

Chapter 12

SPECIFIC REQUIREMENTS FOR REAL ESTATE INVESTMENT TRUSTS

12.01 The following information must be disclosed in the prospectus of a real estate investment trust (REIT), in addition to that specified under Chapters 1 – 11 of these Guidelines, unless otherwise specified.

Inside cover or first page

12.02 There must be an additional statement of disclaimer as follows:

“The valuation utilised for the purpose of the proposals submitted to and approved by the Securities Commission Malaysia should not be construed as an endorsement by the Securities Commission Malaysia on the value of the subject assets.”

Information summary

12.03 The information summary section must also include the following information:

- (a) Brief but relevant details on the real estate of the REIT's investment portfolio upon listing, including principal statistics of the real estate;
- (b) Revaluation policy;
- (c) Borrowing or financing policy; and
- (d) Summary of financial information.

Information on the REIT

General

12.04 A prospectus of a REIT must contain the following information:

- (a) The investment objective of the REIT. There must also be a statement that material changes to the investment objective of the REIT would require unit holders' approval;
- (b) The policies and investment strategies to achieve the REIT's stated objective. The investment strategies must include the REIT's future plans (e.g. growth strategies) and steps taken, including the time frame to realise the plans;
- (c) The types and characteristics of real estates which the REIT will acquire, i.e. considerations taken into account in selecting the real estate (e.g. location, types of real estate and income/rental prospects of the real estate, etc.);
- (d) Permitted investments and investment limits and restrictions;
- (e) The policy on borrowing or financing and the REIT's level of gearing at the point of listing, including source, type, nature of borrowings or financing and the interest or profit rate payable;
- (f) Distribution policy and mode of distribution to investors; and
- (g) Investors' profile most suitable for the REIT.

12.05 For an Islamic REIT, the prospectus must also include–

- (a) a clear description of the Shariah approval process, including details on methodologies, rulings and screening process;
- (b) a statement to the effect that the investment of the Islamic REIT is carried out in accordance with the ruling issued by the Shariah adviser. Where the Islamic REIT also invests in other Shariah-compliant instruments, the statement must include that the instruments have been classified as Shariah compliant by the SAC of the SC or the SAC of BNM. For instruments that are not classified as Shariah compliant by the SAC of the SC or the SAC of BNM, a statement stating that the status of the instruments

has been determined in accordance with the ruling issued by the Shariah adviser;

- (c) the percentage ratio of rental received from Shariah non-compliant activities based on the most recent financial year and if applicable, the most recent interim period;
- (d) a statement on coverage of real estate by takaful or insurance scheme, where applicable; and
- (e) compliance with Shariah principles for any financing facilities obtained or to be obtained by the Islamic REIT.

Investment in real estates

12.06 Provide details of the real estate that the REIT will be invested in upon listing, including the following:

- (a) Description of the real estate which includes type, location, age, existing use, net lettable area, number of car parks, information specific to the type of the real estate, such as hotel, hospital and agriculture properties, the market value and purchase consideration;
- (b) Where applicable, particulars of the tenancies, which include major tenants and their corresponding percentage contribution to total gross rental income, tenancy periods, periodic reviews and occupancy rates for the past three years and, in the case of a sale and leaseback, the basis of arriving at the rental entered into by the REIT;
- (c) Details of incomes and expenditure including gross rental income, outgoings, net income, estimation of future income and major capital expenditures likely to be incurred in the immediate future;
- (d) Details of any existing or proposed arrangement which materially enhances short-term yields but may not be sustainable in the

long-term and the risks associated with such arrangements. Details must include:

- (i) An analysis of how such arrangements affect current and future yields must be disclosed together with a computation of the forecast distribution yields without such arrangements;
 - (ii) Payments receivable or received from such arrangement; and
 - (iii) Any other information in relation to the arrangement that is pertinent to an investor's decision to invest in the REIT;
- (e) Encumbrances and limitations in title or interest to the real estate, if any;
- (f) Where a real estate is leased or is proposed to be leased, details of the lease (excluding sub-leases), including details of financial arrangements, stamp duty and options, or other rights given to a lessee or proposed lessee to purchase the real estate. If none, a statement to the effect must be made;
- (g) Where a real estate is to be acquired, the expected period within which the transaction will be completed and its status at the date of prospectus;
- (h) Where a REIT has entered into an agreement to purchase a real estate upon its completion, the rationale and justification of acquiring such real estate and the future prospects of acquiring tenants and future incomes; and
- (i) Other relevant information on the real estate, in particular, risks associated with the following:
- (i) Real estate without a track record;

- (ii) Buildings which are not fully tenanted;
- (iii) Equity of special purpose vehicle;
- (iv) Real estate where the REIT does not have majority ownership of and control in; and
- (v) Real estate located outside Malaysia.

12.07 Where the REIT invests in or proposes to invest in real estate through a lease arrangement, the following must be disclosed:

- (a) Salient terms and conditions of the lease arrangement, including the tenure of the lease to be held by the REIT;
- (b) Details of the lessor;
- (c) A statement whether the lease is registered with the land authority, or where the lease related to a real estate located outside Malaysia, a statement whether the lease is registered or recognised by the relevant authority under an equivalent land registry framework. If the REIT enters into a lease arrangement which is not possible to be registered or recognised by the relevant land authority, the statement must include the following information:
 - (i) Confirmation that the real estate of the lease arrangement is ancillary to a real estate of the REIT, either existing or to be acquired;
 - (ii) The value of the lease arrangement compared with the value of the real estate of the REIT that it is ancillary to, expressed as a percentage;
- (d) Confirmation that the lease arrangement is in the best interests of the unit holders; and
- (e) The interests of the unit holders are protected with respect to the

risk relating to the REIT not being the registered proprietor of the real estate and a legal opinion has been obtained for this purpose.

- 12.08 Disclose the management company's valuation policy for the real estate, including the following information:
- (a) Frequency of valuation;
 - (b) Date of the last valuation conducted;
 - (c) The likely date for the next valuation;
 - (d) Revaluation surplus or deficit comparative to last valuation; and
 - (e) Net book value of the real estate.
- 12.09 An overview of the real estate market and the outlook for the types of real estate that are or to be acquired by the fund must also be included in the prospectus.

Investments in non-real estate assets

- 12.10 Where a REIT invests in non-real estate assets, disclose the following:
- (a) The investment policy and investment strategies to achieve the investment objective of the REIT. In describing the investment policy and investment strategies, the following information must be disclosed:
 - (i) Investment focus of the REIT (e.g. equity, debenture, money market, etc.), the characteristics of the securities/instruments to be invested and the asset allocation strategy. Where appropriate, the investment focus must also include the countries or markets (e.g. global, regional or country-specific, developed or emerging markets, etc.) and target sector or industry;

- (ii) Practice, technique or approach used by the fund manager in managing the investment portfolio, including the policy on active and frequent trading of securities; and
 - (iii) Where applicable, disclosure on whether the fund manager may take temporary defensive positions that may be inconsistent with the REIT's principal strategy in attempting to respond to adverse market conditions, economic, political or any other condition. There must also be a disclosure on types of securities or instruments in which the fund would invest in during defensive positions;
- (b) The risk management strategies and techniques to be employed by the fund manager;
 - (c) The permitted or authorised investments and the investment limits and restrictions for the REIT;
 - (d) Valuation bases for all types of assets invested or to be invested by the REIT, including treatment for suspended counters; and
 - (e) Policy with respect to valuation point to determine the values of the investments, including policy on timing for valuation of a fund's foreign investments and frequency of valuation of the fund's assets.

Fees

- 12.11 Where performance fees are payable, the prospectus must include the computation method together with illustrations, such as numerical examples.

Key Parties

The Management Company

- 12.12 Disclose the nature of any association or family relationship between the substantial shareholders, directors and key personnel of the

management company, and promoters.

12.13 Disclose details of board practices, as follows:

- (a) Date of expiration of the current term of office, where applicable, and the period for which each director has served in that office; and
- (b) The board committees established including the names of the committee members and a summary of the terms of reference of each committee.

Financial information

12.14 The prospectus must disclose pro forma statement of comprehensive income and statement of financial position. Where applicable, audited financial statements must also be disclosed.

12.15 The date of the prospectus issuance must not be later than six months after the end of the period to which the financial information is prepared.

Pro forma statement of comprehensive income

12.16 A pro forma statement of comprehensive income must be prepared for each of the last three financial years and, if applicable, for the most recent interim period. The pro forma statement of comprehensive income is presented for illustrative purpose only and on the assumption that the REIT was in existence throughout the period under review.

12.17 For the pro forma statement of comprehensive income required under paragraph 12.16, state –

- (a) the basis upon which the pro forma statement of comprehensive income is prepared;
- (b) where applicable, that the financial statements used in the preparation of the pro forma financial information were prepared

in accordance with approved accounting standards. Details of the auditor's qualification to these underlying financial statements must also be disclosed, if any, including a statement on how such qualification has been dealt with; and

- (c) whether the pro forma statement comprehensive income has been prepared in a manner consistent with the format of the financial statements and the accounting policies to be adopted by the REIT.

Pro forma statement of financial position

12.18 A pro forma statement of financial position must be prepared at the date of establishment of the REIT or at the last date to which the financial statements must be prepared and adjusted for the following:

- (a) Any acquisition or disposal connected with the proposed offering exercise; and
- (b) Proceeds of the proposed offering exercise, the effects of the offering exercise on the unit holders' funds and proposed utilisation of funds.

12.19 The pro forma statement of financial position must include the following information:

- (a) NAV per unit; and
- (b) Pro forma NAV per unit.

12.20 For the pro forma statement of financial position required under paragraph 12.18, state –

- (a) the basis upon which the pro forma statement of financial position is prepared;
- (b) where applicable, that the financial statements used in the preparation of the pro forma statement of financial position were

prepared in accordance with approved accounting standards. Details of the auditor's qualification to these underlying financial statements must also be disclosed, if any;

- (c) whether the pro forma statement of position has been prepared in a manner consistent with the format of the financial statements and the accounting policies to be adopted by the REIT; and
 - (d) any adjustments made when preparing the pro forma statement of financial position.
- 12.21 The pro forma statement of financial position must be accompanied by a reporting accountant's letter which states–
- (a) whether the pro forma statement of financial position has been properly compiled on the basis stated in paragraph 12.20(a); and
 - (b) that the engagement was performed in accordance with the relevant standards on assurance engagements approved for the application in Malaysia.

Audited financial statements

- 12.22 For a REIT already in operation prior to its listing, the prospectus must disclose the audited financial statements of the REIT for the past three most recent financial years or such shorter period that the REIT has been in existence, and for the most recent interim period, if applicable.
- 12.23 The audited financial statements provided in the prospectus must be prepared in accordance with the approved accounting standard.
- 12.24 For the purpose of this Chapter, the audited financial statements mean the audited financial statements of a REIT, or where applicable, the audited consolidated or combined financial statements of a REIT.
- 12.25 A prospectus must contain an accountant's report prepared by a reporting accountant in respect of the audited financial statements and audited interim financial report of the REIT.

- 12.26 The accountant's report must include—
- (a) the financial statements and, where applicable, the interim financial report of the REIT, as prepared by the management company and has been audited;
 - (b) an audit opinion expressed by the reporting accountant on the financial statements and, where applicable, the interim financial report;
 - (c) a statement that it was prepared in accordance with the relevant standards on auditing approved for application in Malaysia; and
 - (d) a statement that it was prepared for the inclusion in the prospectus.
- 12.27 The accountant's report must report on the audited financial statements of the REIT referred to in a prospectus for the three most recent financial years or such shorter period that the REIT has been in existence and, where applicable, the interim financial period. The date of the interim financial period must not be more than six months from the issuance of the prospectus.
- 12.28 The reporting accountant must disclose any significant subsequent event between the date of the most recent audited financial statements and the audited interim financial report, where applicable, used in the preparation of the accountants' report, and the date of such report. If there is no such event, to provide an appropriate statement to that effect.

Management's discussion and analysis of financial condition and results of operations

- 12.29 To provide the management's discussion and analysis of the REIT's financial condition, changes in financial condition, and results of operations for each year and interim period for which the financial information is provided in the prospectus. The discussion must include, among others:
- (a) Material changes from year to year in relation to, at a minimum,

the following selected financial information;

- (i) Revenue;
 - (ii) Other income;
 - (iii) Property operating expense;
 - (iv) Net property income; and
 - (v) Profit before tax; and
- (b) The nature and conditions of the REIT's operations, its risk factors and the prevailing economic environment.

12.30 Results of operations

- (a) Provide information regarding any significant factor, including unusual or infrequent events or new developments, which materially affected profits and to indicate the extent the profits were affected. Describe any other significant component of revenue or expenditure necessary to understand the REIT's results of operations;
 - (b) If material, the impact of fluctuations of foreign exchange rates or interest rates on the REIT, and the extent to which foreign currency exposure and investments are hedged by currency borrowings or other hedging instruments; and
 - (c) Provide information on any government, economic, fiscal or monetary policies or factors which have materially affected, or could materially affect the REIT's operations.
- 12.31 Disclose whether or not there are any significant changes that have occurred, which may have a material effect on the financial position and results of the REIT since the date to which the most recent annual financial statements have been prepared and where applicable, since the date of the interim financial statements. If there are no changes, to provide an appropriate statement to that effect.

12.32 Provide a statement of capitalisation and indebtedness (distinguishing

between guaranteed and unguaranteed, and secured and unsecured, indebtedness) as of a date no earlier than 60 days prior to the date of the prospectus, showing the REIT's capitalisation and, where applicable, as adjusted to reflect the new units being issued and the intended application of the proceeds. Indebtedness also includes indirect and contingent liabilities.

Future financial information

12.33 The prospectus must disclose future financial information as follows:

- (a) For a newly-established REIT, for the first financial period. However, if the period represented is less than nine months, future financial information for the second financial year of the REIT must be provided; and
- (b) For a REIT which has been in operation prior to its listing, future financial information must be provided, where—
 - (i) in the case the prospectus is issued in the last three months of the current financial year, a forecast for that financial year and the next financial year; or
 - (ii) in the case the prospectus is issued subsequent to the last financial year, an estimate for that last financial year and a forecast for the next financial year.

12.34 The future financial information required to be disclosed must include at a minimum, the following:

- (a) Revenue;
- (b) Property operating cost;
- (c) Profit before tax;
- (d) Tax expense; and

- (e) Profit after tax.
- 12.35 In addition to the information required under paragraph 12.34, the following must be disclosed:
- (a) Distribution policy;
 - (b) Distribution rate;
 - (c) Distributable amount;
 - (d) Distribution cover; and
 - (e) Distribution yield.
- 12.36 Future financial information must be prepared on reasonable bases and assumptions.
- 12.37 Future financial information must be clear and unambiguous, and there must be a disclosure on whether such information is prepared on the bases and accounting policies consistent with those adopted by the REIT, and is presented in accordance with the accounting standards adopted or to be adopted by the REIT in the preparation of its financial statements.
- 12.38 Disclose details on the bases and assumptions of the future financial information and additional information that investors would reasonably require, for the purpose of making an informed investment decision.
- 12.39 To state the extent to which projected revenues are based on secured tenancies and the reasons for expecting such projected revenues. Also, to include a discussion on the impact of any likely changes in business and operating conditions included in the future financial information.
- 12.40 Directors' analysis of future financial information and commentary on its achievability must be disclosed, in light of the following:

- (a) Future prospects of the industry;
 - (b) Future plans and strategies to be adopted; and
 - (c) The level of gearing, liquidity and other requirements.
- 12.41 The following warning statements, in bold, must be clearly stated:
- “Rental yield on real estate held by the REIT is not equivalent to the yield of the units.”**
- “Current rental receipts and yields may not be sustained.”**
- “Value of the real estate may rise as well as fall.”**
- 12.42 The reporting accountants must review and report on the underlying accounting policies and assumptions relied on in the preparation of the future financial information.
- 12.43 The report must state –
- (a) that the engagement was performed in accordance with the relevant standards on assurance engagements approved for application in Malaysia;
 - (b) whether the reporting accountant is of the opinion that the future financial information is properly prepared based on the assumptions made by the directors and is presented in a manner consistent with both the format of the financial statements and the accounting policies of the REIT; and
 - (c) that nothing has come to the reporting accountant’s attention which gives him any reason to believe that the assumptions do not provide a reasonable basis for the preparation of future financial information.

Shariah pronouncement by Shariah Adviser

- 12.44 For an Islamic REIT, the Shariah pronouncement including detailed

reasoning or justification from the Shariah adviser must be disclosed in the prospectus.

Fee

12.45 The list of expenses for the REIT must also include fee payable to the property manager.

The property manager

12.46 Where a property manager is appointed, disclose information on the appointed property manager, including the following:

- (a) Corporate information, including number of years in real estate or property management, total property under management and staff strength;
- (b) Information on key personnel, highlighting the educational and/or professional qualification, and work experience;
- (c) Functions, duties and responsibility of the property manager;
- (d) The annual fee and basis of the fee calculation; and
- (e) Where applicable, unit holding of the property manager in the fund.

Valuation certificate

12.47 In relation to the valuations of the real estates, disclose a summary of the valuations in the form of a valuation certificate that complies with the *Guidelines on Asset Valuation*.

Related-party transactions or conflict of interest

12.48 The relationship between the management company, including the management company's related corporations and associated persons,

and the vendors must be clearly explained.

- 12.49 Disclosure on any transaction within the two preceding years relating to any real estate purchased or to be purchased out of the proceeds of the issue, which may give rise to a conflict of interest.

Additional information

- 12.50 The inclusion of photographs in the prospectus is only permitted on condition that the photograph is not more than six months old and the REIT owns a major portion of the real estate. Drawings of real estate must not be included in the prospectus.

- 12.51 Disclose the salient terms of material agreements relating to the proposed acquisition of real estates.

- 12.52 If materially dependent to the REIT's establishment or operations, summary information regarding the extent to which the REIT is dependent on–

- (a) Contracts including commercial or financial contracts; and
- (b) Licences and permits.

Such information must include the salient terms, approvals and conditions attached and status of compliance, where applicable.