valuer of the market rent and an estimate of the time required and fees, costs and expenses estimated to be incurred in order to lease the real estate.

(l) In the case of real estate being acquired or transferred –

(i) the stage of acquisition or transfer;

(ii) from whom it is being acquired or transferred;

(iii) conditions and terms of the acquisition or transfer including price or other consideration;

(iv) scheduled date for completion;

(v) details of the valuations.

4. Where a REIT is a D-REIT or is an I-REIT that proposes to undertake development and construction activities then the prospectus or offering memorandum shall include –

(a) Details of the real estate on which the development or construction is to be undertaken including as applicable the details required in 1, above;

(b) Details of the price for which the property was acquired or the value of the consideration and the terms of any vesting, transfer or acquisition or proposed, including the issue of REIT securities and the basis on which the price paid or consideration provided was determined;

(c) Details of the project including intended usage of the real estate on completion and the property manager's strategy for marketing the real estate or acquiring tenants;

(d) A detailed description of the development or construction to be undertaken and of any report or estimates by the project manager;

- (e) Details of approvals and consents required and the time frame for obtaining;
 - (f) A budget, work plan and time-frame to undertake the development and construction together with details of all consents and approval required and costings;
 - (g) An assessment from the structural engineer and the project manager as appropriate as to whether or not it considers the budget and costings for the development and/or construction are reasonable;
 - (h) An assessment by the REIT manager of the market to sell or lease up the real estate when completed together with any expert assessments of the market.
5. A table reflecting the objectives and classification of the REIT that sets out the key assumptions underlying any projections included in the prospectus or information memorandum and a sensitivity analysis of the impact on income, earnings, profits and distributions to implement the assumptions including –
- (a) Failure to let up to assumed level within the scheduled time;
 - (b) Failure to achieve assumed rents;
 - (c) Cost over runs for development and construction;
 - (d) Time overruns for development and construction;
 - (e) Changes in interest rates;
 - (f) The impact of any financial structuring;
 - (g) Any other material factors.
6. Details of the valuations obtained in respect of the real estate and other assets vested in or proposed to be acquired by or transferred to the REIT including basis of valuation.
7. The date of each valuation and the basis of valuation.
8. Policy in relation to revaluations and requirements of the Act and Regulations for revaluations.
9. Where the trust deed authorizes the trustee of the REIT to invest in non-real estate assets detail the investments in which the trustee is authorized to invest, the investment strategy and trading policy that the REIT manager proposes to adopt and the timing of valuations and basis of valuation.
10. Where the REIT is an Islamic REIT the prospectus or offering memorandum shall include details of the assessment by the *Shariah* Adviser of the real estate vested in the REIT or to be acquired or transferred to the REIT together with a list of non-

permissible activities and tenancies and detail the REIT manager's strategy to comply with *Shariah* requirements including as regards financing of the REIT through *Shariah* compliant Islamic instruments, the investment of monies not invested in real-estate and the insurance of the assets through Takaful schemes.

PART 8

APPOINTMENT & ROLE OF STRUCTURAL ENGINEER & PROJECT MANAGER CERTIFIER

1. Details of the structural engineer including details of experience, resources and key personnel.
2. Include a description of the structural engineer's role, duties, responsibilities and obligations.
3. Disclose any potentially conflicting interests or competing roles.
4. Details of the appointment of any project manager certifier including, details of experience, resources and key personnel.
5. Include a description of the project manager certifier's role, duties, responsibilities and obligations.
6. Disclose any potentially conflicting interests or competing roles.

PART 11

THE ROLE OF THE PROMOTER OR ISSUER & ONGOING RELATIONSHIP & HOLDINGS OF REIT SECURITIES, INCLUDING LOCK-UP PERIODS

1. Provide details of the promoter or issuer.
2. Include details of any property vested or to be transferred or acquired by the REIT and details of the price paid in cash or REIT securities or other consideration or of value attributed.
3. Include a summary of the requirements under the Act or Regulations for the promoter to maintain an investment in REIT securities in the REIT.
4. Include details of the percentage and value of REIT securities held or to be issued to the promoter and obligations as regards retention and lock up periods.
5. Provide details of the ongoing relationship of the promoter or of persons connected with the promoter with the REIT and proposed roles, including any option or right of first refusal to acquire real estate assets.
6. Details of the promoter's capacity, if any, to fund overruns and to receive additional REIT securities as a consequence. Unless the promoter has undertaken to fund any

cost overruns then it should be clearly stated in bold type that the promoter may but has no obligation to fund cost overruns.

PART 12

CONNECTED PARTY TRANSACTIONS

1. Include details of any existing relationships and potential conflict of interest situations together with the steps taken to address such conflicts or potential conflicts and any proposed connected party transactions including roles to be undertaken by connected persons, e.g. as REIT manager.
2. Detail the processes to be adopted to address potential conflicts of interest and in particular conflicts with connected persons.
3. Detail the rights of the REIT securities holders to vote on proposed connected person transactions.

PART 13

KEY DATA & MARKET

1. Key information shall be included on the real estate market in which the REIT proposes to invest.
2. The data that is relevant will vary significantly depending on the sector of proposed investment and classification of the REIT and the activities in which it proposes to involve. Data might include but not be limited to, brief information on the following and references to -
 - (a) Relevant details on supply and demand in the market for real estate in specified locations.
 - (b) Price trends.
 - (c) Rental property supply and demand in specified locations.
 - (d) Rent trends.
 - (e) Impact of the economy on demand for real estate, real estate prices and rents.
 - (f) Key drivers of the income from the sector being invested in or on capital gains or profits from sale.
 - (g) Government policies and their impact.
3. Where the REIT is an Islamic REIT the information shall take account of any limits or special requirements resulting from the need to maintain *Shariah* compliance.

PART 14

DETAILS OF ANY FINANCIAL STRUCTURING INCORPORATED OR TO BE INCORPORATED IN THE SCHEME & POTENTIAL IMPACT ON PERFORMANCE OF SCHEME AND FUTURE DISTRIBUTIONS

Provide as required by the Act and Regulations details of any financial structuring as required by Regulation 36.

PART 15

RISKS

1. The prospectus or offering memorandum shall contain information on the risk factors relating to investment in REIT securities. The risks disclosed shall include the risks –
 - (a) generally of investment in REIT securities.
 - (b) associated with the particular REIT given its structure, classification and objectives and strategy; and
 - (c) specifically associated with the investment portfolio or assets of this REIT and its objectives and proposed activities.
2. Risks, where possible, shall be listed based on potential severity and impact.
3. Where appropriate and possible a sensitivity table or other method for quantifying the risk and its potential impact shall be included.
4. For major risks any mitigating factors or risk management mechanisms employed or proposed by the REIT manager shall be disclosed.
5. Disclaimers included shall not be so wide as to cause the disclosure of the risks to be of little or no benefit to investors in REIT securities.

PART 16

TRUSTEE'S POWER TO BORROW ON BEHALF OF THE TRUST & CHARGE OR PLEDGE ASSETS AS SECURITY

Provide details of –

- (a) the trustee's powers under the trust deed to borrow or raise finance for the purposes of the trust and to provide security for such borrowing by charging or pledging the assets of the REIT.
- (b) the limits contained in the Act or Regulations on the trustee's powers.

- (c) circumstances, if any, in which REIT securities holder may be required to vote to approve a borrowing by the trustee.
- (d) the implications of the trustee exceeding the limits in the Act or Regulations or the limits set out in the trust deed.

PART 17
EXPERTS OPINIONS AND LEGAL OPINIONS

1. The prospectus or offering memorandum shall include a summary of any opinions obtained from experts or upon which the promoter or issuer has placed reliance for statements made in the prospectus or offering memorandum and the reports shall be included in the list of documents available for inspection.
2. Details of the legal opinion obtained by the trustee in relation to the title of any real estate asset vested in or to be acquired by or transferred to the REIT, compliance with the Act and Regulations and in respect of any other matters required by the trust deed, the scheme documents, the Act or Regulations.
3. Where a prospectus or offering memorandum contains a summary of or excerpt from an expert's report, the complete report of which is included as an additional document available for inspection then there shall also be included a statement from that expert stating whether or not the report was prepared for inclusion in the prospectus or offering memorandum and whether or not the summary or excerpt accurately reflects their opinion and is relevant in the context in which it is used.
4. All experts' reports shall be signed by the expert and dated not more than ninety days prior to the date of publication of the prospectus or offering memorandum. Reports may be updated by the expert confirming that the opinion is unchanged and is still relevant.
5. Experts' opinions that include disclaimers that are so wide that the report is of little or no value to potential investors in REIT securities may be misleading and shall not be included.

PART 18
FEES, COSTS AND EXPENSES

1. Include details of all fees, costs and expenses payable in respect of the issue or offer of the REIT securities including underwriting fees and amounts reimbursable to any party, the manner of calculation together with details of who is responsible for the payment of such.
2. Provide details of all fees, costs and expenses payable by the trustee out of the assets of the trust and the manner of their calculation.
3. Include a statement of the estimated MER of the REIT.

4. Provide details of the limits imposed by the Act or Regulations on the charging of fees or the reimbursement of expenses.

PART 19

DISTRIBUTION POLICY AND FACTORS DETERMINING DISTRIBUTION

1. Provide details of the distribution policy set out in the trust deed.
2. Include a statement of the requirements under the Act or Regulations to make distributions and of the impact of the failure to make minimum distributions.
3. Detail the powers and obligations of the REIT manager and the trustee with respect to distributions and any requirements for a vote of REIT securities holders.

PART 20

TAXATION, DISCRETION AS REGARDS DISTRIBUTIONS & IMPLICATIONS FOR TAXATION TREATMENT OF THE REIT AND DISTRIBUTIONS

1. Provide details of the taxation treatment of the income, trading profit, capital gains and profit of the REIT and of the taxation of distributions including withholding tax obligations.
2. Provide details of any expert opinion obtained and addressed to the trustee for the benefit of the investors in REIT securities to support the conclusions set out in 1, above. The full opinion shall be included in list of additional documents available for inspection.
3. Provide details of the circumstances in which such taxation treatment could vary and in particular of the implications of failure to comply with specific provisions of the Act or the Regulations.

PART 21

TRANSFERABILITY OF REIT SECURITIES, LISTING AND REDEMPTION

Given the nature of the assets in which REITs invest the ability of the REIT manager to provide for redemptions is in most circumstances extremely limited and redemption may not be available or only available after the happening of specified trigger events.

1. Include details of any restriction on the transferability of the REIT securities.
2. Include details of the intention to list the REIT securities on a securities exchange and the persons who can trade on such an exchange.
3. Where there is no right to request redemption then this fact should also be stated in bold type and include a caution that the REIT securities' holders are not entitled to seek redemption.

4. Where redemption is provided for then include an explanation of how the REIT manager and the trustee are to fund redemptions and their powers to limit or freeze redemptions.
5. Where there is an ability to seek redemption then the trust deed should clearly set out the –
 - (a) terms on which redemption can be sought including, deferral periods, preconditions or trigger events, number, notice periods and redemption dates;
 - (b) process and procedure for seeking redemption;
 - (c) manner in which units are to be valued and the redemption price is to be calculated; and
 - (d) the ability of the trustee or the REIT manager to limit, suspend or cancel redemptions.
6. Where REIT securities are not to be listed then a prominent warning in bold type-face shall be included warning that the investment has limited, if any, liquidity and drawing attention to the rights to redemption, if any, or the lack thereof.

PART 22

ACCOUNTS AND PRO FORMA ACCOUNTS AND FINANCIAL STATEMENTS

1. All pro forma accounts and the pro forma financial statements included shall be identified as being pro forma only and to be clearly labeled in bold type-face as having been included for illustrative purposes only and being based on a number of assumptions which may or may not eventuate.
2. A statement shall be included that the pro forma accounts and balance sheet have been prepared in accordance with IFRS.
3. Where forecasts are included based on assumptions then in addition to the assumptions being clearly identified and highlighted a sensitivity table or tables shall be included to indicate the implications of changes in the key assumptions or variables.
4. Any accounts or financial statements of the trustee or REIT manager should be clearly labeled as such and a statement included in bold type that the investor in REIT securities only has recourse to the assets of the real estate investment trust and not to the assets of the trustee or the REIT manager.
 - A. *For newly formed I-REIT with income producing properties*
 1. Where a newly formed REIT has property vested in it or real estate assets have or are to be acquired or transferred to the REIT which assets have had an income stream

then the prospectus or offering memorandum shall include by way of illustration only pro forma financial statements prepared on the assumption that the REIT had been in existence for the three years immediately preceding the date of the prospectus or offering memorandum or if the real estate assets had not been income producing for three years then for such lesser period.

2. The pro forma financial statements shall –
 - a. be clearly identified as pro forma accounts prepared for illustrative purposes only;
 - b. be prepared based on IFRS and show the income and all outgoings and expenses of the real estate assets including, maintenance, capital works and depreciation or capital allowances or permissible allocations to reserves or sinking funds for the replacement of capital assets and include estimates for fees and expenses that would have been payable for, for example, trustee's fees, REIT manager's fees, valuation costs and audit costs if the real estate assets had been assets of the REIT during that period. Allowance shall also be made for the any costs of the establishment of the REIT and for acquisition costs if these are to be borne by the REIT;
 - c. clearly identify variations to take account of REIT specific fees, charges, expenses and other adjustments.
 3. Provision shall be made in the pro forma accounts for the payment of the minimum distribution provided for in the Act or Regulations.
 4. Where the I-REIT proposes to undertake any development or construction activities within the first year after the date of the prospectus or offering memorandum then the impact of such activities on returns shall be illustrated through adjustments made to the last year of the pro forma accounts. These adjustments and the underlying assumptions on which they are based shall be clearly identified.
 5. The objective of the pro forma accounts is to illustrate the returns that would have been received if the real estate had been assets of the REIT for that period and an analysis of the performance of the assets shall be included.
- B. *For a newly formed I-REIT with real estate assets a substantial proportion of which have not previously been income producing*
1. Pro forma accounts, for illustrative purposes only, based on forecasts for the next full year of operation shall be included.
 2. These shall be based on the reasonable expectations of the promoter and REIT manager and there shall be clear identification and differentiation of:
 - a. Known information based, for example, on leases entered into, and existing contracts and finance charges;
 - b. Assumed income and costs charges, expenditure and provisions for e.g. depreciation etc. any proposed development and construction costs and expenses including allowances for over runs, and

- c. The underlying assumptions on which income or expenses are based shall be clearly stated.
- 3. Provision shall be made in the pro forma accounts for the payment of the minimum distribution provided for in the Act or Regulations.
- C. For a newly formed D-REIT with real estate assets in a development and construction phase a substantial proportion of which have not previously been income producing
 - 1. Include pro forma accounts, for illustrative purposes only, based on forecasts for the next full year of operation.
 - 2. These shall be based on the contracted work, known liabilities and commitments, budgets and work plans for the period and the reasonable expectations of the promoter and REIT manager and there shall be clear identification and differentiation of –
 - (a) known information based, for example, on leases entered into, and existing contracts and finance charges;
 - (b) assumed development and construction costs and expenses including allowances for over runs, any income and costs charges, expenditure and provisions for e.g. depreciation etc.; and
 - (c) the underlying assumptions on which costs income or expenses are based shall be clearly stated.
- D. *For a D-REIT converting to an I-REIT or a restricted I-REIT which proposes to become unrestricted*
 - 1. Include, for illustrative purposes only, a pro forma accounts based on the three years prior audited financial statements prepared by the trustee in respect of the REIT, adjusted only to take account of the additional costs, if any, that would have been incurred if the REIT had been an I-REIT or an unrestricted I-REIT for the period.
 - 2. Provision shall be made in the pro forma accounts for the payment of the minimum distribution, if any, provided for in the Act or Regulations.
- E. *Pro forma Financial Statements for all classifications of REITs*
 - 1. Include, for illustrative purposes only, a pro forma balance sheet as at the projected date of the closing of the issue or offer and adjusted for, as appropriate –
 - (a) vesting of assets and proposed contracted acquisitions;
 - (b) proceeds from the issue of REIT securities and proposed use of funds;
 - (c) borrowings contracted or proposed to be entered into on closing;

- (d) contracted development and construction activities;
 - (e) other contractual obligations;
 - (f) requirements for minimum distributions, if any, provided for in the Act or Regulations; and
 - (g) costs of acquisitions and the issue.
2. All adjustments and underlying assumptions shall be clearly identified and highlighted.
 3. The pro forma balance sheet shall be accompanied by a reporting accountant's or auditor's letter confirming that it has been prepared as a pro forma balance sheet in accordance with IFRS and the accounting policies recommended by the REIT manager and adopted by the trustee on behalf of the REIT.

PART 23
MEETINGS, REPORTS AND ACCOUNTS & REIT SECURITIES HOLDER'S
RIGHTS

1. The prospectus or offering memorandum shall include in summary form details of –
 - (a) requirements for meetings and the rights or REIT securities holders to require the calling of meetings;
 - (b) provisions as to notice required for meetings and procedures and voting and the voting level required to pass ordinary and special resolutions;
 - (c) list those matters which require a special resolution;
 - (d) list those matters which are required to be put to a vote of REIT securities holders;
 - (e) REIT securities holder's right to receive reports and financial statements;
 - (f) include a brief statement of the key rights of REIT securities holders.
2. Where any matters required to be disclosed in this Part have been included in another Part then they may be addressed in this part by the inclusion of a cross-reference.

PART 24
ADDITIONAL INFORMATION

1. The prospectus or offering memorandum shall disclose any additional information relevant to a potential investor in REIT securities where the failure to include could constitute an omission or lead to information contained being misleading.

2. In particular there shall be full disclosure of all material contracts (including contracts not reduced to writing).

PART 25

CONSENTS

1. The prospectus or offering memorandum shall include a statement of consent from all relevant parties and from all parties named in the document consent in to their being named in the document in the form and context in which it appears together with the statement that they have not subsequently withdrawn their consent.
2. Signed copies of consents, dated not more than thirty days prior to the date of publication of the prospectus or offering memorandum shall be included in the list of documents available for inspection.

PART 26

DOCUMENTS AND ADDITIONAL DOCUMENTS AVAILABLE FOR INSPECTION

1. The prospectus or offering memorandum shall contain a statement that for a period of not less than three years from the date of the approval of the prospectus or offering memorandum by the Authority copies of the documents listed in the prospectus or offering memorandum shall be available for inspection at the registered office of the trustee or such other address as the Authority may approve and subsequently shall be made available by the trustee for inspection for a period of eight years from the date of approval of the prospectus on the giving of fourteen days' notice in writing to the trustee.
2. Documents shall include –
 - (a) the trust deed and any supplemental deeds;
 - (b) each contract disclosed in the prospectus or offering memorandum (including agreements with the REIT manager or any loan or funding agreements), and in the case of a contract not reduced to writing, a memorandum setting out the parties, date and full particulars;
 - (c) all valuation reports obtained in respect of the real estate assets;
 - (d) structural engineer reports;
 - (e) any reports by any project manager certifier;
 - (f) legal opinions;
 - (g) expert reports;
 - (h) where applicable the audited annual and semi-annual or interim reports and financial statements for the trust for whichever is the later of the three years

prior to the date of approval of the prospectus or offering memorandum or from the date of formation of the trust;

- (i) audited financial statements for the trustee and REIT manager for whichever is the later of the three years prior to the date of approval of the prospectus or offering memorandum or from the date of formation of the entity;
- (j) all reports, letters, opinions or other documents and statements by any expert, any part of which is extracted in or summarized in or referred to in the prospectus or offering memorandum and where an extract or summary is included the corresponding full report shall be made available for inspection;
- (k) signed and dated consents given by any experts and copies of any withdrawals of consents;
- (l) underwriting agreements;
- (m) any letters with any parties whether enforceable or not; and
- (n) copies of any court orders or other documents relating to court actions commenced against the trustee or the REIT manager in the previous three years relating respectively, to the conduct of their duties as a trustee or REIT manager.

PART 27

ADDITIONAL MATERIAL TO BE INCLUDED WHERE A D-REIT IS CONVERTING TO AN I-REIT

Where a prospectus or offering memorandum is being issued as part of the process of conversion of a D-REIT to an I-REIT then the prospectus or offering memorandum shall include –

- (a) details of amendments or amendments proposed to be made to the trust deed;
- (b) all information that would have been required to be included in the prospectus or offering memorandum for an I-REIT including current experts' reports;
- (c) details of the audited annual and semi-annual or interim reports and financial statements for the trust for whichever is the later of, the three years prior to the date of the prospectus or offering memorandum, or from the date of approval of the D-REIT;

- (d) valuation reports for the later of the three years prior to the date of the prospectus or offering memorandum or from the date of approval of the D-REIT;
- (e) compliance reports for the later of the three years prior to the date of the prospectus or offering memorandum or from the date of approval of the D-REIT;
- (f) details of amendments proposed to the trust deed;
- (g) details of all distributions made since the establishment of the D-REIT, the percentage distributed and the source of the distribution;
- (h) details of the taxation treatment of the D-REIT and of distributions made;
- (i) details of the periodic trustee compliance reports for the previous three years;
- (j) details of any legal action or proceeding commenced against or by the trustee or the REIT manager in the previous three years or which is current or has not been settled;
- (k) details of any action taken by the Authority or any other government body or authority in respect of the scheme, the trustee or the REIT manager or any auditor, valuer or structural engineer of the REIT.

PART 28

ADDITIONAL INFORMATION TO BE INCLUDED WHERE A RESTRICTED I-REIT IS CONVERTING INTO AN UNRESTRICTED I-REIT TO BE LISTED AND NOT SUBJECT TO RESTRICTIONS

Where a prospectus or offering memorandum is being issued as part of the process of conversion of a restricted I-REIT to a listed unrestricted I-REIT not subject to restrictions then the prospectus shall include, all information that would have been required to be included in the prospectus for an I-REIT with unrestricted listing including –

- (a) current experts reports;
- (b) details of the amendments made or to be made to the trust deed;
- (c) details of the audited annual and semi-annual or interim reports and financial statements for the trust for whichever is the later of, the three years prior to the date of the prospectus or offering memorandum, or from the date of the original approval as an I-REIT;

- (d) valuation reports for the later of the three years prior to the date of the prospectus or offering memorandum or from the date of the original approval as an I-REIT;
- (e) compliance reports for the later of the three years prior to the date of the prospectus or offering memorandum or from the date of the original approval as an I-REIT;
- (f) details of amendments proposed to the trust deed;
- (g) details of all distributions made since the establishment of the I-REIT, the percentage distributed and the source of the distribution;
- (h) details of the taxation treatment of the I-REIT and of distributions made;
- (i) details of the periodic trustee compliance reports for the previous three years;
- (j) details of any legal action or proceeding commenced against or by the trustee or the REIT manager in the previous three years or which is current or has not been settled;
- (k) details of any action taken by the Authority or any other government body or authority in respect of the scheme, the trustee or the REIT manager or any auditor, valuer or structural engineer of the REIT.

PART 29

APPLICATION FOR REIT SECURITIES & APPLICATION FORM

1. The prospectus or offering memorandum shall set out details on how to apply for REIT securities and to complete the application and include an Application Form.
2. The prospectus or offering memorandum shall specify the minimum number and value of REIT securities that can be applied for and detail the process to determine allocation and the discretions, if any, vested in the issuer including, to –
 - (a) determine the number of REIT securities to be issued or allocated to any applicant;
 - (b) to extend the closing date for the issue or offer; or
 - (c) to withdraw the offer in the event that a minimum subscription is not reached.
3. Where the offering memorandum relates to a D-REIT or an issue or offer in respect of a restricted I-REIT then both the offering memorandum and the Application Form

shall set out the requirements for an investor to qualify as a professional investor to whom the REIT securities may be issued or offered and contain a warning that the REIT securities can only be transferred to another qualified investor.

4. The prospectus or an offering memorandum shall state that applications for REIT securities can only be made on the Application Form attached to the prospectus or offering memorandum.
5. An offering memorandum shall comply with the Act and Regulations and any other laws of Kenya relating to the issue or offer of securities to professional investors or to any other person.

CONTENTS OF SEMI-ANNUAL REPORT, ANNUAL REPORT AND
FINANCIAL STATEMENTS

1. MINIMUM STANDARDS

- (a) The semi-annual and annual report and financial statements for a real estate investment trust scheme must include all of the information required by this Schedule; comply with the provisions of the Act and the Regulations and of any listing exchange.
- (b) The financial statements shall include, as a minimum, Statement of Financial Position (Balance Sheet), a Statement of Comprehensive Income (Profit and Loss), a Statement in Change in Equity and a Cash Flow Statement (Source and Use of Funds) as well as a description of the accounting policies used and the relevant notes to the financial statements and a report on other legal requirements
- (c) The requirements of this Schedule represent the minimum content required to be included in the reports of a real estate investment trust scheme. Compliance with the schedule does not remove or reduce the obligations of the trustee or the REIT manager, auditor or any other party under the laws of Kenya.
- (d) Information may be included by way of tables, charts or graphs where this assists in understanding.
- (e) Only photographs of assets actually owned by the REIT as at the date of the report may be included and should provide a fair representation of the state of repair and/or stage of completion of the asset.
- (f) Where the reports of any experts, including valuers, or summaries of their reports are included then the report should also contain a letter of consent signed by the expert to the inclusion of the report or the summary in the report.
- (g) References in this Schedule to a REIT, D-REIT or I-REIT shall where the context permits also include a reference to an investee company or investee trust of the REIT, D-REIT or I-REIT as the case may be and the requirement to disclose or include information shall extend to the investee company or investee trust.

2. COMPLIANCE WITH ACCOUNTING STANDARDS

In addition to meeting the requirements of this Schedule all reports and financial statements shall be prepared under and comply with the International Financial Reporting

Standards and the International Auditing Standards or such other the accounting standards and auditing standards as are applying in Kenya from time to time.

3. GENERAL REAL ESTATE INVESTMENT TRUST SCHEME INFORMATION

The report shall include -

- (a) a table of contents and glossary of terms used in the reports;
- (b) the name of the real estate investment trust scheme;
- (c) the date of authorization of the scheme, the duration of the real estate investment trust and the type of scheme;
- (d) if the fund is an open fund, details of any restriction on applications for redemption;
- (e) date of any conversion from a D-REIT to an I-REIT or from a restricted I-REIT to an unrestricted I-REIT or conversion from an open to a closed fund or closed to open;
- (f) a statement of the number and type of units outstanding as at the balance date of the report and of the balance date for the financial statements;
- (g) information on whether the scheme is listed and details of the listing including, if trading is restricted;
- (h) a statement of any restriction on the transferability of units;
- (i) the scheme's objectives as at the balance date of the report and any changes since the date of the last report;
- (j) a structure diagram of the REIT which summarises the parties, relationship, roles of parties and material cash flows;
- (k) brief summary of the real estate assets (including development and construction projects) and other assets and purchase or sales contracts and of any material development or construction contracts entered into in the period covered by the report;
- (l) a statement as to whether or not the scheme has complied with Regulation 66 or Regulation 77 as regards the making completion of investment in at least one real estate asset within one hundred and eighty days and if not the action taken in accordance with the Regulations;
- (m) a brief statement of borrowings and financial arrangements entered into by the trustee on behalf of the scheme entered into in the period covered by the report and the outstanding as at the date of the report together with a calculation made pursuant to Regulation 71 or 81 on the gearing as at the date of the report;

- (n) table summarising distributions made for the lesser of 5 years or since the establishment of the scheme, the dates of such distributions and for each distribution the percentage of net, after tax, income distributed as provided for in the Regulations. The following is provided *by way of example* but will need to be adapted to the type of REIT, its assets and sources of income and the requirements under taxation legislation or of the Kenyan Revenue Authority, if any, from time-to-time.

SOURCES OF DISTRIBUTION**	20XX KShs	20XX- KShs
Rental income		
For D-REIT or I-REIT converted from D-REIT Interest or similar income from provision of finance to purchases of developed real estate etc		
Dividend income, including from wholly owned & controlled company		
Distributions from other REIT scheme/s or collective investment schemes by source for each scheme		
Realised capital gains (less losses) sales of real estate		
Other realized capital gains (less losses)		
Other income		
SUBTOTAL		
LESS**		
Expenses & permitted deductions or transfers		
Taxation		
TOTAL POTENTIAL DISTRIBUTABLE INCOME		
Distribution per unit in KShs		
Distribution as a % and compliance with Regulation 71, if an I-REIT		
** In additional items may be to be included to reflect the particular REIT's situation and/or to reflect e.g. unrealized losses brought forward or distributions made from previous year's realized gains or unrealized gains.		

- (o) If the REIT is listed a graph which plots the unit price on at least a monthly basis for the lesser of the previous 5 years or the period since first listing.

4. DETAILS OF PARTIES

The report must include -

- names, addresses, registered office, telephone and facsimile number of persons (including partnerships) who have provided services during the relevant period and prior financial year and the dates of appointment, retirement, resignation or replacement of such persons, including the-

- (a) promoter;
- (b) trustee and compliance officer;
- (c) registrar;
- (d) REIT manager and compliance officer, and of directors of the REIT manager during the period covered by the report, including –
 - (i) their qualifications and identifying the independent directors and setting out dates of appointment and resignation, if applicable; and
 - (ii) include details of any committees established by the board and their functions;
- (e) property manager, if any;
- (f) project manager certifier, if any;
- (g) structural engineer;
- (h) valuer and any other valuers;
- (i) legal advisers;
- (j) auditors; and
- (k) other experts appointed under the trust.

2. Concise details of any relationship or transaction which results in any parties being connected persons for the purposes of the Act or Regulations.

5. UNITS OF REIT SECURITIES ISSUED, OUTSTANDING AND HOLDINGS

The report must include -

1. Details of number, price at which units were issued or redeemed and the total value of units of REIT securities issued or redeemed during the period covered by the report.
2. Classes and number of units by class outstanding as at the balance date and the date of the report.

3. A table with a breakdown of REIT securities holdings, by class, as follows -

<i>No. of REIT securities holders</i>	<i>Level of holding</i>	<i>Total holdings</i>	<i>%</i>
	Less than 100		
	100 to 1,000		
	1,001 to 10,000		
	10,001 to 100,000		
	100,001 to less than 5% of number of units on issue as at the balance date of the financial statements included in the report		
	Names of REIT securities holders and connected persons with holdings of 5% and above of number of units on issue as at the balance date of the financial statements included in the report		
Promoter's holdings as per Regulations 74 and 84			
Free float As required by Regulation 27 and 29			

4. Where any units have been redeemed during the period covered by the report then provide by month details of the number of units redeemed by bands, and the price applicable.

6. REIT MANAGER'S REPORT

The report shall include -

1. The report should include a concise statement explaining the REIT manager's responsibility for preparing the report and the financial statements and include a statement signed by the Chairman and an independent director of the REIT manager stating that the reports and financial statements have been prepared in accordance with the accounting standards currently applying in Kenya and comply with the Act and Regulations and where the REIT is listed with the requirements of the listing exchange.
2. Where the report is an annual report and the audited results for the financial year differ by more than 10% from any profit estimate, forecast or projection previously made or issued in respect of the scheme for the relevant period the REIT manager should include an explanation for the difference.

The assets and performance of the Real Estate Investment Trust Scheme

The report should contain a report by the REIT manager on the operational aspects of the scheme and in particular should provide as regards -

A. *Assets*

1. Break-up of eligible assets by class (e.g. real estate, development and construction, cash, investment in wholly owned and controlled, companies, investee companies and investee trusts, investment in other securities) and include –

- (a) the most recent valuations for each class of asset and date of valuation; and
- (b) details of any assets that do not qualify as eligible assets under the Act or Regulations;
- (c) where appropriate, tables, graphs or charts illustrating change over time and trends; and
- (d) a table, dependent on the type of REIT, which includes the following information:

<i>I-REIT Eligible Investments (Assets) Regulation 65</i>	<i>Regulation & Maximum Limit %</i>	<i>Regulation & Minimum Limit %</i>	<i>Limit in Scheme Document %</i>	<i>% as at Balance Date</i>	<i>Highest % Level During Reporting Period</i>	<i>Date of Most Recent Valuation/s & Reference to Page of Report Detailing Valuation</i>
If the REIT is an Islamic REIT percentage of Shariah compliant total. If not 100% then for each category set out below specify % that is Shariah compliant.						
All direct eligible real estate (a) Freehold						

<i>I-REIT Eligible Investments (Assets) Regulation 65</i>	<i>Regulation & Maximum Limit %</i>	<i>Regulation & Minimum Limit %</i>	<i>Limit in Scheme Document %</i>	<i>% as at Balance Date</i>	<i>Highest % Level During Reporting Period</i>	<i>Date of Most Recent Valuation/s & Reference to Page of Report Detailing Valuation</i>
(b) Leasehold						
All indirect eligible real estate (a) Freehold held through investee companies or investee trusts (b) Leasehold held through investee companies or investee trusts						
Income producing real estate Regulation 65(5) Minimum of 75% of TAV within 2 years of authorization						
Land and cost of construction Regulation 70 Maximum 15% TAV						
Vacant Land at acquisition cost & real						

<i>I-REIT Eligible Investments (Assets) Regulation 65</i>	<i>Regulation & Maximum Limit %</i>	<i>Regulation & Minimum Limit %</i>	<i>Limit in Scheme Document %</i>	<i>% as at Balance Date</i>	<i>Highest % Level During Reporting Period</i>	<i>Date of Most Recent Valuation/s & Reference to Page of Report Detailing Valuation</i>
estate not producing commercial return Regulation 70 Maximum 10% of TVA						
Cash, deposits, bonds and money market instruments Regulation 65(9) Maximum 5% to single issuer, institution or members of group						
Wholly owned and controlled company which conducts real estate activities Regulation 65(10) Maximum of 10% TAV with REIT securities holder consent						
Income						

<i>I-REIT Eligible Investments (Assets) Regulation 65</i>	<i>Regulation & Maximum Limit %</i>	<i>Regulation & Minimum Limit %</i>	<i>Limit in Scheme Document %</i>	<i>% as at Balance Date</i>	<i>Highest % Level During Reporting Period</i>	<i>Date of Most Recent Valuation/s & Reference to Page of Report Detailing Valuation</i>
producing assets including listed shares in Kenyan property companies and units in Kenyan I-REITS. Regulation 68(2) Maximum 10% of value of investment and TAV at time of acquisition						
For an I-REIT that has converted from a D-REIT Mortgages or other secured loans Etc.; authorized under Regulation 12 provided to purchasers of real estate developed or constructed Regulation						

<i>I-REIT Eligible Investments (Assets) Regulation 65</i>	<i>Regulation & Maximum Limit %</i>	<i>Regulation & Minimum Limit %</i>	<i>Limit in Scheme Document %</i>	<i>% as at Balance Date</i>	<i>Highest % Level During Reporting Period</i>	<i>Date of Most Recent Valuation/s & Reference to Page of Report Detailing Valuation</i>
12						
Other assets (eligible) include description						
Other assets (not eligible) include description						

<i>D-REIT Eligible Investments (Assets) Regulation 76</i>	<i>Regulation & Limit %</i>	<i>Limit % in Scheme Document</i>	<i>Level % as at Financial Statement Balance Date</i>	<i>Highest % Level During Reporting Period</i>	<i>Date of Most recent Valuation/s & Reference to Page of Report Detailing Valuation</i>
If the REIT is an Islamic REIT percentage of Shariah compliant total. If not 100% then for each category set out below specify % that is Shariah compliant.					
All direct eligible real estate (Regulation 2) (a) Freehold (b) Leasehold					
All indirect eligible real estate (Regulation 2) (a) Freehold held through investee					

<i>D-REIT Eligible Investments (Assets) Regulation 76</i>	<i>Regulation & Limit %</i>	<i>Limit % in Scheme Document</i>	<i>Level % as at Financial Statement Balance Date</i>	<i>Highest % Level During Reporting Period</i>	<i>Date of Most recent Valuation/s & Reference to Page of Report Detailing Valuation</i>
companies or investee trusts (b) Leasehold held through investee companies or investee trusts					
Development & construction projects Regulation 76(4) within one year of date of authorization minimum of 30% TAV in this or income producing or a combination					
Mortgages or other secured loans etc.; authorized under Regulation 12 provided to purchasers of real estate developed or constructed					
Vacant Land					
Cash, deposits, bonds and money market instruments Regulation 76(8) Maximum 5% to single issuer, institution or members of group					
Wholly owned and controlled company conducting real estate activities. Regulation 76(9) Maximum of 10%					

<i>D-REIT Eligible Investments (Assets) Regulation 76</i>	<i>Regulation & Limit %</i>	<i>Limit % in Scheme Document</i>	<i>Level % as at Financial Statement Balance Date</i>	<i>Highest % Level During Reporting Period</i>	<i>Date of Most recent Valuation/s & Reference to Page of Report Detailing Valuation</i>
TAV with REIT securities holder consent					
Income producing assets including shares in Kenyan property companies and units in Kenyan REITS. Regulation 79(3) Maximum 10% of value of investment and TAV at time of acquisition					
Other assets (eligible) include description					
Other assets (not eligible) include description					

2. Concise details of each real estate asset owned or contracted for purchase or sale, including -
- (a) name and address of each real estate asset and whether or not in the course of development or construction;
 - (b) date of acquisition, acquisition price and cost of any material renovations of redevelopments (not in the nature of ongoing maintenance and replacement of capital plant or equipment), most recent valuation and date of valuation;
 - (c) description, property and type and age of each real estate asset;
 - (d) title details and details of encumbrances or any limits or conditions on the title;
 - (e) details of any competing claims made in respect of any title or real estate asset;

- (f) in the case of a leasehold, the tenure of leasehold, remaining term, rental or other fee payable and remediation terms on exit, rights, if any, to purchase or seek new term on expiry and conditions, conditions on transfer of lease;
 - (g) net lettable area or other determinant of income (e.g. acres for plantation or forest, tons processed, passengers or landings) of, existing use, occupancy rates over time, historic let up (vacancy) period and number of parking spaces of other relevant assets;
 - (h) brief particulars of tenancies or other usage rights (e.g. hotel number of occupied room nights and average room rate), major tenants and areas occupied (which may be by band where multiple small tenancies), tenancy/lease periods, average lease term, lease up incentives, etc. which in the case of multiple small tenancies may also be in bands;
 - (i) include tables or charts which illustrate tenancy expiry pattern for all existing leases and historic rental income trends and projected income based on current leases;
 - (j) date of acquisition and price, cost of any material improvements, construction of development works and latest valuation of the property including the date of valuation and name of the valuers and the net book value of the property;
 - (k) in the case of an Islamic REIT also include details of any non- Shariah compliant assets, including values and percentages and details of compliance.
3. Where there have been acquisitions or disposals during the period –
- (a) identity of the seller or purchaser;
 - (b) details of the property acquired as per (1) above;
 - (c) for disposals date of disposal, price of disposal, market value, date of latest valuation, name of valuers and profit or loss on disposal after taking into account improvements, and development and construction; and
 - (d) the anticipated impact of the acquisition or disposal on earnings.
4. Where the acquisition or disposal transaction involves a connected person then in addition to the information required to be disclosed in (1) and (2) above the report shall also contain -
- (a) details of the relationship giving rise to the application of the connected person provisions;

- (b) where REIT securities holders' approval to the transactions was required to be obtained then details of date of meeting, resolution, attendees and votes cast.
- 5. Where the REIT has conducted any development or construction activities then also include details of –
 - (a) the development or construction including nature of development or construction.
 - (b) the original budget and work plan and costings for the development or construction including, details of approvals required;
 - (c) progress to date against budget, work plan, costings and obtaining of approvals and details of any variations;
 - (d) impact of changes on performance, projected returns and on distributions include tables, graphs or charts, where appropriate, to illustrate trends.
- 6. Where the REIT has entered into any contractual arrangements to commence any development or construction activities within the six month period after the balance sheet date then include details to the extent that they are available of –
 - (a) the development or construction proposed, including nature of development or construction;
 - (b) total budget and proposed work plan, including scheduled completion date;
 - (c) required approvals and status of obtaining of approvals;
 - (d) projected impact on projected returns and distributions.
- 7. Where a REIT is a D-REIT developing real estate for sale then in addition to meeting the requirements of 1-4 above the report shall also include details of the –
 - (a) the initial proposed marketing and projected sales schedule;
 - (b) profit and loss on sales;
 - (c) monthly holding costs of completed but unsold properties;
 - (d) where properties developed or constructed have been sold on a tenant purchase or other arrangement which involves the provision of finance to the purchaser or term payment then provide details of the terms provided and the payments by the purchaser or tenant as against scheduled payments including levels of arrears, costs of arrears and action taken to correct the position;

- (e) impact of tenant purchase arrangements, term payment or financing of purchases on performance, projected returns and on distributions, include tables, graphs or charts, where appropriate, to illustrate trends.
8. Include details of investment in any wholly owned and controlled company carrying out real estate related activities.
9. Details of other non-direct real estate assets –
- (a) type;
 - (b) date of acquisition;
 - (c) percentage of each asset class as a percentage of total assets;
 - (d) income or returns on each asset class;
 - (e) last valuation, valuer/s and date of valuation and basis of valuation;
 - (f) where the asset consists of shares in a wholly owned and controlled company provide details of the company's business activities, assets, income and liabilities (including borrowings from any source) and of any loans, guarantees, indemnities or other support provided to the company;
 - (g) for an Islamic REIT also include details of any non- Shariah compliant assets, including values and percentages and details of compliance.

B. *Details of Valuations*

Summaries of the any valuations obtained, included updating of prior valuations, should be included in the report together with a statement that copies of full valuation reports are available for inspection free of charge at the offices of the REIT manager and the hours in which reports may be inspected.

C. *Performance of scheme*

The report shall include the following -

1. Information from the REIT manager relating to the performance of the scheme over the period covered, achievement of the scheme's objectives, the market outlook and key aspects or identified risks likely to impact on the future performance of the scheme and the capacity to fulfil the scheme's objectives.
2. Explanation of maintenance costs and major capital works undertaken in the period and comparison with scheduled or budgeted maintenance or capital works.

3. A comparative table covering at least the last 5 financial years or if established for less than 5 years then since establishment, or from authorization of the scheme if shorter, showing for the end of each financial year or half year as appropriate –
 - (a) Total Asset Value;
 - (b) Net Asset Value ex distribution;
 - (c) Net Asset Value per unit ex distribution;
 - (d) highest and lowest net asset value per unit ex distribution;
 - (e) the number of units outstanding;
 - (f) distribution per unit (interim and final) and the date of distributions;
 - (g) distributions relative to the requirements of the trust deed and minimum distribution provided for in the Act and Regulations;
 - (h) the distribution yield based on net asset value and where the REIT is listed on the NSE the yield based on the value of a unit as at the close of trade on the last trading day of the period;
 - (i) the MER together with an explanation of any changes in the MER.
4. Average annual total return for the scheme measured over –
 - (a) one year, or since inception if shorter;
 - (b) three years; and
 - (c) five years.
5. Include details of any material litigation and potential impact.
6. Any events or circumstances which is likely to impact on the future performance (e.g. increase in outgoings, reduction in rents overall, increased competition for tenants, changes in regulations, end of significant tenancy and no certainty of replacement tenant to take over, requirement for refurbishment or unscheduled or unbudgeted maintenance or capital works, cost of development or construction or delay in completion, delay in achieving sales, increases or decreases in interest rates).
7. Include where appropriate a sensitivity table illustrating the impact on performance and potential distributions of changes in key variables.

D. *Use of proceeds of new issue*

Include a brief statement of the use of funds raised from a new issue of units. This usage report should be updated in subsequent reports.

E. *Connected party transactions*

Include –

- a. details of the transaction or relationship giving rise to the application of the connected person provisions;
- b. details, including value nature of service or goods provided etc; for all connected party transactions; and
- c. where REIT securities holders approval to the transactions was required to be obtained then details of date of meeting, resolution, attendees and votes cast.

F. *Compliance with income tests under Regulations or scheme documents*

Depending on the type of REIT and the provisions of the scheme documents include a summary of the requirements as regards income tests provided under Regulation 69 or the scheme documents and –

- (a) whether the REIT is in compliance with the requirements;
- (b) the reasons for any non-compliance and the action taken to rectify the position; and
- (c) the implications or potential implications for the REIT and REIT securities holders of non-compliance.

G. *Distributions*

The report shall include -

1. Statement as to requirements, policy or objectives included in the scheme documents, including updated statement, in relation to distribution policy.
2. Statement as to requirements of the scheme documents, the Act and Regulations in relation to distributions on–
 - (a) whether the REIT is in compliance with the requirements;
 - (b) the reasons for non-compliance if applicable and the action taken to rectify the position, including action by the trustee and a vote of REIT securities holders; and
 - (c) the implications or potential implications for the scheme, the REIT and REIT securities holders of non-compliance.
3. Include a table setting out details of all distributions paid and declared distributions, date of distributions, source from which any distribution has, or declared distribution, is to be paid, and whether or not in respect of each period requirements of the Act or Regulations or of any other law in relation to taxation treatment as a

REIT have been met and *include by way of example subject to the divisions required to reflect the taxation treatment of distributions:*

<i>SOURCES OF DISTRIBUTION**</i>	20XX <i>KShs</i>	20XX- <i>Kshs</i>
Rental income		
For D-REIT or I-REIT converted from D-REIT Interest or similar income from provision of finance to purchases of developed real estate etc		
Dividend income, including from wholly owned & controlled company		
Distributions from other REIT scheme/s or collective investment schemes by source for each scheme		
Realised capital gains (less losses) sales of real estate		
Other realized capital gains (less losses)		
Other income		
SUBTOTAL		
LESS**		
Expenses & permitted deductions or transfers		
Taxation		
TOTAL POTENTIAL DISTRIBUTABLE INCOME		
Distribution per unit in KShs		
Distribution as a % of net after tax income and compliance with Regulations)		
** In additional items may be included to reflect the particular REIT's situation and/or to reflect e.g. unrealized losses brought forward or distributions made from previous year's realized gains or unrealized gains.		

4. Details of date of any meeting, resolution, attendees and votes cast in relation to the level, if any, of distributions.

H. *Borrowing Levels & Compliance with Covenants*

The report shall include -

1. Details of borrowings or other financing arrangements, maturity profile and average cost of funds together with a graph or chart illustrating the maturity profile and average cost of funds.
2. For an Islamic REIT also include details of any non-Shariah compliant borrowings or financing arrangements, including values and percentages and details of compliance.
3. Summaries of financial covenants (e.g. debt service cover ratio) included in any loan or financing arrangement documentation together with cover ratios and include a table, graph or chart illustrating changes over time and trends.

4. A sensitivity table should be included illustrating the impact of changes in key assumptions of inputs.
5. Details of any connected party transactions and:
 - (a) Details of the transaction or relationship giving rise to the application of the connected person provisions;
 - (b) Where REIT securities holders' approval to the transactions was required to be obtained then details of date of meeting, resolution, attendees and votes cast.
6. Details of the limits on borrowings etc; included in the Trust Deed and of compliance with these provisions and the limits on borrowing etc; imposed by the Act and Regulations over time. Details should include:
 - (a) Whether the REIT is in compliance with the requirements;
 - (b) Instances of non-compliance including, period of non-compliance;
 - (c) The reasons for non-compliance if applicable with scheme documents and Regulations and the action taken to rectify the position, and
 - (d) Approvals or consents obtained including details of date of meeting, resolution, attendees and votes cast.
 - (e) The implications or potential implications of non-compliance by the REIT and REIT securities holders.

I. *Sensitivity Analysis & Impact of any Financial Structuring*

1. Provide details of any measures adopted or proposed which would constitute financial structuring under the Regulations, the implications of the absence, removal or expiry of such on yield, cash flows, distribution or risk profile of the REIT and the assumptions underlying the calculations.
2. Include a sensitivity table.

J. *Notifications and compliance reports*

1. The REIT manager's report should include details of:
 - (a) Any matter arising during the period which has been, or should have been, notified to the Authority pursuant to the Regulations;
 - (b) Any failures by the REIT manager, trustee or any other party to comply with the provisions of the scheme documents, the Act or the Regulations and action taken to remedy the failure;
 - (c) Any action taken by the REIT manager or which the trustee was requested to take during the period to protect assets of the trust or the interests of REIT securities holders; and
 - (d) An update of any matters reported in prior periods and action taken to rectify.
2. The report may also include the REIT manager's comments on trustee's report, performance of the trustee or of any other person or other material matter.

7. *Trustee's Report*

1. The trustee's report should confirm all matters relating to the title particulars of real estate properties and other assets of the fund and include details of –
 - (a) Any appointment of a secondary disposition trustee together with details of purpose of the appointment and of any documents executed by the secondary disposition trustee.
 - (b) Any matter arising during the period which has been, or should have been, notified to the Authority pursuant to the Regulations;
 - (c) Any failures by the trustee to comply with the provisions of the scheme documents, the Act or the Regulations and action taken to remedy the failure;
 - (d) Any failures by the REIT manager or any other person to comply with the provisions of the scheme documents, the Act or the Regulations and action taken to remedy the failure;
 - (e) Any action taken by the trustee during the period to protect assets of the trust or the interests of REIT securities holders, and
 - (f) Meetings of REIT securities holders convened by the trustee, resolutions put and the outcome of voting.
2. The report should contain a summary of the meetings of REIT securities holders called or held during the relevant period, a summary of the purpose of the meeting, resolutions put to the REIT securities holders and of attendees and votes cast.
3. The report should state whether the trustee is of the opinion that the REIT manager has managed the scheme in accordance with the provisions of the scheme documents, the Act and these Regulations and if the trustee is of the opinion that the REIT manager has not done so then –
 - (a) identify the shortcomings of failures to comply;
 - (b) outline the impact of the shortcomings or failures; and
 - (c) detail the action that the trustee has taken to address the shortcomings and/or prevent reoccurrence.
4. The report may also include comments by the trustee on REIT manager's report, performance of the REIT manager or of any other person or other material matter.
5. The Trustee's Report should be signed by the trustee

8. *Auditor's Report*

1. An annual report should be accompanied by an auditor's report addressed to and for the benefit of the trustee in its capacity as the legal owner and trustee for the REIT securities holders and REIT securities holders as beneficial owners.
2. The report shall include -
 - (a) a compliance report as required by the Regulations;
 - (b) calculations of percentages required by the Regulations together with a statement as to whether the limits set out in the Regulation have not been complied with throughout the reporting period and if not should include details of the non-compliance and whether the non-compliance has been rectified as at the balance sheet date or the date of the report –
 - (i) minimum number of REIT securities holders;
 - (ii) minimum free float;
 - (iii) minimum promoter investment and retention;
 - (iv) eligible investments;
 - (v) minimum income generation;
 - (vi) maximum gearing;
 - (vii) minimum distributions;
 - (c) Verification of the MER calculation;
 - (d) Verification of the sources of distribution made to REIT securities holders.
3. The auditor's report should include the auditor's opinion on the financial statements and be signed by the auditor. Where the auditor's report is qualified details of the qualification should be noted clearly and prominently in the report.

9. *Shariah Adviser's Report (if applicable)*

1. The *Shariah* adviser's report should include a statement as to –
 - (a) whether or not the scheme has been operated and managed in accordance with *Shariah* principles and the specific principles established for the fund;
 - (b) if not, then the steps, if any, taken or proposed to be taken to address the situation and/or prevent reoccurrence of non-compliance;

- (c) whether in the Shariah adviser's opinion recognising the stage of development of the *Shariah* financial products and capital markets in Kenya additional steps could, or can, be taken to comply with *Shariah* principles;
- (d) any other matters which the *Shariah* advisor considers relevant to compliance with *Shariah* principles; and
- (e) whether the scheme and the investments comply with any *Shariah* rules, guidelines or regulations issued by the Authority.

2. The *Shariah* Adviser's report should be signed by the *Shariah* Adviser.

10. *Meetings of REIT securities holders*

The report should contain a summary of the meetings of REIT securities holders called or held during the relevant period, a summary of the purpose of the meeting, resolutions put to the REIT securities holders and of attendees and votes cast.

11. *Financial statements*

1. The financial statements should give a true and fair view of the financial position, financial performance and cash flows and be prepared in accordance with the Act, these Regulations, the law and accounting standards applying in Kenya from time-to-time.
2. A clear statement should be included as to whether or not the financial statements are audited.
3. Where the financial statements are unaudited then there should be a statement signed by the Directors of the REIT manager and the compliance officer stating that the financial statements have been prepared to give a true and fair view of the financial position, financial performance and cash flows and be prepared in accordance with the Act, these Regulations, the law and accounting standards applying in Kenya from time-to-time.
4. In addition to any other contents the financial statements should include in the –
 - a. Statement of Financial Position
 - (i) Net asset value of the fund;
 - (ii) Number of issued units by class if more than one;
 - (iii) Net asset value per unit (ex-distribution, where applicable);
 - (iv) Net assets/liabilities attributable to REIT securities holders;
 - (v) Net asset value at book value of each unit as at the Statement of Financial Position date; and

(vi) If not included in the Statement of Financial Position then, by way of Notes, the carrying amounts of investments, as applicable, should be categorised as follows -

- (A) Real estate, with break up by class (e.g. housing, office, industrial Etc.);
- (B) Real-estate related assets;
- (C) Development and construction assets;
- (D) Non real estate assets;
- (E) Other real estate investment trusts;
- (F) Cash, deposits, fixed income and other debt securities;
- (G) Any other investments with material items disclosed separately, and
- (H) Total eligible investments and eligible investments as a percentage of total assets as at the Statement of Financial Position date.
- (I) Details of non- approved investments in the case of a *Shariah* scheme.

(vii) Liabilities should include details of contingencies including construction contracts, acquisition contracts and hedging arrangements or derivatives;

(viii) If not included in the Statement of Financial Position then, by way of Notes, details of borrowings or other financing arrangements including -

- (A) Total borrowings or financing arrangements as at the Statement of Financial Position date as a percentage of total asset value;
- (B) Borrowings of any wholly owned or controlled company; and
- (C) Any guaranteed borrowings or financing arrangements;
- (D) Details of non- approved borrowings or financing arrangements in the case of a *Shariah* scheme;

b. Statement of Comprehensive Income

(i) Fees, charges, reimbursements and expenses paid to the REIT manager or any property manager appointed by the REIT manager, with each type of charge shown separately;

(ii) Fees, charges, reimbursements and expenses paid to the trustee with each type of charge shown separately;

- (iii) Fees, charges, reimbursements and expenses paid to the property manager certifier with each type of charge shown separately;
- (iv) Fees, charges, reimbursements and expenses paid to the structural engineer with each type of charge shown separately;
- (v) Fees, charges, reimbursements and expenses paid to the valuers with each type of charge shown separately;
- (vi) A calculation of MER and in the case of audited financial statements the auditor's verification of the calculation;
- (vii) Details of non- approved income or payments in the case of a *Shariah* scheme;
- (viii) Payments, if any, made to charitable bodies in the case of *Shariah* funds, the basis of calculation and the names of the funds;
- (ix) Sources and nature of income;
- (x) For I-REITs, the percentage of income for the financial year from rent or income streams of a similar nature calculated as provided for in the Regulations;
- (xi) Total amount available for distribution and distribution per unit, interim and final;
- (xii) Net income after tax to be shown separately as to realized and unrealised income.

c. Statement of changes in fund balance.

d. Statement of cash flows.

e. Notes to Financial Statements

If not already shown then, as Notes –

- (A) Accounting policy adopted in respect of the trust as an accounting entity;
- (B) Income basis adopted;

- (C) Movements in number of units on issue including, units issued, cancelled or redeemed, if applicable by class or type;
- (D) All costs of or associated with redemption of units or issuance of new units and of listing;
- (E) Number of units and value of units held, legally or beneficially, by the promoter, the REIT manager and connected parties and movements in holdings during the financial year;
- (F) Details of taxes paid or payable by the REIT and a breakdown;
- (G) Details of any taxes paid by the REIT as a consequence of not compliance with the Act or Regulations;
- (H) Details of taxes withheld in respect of distributions paid or payable;

VALUATIONS

1. INDUSTRY STANDARDS

Subject to the provisions of the Act, the Regulations and the requirements of this Schedule all valuations will be conducted in accordance with the standards and ethical code published and adopted by the Institution of Surveyors of Kenya and the Valuers Registration Board.

A valuation summary prepared in accordance with this schedule may be included in any prospectus or offering memorandum but full copy of the valuation report must be retained and made available for inspection by any REIT securities holders, potential or past investors in REIT securities and the Authority. No claim of confidentiality can be made in respect of a valuation report issued to the trustee or promoter of a REIT.

2. VALUER'S DETAILS, SIGNING, DATING, CERTIFICATION AND AUTHENTICATION

1. The report should set out prominently: the name(s), address(es), qualifications [and registration number(s)] and where applicable her/his organization.
2. All valuation reports shall be signed by the valuer and dated and where the valuer is employed by a company, corporation or other body including a government organisation, department or authority shall also be signed by a director and the CEO of the company or corporation or the head of the organization, authority or department.

A. To whom the report must be addressed

1. All valuation reports must be addressed to the trustee and be expressed to be for the benefit of the trustee as trustee and all REIT securities holders in any real estate investment scheme or real estate investment trust in which the property is or becomes an asset.
2. Where a valuation was obtained prior to the appointment of the trustee or is in respect of property already vested in the REIT then the valuation shall be refreshed and reissued and addressed to the trustee. In refreshing and reissuing a valuation the valuer must expressly consider and address the currency of its prior opinion and of the data, information, capitalisation a discount rates utilised and other considerations and assumptions.

B. Opinion of value and disclaimers

1. The valuer must express an opinion in the report as to the value in words as well as figures.

2. Disclaimers, waivers and limitations on the valuer's opinion should not be so wide as to deprive the trustee, or REIT securities holders or other parties relying on the valuation for the benefit of the valuation.

C. Basis of valuation

The basis of the valuation is to be market value.

D. Compliance with the Act and Regulations

All reports and the conduct of valuations shall comply with the requirements of the Act and the Regulations, including the requirement for physical inspection.

E. Valuation approach and method of valuation – General Principles

1. Valuations should be conducted using wherever possible at least two valuation methods in accordance with the valuation standards published or adopted by the Institution of Surveyors of Kenya and the valuers Registration Board for the valuation of real estate.
2. The valuation achieved under each valuation method shall be disclosed in the valuation report.
3. The valuer shall determine and use the most appropriate valuation based on the type of property, availability of relevant data, accuracy of data, relevancy, and other factors considered by the valuer to be relevant.
4. The valuer shall include in its report a rationale for reconciling the values derived under the different methods and include a comparison by way of a table.
5. In the case of an I-REIT the assumption will be that, unless the valuer for the reasons set out in its report believes that the method is inappropriate in the circumstances, one method of valuation will be the income comparison method.
6. Valuations for assets other than real estate will reflect the industry practice to valuation of such assets and may require the involvement of a specialist valuer.

F. Valuation approach and method of valuation

1. The general approaches for the valuation of real estate currently include –
 - a. Comparison approach;
 - b. Cost approach; and
 - c. Income capitalisation approach.
2. The valuation report shall include an explanation of the valuation methods adopted and their appropriateness to the particular assets and the circumstances of the valuation.

3. In applying the methods of valuation the valuer must ensure that the following are considered and disclosed in any valuation report –

1. Comparison Method

- i. Appropriate and adequate comparables.
- ii. Details of the comparables including, identification and descriptions of the property(ies), date of sale, tenure and details of title, land and/or lettable areas, purchase price, breakdown of land and building values, names of vendor and purchaser, terms and conditions of sale (where available), current use, planning and zoning details and restrictions on use if any, details of any easements, tenancies.
- iii. Adjustments, if any, made by the valuer to ensure comparability so far as possible.

2. Cost Approach

- i. The actual construction or tender cost, if available;
- ii. The cost and rates adopted for buildings structures and other improvements;
- iii. Adjustments made to reflect depreciation and obsolesce.
- iv. Adjustments, if any, made by the valuer to ensure comparability so far as possible, and
- v. Depreciation rates adopted and their bases.
- vi. A caution should be included as to the appropriateness of use of the cost method in that costs may not reflect value.

3. Income Capitalisation Approach

i. Investment method

- (A) Gross income and sustainability of income used in the valuation where projected income is market derived;
- (B) Actual outgoings and other operating expenses where available for the past three years, projections should be supported and market derived;
- (C) Adequacy of maintenance and whether any major capital expenditure or increased maintenance is likely to be incurred in the next two years;
- (D) In the case of tenanted properties, schedules of existing tenancies, including names of tenants, term of tenancy (including options), rentals, services charges and obligation to contribute to outgoings.
- (E) In the case of tenanted properties, any connection of the tenant with the vendor or owner should be disclosed together with a comment as to whether the rentals and terms of the tenancy reflect the market;

- (F) In the case of tenanted properties, analysis of comparable data on rentals, incentives for tenants, outgoings, vacancies and capitalization rates and comparison with the property being valued, and
- (G) Market evidence to support the capitalisation and discount rates utilized which reflect the risk of the business, sector and location and other factors.

ii. Residual method

- (A) The approved or submitted [development] plan together with details of approvals and consents obtained or applied for in relation to the development
- (B) Consideration should be given to the reasonableness of the gross development value, timing of the development and construction period, in addition the valuer should liaise with the structural engineer and any project manager and if considered appropriate obtain additional expert input as to the cost of undertaking the development, and to obtain necessary and current market information;
- (C) The complexity of the development and construction and terms of the building contracts and prior performance of the builder on similar contracts particularly as regards cost overruns, disputes and timing for completion should be taken into account together with the potential impact on cash flows;
- (D) Market information to support projected supply, including supply in the pipeline or approved developments, rates of absorption and projected rents or sales prices and potential impact on input costs,
- (E) Past sales and performance of the REIT or the REIT manager or property manager in achieving sales for similar developments should be considered, and
- (F) The discount rate adopted must be market derived.

iii. Profits method

- (A) Detailed workings showing an estimation of the annual revenue from the assets being acquired, operating expense, overheads and adjustments for depreciation and capital expenses;
- (B) Consideration should be given as to the adequacy of the level of maintenance, remaining useful life, obsolesce and provision for replacement of the assets;
- (C) Where the REIT is acquiring a business or entity rather than simply an asset then the valuer should also take account of any potential liabilities that may be assumed

by the REIT in acquiring the business or entity including unpaid taxation liabilities, pension and other potential employee liabilities. Any potential liability should be disclosed and highlighted in the report and if relevant the valuer should obtain expert input prior to completing the report, and

- (D) Market evidence to support the capitalisation rates utilised which reflect the risk of the business, sector and location and other factors.

iv. Discounted cash flow method

- (A) Detailed workings showing estimation of cash flows and the basis of estimation including comparison with market and supply and demand estimates, and
- (B) Market evidence to support the capitalisation and discount rates utilised which reflect the risk of the business, sector and location and other factors.

v. Other methods

- (A) An explanation of the method and rationale used
- (B) All data used must be substantiated by reference to market evidence.

G. *Minimum contents of valuation report*

1. *General principles*

- a. All valuation reports must be clear and not misleading and must disclose all material information and ensure that information disclosed is accurate and adequate. Where there is an inability to obtain accurate or adequate data then this fact must be clearly disclosed and a caution included.
- b. The report should clearly set out the analytical process, data and information used to arrive at the valuation.
- c. Where the valuation deviates from best practice then the reasons for this and the possible implications on the valuation should be disclosed.

2. *Contents of Report*

- a. All valuation reports must be addressed to the trustee and be expressed to be for the benefit of any and all REIT securities holders in any real estate investment scheme or real estate investment trust in which the property is or becomes an asset.
- b. Details of the instructions provided to the valuer, including any special conditions whether in writing or oral, should be clearly disclosed.
- c. The purpose of the valuation should be stated.

- d. The property(ies) should be clearly identified by reference to title particulars including, [lot number, title number] and postal address.
- e. The report should be dated.
- f. The basis of valuation and methods used, including a description of the method and comment on its appropriateness to the property and limitations or issues arising, where possible two methods should be included;
- g. The extent of and dates of inspection should be included together with the name of the person who conducted the inspection.
- h. The tenure or type of title together with the interest to be valued.
- i. Any encumbrances, easements or other rights or claims or restrictions on use.
- j. Zoning and approved uses and restrictions and building and planning consents and approvals (copies of which should be attached).
- k. A detailed description of the property including:
 - i. Location and accessibility and include a plan;
 - ii. Age, description, condition and state of repair of buildings and other plant, equipment, fixtures and fittings or moveable property included in the valuation;
 - iii. Approvals of buildings, use and compliance as well as disclosure of any breaches of laws, regulations or conditions relating to the property or other assets;
 - iv. Details of any recent material upgrading, refurbishing or renovations;
 - v. Details of the neighbourhood and surrounding developments, availability of communications, services and utilities;
 - vi. Details relevant to the sector and type of property, for example, for:
 - (A) offices details of lettable space, comment on facilities, services, access and access to transport, parking, air-conditioning, standard of fit out and comparative suitability for purpose and market position;
 - (B) factories details of factory buildings including e.g. design, construction, height, span, access to services, plant and equipment, location relative to access roads, railways ports etc.; and suitability for a range of activities or whether designed for specialist use only;
 - (C) residential accommodation, type and sector of market, number of rooms, standard of finish, access to and connection to services, access to transport and schools, any limits on rental that can be charged or requirements to provide access to particular group of tenants or other limits on use or ability to sell;
 - (D) other types or classifications of properties (for example, hospitals, warehouses, logistics, shopping centres, special purpose buildings, extractive industries such as quarries) information relevant to their attractiveness for their intended purpose, state of condition, comparison with norm for sector and location and competitiveness

compliance for zoning and use and limits on changes and other factors that might influence value;

- (E) problems or issues, for example, encroachments, site stability, swampy or hill side, squatters, height restrictions, set-backs, flooding, noise and other detrimental aspects.
- vii. Details of prior registered dealings with the property for the past three years (or longer if the valuer considers relevant) including, date of dealing and if acquisition date of acquisition, cost of acquisition, expenditure subsequent to acquisition; parties involved in the transaction, use at the time of the transaction;
- viii. Photographs of properties, including comparative properties and of the location may be included.
- ix. Current market conditions and the possible impact of micro and macro-economic conditions and the impact of possible changes should be considered
- x. The sources of information should be disclosed together with the opinions of experts.

H. *Use of experts*

1. The valuer may with the agreement of the trustee and the REIT manager engage experts to provide specific input to assist it with the preparation of a valuation. The appointment of experts and all reports of experts must state the purpose for which they were prepared, comply with the Act and Regulations.
2. Where the valuation is to be included in a prospectus or offering memorandum then the expert must be named as an expert in that document and appropriate consents obtained.
3. The reports of experts in addition to being addressed to the valuer must also be addressed to the trustee and be expressed to be for the benefit of any and all REIT securities holders in any real estate investment scheme or real estate investment trust in which the property is or becomes an asset.

I. *Valuation summary*

1. A valuation summary which is a condensed form of the valuation report, prepared for the specific purpose, may be included in a prospectus or offering document or any other document provided to REIT securities holders or any listing body.
2. The valuation summary must clearly state that it is “a summary only of the valuation report which is available for inspection at the offices of the trustee and [*include other designated addresses or on the internet address, if any*].
3. The summary must be clear, signed and dated and contain adequate and accurate information and not be misleading to REIT securities holders or potential investors in REIT securities or to their advisers.

J. *Significant or material changes*

Where a valuer has prepared a report or valuation summary and the valuer becomes aware of any significant or material changes affecting the valuation opinion, report or valuation summary at any time prior to:

- a. the issue of the prospectus or offering memorandum;
- b. the issue of REIT securities pursuant to the prospectus or offering memorandum; or
- c. REIT securities holders voting on any resolution for which the report was prepared

then the valuer must notify the trustee, the REIT manager and the Authority of the fact and the impact or potential impact on his report and opinion on value and shall withdraw his report and consent.

K. *Appendices*

Maps, plans, detailed workings, expert's opinions, market studies, photographs and additional details may be included as Appendices

SEVENTH SCHEDULE – MEETING OF HOLDERS OF REIT SECURITIES

(Regulation 121(2)(a))

1. GENERAL

In addition to provisions for meetings of REIT Security holders provided for in the scheme documents, the trustee and the REIT manager shall convene-

- (a) an annual meeting of REIT securities holders to be held at least fourteen days and not more than twenty eight days after the date of circulation of the annual report;
- (b) whenever required by the Act, these Regulations or the scheme documents;
- (c) whenever the Trustee or the REIT manager determines that a meeting is desirable;
- (d) where directed to do so by the Authority where the Authority is of the opinion that the calling of a meeting is desirable; or
- (e) upon receiving a written request that a meeting be called for the propose specified in the request by not less than fifty REIT securities holders who holds not less than ten percent of the voting REIT securities in the real estate investment trust.

2. NOTICE OF MEETINGS

- 1. At least a notice of fourteen days shall be given to the Authority, the auditor and each holder of REIT Securities of all meetings.
- 2. The notice of the meeting shall include:
 - (a) copies of any reports to be considered or which provide the foundation for any resolution and a copy of any resolution proposed to be put at the meeting;
 - (b) where the meeting is convened pursuant to a request of holders of REIT Securities or the Authority, then a copy of the request and the terms of any resolution proposed and of all reports or valuations that are required to be prepared or provided to holders;
 - (c) where the meeting is convened as a consequence of a direction received from the Authority a copy of the direction and the terms of any resolution proposed, and
 - (d) a statement that a REIT securities holder is entitled to attend the meeting in person or by executing the notice of appointment attached to the notice calling the meeting is entitled to appoint a proxy who need not be a REIT securities holder.

3. CHAIRMAN AND QUORUM

1. Where the meeting is convened by the Trustee or the REIT Manager then the meeting shall be chaired by a representative of the Trustee.
2. Where the meeting is convened at the request of holders of REIT Securities or the direction of the Authority then the meeting shall be chaired by a person elected by holders of the REIT Securities present at the meeting or if no such appointment is made then by the nominee of the Trustee.
3. The quorum of a meeting of holders of REIT Securities shall be five (5) REIT securities holders present in person or by proxy except in the case of a meeting to pass a special resolution in such case the quorum shall be a minimum of five REIT securities holders present in person or by proxy representing the holders of at least twenty five percent of the REIT securities issued at the date of the calling of the meeting.
4. In the event that there is no quorum for any meeting, then the meeting shall be adjourned to a date determined by the Trustee which shall not be more than fourteen days from the date of the adjourned meeting. A notice of the adjourned meeting shall be given to all the holders of REIT Securities, the auditor and the Authority.
5. In the event that there is no quorum for any adjourned meeting, then the meeting may proceed notwithstanding the lack of a quorum.

The REIT Manager or the holdings of REIT securities by the REIT Manager or any party connected to them shall not be included for the purposes of determining whether a quorum is present irrespective of by whom the meeting was convened or the matter before the meeting.

4. RESOLUTIONS

Except where a special resolution is required by or permitted by the Act, these Regulations of the scheme documents, all resolutions may be passed by a simple majority and a copy of all resolutions passed at any meeting shall be filed with the Authority.

5. VOTING RIGHTS

1. The rights of any REIT securities holder to vote at any meeting are subject to any provision of the Act or these Regulations which limit the capacity of the REIT securities holder to vote on any resolution or to any restrictions on voting by the promoter, REIT Manager, REIT property manager, auditor or valuer or any party connected to them in the Act, these Regulations or the scheme documents.
2. On any matter in respect of which a vote is taken, then any REIT securities holder present in person or by proxy shall be entitled to one vote on a show of hands.
3. A poll may be demanded on any vote or be required by the Chairman of the meeting. In the case of a poll then-

- (a) votes may be given either personally or by proxy; and
- (b) every REIT securities holder shall have one vote for each vote held by the REIT securities holder.

6. ADJOURNMENT AND MINUTES

1. The Chairman may adjourn any meeting at which a quorum is present with the consent of the meeting and must adjourn if directed by the meeting.
2. The Trustee shall be responsible for ensuring that-
 - a) minutes are prepared within seven days for all meetings of REIT securities holders and that the minutes record the proceedings and all resolutions put to the meeting and the results of any votes and that the minutes are presented to the Chairman for signing;
 - b) any minutes presented to the Chairman shall be signed within seven days of presentation and recorded in the minute book and a signed copy provided to REIT Manager provided that-
 - (i) if the Chairman is not satisfied that the minutes prepared are correct and on request, these are not corrected by the Trustee, then the Chairman shall be responsible for amending the draft minutes and signing a corrected copy which shall be recorded in the Minute book; and
 - (ii) a signed copy of the corrected minutes are forwarded to the Trustee, the REIT Manager and the Authority.

EIGHTH SCHEDULE

(Regulation 125)

FORM 3

FORM FOR APPLICATION FOR LICENCE AS REIT TRUSTEE OR REIT
MANAGER

THE CAPITAL MARKETS ACT
(Cap. 485A)

THE CAPITAL MARKETS (REAL ESTATE INVESTMENT TRUSTS)
(COLLECTIVE INVESTMENT SCHEMES) REGULATIONS, 2012

APPLICATION FORM

APPLICATION FOR A LICENCE/ RENEWAL OF LICENCE TO CONDUCT THE
BUSINESS OF A REIT MANAGER OR REIT TRUSTEE

Application is made for a REIT Manager/REIT Trustee (tick as appropriate)
licence/renewal of licence (*delete where inapplicable*) under the Capital Markets
(Collective Investment Schemes) (Real Estate Investment Trusts) Regulations, 2012 and
the following statements are made in respect thereof:

Note-

If space is insufficient to provide details, please attach annexure(s). Any annexure(s)
should be identified as such and signed by the signatory of this application.
Information provided should be as at the date of the application or renewal.

1. Name of company Limited
2. Registered office
3. Date of incorporation
4. Address
5. E-mail
6. Location, address and telephone number of principal office.....
.....
7. Location, address and telephone number of branch offices
.....

8. Details of capital structure:

- (a) Nominal capital (Kshs.)
- (b) Number of shares
- (c) Paid-up capital (Kshs)

9. Shareholders (please attach a list)

Name	Address & telephone number	Number of shares Held
------	----------------------------	-----------------------

10(a) Directors (please attach a list)

Name	Identity Card/ Passport number	Date of Appointment	Date of birth	Permanent address & telephone number	Academic Or Professional qualification	Number of shares held in the company
------	--------------------------------	---------------------	---------------	--------------------------------------	--	--------------------------------------

(b) Secretary

Name.....

Address

Institute of Certified Secretaries of Kenya Registration No.

(c) Chief executive and other key personnel

Name	Identity Card/ Passport number	Date of Appointment	Date of birth	Permanent address & telephone number	Academic Or Professional qualification	Number of shares held in the company

11. Particulars of other directorship(s) of the directors and secretary.

.....

12. Particulars of shares held by directors or secretary in other companies

.....

13. Has the applicant or any of its directors, secretary or members of senior management at any time been placed under receivership, declared bankrupt, or compounded with or made an assignment for the benefit of his creditors, in Kenya or elsewhere? Yes/ No. If 'yes', give details

.....

14. Has any director, secretary or senior management of the applicant been a director of a company that has been:

(a) denied any licence or approval under the Capital Markets Act or equivalent legislation in any other jurisdiction: Yes/No.

If Yes, give details.

.....

(b) a director of a company providing banking, insurance, financial or investment advisory services whose licence has been revoked by the appropriate authority? Yes/No.

If Yes, give details.

.....

(c) subjected to any form of disciplinary action by any professional body of which the applicant or any of its director was a member? Yes/ No. If yes, give details.

.....

15. Has any court ever found that the applicant, or a person associated with the applicant was involved in a violation of the Capital Markets Act or Regulations thereunder, or equivalent law outside Kenya? Yes / No. If 'yes', give details.

.....

16. Is the applicant and/or a person associated with the applicant now the subject of any proceeding that could result in a 'yes' answer to the above question (15)? Yes/No. If 'yes,' give details.

.....

17(1) Is the applicant, or any shareholder, director or the secretary of the applicant, a member or director of a member company of any securities exchange? Yes/ No.

If 'yes', give details.

.....

(2) Have any of the above persons been -

(a) refused membership of any securities organization? Yes / No. If 'yes', give details

.....

(b) expelled from or suspended from trading on or membership of any securities organization? Yes/No. If 'yes' give details

.....

(c) subjected to any other form of disciplinary action by any stock/securities exchange? Yes/No. If 'yes', give details.

.....

18. Business references:

Name	Address	Telephone number (s)	Occupation
------	---------	----------------------	------------

19. One bank reference, where the applicant is a bank the reference shall be given by another bank independent of the applicant

20. Profile of the chief executive and key employees in the applicant company:

Name	Post	Qualifications	Experience
------	------	----------------	------------

21. List the office facilities of the applicant

.....

22. State the exact nature of the activity to be carried on which obliges the applicant to apply for a licence from the Capital Markets Authority

.....

23. Any other additional information considered relevant to this application:

.....

We(Director), (Director) and (Secretary) declare that all the information given in this application and in the attached documents is true and correct.

Dated this day of 20

Signed:

.....) Director

.....) Director

.....) Secretary

Note:

1. The following shall be submitted with the application for a licence -

- (a) memorandum and articles of association;
- (b) certificate of incorporation;
- (c) business plan complying with the requirements of regulation 126(1)(d) of the Capital Markets (Real Estate Investment Trusts) (Collective Investment Schemes) Regulations, 2012;
- (d) a statement of the un-audited accounts for the period of accounting year ending not earlier than six months prior to the date of application and audited annual accounts for the preceding two years (in the case of application of licence), management accounts upto the 30th November and audited annual accounts for the preceding year (in the case of renewal of licence);

- (e) a declaration by the directors as to whether after due enquiry by them in relation to the interval between the date to which the last accounts have been made and a date not earlier than fourteen days before the date of the application –
 - (i) the business of the company has, in their opinion, been satisfactorily maintained;
 - (ii) there have, in their opinion, arisen any circumstances adversely affecting the company's trading or value of its assets;
 - (iii) there are any contingent liabilities by reason of any guarantees given by the company or any of its subsidiaries;
 - (iv) there are, since the last annual accounts, any changes in published reserves or any unusual factors affecting the profit of the company or any of its subsidiaries;
- (f) a declaration by persons authorized as prescribed to accompany the application form;
- (g) an application fee of Kshs. 2,500.

NINTH SCHEDULE

(Regulation 134)

THE CAPITAL MARKETS AUTHORITY FEES STRUCTURE
AS APPROVED BY THE MINISTER FOR FINANCE PURSUANT TO SECTION
36(1)(a) OF THE CAPITAL MARKETS ACT.

PART 1 – APPLICATION, AUTHORIZATION OF SCHEME, APPROVAL OF PROSPECTUS OF OFFERING MEMORANDUM, CONVERSION AND ANNUAL FEES

	<i>Fee</i> <i>Kshs or percent</i>
(a) Application fee or application renewal fee for authorization of real estate investment trust scheme	2,500 2,500
(b) Application fee for REIT conversion	150,000
(c) Authorization or annual fee of real estate investment trust scheme	0.15% of value of offer of REIT securities subject to a maximum of 10,000,000
(d) Approval fee of Prospectus	0.0375% of value of offer of REIT securities subject to a maximum of 2,500,000
(e) Approval fee of Offering Memorandum	0.1125% of value of offer of securities and a maximum of 7,500,000
(f) Approval fee for conversion of a D-REIT to an unrestricted I-REIT	150,000
(g) Approval fee for conversion of a D-REIT to a restricted I-REIT	0.1125% of value of offer of securities and a maximum of 7,500,000
(h) Approval fee for conversion from restricted I-REIT to unrestricted I-REIT	150,000
(i) Approval fee for conversion from unrestricted I-REIT to restricted I-REIT	1,500
(j) Public inspection of documents.	

PART II – TRUSTEE AND REIT MANAGER LICENCE AND RENEWAL FEES

<i>License and renewal fees</i>	<i>Fee Kshs or percentage</i>
(a) Trustee for a REIT	200,000
(b) REIT Manager	100,000

Dated the 18th June, 2013.

HENRY ROTICH,
*Cabinet Secretary,
The National Treasury.*