

DRAFT FOR PUBLIC COMMENTS

SECURITIES AND EXCHANGE BOARD OF INDIA (REAL ESTATE INVESTMENT TRUSTS) REGULATIONS, 2008

S.O.No. In exercise of the powers conferred by section 30 read with sections 11 and 12 of the Securities and Exchange Board of India Act, 1992 (15 of 1992), the Securities and Exchange Board of India hereby makes the following Regulations, namely:-

CHAPTER I

PRELIMINARY

Short title and commencement

1. (1) These regulations may be called the Securities and Exchange Board of India (Real Estate Investment Trusts) Regulations, 2008.

(2) They shall come into force on the date of their publication in the Official Gazette.

Definitions

2. (1) In these regulations, unless the context otherwise requires:
 - (a) "Act" means the Securities and Exchange Board of India Act, 1992 (15 of 1992);
 - (b) "advertisement" includes:
 - (i) notices, brochures, pamphlets, circulars, showcards, catalogues, hoardings, placards, posters, insertions in newspapers, pictures, films and cover pages of offer documents;

- (ii) any other matter to which publicity is given through print medium, radio, television programmes or electronic media;
- (c) "appraising agency" means an agency empanelled with the Board for the purpose of conducting technical or financial appraisal of the scheme;
- (d) "associate" in relation to a real estate investment management company or trust, includes a person:
 - (i) who, directly or indirectly, by himself, or in combination with other persons, exercises control over the real estate investment management company or the trust, as the case may be, or
 - (ii) in respect of whom the real estate investment management company or the trust, as the case may be directly or indirectly, by itself, or in combination with other persons, exercises control, or
 - (iii) whose director, officer or employee is a director, officer or employee of the real estate investment management company or the trust, as the case may be;
- (e) "auditor" means a person qualified to audit the accounts of companies under the Companies Act, 1956 (1 of 1956);
- (f) "Board" means the Securities and Exchange Board of India established under the provisions of section 3 of the Act;
- (g) "certificate of registration" means a certificate of registration granted under these regulations;
- (h) "close-ended scheme" means any scheme launched by a Real estate Investment Trust, in which the period of maturity of the

scheme is specified and there is no provision for re-purchase before the expiry of the maturity of the scheme;

(i) connected persons to the scheme include:

(i) real estate investment management company of the scheme;

(ii) principal Valuer of the scheme;

(iii) trustee of the scheme;

(iv) a controlling person ;

(v) associate;

(vi) a director, senior executive or an officer of the persons mentioned at (i), (ii), (iii) , (iv) or (v) above;

(j) "control" or "controlling interest" means control exercised or controlling interest held:

(i) in case of a company, by any person or combination of persons who directly or indirectly own, control or hold shares carrying not less than 10% of the voting rights of such company; or

(ii) as between two companies, if the same person or combination of persons, directly or indirectly, own, control or hold shares carrying not less than 10% of the voting rights of each of the two companies; or

(iii) majority of the directors of any company who are in a position to exercise control over the real estate investment management company.

(k) "credit rating agency" means a body corporate registered under Securities and Exchange Board of India (Credit Rating Agencies) Regulations, 1999;

- (l) "depository" means a body corporate as defined in the Depositories Act, 1996 (22 of 1996);
- (m) "inspecting officer" means any person appointed as such by the Board under Chapter VII of these regulations;
- (n) "key-personnel" in relation to a company, means persons who exercise effective control over its affairs;
- (o) "net worth" means the aggregate value of the paid up equity capital and free reserves (excluding funds created out of revaluation), reduced by the aggregate value of accumulated losses and deferred expenditure not written off, including miscellaneous expenses not written off;
- (p) "offer document" means any document by which applications for subscribing to units of the scheme are invited from the public;
- (q) "property valuer" or "Principal Valuer" refers to the property valuer appointed to a scheme pursuant to Chapter VI of these regulations and empanelled with the Board.
- (r) "real estate" or "property" refers to land or buildings, whether the interest is a freehold or leasehold interest, and includes car parks and assets incidental to the ownership of real estate (e.g. fittings, fixtures, etc).
- (s) "real estate investment management company" means a company incorporated under the Companies Act, 1956 (1 of 1956) and registered with the Board under these regulations, whose object is to organise, operate and manage a real estate investment scheme;
- (t) " real estate investment trust " means a trust registered under the Indian Trusts Act,1882 and registered with the Board under these

regulations, whose object is to organize, operate and manage real estate collective investment ;

(u) "recognised stock exchange" means any stock exchange which is recognised under section 4 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956);

(v) "relative" means a person who is a relative, as defined in section 6 of the Companies Act, 1956 (1 of 1956);

(w) "registrars to an issue and share transfer agent" means a person registered as Registrars to an Issue and Share Transfer Agents under the Securities and Exchange Board of India (Registrar to an Issue and Share Transfer Agents) Regulations, 1993;

(x) "regulation" means a regulation forming part of these regulations;

(y) "scheme" means a close-ended real estate investment scheme constituted as a trust that invests in real estate with the aim to provide returns to unit holders derived mainly from the rental income or capital gains of the real estate and authorised under these Regulations.

(z) "schedule" means any of the schedule appended to these regulations;

(aa) "sponsor" means any person who, acting alone or in combination with another body corporate, establishes a Real estate Investment Trust;

(i) subscription of moneys or money's worth (including bank deposits) to the scheme;

(ii) property acquired, directly or indirectly, with, or with the proceeds of, subscription of money referred to in item (i) of this Clause or

(iii) income arising, directly or indirectly, from subscription money or property referred to in item (i) or (ii),

(ab) "trustee" means a person who holds the property of the real estate investment scheme in trust for the benefit of the unit holders, in accordance with these regulations;

(ac) "unit" includes any instrument issued under a scheme, by whatever name called, denoting the value of the subscription of a unit holder; and

(ac) "unit holder" means a person holding a unit in a scheme.

(2) Words and expressions not defined in these Regulations, but defined in or under the Act or the Securities Contracts (Regulation) Act (42 of 1956) or the Companies Act, 1956 (1 of 1956) or any statutory modification or re-enactment thereof, shall have the same meaning as have been assigned to them by or under those enactments, unless the context requires otherwise.

CHAPTER II

REGISTRATION OF REAL ESTATE INVESTMENT TRUST AND REAL ESTATE INVESTMENT MANAGEMENT COMPANY

No person other than real estate investment trust to make a public offer or seek listing of units

3. A real estate Investment trust shall not make a public offer of real estate investment instruments or units or seek listing for such units unless:-

- (a) it is constituted as a Trust;
- (b) such Trust is registered with the Board under these regulations; and
- (c) it complies with all applicable provisions of the Act, Securities Contracts (Regulation) Act, 1956 and other Acts as may be applicable.

No person other than real estate investment management company to manage real estate investment schemes

4. No person other than a real estate investment management company which has obtained a certificate of registration under these regulations shall manage schemes of a real estate investment trust.

Application for grant of certificate of registration

5. A real estate investment trust and a real estate investment management company shall make separate applications to the Board for the grant of certificate of registration in the forms specified by the Board.

Application fee to accompany the application

6. Every application for registration under regulation 5 shall be accompanied by a non-refundable application fee as specified in the First Schedule.

Application to conform to the requirements

7. An application which is not complete in all respects or does not conform to the requirements of these regulations shall be rejected by the Board.

Provided that before rejecting any such application, the applicant may be given an opportunity to remove within one month such objections as may be indicated by the Board.

Provided further that the Board may on sufficient reasons being shown extend the time in order to enable the applicant to remove such objections.

Furnishing information

8. (1) The Board may direct the applicant to furnish such further information or clarification as may be required by it, for the purpose of processing the application.

(2) The Board, if it so desires, may ask the applicant or its authorized representative to appear before the Board for personal representation in connection with the grant of a certificate.

Conditions for eligibility

9. The Board shall not consider an application for the grant of a certificate of registration to a real estate investment trust or a real estate investment management company unless;

(1) Real estate investment trust satisfies the following conditions in addition to the conditions specified in regulation 10:-

(a) it is set up as a trust and the trust deed provides for undertaking real estate investment schemes as per these regulations;

(b) trustees are either;

(i) a scheduled bank carrying on commercial activity ; or

(ii) a trust company which is a subsidiary of such a bank;

(iii) a public financial institution within the meaning of section 4 A of the Companies Act; or

(iv) an insurance company; or

(v) a body corporate

(2) Real estate investment management company satisfies the conditions specified in regulation 10 and its trust deed provides for managing of real estate investment schemes as its main object.

10. A real estate investment trust and a real estate investment management company shall each satisfy the following further conditions for grant of registration by the Board;

(a) a net worth of not less than rupees five crores;

Provided that at the time of making the application the applicant shall have a minimum net worth of rupees three crores which shall be increased to rupees five crores within three years from the date of grant of registration

(b) the applicant is fit and proper person for the grant of such certificate of registration in terms of Securities and Exchange Board of India

(Criteria for Fit and Proper Person) Regulations, 2004 as far as they may apply;

- (c) trustees, directors and key personnel of real estate investment trust and real estate investment management company shall consist of persons of honesty and integrity, having adequate professional experience in related field and shall be fit and proper persons in terms of Securities and Exchange Board of India (Criteria for Fit and Proper Person) Regulations, 2004;
- (d) at least fifty per cent of the trustees of such real estate investment trust and directors of real estate investment management company shall consist of persons who are independent and are not directly or indirectly associated with the persons who have control over the real estate investment trust or the real estate investment management company as the case may be;
- (e) no person, directly or indirectly connected with the applicant or the trustees of real estate investment trust and directors of real estate investment management company has in the past been refused registration by the Board under the Act;

Explanation: For the purposes of this clause, the Board shall take into account whether the previous application for registration of any person, directly or indirectly, connected with the applicant has been rejected by the Board or any disciplinary action has been taken against such person under the Act or any of the rules or any of the regulations made there under.

- (f) the management of real estate investment trust and the management of the real estate investment management company shall be independent of each other;
- (g) real estate investment trust and real estate investment management company shall enter into an agreement for managing the scheme property.

The agreement for managing the scheme property shall contain such clauses as are specified by the Board as are necessary for the purpose of fulfilling the objectives of the scheme.

Grant of certificate of registration

11. (1) The Board may, on receipt of an application and on being satisfied that the applicant complies with the requirements of these regulations, call upon the applicant to pay registration fee as specified in the First Schedule.

(2) On receipt of registration fee, the Board shall grant a certificate of registration in the form specified in the second schedule, on such terms and conditions as are in the interest of investors and as may be specified by the Board.

Terms and conditions to be complied with

12. The certificate of registration granted under regulation 11 shall be subject to the following conditions, namely:-

(a) any trustee of the real estate investment trust or a director of the real estate investment management company shall not be a director in any other associate of the real estate investment trust or the real estate investment management company unless such person is an independent director and approval of the board of such associate of which such person is an independent director, has been obtained;

(b) the real estate investment trust and the real estate investment management company shall forthwith inform the Board of any material change in the information or particulars previously furnished, which have a bearing on the certificate of registration granted by it;

- (c) appointment of a trustee of a real estate investment trust or director of a real estate management company shall be made with the prior approval of the Board;
- (d) the real estate investment trust and the real estate investment management company shall comply with provisions of the Act and these regulations;
- (e) no change in the controlling interest of the real estate investment trust or real estate investment management company shall be made without obtaining prior approval of the Board and the unit holders holding at-least one-half of the nominal value of the unit capital of the scheme.
- (f) the real estate investment trust and real estate investment management company shall take adequate steps to redress the grievances of the investors within one month from the date of receipt of the complaint from the aggrieved investor.
- (g) real estate investment trust and real estate investment management company shall comply with the Code of Conduct as specified in the Third Schedule.

Procedure where registration is not granted

- 13.** (1) Where an application made under these regulations for grant of registration does not satisfy the conditions specified in these regulations, the Board may reject the application after giving the applicant a reasonable opportunity of being heard and inform the applicant of the same.
- (2) The decision shall be communicated to the applicant, in writing, by the Board within 30 days of such decision stating therein the grounds on which the application has been rejected.

CHAPTER III

TRUSTEES AND THEIR OBLIGATIONS

Trust Deed to be registered under the Registration Act

14. (1) The instrument of trust shall be in the form of a deed specified by the Board and duly registered under the provisions of the Indian Registration Act, 1908 (16 of 1908) executed by sponsor in favour of the trustees named in such an instrument.

Appointment of trustees

- (2) Sponsor shall appoint trustees who shall hold the assets of the scheme for the benefit of unit holders.

Contents of trust deed

15. (1) the trust deed shall contain such clauses specified by the Board as are necessary for safeguarding the interests of the unit holders.

- (2) no trust deed shall contain a clause which has the effect of-

- (i) limiting or extinguishing the obligations and liabilities of the real estate investment trust or real estate investment management company in relation to any scheme or the unit holders; or
- (ii) indemnifying the trustee or the real estate investment management company or its directors for loss or damage caused to the unit holders by their acts of negligence or acts of commissions or omissions.

Rights and obligations of the real estate investment trust

16. (1) Real estate investment trust shall have a right:-

- (a) to obtain from the real estate investment management company such information as is considered necessary by the real estate investment trust.
 - (b) to inspect the books of accounts and other records relating to the scheme.
- (2) The real estate investment trust shall ensure that the real estate investment management company has;-
- (a) the necessary office infrastructure;
 - (b) appointed all key personnel including managers for the schemes and submitted their bio-data which shall contain the educational qualifications and past experience in the areas relevant for fulfilling the objectives of the schemes;
 - (c) appointed auditors to audit the accounts of the scheme from the list of auditors approved by the Board;
 - (d) appointed a compliance officer to comply with the provisions of the Act and these regulations and to redress investor grievances;
 - (e) appointed registrars to an issue and share transfer agent;
 - (f) prepared a compliance manual and designed internal control mechanisms including internal audit systems;
 - (g) taken adequate insurance for the assets of the scheme;
 - (h) not given any undue or unfair advantage to any associate or dealt with any of the associates in any manner detrimental to the interest of the unit holders;
 - (i) operated the scheme in accordance with the provisions of the trust deed, these regulations and offer document of the scheme(s);

- (j) undertaken the activity of managing schemes only;
 - (k) taken adequate steps to ensure that the interest of investors of one scheme are not compromised with the object of promoting the interest of investors of any other scheme;
 - (l) minimum net worth on a continuous basis and shall inform the Board immediately of any shortfall;
- (3) Where the real estate investment trust has reason to believe that the conduct of business of the scheme is not in accordance with these regulations, trust deed and the offer document of the scheme, real estate investment trust shall forthwith take such remedial steps as are necessary and shall immediately inform the Board of the action taken.
- (4) The real estate investment trust shall be accountable for, and be the custodian of, the funds and property of the respective schemes and shall hold the same in trust for the benefit of the unit holders in accordance with these regulations and the provisions of trust deed.
- (5) The real estate investment trust shall be responsible for the calculation of any income due to be paid to the scheme and also for any income received in the scheme to the unit holders.
- (6) The real estate investment trust shall convene a meeting of the unit holders –
- (a) whenever required to do so by the Board in the interest of the unit-holders; or
 - (b) whenever required to do so on the requisition made by unit holders holding at least one-tenth of nominal value of the unit capital of any scheme; or

- (c) when any change in the fundamental attributes of any scheme which affects the interest of the unit holders is proposed to be carried out.

Provided that no such change shall be carried out unless the consent of unit holders holding at least three-fourths of nominal value of the unit capital of the scheme is obtained.

Explanation:- For the purposes of this clause "fundamental attributes" means the investment objective and terms of a scheme.

- (7) The real estate investment trust shall review;

- (a) on a quarterly basis (i.e., by the end of March, June, September and December) every year all activities carried out by the real estate investment management company.

- (b) periodically all service contracts relating to registrars to an issue and share transfer agents and satisfy itself that such contracts are fair and reasonable in the interest of the unit holders.

- (c) investor complaints received and the redressal of the same by the real estate investment management company .

- (8) The real estate investment trust shall ensure that:-

- (a) net worth of real estate investment management company is not deployed in a manner which is detrimental to interest of unit holders.

- (b) property of each scheme is clearly identifiable as scheme property and held separately from property of the real estate investment management company and property of any other scheme.

(c) clearances or no objection certificate is obtained, in respect of transactions relating to property of the scheme from such authority as is competent to grant such clearance or no objection certificate.

(d) it shall abide by the Code of Conduct as specified in the Third Schedule.

(9) The real estate investment trust shall furnish to the Board on a quarterly basis (i.e., by end of March, June, September and December), every year –

(a) a report on the activities of the scheme;

(b) a certificate stating that real estate investment trust has satisfied itself that the affairs of the real estate investment management company and of the various schemes are conducted in accordance with these regulations and investment objective of each scheme.

(10) The real estate investment trust shall cause:-

(a) the profit and loss accounts and balance sheet of the schemes to be audited at the end of each financial year by an auditor empanelled with the Board.

(b) each scheme to be appraised at the end of each financial year by an appraising agency.

(c) the scheme to be rated by a credit rating agency.

(11) A meeting of the trustees to discuss the affairs of the scheme shall be held at least twice in every three months in a financial year.

(12) The real estate investment trust shall report to the Board any breach of these regulations which has had, or is likely to have, a materially

adverse effect on the interests of unit holders as soon as they become aware of the breach.

- (13) The real estate investment trust shall ensure that-
- (a) the fees and expenses of the scheme are within the limits as specified by the Board;
 - (b) accounts of the schemes are drawn up in accordance with the accounting norms as specified by the Board;
 - (c) accounts of the scheme comply with the format of the balance sheet and the profit and loss account as specified by the Board.
- (14) the real estate investment trust shall take all reasonable care to ensure that the sale, issue, repurchase and cancellation of units effected by a scheme are carried out in accordance with the provisions of the offer documents and these regulations;
- (15) the real estate investment trust shall be liable for the acts and omissions of its nominees and agents in relation to assets forming part of the property of the scheme;
- (16) the real estate investment trust shall take all reasonable care to ensure that real estate investment trust has proper legal title to the real estate owned by scheme, as well as to the contracts (such as property contracts, rental agreements, joint venture or joint arrangement agreements, and any other agreements) entered into on behalf of the scheme with respect to its assets and that each such contract is legal, valid and binding and enforceable by or on behalf of the scheme in accordance with its terms;
- (17) the real estate investment trust shall ensure there are adequate safe vaults for custody of original documents of title relating to trust property.

- (18) the real estate investment trust shall comply with such guidelines, directives, circulars and instructions as may be issued by the Board from time to time, on the subject of real estate investment schemes.

Termination of trusteeship

17. (1) The trusteeship of a trustee shall come to an end -

- (a) if the real estate investment trust is in the course of being terminated; or
- (b) if unit holders holding at least three-fourths of the nominal value of the unit capital of the scheme pass a resolution for removing the trustee and the Board approves such resolution; or
- (c) if in the interest of the unit holders, the Board, for reasons to be recorded in writing decides to remove the trustee for any violation of the Act or any other regulations there under committed by them; or

Provided that the trustee shall be afforded reasonable opportunity of being heard before action is taken under this clause;

- (d) if the trustee serves on the sponsor a notice of not less than three months expressing its intention not to continue as trustee.

(2) The Board may notwithstanding anything contained in these regulations appoint any person as a trustee if the sponsor fails to appoint a trustee.

(3) The trustee so removed shall from such date be discharged from complying with the obligations under the trust deed but shall remain liable for any action taken before such removal.

Termination of the Agreement with the real estate investment management company

18. (1) The agreement entered into by the real estate investment trust with the real estate investment management company may be terminated;
- (a) if the real estate investment management company is in the course of being wound up as per the provisions of the Companies Act, 1956 or;
 - (b) if unit holders holding at least three-fourths of the nominal value of the unit capital of the scheme pass a resolution for terminating the agreement with the real estate investment management company and the prior approval of the Board has been obtained, or
 - (c) if in the interest of the unit holders the Board, or real estate investment trust after obtaining prior approval of the Board, and after giving an opportunity of being heard to the real estate investment management company , decides to terminate the agreement with the real estate investment management company.
- (2) Upon termination of agreement under sub-regulation (1), another real estate investment management company, registered with the Board, shall be appointed by the real estate investment trust within three months from the date of such termination.
- (3) The real estate investment management company so removed shall continue to act as such at the discretion of real estate investment trust or real estate investment trust itself may act as real estate investment management company till such time as new real estate investment management company is appointed.
- (4) The real estate investment management company appointed under sub-regulation (2) shall stand substituted as a party in all the documents to which the real estate investment management company so removed was a party.

- (5) The real estate investment management company so removed shall continue to be liable for all acts of omissions and commissions notwithstanding such termination.
- (6) If none of the real estate investment management companies, registered under these regulations, consent to being appointed as real estate investment management company within a further period of three months, then the trustee may terminate the scheme/s.
- (7) An agreement for managing scheme property shall be executed in favour of the new real estate investment management company subject to all the rights and duties as specified in the regulations.

CHAPTER IV

BUSINESS ACTIVITIES AND OBLIGATIONS OF REAL ESTATE INVESTMENT MANAGEMENT COMPANY

Restrictions on business activities

19. The real estate investment management company shall not:

- (a) undertake any activity other than that of managing the scheme;
- (b) act as a trustee of any scheme;
- (c) launch any scheme for the purpose of investing in securities;
- (d) invest in any schemes floated by it.

Provided that a real estate investment management company may invest in its own scheme;

- (i) if it makes a disclosure of its intention to invest in the offer document of the scheme, and
- (ii) does not charge any fees on its investment in that scheme.

Obligations of real estate investment management company

20. Every real estate investment management company shall:

- (a) be responsible for managing the funds or properties of the scheme on behalf of the unit holders;
- (b) take all reasonable steps and exercise due diligence to ensure that the scheme is managed in accordance with the provisions of these regulations, offer document and the trust deed;

- (c) exercise due diligence and care in managing assets and funds of the scheme;
- (d) be responsible for the acts of commissions and omissions by its employees or the persons whose services have been availed by it;
- (e) remain liable to the unit holders for its acts of commission or omissions, notwithstanding anything contained in any contract or agreement;
- (f) be incompetent to enter into any transaction with or through its associates, or their relatives relating to the scheme;

Provided that in case the real estate investment management company enters into any transactions relating to the scheme with any of its associates, a report to that effect shall immediately be sent to the trustee and to the Board.

- (g) appoint registrar and share transfer agent;
- (h) abide by the Code of Conduct as specified in the Third Schedule;
- (i) give receipts for all monies received by it and give a report to the Board every month, particularly of receipts and payments;
- (j) hold a meeting of the Board of Directors to consider the affairs of scheme at least twice in every three months;
- (k) ensure that its officers or employees do not make improper use of their position or information to gain, directly or indirectly, an advantage for themselves or for any other person or to cause detriment to the scheme;
- (l) obtain adequate insurance against the property of the scheme;

- (m) comply with such guidelines, directives, circulars and instructions as may be issued by the Board from time to time, on the subject of real estate investment schemes.
- (n) ensure compliance with any applicable laws, rules, codes or guidelines issued by governmental departments, regulatory bodies, exchanges or any other organizations regarding the activities of the scheme or its administration.

Submission of information and documents

21. (1) The real estate investment management company shall prepare quarterly reports (i.e., as at the end of March, June, September and December) on its activities and the position regarding compliance with these regulations and submit the same to the trustees within one month of the expiry of each quarter.
- (2) The real estate investment management company shall file with the trustee and the Board-
- (a) particulars of all its directors along with their interest in other companies within fifteen days of their appointment; and
 - (b) any change in the interests of directors, within fifteen days of such change.
- (3) The real estate investment management company shall furnish a copy of the Balance Sheet, Profit and Loss Account and a copy of the summary of the yearly appraisal report to the unit holders within two months from the closure of financial year.
- (4) the real estate investment management company shall furnish to the Board and the trustee such information and documents as may be required by them concerning the affairs of the scheme.

CHAPTER V

SCHEMES OF REAL ESTATE INVESTMENT TRUST

Procedure for launching of schemes

- 22.** (1) No scheme shall be launched by the real estate investment trust unless it is in accordance with these regulations.

Rating

- (2) No scheme shall be launched by the real estate investment trust without obtaining rating from a credit rating agency.

Appraisal

- (3) No scheme shall be launched by the real estate investment trust without getting the scheme appraised by an appraising agency.

No Guaranteed returns

- 23.** No scheme shall provide guaranteed or assured returns.

Provided that indicative return may be specified in the offer document only if the same is assessed by the appraising agency and expressed in monetary terms.

Disclosures in the offer document

- 24.** (1) The real estate investment trust shall before launching any scheme file a copy of the offer document of the scheme with the Board and pay filing fees as specified in the Second Schedule.

- (2) The offer document shall contain such information as specified by the Board.

- (3) The offer document shall also contain true and fair view of the scheme and adequate disclosures to enable the investors to make informed decision.
- (4) The Board may in the interest of investors require the real estate investment trust to carry out such modifications in the offer document as it deems fit.
- (5) In case no modifications are suggested by the Board in the offer document within 21 days from the date of filing, the real estate investment trust may issue the offer document to public.

Advertisement material

- 25. (1) Advertisements in respect of every scheme shall be in conformity with the Advertisement Code as specified by the Board.
- (2) The advertisement for each scheme shall disclose in addition to the investment objectives, the method and periodicity of valuation of scheme property.

Appraising Agency

- 26. The appraising agency, whose appraisal report forms part of the offer document and has given a written consent for the inclusion of the appraisal report in the offer document, shall be liable for any statement in the appraisal report which is misleading, incorrect or false.

Misleading Statements

- 27 (1) The offer document and advertisement materials shall not be misleading or contain any statement or opinion which is incorrect or false.
- (2) Where an offer document or advertisement includes any statement or opinion which is incorrect or false or misleading, every person who is a trustee of real estate investment trust or director of real estate

investment management company at the time of the issue of the offer document shall be punishable under the Act unless he proves either that the statement or opinion was immaterial or that he had reasonable ground to believe at the time of the issue of the offer document or advertisement that the statement was true.

Offer Period

28. No scheme shall be open for subscription for more than 90 days.

Allotment of Units and refunds of moneys

29 (1) The real estate investment trust shall specify in the offer document, -

(a) the minimum and the maximum subscription amount it seeks to raise under the scheme; and

(b) in case of oversubscription the process of allotment of the amount oversubscribed.

(2) The real estate investment trust shall refund the application money to the applicants if the scheme fails to receive the minimum subscription amount referred to in clause (a) of sub-regulation (1).

(3) Any amount refundable under sub-regulation (2) shall be refunded within a period of six weeks from the date of closure of subscription list, by Registered A.D and by cheque or demand draft marked "A/C Payee" to the applicants.

(4) In the event of failure to refund the amounts within the period specified in sub-regulation (3), the real estate investment trust shall pay interest to the applicants at a rate of fifteen percent per annum on the expiry of six weeks from the date of closure of the subscription list.

Unit certificates

- 30.** The real estate investment trust shall issue to the applicant whose application has been accepted, unit certificates as soon as possible but not later than six weeks from the date of closure of the subscription list.

Provided that if the units are issued through a depository, a receipt in lieu of unit certificate will be issued as per provisions of Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 and bye-laws of the depository.

Transfer of units

- 31** (1) A unit certificate issued under the scheme shall be freely transferable.

(2) The real estate investment trust shall, on production of instrument of transfer together with relevant unit certificates, register the transfer and return the unit certificate to the transferee within thirty days from the date of such production.

Provided that if the units are held in a depository such units shall be transferable in accordance with the provisions of the Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996 and the bye-laws of the depository.

Money to be kept in separate account and utilisation of money

- 32** (1) The subscription amount received shall be kept in a separate bank account in the name of the scheme and shall be utilised for-

(a) adjustment against allotment of units only after the trustee has received a statement from the registrars to the issue and share transfer agent regarding minimum subscription amount, as stated in the offer document, having been received from the public, or

(b) for refund of money in case minimum subscription amount, as stated in the offer document, has not been received or in case of over-subscription.

- (2) The minimum subscription amount as specified in the offer document shall not be less than the minimum amount, as specified by the appraising agency, needed for completion of the project for which the scheme is being launched.
- (3) The moneys credited to the account of the scheme shall be utilised for the purposes of the scheme and as specified in the offer document.
- (4) Any unutilised amount lying in the account of the scheme shall be invested in the manner as disclosed in the offer document.

Investments and segregation of funds

33. The real estate investment trust shall:

- (a) not invest the funds of the scheme for purposes other than the objective of the scheme as disclosed in the offer document.
- (b) segregate the scheme assets of different schemes.
- (c) not invest corpus of a scheme in other schemes.
- (d) not transfer funds from one scheme to another scheme.

Provided that inter scheme transfer of scheme property may be permitted at the time of termination of the scheme with prior approval of the trust and the Board.

Listing of schemes

- 34** (1) The units of every scheme shall be listed immediately after the date of allotment of units and not later than six weeks from the date of closure of the scheme on each of the stock exchanges as mentioned in the offer document.
- (2) The real estate investment trust submit such information, including financial information relating to the schemes, to the stock exchanges and

investors and comply with such other continuing obligations as may be stipulated in the listing agreement.

(3) The units issued to the public, which are listed in recognised stock exchanges, shall be traded and such trades shall be cleared and settled in recognised stock exchanges subject to bye laws of concerned stock exchange or such conditions as may be specified by the Board.

Termination of a scheme

35 (1) A scheme shall be terminated on the expiry of duration specified in the scheme or on the accomplishment of the purpose of the scheme.

(2) Notwithstanding anything contained in sub-regulation (1), a scheme may also be terminated -

(a) on the happening of any event which, in the opinion of the trustee, requires the scheme to be terminated and the prior approval of the Board is obtained; or

(b) if unit holders of a scheme holding at least three-fourth of the nominal value of the unit capital of the scheme pass a resolution that the scheme be terminated and the approval of the Board is obtained; or

(c) if in the opinion of the Board, the continuance of the scheme is prejudicial to the interests of the unit-holders; or

(d) if in the opinion of the real estate investment trust, the purpose of the scheme can not be accomplished and it obtains the approval of the trustees and also of the unit holders of the scheme holding at least $\frac{3}{4}$ of the nominal value of the unit capital of the scheme with a resolution that the scheme be terminated and the approval of the Board is obtained.

- (3) Where a scheme is to be terminated under sub-regulation (1) or sub-regulation (2), the trustee shall give notice disclosing the circumstances leading to the termination of the scheme in a daily newspaper having nation wide circulation and in the newspaper published in the language of the region where the real estate investment trust is registered.
- (4) (a) The real estate investment trust shall dispose of the assets of the scheme concerned in the best interest of the unit holders of that scheme.
- (b) The proceeds of sale realised under clause (a), shall be first utilised towards the discharge of such liabilities as are due and payable under the scheme and after making appropriate provision for meeting the expenses connected with such termination, the balance shall be paid to the unit holders in proportion to their unit holding.
- (5) On the completion of the termination, the real estate investment trust shall forward to the Board and the unit holders
- (a) a report on the steps taken for realisation of assets of the scheme, expenses for termination and net assets available for distribution to the unit holders and
- (b) a certificate from the auditors of the scheme to the effect that all the assets of the scheme are realised and the details of the distribution of the proceeds.
- (6) The unclaimed money if any at the time of termination shall be kept separately in a bank account by the trustee for a period of three years for the purpose of meeting investors' claims and thereafter shall be transferred to investor protection fund, as may be specified by the Board.

Effect of commencement of termination proceedings

36. On and from the date of the publication of notice under sub-regulation (3) of regulation 35, the real estate investment trust or the real estate investment management company shall cease to carry on any business activities in respect of the scheme so terminated.

Cessation of the scheme

37. If, after the receipt of the report under sub-regulation (5) of regulation 35, the Board is satisfied that all the conditions for termination of the scheme have been complied with, the scheme shall cease to exist.

CHAPTER VI

VALUATION OF SCHEME PROPERTIES

Appointment of a Principal Valuer

38 (1) Every scheme for which authorisation is requested shall appoint an independent property valuer (the “Principal Valuer”)

(2) The agreement for such appointment shall clearly list the obligations and length of tenure of the Principal Valuer as set out in this Chapter.

General Obligations of a Principal Valuer

39 (1) The Principal Valuer shall value all the real estate held under the scheme, on the basis of a full valuation with physical inspection in respect of the site of the real estate and an inspection of the building(s) and facilities erected thereon once a year, and in any event, for the purposes of issuance of new units.

(2) The Principal Valuer shall also submit a valuation report on real estate to be acquired or sold by the scheme or where new units are offered by the scheme or in any other circumstances as may be specified by the Board.

(3) The contents of the valuation report shall be as specified by the Board.

40. The valuation methodology shall follow the “Valuation Standards on Properties” published from time to time by the concerned Indian Institute or the International Valuation Standards issued from time to time by the International Valuation Standards Committee.

Criteria for Acceptability of the Principal Valuer

- 41.** The Principal Valuer shall be a reputed firm or company which:
- (a) provides property valuation services on a regular basis;
 - (b) carries on the business of valuing real estate;
 - (c) has key personnel who are qualified to perform property valuations;
 - (d) has sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities; in particular, it shall have a minimum issued and paid-up capital and capital reserves of five crore or its equivalent in foreign currency, and its assets shall exceed its liabilities by 5 crore or more as shown in the firm's or company's last audited balance sheet;
 - (e) has robust internal controls and checks and balances to ensure the integrity of valuation reports and that these reports are properly and professionally prepared in accordance with best practices; and
 - (f) has adequate professional insurance to cover its usual risks.
- 42** (1) The Principal Valuer shall be independent of the scheme, real estate investment trust, real estate investment management company and each of the significant holders of the scheme.
- (2) The Principal Valuer shall not be considered independent if:
- (a) it is the subsidiary or holding company of:
 - (i) the real estate investment management company of the scheme;
 - (ii) the trustee of the scheme;
 - (iii) any of the significant holders of the scheme; or
 - (iv) the holding company, subsidiary or associated company of the real estate investment management company, real estate investment trust, or any of the significant holders of the scheme; or
 - (b) any of its partners, directors or officers is

- (i) director or officer of the real estate investment management company of the scheme;
- (ii) the trustee of real estate investment trust;
- (iii) any of the significant holders of the scheme; or
- (iv) the holding company, subsidiary or associated company of the real estate investment management company, real estate investment trust or any of its significant holders; or

(c) it is holding or controlling 10% or more of the beneficial interest in, or the right to vote in the governing bodies of, any of the entities in (b)(i), (b)(ii), (b)(iii) or (b)(iv); or

(d) in the case where the scheme intends to acquire or dispose of a property, the principal valuer or its associate:

- (i) is engaged whether as principal or agent by the scheme's counterparty that intends or has agreed to sell to or purchase from the scheme property, in relation to the introduction or referral of the scheme to the scheme property or vice versa;
- (ii) is engaged whether as principal or agent by the scheme in relation to the acquisition of the scheme property;
- (iii) acts as a broker for the property transaction for a fee; or
- (iv) had, at any time during the one year immediately before the date of the agreement for such intended purchase or disposal, been retained to provide valuation of the subject property to the scheme's counterparty (or its associated companies);

Explanation:- For the purpose of this regulation, "significant holders of the scheme" means a person who holds units exceeding five per cent of total units of the scheme.

43. The Principal Valuer shall ensure that its opinion and valuation is independent of and unaffected by its business or commercial relationship with other persons.

Qualifications of Directors of Principal Valuer

44. The directors of the Principal Valuer shall be persons of good repute who possess the necessary experience for the performance of their duties.

Valuation Report

- 45 (1) The Principal Valuer shall submit a valuation report which shall include as a minimum:

- (a) all material details in relation to the basis of valuation and the assumptions used;
- (b) describe and explain the valuation methodologies adopted;
- (c) overall structure and condition of the relevant market including an analysis of the supply demand situation, the market trend and investment activities;
- (d) the following particulars in respect of each property, such as:
 - (i) an address sufficient to identify the property, which shall generally include postal address, lot number and such further designation as is registered with the appropriate government authorities;
 - (ii) the nature of the interest the scheme holds in the property (e.g. if it is a freehold or leasehold, and the remainder of the term if it is a leasehold);
 - (iii) the existing use (e.g. shops, offices, factories, residential, etc.);

- (iv) a brief description of the property, such as the age of the building, the site area, gross floor area, net lettable floor area, and the current zoning use;
 - (v) the options or rights of pre-emption and other encumbrances concerning or affecting the property;
 - (vi) occupancy rate;
 - (vii) lease cycle duration;
 - (viii) lease expiry profile;
 - (ix) a summary of the terms of any sub-leases or tenancies, including repair obligation, granted to the tenants of the property;
 - (x) the capital value in existing state at the date the valuation was performed;
 - (xi) the existing monthly rental before tax if the property is wholly or partly let together with the amount and a description of any outgoings or disbursements from the rent, and, if materially different, the estimated current monthly market rental obtainable, on the basis that the property was available to let on the effective date as at which the property was valued;
 - (xii) the estimated current net yield;
 - (xiii) a summary of any rent review provisions, where material;
 - (xiv) the amount of vacant space, where material;
 - (xv) material information regarding the title of the subject property as contained in the relevant legal opinion, and a discussion as to whether any and how the legal opinions have been taken into consideration in the valuation of the relevant property; and
 - (xvi) any other matters which may affect the property or its value;
- (e) particulars (as set out in (d)) of any real estate for which the scheme has an option to purchase;

- (f) a letter stating the independent status of the principal valuer and that the valuation report is prepared on a fair and unbiased basis;
- (g) a discussion of the valuation methodology and assumptions used, and justification of the assumptions; and
- (h) an explanation of the rationale for choosing the particular valuation method if more than one method is or could have been adopted.

Provided where a valuation report is allowed by the Board to be published in summary form, the full valuation report shall be made available for inspection at an address in India.

- (2) Where a legal opinion is required, such opinion together with copies of any document referred to therein shall be made available to the Principal Valuer of the relevant property prior to the completion of the valuation report.

46. (1) Whenever a valuation report is prepared for the scheme, the date of the valuation report shall be:

- (a) the date the scheme is valued, if such report is prepared for the purpose of calculating the net asset value of the scheme; or
- (b) a date which is not more than three months before the date on which:
 - (i) an offer document is issued; or
 - (ii) a circular is issued, if the circular relates to a transaction that requires holders' approval; or
 - (iii) a sale and purchase agreement (or other agreement to transfer legal title) is signed, if the transaction does not require holders' approval.

- (2) Where the date of the valuation report precedes the end of the last period reported on by the auditor, it will be necessary for the offer document or circular to include a statement reconciling the valuation figure with the figure included in the balance sheet as at the end of the period in the event the two figures are different.

Retirement of the Principal Valuer

- 47.** The Principal Valuer shall retire after it has conducted valuations of the real estate of the scheme for three consecutive years. Furthermore, the same valuer may only be re-appointed after another three years.
- 48.** The Principal Valuer shall be subject to removal by notice in writing from the real estate investment trust in any of the following events:
- (a) the Principal Valuer goes into liquidation, becomes bankrupt or has a liquidator appointed over its assets; or
 - (b) for good and sufficient reason, the real estate investment trust states in writing that a change in the Principal Valuer is desirable in the interests of the unit holders; or
 - (c) an ordinary resolution is passed by the unit holders to dismiss the Principal Valuer where the following persons shall abstain from voting:
 - (i) the Principal Valuer;
 - (ii) directors, senior executives or officers of the Principal Valuer;
 - (iii) associates of the persons in (ii); and
 - (iv) controlling entity, holding company, subsidiary or associated company of the Principal Valuer.

49. Upon the retirement or dismissal of the Principal Valuer, the real estate investment trust shall appoint a new Principal Valuer that meets the qualification requirements of this Chapter.

Disclosure of Net Asset Value

50. A real estate investment management company shall take all reasonable care to ensure that the net asset value per unit of a scheme is calculated as and when an annual valuation report is issued by the principal valuer for the relevant period, and that such net asset value shall be published in the annual report and disclosed to unit holders at such frequency as specified by the Board;

CHAPTER VII

INVESTMENT LIMITATIONS AND DIVIDEND POLICY REQUIREMENTS

51 (1) The scheme shall only invest in real estate.

(2) The real estate shall generally be income-generating.

(3) The scheme may acquire uncompleted units in a building which is unoccupied and non-income producing or in the course of substantial development, redevelopment or refurbishment, but the aggregate contract value of such real estate shall not exceed 20% of the total net asset value of the scheme at the time of acquisition.

(4) The offer document shall clearly disclose if the scheme intends to acquire further properties during the first 12 months from listing.

(5) No real estate investment trust under all its schemes shall have exposure to more than 15% of any single real estate project.

(6) No real estate investment trust under all its schemes shall have exposure to more than 25% of all the real estate projects developed, marketed, owned or financed by a group of companies.

52. The scheme is prohibited from investing in vacant land or engaging or participating in property development activities.

Explanation:- For the purpose of this regulation , property development activities do not include refurbishment, retrofitting and renovations.

53. A scheme shall not lend, assume, guarantee, endorse or otherwise become directly or contingently liable for or in connection with any obligation or indebtedness of any person nor shall it use any assets of the scheme to

secure the indebtedness of any person nor shall it use any assets of the scheme to secure any obligations, liabilities or indebtedness without the prior written consent of the real estate investment trust and unit holders.

54. A scheme shall not acquire any asset which involves the assumption of any liability that is unlimited.

Limitation on Borrowings

55 (1) A scheme may borrow for financing investment or operating purposes but aggregate borrowings shall not at any time exceed one fifth of the value of total gross assets of the scheme.

(2) The scheme may mortgage or pledge its assets to secure such borrowings.

(3) The scheme shall disclose in its offer document its borrowing policy including its maximum borrowing limit and the basis for calculating such limit.

Dividend Policy

56 (1) The scheme shall distribute to unit holders as dividends each year an amount not less than 90 % of its annual net income after tax.

(2) The real estate investment trust shall determine any (i) revaluation surplus credited to income, or (ii) gains on disposal of real estate which shall form part of net income for distribution to unit holders.

CHAPTER VIII

TRANSACTIONS WITH CONNECTED PERSONS

Disclosure of Transactions of Connected Persons

57. Where any of the connected persons has an interest in a related business which competes or is likely to compete, either directly or indirectly, with the scheme's activities, the offer document shall prominently disclose the following:

(1) a description of the related business of the connected person and its management, to enable investors to assess the nature, scope and size of such business, with an explanation as to how such business may compete with the scheme;

(2) where applicable, a statement from the relevant connected person that it is capable of performing, and shall perform, its duty in relation to the scheme independently of its related business and in the best interests of the scheme and its holders; and

(3) a statement as to whether the scheme may acquire any of the related business or assets of the connected person in the future, together with the time frame during which such acquisition will take place or no such acquisition is intended.

58. Where any of the connected persons have for the purpose of the establishment of the scheme, agreed to sell real estate to the scheme, the offer document shall prominently disclose the following:

(1) a valuation report of the real estate that the connected person has agreed to sell; and

(2) the price to be paid by the scheme for the subject real estate and other terms of the transaction.

59. If the real estate investment management company manages more than one scheme and a transaction involves two or more of the schemes managed by the real estate management company, transactions between these schemes shall be deemed connected party transactions for each of the schemes involved in the transactions.

Transactions of Connected Persons to be at Arms Length and Transparent

60. All transactions carried out by or on behalf of the scheme shall be:
- (a) carried out at arm's length;
 - (b) carried out in an open and transparent manner and where circumstances permit, transactions shall be carried out by way of open tender or competitive bidding by auction and it shall be the duty of the real estate investment management company to ensure the same.
 - (c) valued, in relation to a property transaction, by an independent valuer;
 - (c) consistent with the investment objectives and strategy of the scheme;
 - (d) in the best interests of holders; and
 - (e) properly disclosed to holders.

Approval of Unit Holders in some cases

61. Unit holders' prior approval is not required for connected party transactions where:
- (a) the total consideration or value of the transaction is less than five per cent of the latest net asset value of the scheme, as disclosed in the latest published audited accounts of the scheme, and adjusted for

any subsequent transactions since the publication of such accounts;
and

Explanation: Where more than one transaction is conducted with the same connected person and the value of this single transaction does not exceed the 5% limit, the limit applies to the cumulative value of all the transactions between such person and the scheme during the twelve months preceding the intended transaction.

(b) the scheme has not entered into any other transactions with the same connected person (including its associate, controlling entity, holding company, subsidiary or associated company) during the twelve months preceding the current transaction.

- 62.** Connected party transactions in the nature of services provided relating to the real estate of the scheme in the ordinary and usual course of estate management, such as renovation and maintenance work, shall be contracted on normal commercial terms and subject to the prior approval of the real estate investment trust.
- 63.** Neither the trustees of real estate investment trust nor the real estate investment management company, its delegates, the Principal Valuer of the scheme nor any other connected persons to the scheme may retain cash or other rebates from a property agent in consideration of referring transactions in scheme property to the property agent.
- 64.** The scheme shall not engage connected persons as property agents for rendering services to the scheme, including advisory or agency services in property transactions.

CHAPTER IX

OPERATIONAL REQUIREMENTS

Matters to be Disclosed in Offer Document

65. Authorised schemes shall issue an up-to-date offer document when they offer units to the public, containing information necessary for investors to be able to make an informed judgment regarding the investment proposed to them, and in particular containing the information as specified by the Board.

Legal Documentation

66. Title investigation and legal documentation of scheme properties shall be examined by advocates who are on the panel of financial institutions and scheduled banks who extend housing loans on mortgage of properties.

Register of Holders

a. (1) The real estate investment trust or registrar to an issue and share transfer agent so appointed by the trust shall maintain a register of unit holders and the Board shall be informed of the address (es) where such register is kept.

(2)The register shall be kept open for inspection by unit holders during business hours.

Meetings

67. General meetings of unit holders shall be conducted as follows:

(a) holders shall be able to appoint proxies;

(b) votes shall be proportionate to the number of units held or to the value of units held where there are accumulation units;

- (c) the quorum for meetings at which a special resolution is to be considered shall be the holders of 25% of the units in issue and 10% if only an ordinary resolution is to be considered;
- (d) if within half an hour from the time appointed for the meeting a quorum is not present, the meeting shall be adjourned for not less than 15 days. The quorum at an adjourned meeting will be the number of those holders present at the adjourned meeting in person or by proxy;
- (e) if the possibility exists of a conflict of interest between different classes of holders there shall be provision for class meetings;
- (f) holders shall be prohibited from voting their own units at, or counted in the quorum for, a meeting at which they have a material interest in the business to be contracted and that interest is different from the interests of all other holders;
- (g) an ordinary resolution may be passed by a simple majority of the votes of those present and entitled to vote in person or by proxy at a duly convened meeting;
- (h) a special resolution may only be passed by 75% or more of the votes of those present and entitled to vote in person or by proxy at a duly convened meeting and the votes shall be taken by way of poll.

Fees

- 68.** The basis of calculation of all costs and charges payable from the scheme's property shall be clearly stated in the offer document, with percentages expressed on a per annum basis.

Provided that Percentage-based transaction fees payable to the real estate investment management company or any of its connected persons may be disallowed as being inconsistent with the management company's fiduciary responsibility.

69. The following fees, costs and charges shall not be paid from the scheme's property:

(a) commissions payable to sales agents arising out of any dealings in units of the scheme;

(b) expenses arising out of any advertising or promotional activities in connection with the scheme;

(c) expenses which are not ordinarily paid from the property of schemes; and

(d) expenses which have not been disclosed in the offer documents.

Announcements

70. The real estate investment management company shall inform holders as soon as reasonably practicable of any information or transaction concerning the scheme which;

(a) is necessary to enable holders to appraise the position of the scheme; or

(b) is necessary to avoid a false market in the units of the scheme; or

(c) might be reasonably expected to materially affect market activity in the scheme or affect the price of the units of the scheme, or

(d) requires holders' approval.

CHAPTER X

GENERAL OBLIGATIONS

To maintain proper books of accounts and records, etc.

71 (1) Every real estate investment management company shall -

- (a) keep and maintain proper books of accounts, records and documents, for each scheme so as to explain its transactions and to disclose at any point of time the financial position of each scheme and in particular give a true and fair view of the state of affairs of the scheme and
- (b) intimate to the Board and the trustees the place where such books of accounts, records and documents including computer records are maintained.

(2) Every Real estate investment management company shall continue to maintain and preserve, for a period of five years after the close of each scheme, its books of accounts, records, computer data and documents.

Financial year

72. The financial year for all the schemes shall end as of March 31 of each year.

Dispatch of warrants and proceeds

73. The real estate investment management company shall,

- (a) dispatch to the unit holders the warrants within 42 days of the declaration of the interim returns.
- (b) dispatch the redemption proceeds within 30 days of the closure or the winding up of the scheme.

Statement of Accounts and Annual Report

74. (1) The real estate investment management company shall:

- (a) not exceed the ceilings on expenses or fees in respect of the scheme as specified by the Board.
- (b) prepare the accounts of the scheme in accordance with accounting norms as specified by the Board;
- (c) comply with format of balance sheet and profit and loss accounts as specified by the Board;
- (d) prepare an annual report and annual statement of accounts of each scheme in respect of each financial year.

(2) Every real estate investment management company shall within two months from the date of closure of each financial year forward to the Board a copy of the Annual Report.

Auditor's Report

75. (1) Every scheme shall have the annual statement of accounts audited by an auditor who is empanelled with the Board and who is not in any way associated with the auditor of the real estate investment management company.

(2) The auditor shall be appointed by the trustee.

(3) The auditor shall forward his report to the trustee and such report shall form part of the Annual Report of the scheme.

(4) The auditor's report shall comprise the following:-

- (a) a certificate to the effect that:-

- (i) he has obtained all information and explanations which, to the best of his knowledge and belief, were necessary for the purpose of the audit;
 - (ii) the balance sheet and the revenue account give a fair and true view of the scheme, state of affairs and surplus or deficit in the scheme for the accounting period to which the Balance Sheet or, as the case may be the Revenue Account relates;
 - (iii) the statement of account has been prepared in accordance with accounting policies and standards as specified by the Board.
- (b) any other matter which in the opinion of the auditor is vital and has a bearing on the schemes.

Functions of auditors of scheme

76. (1) The auditor of the scheme shall, as soon as possible, notify the Board and the trustee in writing if he has reasonable grounds to suspect that a contravention of the regulations has occurred or if the schemes are not conducted on sound commercial principles.

(2) The auditor of the scheme:

- (a) shall have a right of access at all reasonable times to the books of the scheme; and
- (b) may require any employee of the Real estate investment management company to give the auditor information and explanations for the purposes of the audit.

Removal or Resignation of auditors

77 (1) The trust for reasons to be recorded in writing may remove the auditor of the scheme for misconduct or inefficiency after giving the auditor a reasonable opportunity of being heard.

Provided that another auditor for the scheme is appointed by trust immediately from auditors empanelled with the Board.

- (2) The auditor of the scheme may resign by giving a three months written notice to the real estate investment management company and to the real estate investment trust.

Publication of Annual Report and summary thereof

- 78** (1) The scheme wise annual report or an abridged form thereof shall be published in a national daily as soon as possible but not later than two calendar months from the date of finalisation of accounts.
- (2) The annual report shall contain details as specified by the Board and such other details as are necessary for the purpose of providing a true and fair view of the operations of the real estate investment management company.
 - (3) The report if published in abridged form shall carry a note that full annual report shall be available for inspection at the Head Office and all branch offices of the real estate investment management company.

Periodic and continual disclosures

- 79** (1) The real estate investment management company and the trustee, shall make such disclosures or submit such documents as they may be called upon by the Board to make or submit.
- (2) Without prejudice to the generality of sub-regulation (1), the real estate investment management company on behalf of the scheme shall furnish the following periodic reports to the Board, namely:
 - (a) copies of the duly audited annual statements of accounts including the balance sheet and the profit and loss account in respect of each scheme, once a year;

(b) a copy of quarterly unaudited accounts;

(c) a quarterly statement of changes in net assets for each of the schemes.

Quarterly disclosures

80. A real estate investment management company, on behalf of the scheme shall before the expiry of one month from the close of each quarter that is 31st March, 30th June, 30th September and 31st December publish its unaudited financial results in one daily newspaper having nation wide circulation and in a newspaper published in the language of the region where the Head Office of the real estate investment management company.

Provided that the quarterly unaudited report referred in this sub-regulation shall contain details as specified in the regulations and such other details as are necessary for the purpose of providing a true and fair view of the operations of the scheme.

Disclosures to the investors

81. The trustee shall ensure that the real estate investment management company shall make such disclosures to the unit holders as are essential in order to keep them informed about any matter which may have an adverse bearing on their investments.

Calling of meeting of unit holders, transfer and transmission of units

82. The calling of meeting of unit holders as well as transfer and transmission of units of scheme shall be as specified by the Board.

CHAPTER XI

INSPECTION AND AUDIT

Board's right to inspect and investigate

83 (1) The Board may appoint one or more persons as inspecting officer to undertake the inspection of the books of accounts, records, documents and infrastructure, systems and procedures or to investigate the affairs of the trust and real estate investment management company for any of the following purposes, namely:

(a) to ensure that the books of accounts are being maintained by the Trust or real estate investment management company in the manner specified in these regulations;

(b) to ascertain whether the provisions of the Act and these regulations are being complied with by the trust and real estate investment management company ;

(c) to ascertain whether the systems, procedures and safeguards followed by the real estate investment trust and real estate investment management company are adequate;

(d) to investigate into the complaints received from the investors or any other person on any matter having a bearing on the activities of the real estate investment trust and Real estate Investment Management Company;

Notice before inspection and investigation

84 (1) Before ordering an inspection under regulation 83 the Board shall give not less than ten days notice to the Trust or the real estate investment management company as the case may be.

(2) Notwithstanding anything contained in sub-regulation (1), where the Board is satisfied that in the interest of the investors no such notice is

required to be given, it may, by an order in writing direct that such inspection or investigation be taken up immediately without any notice.

- (3) During the course of inspection or investigation, the trust or real estate investment management company against whom the inspection or investigation is being carried out shall be bound to discharge its obligations as provided in regulation 85.

Obligations during inspection and investigation

85 (1) It shall be the duty of the every trustee or Real estate Investment Management Company whose affairs are being inspected or investigated, and of every director, officer and employee thereof, to produce such books, accounts, records, and other documents in its custody or control and furnish him such statements and information relating to the activities as trust or real estate investment management company, as the inspecting officer may require, within such reasonable period as the inspecting officer may specify.

- (2) The trust or real estate investment management company shall allow the inspecting officer to have a reasonable access to the premises occupied by it or by any other person on its behalf and also provide necessary infrastructure for examining any books, records, documents, and computer data in the possession of the trust and real estate investment management company or such other person and also provide copies of documents or other materials which in the opinion of the inspecting officer are relevant for the purpose of the inspection.

Submission of report to the Board

86. The inspecting officer shall, on completion of the inspection or investigation, submit a report to the Board:

Provided that if directed to do so by the Board, he shall also submit interim reports.

Appointment of Auditor and recovery of expenses

- 87** (1) Without prejudice to the provisions of regulation 83, the Board shall have the power to appoint an auditor to inspect or investigate, as the case may be, into the books of accounts or the affairs of the trust or real estate investment management company in respect of schemes:

Provided that the Auditor so appointed shall have the same powers of the inspecting officer as stated in regulation 83 and the obligation of the real estate investment trust or real estate investment management company and their respective employees, shall be applicable to the inspection under this regulation.

Payment of inspection fees to the Board

- (2) The Board shall be entitled to recover such expenses including fees paid to the auditors as may be incurred by it for the purposes of inspecting the books of accounts, records and documents of the trust or real estate investment management company.

CHAPTER XII

PROCEDURE FOR ACTION IN CASE OF DEFAULT

Liability for action in case of default

88. In case a real estate investment trust or Real estate investment management company –

- (a) contravenes any provision of the Act or these regulations;
- (b) for the purposes of these regulations furnishes any information which is false or misleading or suppresses any material information;
- (c) does not co-operate in any inspection, investigation or inquiry conducted by the Board under the Act or these regulations;
- (d) fails to comply with any directions issued by the Board under the Act or the regulations;
- (e) fails to resolve the complaints of the investors or fails to furnish to the Board a satisfactory reply in this behalf when called upon to do so by the Board;
- (f) commits a breach of any provision of the Code of Conduct specified in the Third Schedule;
- (g) fails to pay the fees specified in the First Schedule;
- (h) commits a breach of the conditions of registration; or
- (i) fails to make an application for listing or fails to list units of a scheme in a recognized stock exchange;

shall be dealt with in the manner provided in the Act and or Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002.

Directions by the Board

89. The Board may, in the interests of the securities market and the investors and without prejudice to its right to initiate action under this Chapter, give such directions as it deems fit in order to ensure effective observance of these regulations, including directions,

- (a) requiring the real estate investment trust not to collect any money from investors or to launch any scheme;
- (b) prohibiting real estate investment trust from disposing of any of the properties of the scheme acquired in violation of these regulations;
- (c) requiring real estate investment trust to dispose of the assets of the scheme in a manner as may be specified in the directions;
- (d) requiring real estate investment trust to refund any money or the assets to the concerned investors along with the requisite interest or otherwise, collected under the scheme.
- (e) prohibiting real estate investment trust from operating in the capital market or from accessing the capital market for a specified period.

Action against intermediaries

90. The Board may initiate action for suspension or cancellation of registration of an intermediary holding a certificate of registration under section 12 of the Act who fails to exercise due diligence in the performance of its functions or fails to comply with its obligations under these regulations:

Provided that no such certificate of registration shall be suspended or cancelled unless the procedure specified in the regulations applicable to such intermediary is complied with.

Effect of suspension or cancellation of certificate of registration

91 1) On and from the date of the suspension or cancellation of the certificate of registration, the real estate investment trust or real estate investment management company shall cease to carry on any activity (during the period of suspension in case of suspension), and shall be subject to the directions of the Board with regard to any records, documents, or assets that may be in its custody or control, relating to its activities.

(2) While passing an order of suspension or cancellation of registration of an intermediary, the Board may also direct termination of schemes of trust within such period and in such manner as may be directed.

Explanation: For the purpose of this sub-regulation, 'termination of schemes' shall mean liquidation of the asset pool and repayment of the proceeds thereof to the unit holders in the scheme.

CHAPTER XIII

MISCELLANEOUS

Power of the Board to issue interpretations or clarifications

- 92.** In order to remove any difficulties in the application or interpretation of these regulations, the Board shall have the power to issue clarifications or guidelines in the form of notes or circulars which shall be binding on the trust or real estate investment management company or any other intermediary in the capital market.
- 93.** The powers exercisable by the Board under these regulations shall also be exercisable by any officer of the Board to whom such powers are delegated by the Board by means of an order made under section 19 of the Securities and Exchange Board of India Act, 1992 (15 of 1992).

FIRST SCHEDULE

SECURITIES AND EXCHANGE BOARD OF INDIA (REAL ESTATE INVESTMENT TRUSTS) REGULATIONS, 2008 [Regulation 6]

FEES

I. A. APPLICATION FEES PAYABLE BY REAL ESTATE INVESTMENT TRUST AND REAL ESTATE INVESTMENT MANAGEMENT COMPANY: Rupees Twenty Five Thousand each

B. REGISTRATION FEES PAYABLE BY REAL ESTATE INVESTMENT TRUST: Rupees Ten Lakhs

C. REGISTRATION FEES PAYABLE BY REAL ESTATE INVESTMENT MANAGEMENT COMPANY: Rupees Ten Lakhs

D. ANNUAL FEES PAYABLE BY REAL ESTATE INVESTMENT TRUST:

Net Assets as on 31 st March	Annual fees payable
Up to Rs. 500 crores	Rs. 1.00 lakhs
Above Rs. 500 crores and up to Rs. 1000 crores	Rs. 2.00 lakhs
Above Rs. 1000 crores and up to Rs. 3000 crores	Rs. 3.00 lakhs
Above Rs. 3000 crores and up to Rs. 5000 crores	Rs. 4.00 lakhs
Above Rs. 5000 crores	Rs. 5.00 lakhs

E. FILING FEES FOR OFFER DOCUMENT: Rupees Twenty Five Thousand per document

II. The fees referred to in clause I above, shall be paid by means of a bank draft payable to 'The Securities and Exchange Board of India' at Mumbai.

SECOND SCHEDULE

**SECURITIES AND EXCHANGE BOARD OF INDIA
(REAL ESTATE INVESTMENT TRUSTS) REGULATIONS, 2008
[Regulation 11]**

CERTIFICATE OF REGISTRATION

In exercise of the powers conferred by section 30 of the Securities and Exchange Board of India, 1992 (15 of 1992), read with the Securities and Exchange Board of India (Real estate Investment Trusts) Regulations, 2008 made there under, the Board hereby grants a certificate of registration to as Real Estate Investment Trust (or Real Estate Investment Management Company as the case may be).

Registration Code for the Real Estate Investment Trust is REIT/ REI/// (or Registration Code for the Real Estate Investment Management Company is REIMC/ REI/// as the case may be)

Date

By Order

Sd/-

For and on behalf

Securities and Exchange Board of India

THIRD SCHEDULE

SECURITIES AND EXCHANGE BOARD OF INDIA (REAL ESTATE INVESTMENT TRUSTS) REGULATIONS, 2008 [Regulation 12 (g)]

CODE OF CONDUCT

1. Real estate investment trust and real estate investment management company should neither be organised, operated, managed nor should it have the portfolio of property selected, in the interest of sponsors, members of Board of trustees, directors of Real estate Investment Management Companies, associated persons or in the interest of special class of unit-holders rather than in the interest of all classes of unit-holders of the scheme.
2. Real estate investment trust and real estate investment management company must ensure dissemination to all unit holders of adequate, accurate, explicit and timely information fairly presented in a simple language about the investment policies, investment objectives, financial position and general affairs of the scheme.
3. Real estate investment trust and real estate Investment Management Companies should avoid excessive concentration of business with real estate firms, broking firms, affiliates and also excessive holding of units in a scheme among a few investors.
4. Real estate investment trust and real estate investment management company must avoid conflicts of interest in managing the affairs of the schemes and keep the interest of all unit holders paramount in all matters.
5. Real estate investment trust and real estate investment management company must ensure scheme-wise segregation of bank accounts and securities accounts.
6. Real estate investment trust and real estate investment management company shall carry out the business and invest in accordance with the investment objectives stated in the offer document and take investment decision solely in the interest of unit holders.
7. Real estate investment trust and real estate investment management company must not use any unethical means to sell; market or induce any investor to buy their schemes.
8. Real estate investment trust and real estate investment management company shall maintain high standards of integrity and fairness in all their dealings and in the conduct of their business.
9. Real estate investment trust and real estate investment management company shall render at all times high standards of service, exercise due

diligence, ensure proper care and exercise independent professional judgment.

10. Real estate investment trust or asset real estate investment management company shall not make any exaggerated statement, whether oral or written, either about their qualifications or capability to render investment management services or their achievements.