

Chapter 1

INTRODUCTION

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

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

Chapter 2

DEFINITIONS

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

accounting records	includes invoices, receipts, orders for payment of money, bills of exchange, cheques, promissory notes, vouchers, and other documents of prime entry. They also include working papers and other documents necessary to explain the methods and calculations by which the accounts are made up.
accounts	means a profit and loss account (or income and expenditure statement) and balance sheet (or statement of assets and liabilities) and include notes or statements (other than auditor's report or director's report) attached or intended to be read with the profit and loss account and balance sheet.
adviser	means a Malaysian incorporated– (a) investment bank/merchant bank; (b) universal broker; or (c) such other person who provides advice/information to the applicant where such advice/information is submitted to the SC with any proposal.
auditor	has the same meaning as given under the CMSA.
associated person	means the person within the meaning of section 3 of the CMSA.
assets of the fund	includes assets of the fund and all amounts due to the fund.

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

creation price for units	means the price payable to the real estate investment trust for the creation of a unit in the fund.
debenture	has the same meaning as given under the CMSA.
deed	has the same meaning as given under the CMSA.
eligible market	means a market that– (a) is regulated by a regulatory authority; (b) operates regularly (c) is open to the public; and (d) has adequate liquidity for the purposes of the fund in question.
Equity Guidelines	means the <i>Guidelines on the Offering of Equity and Equity-linked Securities</i> .
financial statements	includes a profit and loss account (or an income and expenditure statement), a balance sheet (or statement of assets and liabilities), a statement showing either all changes in equity, or changes in equity other than those arising from capital transactions with owners and distribution to owners, a cash flow statement and accounting policies, and explanatory notes.
fund	means a real estate investment trust.
fund's property	means assets of the fund.
fund manager	means a person who holds a Capital Markets Services Representative's Licence to carry on the regulated activity of fund management.

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

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

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

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

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

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

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

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

Where:

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

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

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

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

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

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

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

non-real estate-related assets means:

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

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

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

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

person connected

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

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

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

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

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

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

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

real estate	means land and all things that are a natural part of the land as well as things attached to the land both below and above the ground.
real estate-related assets	includes units of other real estate investment trusts, listed securities of and issued by property companies, listed or unlisted debt securities of and issued by property companies, and real estate-related asset-backed securities.
related corporation	has the same meaning as given under the CMSA.
related party	means— <ul style="list-style-type: none">(a) the management company of the fund;(b) the trustee of the fund;(c) a major unit holder of the fund;(d) a director, chief executive officer or major shareholder of the management company; or(e) a person connected with any director, chief executive officer, or major shareholder of the management company, or a person connected with the management company, trustee or a major unit holder of the fund.
restricted offer for sale	means an invitation to an identifiable group/pool of investors by, or on behalf of, an existing unit holder to purchase units of the fund already in issue or allotted.
restricted offer for subscription	means an invitation to an identifiable group/pool of investors by, or on behalf of, an existing unit holder to subscribe for units of the fund not yet in issue or allotted.

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

Calculation of Time Period

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

Chapter 3

THE MANAGEMENT COMPANY

Appointment of Management Company

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

Eligibility Requirements

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

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

Reconstruction, Amalgamation and Change in Shareholding

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

Directors

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

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

Key Personnel

Chief Executive Officer

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

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

Designated Person Responsible for the Fund

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

Compliance Person

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

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

Property Manager

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

Internal Audit

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

Roles and Responsibilities of a Management Company

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

General

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

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

Foreign Investments

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

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

Valuation

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

Pricing (for Unlisted Fund)

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

Transactions

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

Maintenance of Records

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

Provision of Information

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

Chapter 4

THE TRUSTEE

Appointment of Trustee

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

Eligibility Requirements

4.02 A trustee must–

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

Roles and Responsibilities of Trustee

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

General

4.04 A trustee should–

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

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

4.05 A trustee should, among others–

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

4.06 A trustee should ensure that its officers and delegates–

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

Holding of the Fund's Property

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

Trustee's Obligations on Oversight Functions

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

Guidance

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

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

Trustee's Reporting and Disclosure Obligations

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

Dealings in Fund's Property

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

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

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

Creation, Cancellation, and Dealing in Units of the Fund

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

Provision of Information

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

Maintenance of Records

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

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

Holdings of Units by Trustee

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

Chapter 5

DELEGATION AND OUTSOURCING

General

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

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

Delegation of Function by the Management Company

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

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

Delegation of Function by the Trustee

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

Outsourcing of Functions

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

Chapter 6

OVERSIGHT ARRANGEMENT

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

Investment Committee

General

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

Roles and Responsibilities

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

Shariah Adviser

General

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

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

Roles and Responsibilities

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

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

Fit and Proper Criteria

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

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

Chapter 7

CONSTITUTION OF A REAL ESTATE INVESTMENT TRUST

Instrument Constituting the Fund

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

Name of Fund

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

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

Investment Objective of the Fund

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

Modifications to the Deed

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

Chapter 8

INVESTMENTS OF THE REAL ESTATE INVESTMENT TRUST

General

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

Dealings in the Fund's Property

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

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

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

Authorised Investments

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

Investments in Real Estates

Acquisitions

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

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

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

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

Disposals

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

Acquisition and Disposal Price

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

Investments in Single-purpose Companies

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

- it to exercise an effective control over the company and exercise all rights and interests over the real estate without any hindrance;
 - (e) the fund should not assume any liability of the single-purpose company it is acquiring, except for the commitments under clause 8.09(d); and
 - (f) the value of the single-purpose company is backed by the value of the real estate.
- 8.21 In disposing of investments in a single-purpose company, the management company should ensure that clause 8.17 is complied with.

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

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

General

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

Spread Limits

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

Concentration Limits

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

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

Guidance

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

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

Investments in Deposits

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

Investments in Foreign Real Estates/Markets

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

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

Borrowings

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

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

Breach of Investment Limits

Real Estates and Single-purpose Companies

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

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

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

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

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

Non-Permissible Activities

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

Guidance

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