

The Securities and Exchange Commission**The Securities Act**
(Act No. 41 of 2016)**The Securities (Real Estate Investment Trust)
Guidelines, 2020**

IN EXERCISE of the powers contained in section 211 of the Securities Act, 2016, the following Guidelines are hereby made:

1. *Title*

These Guidelines may be cited as the Securities (Real Estate Investment Trust) Guidelines, 2020.

2. *Application*

2.1 These Guidelines shall apply to Income Real Estate Investment Trusts (I-REITs) authorized by the Commission and does not apply to Development Real Estate Investment Trusts (D-REITs), Mortgage Real Estate Investment Trusts (M-REITs) or other forms of REITs.

2.2 Unless specifically exempted under the Securities Act, The Securities (Collective Investment Scheme) Rules, Statutory Instrument No. 161 of 1993 as amended and additional requirements prescribed in these Guidelines shall apply to the authorization, establishment and operation of REITS.

2.3 In case of any doubt of the application of these Guidelines to a particular REIT, it is advised that direction or clarification be sought from the Commission.

3. Interpretation

In these Guidelines, unless the context otherwise requires—

“Act” means the Securities Act, No. 41 of 2016 and any subsequent amendments;

“Authorization” has the meaning assigned to it in the Act;

“Capital gains” means the increase in the value of a real estate asset resulting from a valuation which gives the real estate asset a higher value than the purchase price;

“Closed Ended Fund” means a fund or trust where—

(a) The number of REITS units issued remains constant overtime except where a new issue of REITS units is made or there is a reduction in the capital of the fund initiated by the trustee or as a consequence of the termination or winding up of the trust; and

(b) The REITS unit holders, except where there is a reduction in the capital of the fund initiated by the trustee or as a consequence of termination or winding up of the trust,—

(i) is not entitled to require the trustee to redeem the REIT units; and

(ii) may only exit the investment by selling the units in the secondary market;

“Commission” has the meaning assigned to it in the Act;

“Constitutive Documents” has the meaning assigned to it in the Act;

“Custodian” has the meaning assigned to it in the Act;

“Distribution” means accumulated realized income less the accumulated realized losses;

“Distributable income” means income (rental and investments) derived from a distribution;

“Firm” means a valuation survey firm with at least one valuation surveyor that meets the eligibility criteria specified in these Guidelines and “property valuer” shall be construed to have the same meaning as “firm”;

“income-generating real estate” means real estate properties that generate a consistent, recurring revenue in the form of dividends, interest or cash distribution

“Investment Income” means income derived from investing in cash and cash equivalents

“Manager” has the meaning assigned to it in the Act;

“Net Asset Value” means the value of all assets of the fund less the value of liabilities, including trustee, custodian and management fees as at the day the calculation is made;

“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 and includes rights, interests and benefits to the ownership of the real estate or things which are fixtures or are developed, installed or constructed on the land including buildings and site improvements; or improvements and permanent building, plant and equipment or attachments including plumbing, heating and cooling systems, electrical wiring and built-in items including elevators which may be used in connection with the land; but excludes minerals, or oil and gas assets and resources;

“Real Estate Investment Trust” or “REIT” means a Collective Investment Scheme that invests in or proposes to invest primarily in income-generating real estate and shall have the same meaning as I-REITS;

“Rules” means the Securities (Collective Investment Scheme) Rules, Statutory Instrument No. 161 of 1993;

“Total Asset Value” means the value of all assets of the fund based on the latest valuation (which shall not be more than 12 months old);

“Trustee” has the meaning assigned to it in the Act;

“Valuation report” means a report prepared by a valuation surveyor; and

“Valuation surveyor” has the same meaning assigned to it in the Valuation Surveyors Act, Cap. 207 of the Laws of Zambia.

4. Authorization of REIT

4.1 An application for the authorization of a REIT shall be made to the Commission in accordance with Rule 5 of the Securities (Collective Investment Scheme) Rules.

4.2 In addition to the documents required under Rule 5, a REITS application shall include the following:

4.2.1 a management service agreement with the REIT Manager or the proposed agreement;

4.2.2 any agreements with property manager or the proposed agreement;

4.2.3 the certified copies of valuations of real estate vested in, acquired, transferred or to be vested in, acquired or transferred to the REIT;

4.2.4 a signed and dated legal opinion on the title of the real estate vested in, transferred or to be vested in, acquired or transferred to the REIT; and

4.2.5 the certified copy of the report of the structural engineer.

5. Qualification of REIT

5.1 To qualify as a REIT, a Collective Investment Scheme shall satisfy the following criteria:

5.1.1 the REIT shall be structured as a closed ended fund and shall be listed on an exchange licensed by the Commission;

5.1.2 A REIT shall have a minimum of two investors;

5.1.3 The minimum value of initial assets of real estate investment shall be ZMW 50 million;

5.1.4 at least 80% of the total assets of the REIT shall comprise of real estate;

5.1.5 the real estate shall be engaged in the business of investing in income generating real estates;

5.1.6 at least 80% of the REIT revenue shall be derived from rents and investment income;

5.1.7 the operating costs of a REIT should not be more than 30% of revenue derived from rents and investment income; and

5.1.8 at least 80% of the distributable income of the REIT, for each accounting period, shall be distributed to unit holders.

6. Listing of REIT

6.1 The units of every REIT shall be listed on a securities exchange licensed by the Commission no later than six weeks from the date of closure of the offer.

6.2 The units of a REIT that is listed on a securities exchange shall be traded, cleared and settled in accordance with the listing rules of the concerned exchange.

6.3 A minimum of 25% of the total of REIT units in issue shall be the free float.

7. *Restriction on investment*

7.1 An authorized REIT shall be subject to the following investment restrictions:

- 7.1.1 a REIT shall invest only in real estate and permissible cash equivalents;
- 7.1.2 a REIT shall invest a minimum of 80% of its net asset value in real estate and a minimum of 20% shall be invested in cash and cash equivalent, government treasury bills, fixed deposits and any other liquid financial instruments;
- 7.1.3 a REIT shall not invest more than 25% of its net asset value in a single property; and
- 7.1.4 A REIT is prohibited from investing in vacant properties or participating in property development activities.

7.2 For the purpose of these Guidelines, property development activities do not include refurbishment, retrofitting and renovations.

8. *Income requirements*

8.1 A REIT shall, in each financial year after the first year of its authorization, earn at least 80% of its income from its income producing real estate.

8.2 In determining the income referred to in clause 7.1, any profits or capital gains from the sale of real estate shall be excluded.

9. *Income distribution*

9.1 A Manager shall make income distributions to REIT unit holders from realized gains, realized income or from cash held in the fund which is surplus to the investment of the trust.

9.2 A minimum of 80% of the distributable income, if any, shall be made within three months after the end of each quarter, half-year or annually depending on the distribution policy of the REIT as stated in its constitutive documents.

9.3 Where a Manager intends to recommend an income distribution that is lower than 80%, the Manager shall—

- 9.3.1 Submit, to the Trustee and the Commission, a statement of—
 - (a) The reasons for proposing a lower distribution; and
 - (b) When that minimum distribution level of 80% is likely to be restored; and
- 9.3.2 obtain the Trustee's (Or Commission's) consent before proposing the income distribution to the unit holders.

9.4 Subject to clause 8.4 and to the provisions of the constitutive documents, a Manager may distribute realized capital gains.

9.5 Any realized capital gains which have not been invested within a period of two years from the date of realization shall be distributed to REIT unitholders within two months of the second year of such realization.

10. *Consequences for breach of income distribution under Clause 9*

- 10.1 The following shall constitute a breach of these Guidelines:
 - 10.1.1 failure by a REIT to distribute income as required under Clause 9;
 - 10.1.2 a Manager proposing an income distribution which is below 80% without seeking the Trustee's approval as required under clause 9.3 of these Guidelines; or
 - 10.1.3 a Manager distributing income without the unit holders voting to receive a distribution which is below 80%.

10.2 Where a REIT commits a breach of these Guidelines as provided in clause 10.1,

- 10.2.1 the REIT may cease to be classified as a REIT;
- 10.2.2 Subject to the constitutive documents, the unit holders of the REIT may institute a cause of action against the Trustee and Manager for breach of the Trustee's or Manager's fiduciary duty; and
- 10.2.3 The Commission may revoke the authorization issued.

11. *Borrowings*

11.1 The REIT may, subject to any restrictions imposed by the constitutive documents, enter into a borrowing arrangement—

- 11.1.1 With the express approval of the Trustee, where such borrowing is required to preserve the value of the asset of the trust and is in the best interest of the REIT unit holders; or
- 11.1.2 with the express approval of the Trustee, if requested to do so by the REIT Manager to give effect to the objective of the scheme to acquire real estate assets or to undertake capital expenditure or refinance an existing borrowing.

11.2 The Trustee may provide security over the assets of the trust to secure the borrowings under clause 10.1.

11.3 Notwithstanding clause 11.1 and 11.2 the Trustee shall ensure that any borrowing or provision of security is not prejudicial to the interests of the REIT unit holders.

11.4 The total borrowings entered into by the Trustee on behalf of the REIT with the approval of the REIT unit holders by special resolution shall not exceed, at the time the liability is incurred, 35% of the total asset value.

12. *Appointment of and qualifications of valuation surveyor*

12.1 The Manager shall, with the approval of the Trustee, appoint an independent valuation survey firm with at least one valuation surveyor who is eligible for appointment in accordance with the eligibility criteria in this clause.

12.2 Notwithstanding the Valuation Surveyors Act, Cap. 207 of the Laws of Zambia, a firm that is appointed as a valuation surveyor for a REIT shall have at least one qualified valuation surveyor in good standing of the Valuation Surveyor's Registration Board established under the Valuation Surveyors Act and the firm shall not provide valuation services to a REIT unless the firm meets the minimum criteria specified in this clause.

12.3 A firm is eligible for appointment as a valuation surveyor of a REIT if that firm—

- 12.3.1 has at least one member registered with the Valuation Surveyor's Registration Board established under the Valuation Surveyors Act, Cap. 207 of the Laws of Zambia;
- 12.3.2 carries on the business of valuing real estate;
- 12.3.3 has sufficient financial resources at the firm's disposal to enable the firm conduct the valuation business effectively and meet its liabilities;
- 12.3.4 has robust internal controls and checks and balances to ensure the integrity of valuation reports and that these reports are properly and professionally prepared in accordance with international best practice;
- 12.3.5 has adequate professional insurance to cover usual valuation risks;
- 12.3.6 is independent of the REIT, Trustee, Custodian or Manager;

12.3.7 shall ensure that its opinion and valuations are independent of and unaffected by its business or commercial relationships with other persons; and

12.3.8 meets such other criteria as may be required by the Valuation Surveyor's Registration Board or the Commission.

13. *General obligations of property valuer*

13.3 A property valuer shall—

13.1.1 value all the real estate held under the REIT, on the basis of a full valuation;

13.1.2 physically inspect the sites of the real estate and any building(s) and facilities erected thereon once a year, and in any event, for the purposes of issuance of new units; and

13.1.3 produce a valuation report prior to the acquisition or sale of any real estate by a REIT.

13.2 The valuation report produced under Clause 13.1.3 shall comply with the requirements of Clause 14.

14. *Valuation report*

14.1 A property valuer shall produce a valuation report which shall include, as a minimum—

14.1.1 all material detail in relation to the basis of valuation and the assumptions used;

14.1.2 a description and explanation of the valuation methodologies adopted;

14.1.3 the following particulars in respect of each property:

(a) an address sufficient to identify the property, which shall generally include the postal address, lot number and such further designation as is registered with the appropriate government authorities;

(b) the nature of the interest the REIT holds in the property (e.g. if it is a statutory or Presidential lease, and the remainder of the term if it is a leasehold);

(c) the existing or current usage of the property (e.g. shops, offices, factories, residential, etc);

(d) a brief description of the property, such as the age of the building, the site area, gross floor area, net lettable floor area, and the current planning use;

(e) the options or rights of pre-emption and other incumbrances concerning or affecting the property;

(f) the occupancy rate;

(g) lease cycle duration;

(h) lease expiry profile;

(i) a summary of the terms of any sub-lease or tenancies, including repair obligations, granted to the tenants of the property;

(j) the fair value existing at the date the valuation was performed;

(k) the existing monthly rental before tax if the property is wholly or partly let together with the amount and description of any outgoings or disbursements from the rent, and, if materially different, the estimated current monthly market rental obtained, on the basis that the property was available to let on the effective date as at which the property was valued;

(l) the estimated current net yield;

(m) a summary of any rent review provisions, where material;

(n) the amount of vacant space, where material;

(o) Material information regarding the title of the subject property as contained in the relevant legal opinion, and a discussion as to whether any and how the legal opinions have been taken into consideration in the valuation of the relevant property; and

(p) any other matter which, in the valuer's opinion, may affect the property or its value;

14.1.4 particulars (as set out in c) of any real estate for which the REIT has an option to purchase;

14.1.5 a letter stating the independent status of the property valuer and that the valuation report is prepared on a fair and unbiased basis;

14.1.6 a statement as to the valuation methodology and assumptions used, and justification of the assumptions; and

14.1.7 an explanation of the rationale for choosing the particular valuation method if more than one method is adopted.

14.2 Whenever a valuation report is prepared for the REIT, the date of the valuation report shall be—

14.2.1 the date the property is valued, if the report is prepared for the purpose of calculating the net asset value of the REIT; or

14.2.1 a date which is not more three months before the date on which a prospectus is issued or the sale and purchase agreement or other agreement to transfer legal title is signed.

15. *Retirement of property valuer*

15.1 A property valuer shall retire after the valuer has conducted valuations of the real estate of the REIT for three consecutive years, and the same valuer may not be re-appointed until the expiration of three years after the last engagement as the REIT's property valuer.

15.2 A property valuer shall retire in all other cases provided for in the constitutive documents.

15.3 The property valuer shall be subject to removal by notice in writing from the Manager in any of the following events—

15.3.1 the property valuer goes into liquidation, becomes bankrupt or has a receiver appointed over its assets or ceases to have qualified valuation surveyors;

15.3.2 the firm's qualified valuation surveyor is no longer in good standing with the Valuation Surveyor's Registration Board;

15.3.3 for good and sufficient reason, if the Manager states in writing that a change in the property valuer is desirable in the interests of the unit holders; or

15.3.4 an ordinary resolution is passed by the unit holders to dismiss the property valuer.

15.4 A property valuer shall, prior to removal by a Manager under clause 15.3, be given an opportunity to be heard.

15.5 Upon the retirement or removal of the valuer, the Manager shall appoint a new property valuer approved by the Trustee that meets the eligibility requirement of clause 12.

16. *Acquisition and disposal of real estate and price*

16.1 A REIT shall not:

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

16.2 A valuation report produced pursuant to Clause 13 shall not be more than twelve months old.

16.3 Where the disposal of an asset would exceed fifty percent of the total asset value of the REIT, the unit holders shall approve the disposal by ordinary resolution prior to the Manager entering into a binding contract for the disposal, except where a disposal is for the purpose of terminating or winding up the REIT.

16.4 The Trustee and the Manager of a REIT shall, before acquiring any real estate as an asset of the REIT, ensure that the prospective property—

- 16.4.1 is tenanted on a commercial basis to a tenant(s) paying rent at commercial rates;
- 16.4.2 has good prospects for future net rental income and is competitively located as evidenced by market studies;
- 16.4.3 is complete and located within a good catchment area as evidenced by market studies;
- 16.4.5 is in a good state of repair or if it requires redevelopment or capital expenditure, this has been factored into the purchase price as reflected in the—
- (a) valuation obtained prior to the acquisition;
- (b) budget prepared by the Manager; and
- (c) disclosure in the report of the structural engineer obtained on the condition of the real estate to be acquired.

16.5 Notwithstanding clause 16.4 a REIT may acquire a real estate which is not fully tenanted at the time of acquisition provided that—

- 16.5.1 the Manager reasonably believes that there is good potential to secure tenants within a reasonable period of time at commercial rate;
- 16.5.2 any capital expenditure required to be incurred to enhance the real estate and secure tenants would not materially affect the level of distributions or the yield to the REIT unit holders; and
- 16.5.3 the acquisition will yield a reasonable return within a reasonable period of time.

17. *Continuing obligations for REITS*

17.1 A REIT shall, apart from compliance with continuing obligations as stipulated in the Securities (Collective Investment) Rules, forthwith publish in at least 2 daily newspapers having a national circulation or in any other media approved by the Commission, and notify the Commission, its unitholders and its listing exchange as soon as reasonably practicable (but in any event no later than the end of the next working day) of any material change or any major new development in its sphere of activity which are not public knowledge and which information—

- 17.1.1 is necessary to enable them and the public to appraise the financial position of the issuer;

17.1.2 is necessary to avoid the establishment of a false market in its securities; and

17.1.3 might reasonably be expected materially to affect market activity in the price of its securities.

18. *Review and updating of these Guidelines*

The Commission shall from time to time issue updates to these Guidelines.

Dated the 14th day of July, 2020.

LUSAKA

P. K. CHITALLI
Chief Executive Officer