



JurisTax

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## The Securities (Real Estate Investment Trusts) Rules 2021

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## 1. INTRODUCTION

The Financial Services Commission (the 'Commission') has issued the **Securities (Real Estate Investment Trusts) Rules 2021** (the 'Rules') in line with its plan to support and encourage the development of the Real Estate industry within Mauritius.

A **real estate investment trust (REIT)** means a collective investment scheme or closed-end fund that invests primarily in real estate asset with the aim to provide returns to holders derived from the rental income of the real estate asset.

These Rules shall apply to a collective investment scheme or closed-end fund which has been authorised to operate as a REIT by the Commission and shall be read in conjunction with the Securities Act 2005 and any guidelines which the Commission may issue from time to time.

These rules came into operation on the **4<sup>th</sup> September 2021**.

## 2. APPLYING FOR AUTHORIZATION AS A REIT

### 2.1 Application for Authorization

Any scheme may apply to the Commission under these Rules for an authorisation as a REIT in such form and manner as may be determined by the Commission.

An application to the Commission for an authorisation as a REIT shall be made by the **CIS manager** or proposed CIS manager or by **the promoter** of the REIT, in accordance with these Rules.

An application for authorisation as a REIT shall be accompanied by:

- the constitutive documents;
- the prospectus including all the information such as the general information, brief background, details and principal functions, details of members of the REIT as per the First Schedule of the Rules.
- particulars and details of the promoter and each controller of the REIT including details of any experience relevant to the operation of similar funds investing in real estate asset;
- particulars and details of the officers or proposed officers of the REIT including details of any experience relevant to operation of similar funds investing in real estate asset;
- particulars and details on functionaries or proposed functionaries of the REIT including details of any experience relevant to the management, administration or other operative functions of similar schemes; and
- such other information as may be required by the Commission to determine the application.

A REIT authorised under these Rules shall pay to the Commission such fees as may be specified in the FSC Rules.

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## 2.2 Minimum Funding

The prospectus of the REIT shall specify that the REIT shall receive a minimum number of subscriptions of at least 90 percent of the total amount to be raised from investors so as to begin operating the REIT, or such higher amount as may be disclosed in its prospectus.

The REIT shall receive the minimum number of subscriptions indicated in the prospectus during the first 6 months of the offering period. Where the minimum amount of subscriptions indicated in the prospectus is not met during the first 6 months of the offering period, the REIT shall refund, within 14 days, in full, all the funds paid by investors into the REIT together with any interest earned thereon.

The Commission may on application grant an extension of the initial 6 months which shall not exceed a further 6 months. To note, an approval for extension shall not be granted unless it is shown to the satisfaction of the Commission that an extension is justifiable.

Without prejudice to the Securities Act 2005, the prospectus of a REIT shall also specify where the funds collected from investors will be kept and how they will be returned to investors, if necessary.

## 2.3 Listing of a REIT

A REIT shall be listed on an Official Exchange in Mauritius within a period of 6 months after it has been duly authorised to operate as a REIT by the Commission. Conditional to:

- where a REIT is newly incorporated, it shall be allowed to raise funds from investors prior to its listing;
- where a REIT is an existing entity which has been operating in the real estate sector but which is not listed, the REIT will be able to raise funds from investors prior to being listed.

The funds raised following the authorisation as a REIT shall not be used for investment until it is listed on an Official Exchange in Mauritius.

If a REIT **fails** to secure its listing on Official Exchange in Mauritius within the prescribed time period, it shall

- refund **within 14 days**, in full, all the funds paid by investors into the REIT together with any interest earned thereon; and
- forthwith surrender its authorisation to the Commission.

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### 3 FUNTIONARIES OF A REIT

#### 3.1 CIS MANAGER

A REIT shall appoint and have, **at all times**, a CIS manager holding a licence issued by the Commission and having a place of business in Mauritius. A REIT may also appoint a CIS manager which shall be licensed by an authority which is identified in Appendix A of the **International Organisation of Securities Commission Multilateral Memorandum of Understanding** ((IOSCO MMoU) as a signatory to the IOSCO MMoU.

The CIS manager:

- Must ensure that it has the adequate resources, infrastructure, and staff with the appropriate competence, experience and proficiency to effectively and responsibly discharge its functions in relation to the REIT.
- Shall ensure that the real estate assets of the REIT have proper legal and marketable titles and that all the material contracts including rental or lease agreements entered into on behalf of the REIT are legal, valid, binding and enforceable by and on behalf of the REIT, in accordance with its terms.
- Shall arrange for adequate insurance coverage for the real estate assets of the REIT.
- May, subject to the approval of the REIT's governing body, appoint appropriate agents as it considers necessary to undertake assets and property management including lease management, maintenance of assets, tenant management and regular safety audits.
- Shall monitor and ensure proper performance of the appointed agents.

No change in the appointment of the CIS manager shall be effective unless:

- the shareholders of the REIT have approved the change in accordance with the constitutive documents; and
- the Commission has given its approval to the proposed replacement.

#### 3.2 Custodian

The REIT may appoint a custodian who shall be the holder of a custodian licence issued by the Commission; or licensed by an authority which is identified in Appendix A of the **International Organisation of Securities Commission Multilateral Memorandum of Understanding** (IOSCO MMoU) as a signatory to the IOSCO MMoU.

No change in the appointment of the custodian shall be effective unless:

- the shareholders of the REIT have approved the change in accordance with the constitutive documents; and
- the Commission has given its approval to the proposed replacement.

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### 3.3 CIS Administrator

Subject to the prior approval of the Commission and on such terms and conditions as the Commission deems appropriate, a REIT, where appropriate, may appoint a CIS administrator to provide administration services with respect to a **collective investment scheme**.

Where a REIT is a holder of a Global Business Licence issued by the Commission, the REIT shall, subject to the prior approval of the Commission, appoint a CIS administrator with a place of business in Mauritius to provide administration services.

An application for approval of the Commission for the above shall:

- specify which administration services the CIS administrator will provide;
- give complete details of the CIS administrator, including its constitution, resources, past experience in providing such services, names of the collective investment schemes to which administrative services have been or are presently provided;
- be accompanied by such other information as may be required by the Commission; and
- be accompanied by such fees specified in FSC Rules.

The REIT shall, where appropriate, seek the prior approval of the Commission for a change of CIS administrator.

### 3.4 Valuer

Every REIT authorised by the Commission shall appoint a valuer who shall be an approved or registered valuer with a professional institution recognised by the **International Valuation Standards Council**.

The agreement for the appointment of the valuer shall include the obligations and length of tenure of the valuer.

The valuer:

- Shall have no connection with the REIT's:
  - governing body;
  - promoter;
  - custodian;
  - CIS manager;
  - substantial shareholder; and
  - any other party whom the REIT is contracting with which could reasonably be perceived to materially affect the valuer's ability to give an independent and professional valuation of the REIT's real estate assets.
- The valuer or any of its partners, associates, directors, officers or key personnel shall not hold shares in the REIT.

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- Shall have sufficient key personnel with adequate experience and qualification to perform the valuation of the real estate assets of the REIT.
- Shall ensure that its opinion and valuation is independent of and unaffected by its business or commercial relationship with other persons.
- Shall not value the same property for more than five consecutive financial years.

No change in the appointment of the valuer shall be effective unless:

- the shareholders of the REIT have approved the change in accordance with the constitutive documents; and
- the Commission has given its approval to the proposed replacement.

#### 3.4.1 General obligations of a valuer

- The valuer shall conduct a full valuation on each of the real estate assets held under the REIT, with physical inspection in respect of the site of the real estate and an inspection of the building(s) and facilities erected thereon, at least once during the financial year.
- The valuer shall also produce a valuation report on real estate assets to be acquired or sold by the REIT.

#### 3.4.2 Valuation report

- The valuer shall submit a valuation report to the REIT, prepared in accordance with **International Valuation Standards** and which shall include, as a minimum, all the information prescribed in the Second Schedule of the Rules.
- The valuation report shall include a statement from the valuer confirming his independence and that the valuation report has been prepared on a fair and unbiased basis.

## 4 PROSPECTUS

### 4.1 Prospectus of a REIT

The prospectus of the REIT shall include:

- the information prescribed in the First Schedule and any other information provided for under these Rules;

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- the conditions for the replacement of the CIS manager, the custodian, a member of the board of directors, a trustee or a member of the governing body;
- relevant provisions to ensure the protection of interests of participants in the event of a replacement as per above and;
- any other information that may be necessary to enable participants to make an informed judgment as to the investment proposed.

No alteration shall be made to the constitutive documents of a REIT except with the prior approval of the Commission and, if applicable, of the shareholders of the REIT. However, the constitutive documents may be altered by the CIS manager where the proposed alteration;

- is necessary to enable compliance with fiscal or other statutory or official requirements;
- is necessary to correct a manifest error;
- does not materially prejudice participants' interests;
- does not to any material extent release the custodian, CIS manager or any other person from any liability to participants; or
- does not increase the costs and charges payable from the REIT's assets.

## 5 INVESTMENT RESTRICTIONS AND PRACTICES

### 5.1 Permissible investments

Subject to the investment restrictions in rule 15, a REIT may invest in:

- real estate assets, whether freehold or leasehold, within or outside Mauritius;
- real estate-related assets, wherever the issuers/assets/securities are incorporated/located/issued/traded;
- government securities (issued on behalf of the Mauritius Government or governments of other countries) and securities issued by a supra-national agency or a Mauritius statutory board; and
- cash and cash equivalent items.

To note, an investment in real estate asset may be made by way of direct ownership or a shareholding in an unlisted special purpose vehicle constituted to hold or own real estate asset.

- A REIT may invest in local or foreign real estate assets, subject to the terms of its constitutive documents.
- Where an investment in a foreign real estate asset is made, the REIT shall ensure that the investment complies with all the applicable laws and requirements in that foreign country.

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When investing in **leasehold properties**, the REIT shall take into consideration:

- the remaining term of the lease
- the objectives of the REIT; and
- the lease profile of the REIT's existing property portfolio.

When investing in real estate as a **joint owner**, the REIT shall:

- invest directly in the real estate assets or by acquiring shares or interests in an unlisted special purpose vehicle constituted to hold or own the real estate assets;
- have freedom to dispose of such investment; and
- have a joint venture agreement, memorandum and articles of association and/or other constitutive documents.

To note, the joint venture agreement, memorandum and articles of association and/or other constitutive documents shall, inter-alia, provide for:

- the terms and conditions of the joint venture which shall not be less favourable than the joint venture partners. The terms and conditions shall not prevent the REIT from complying with the provisions of this Rules;
- the rights to vote or be consulted over key operational issues; and
- a mode for the resolution of disputes between the REIT and joint venture partners.

## 5.2 Investment restrictions

A REIT shall

- invest at **least 75 per cent** of its gross asset value in income producing real estate assets.
- not undertake property development activities whether on its own, in a joint venture with others, or by investing in unlisted property development companies unless the REIT intends to hold the developed property for at least 3 years upon completion.
  - the total contract value of property development activities undertaken and investments in uncompleted property developments should not exceed 25 per cent of the gross asset value of the REIT; and
  - property development activities do not include refurbishment, retrofitting and renovations.

A REIT shall not invest in vacant land, agricultural land and mortgages, except for mortgage-backed securities. Although, a REIT is not precluded from investing in vacant land where same is to be used for **property development** activities which may be undertaken by the REIT.

For investments under rules 14 (1) (c) or (d), not more than 5 per cent of the REIT's gross asset value can be invested in any one issuer's securities or any one manager's funds. The investment restrictions above are applicable at the time the transactions are entered into.

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A REIT is not required to divest any assets that breach the restrictions or requirements if such breaches were a result of:

- the appreciation or depreciation of the value of the REIT's assets;
- any redemption of units or distributions made from the REIT; or
- investments in listed shares issued by property corporations (local or foreign), any changes in the total issued nominal amount of securities arising from rights, bonuses or other benefits that are capital in nature.

Where as a result of divestment or new issue of units by the REIT, a REIT's investments in income producing real estate assets fall **below 75 per cent** of its gross asset value, the REIT shall increase the proportion of its real estate assets investments to 75 per cent within:

- 6 months if the real estate assets investments fall to a level between 50 per cent and 75 per cent of the REIT's gross asset value; or
- 12 months if the real estate assets investments fall below 50 per cent of the REIT.

The previous point does not apply:

- in the case of divestment, the REIT offers to return (by way of redemption) or distributes at least 70 per cent of the proceeds of the divestment in cash within 6 months and 12 months as may be applicable;
- in the case of a new issue of units, the REIT offers to return at least 70 per cent of the subscription monies received from such new issue within 6 months and 12 months as may be applicable; or
- the REIT is in the process of being wound up.

A REIT shall not:

- lend, assume, guarantee, endorse or otherwise become directly or contingently liable for or in connection with any obligation or indebtedness of any person;
- use any assets of the REIT to secure the indebtedness of any person; or
- use any assets of the REIT to secure any of its obligations, liabilities or indebtedness without the prior written consent of its governing body.

**Except** within the limits established by the Commission, a REIT shall not purchase or sell derivatives.

### 5.3 Limitations on borrowing

The REIT:

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- may borrow (either directly or through its special purpose vehicle) for financing investment or operating purposes but aggregate borrowings shall not at any time exceed 45 per cent of its gross asset value.
- may pledge its assets to secure such borrowings.
- shall disclose in its prospectus its borrowing policy, including its maximum borrowing limit, and the basis for calculating such limit.

#### 5.4 Distribution requirements

The REIT shall in each year, distribute at least 75 per cent of its distributable income to its beneficiaries or participants, as the case may be, to the extent the solvency test (as defined in the Companies Act) is met.

## 6 FINANCIAL STATEMENTS AND MANAGEMENT REPORTS

### 6.1 Reporting obligations

Every REIT shall, as soon as possible, but not later than 6 months of its balance sheet date, file with the Commission and submit to its participants an annual report within 6 months from the date of its balance sheet which shall include audited financial statements prepared in accordance **with International Financial Reporting Standards (IFRS)** and audited in accordance with the **International Standards on Auditing**, and such other standards as may be issued under the **Financial Reporting Act 2004**, by an audit firm approved by the Commission.

Every REIT shall, as soon as possible, but not later than **45 days** from its interim period, file with the Commission and submit to its participants half-yearly report comprising of the following-

- its financial statement (need not be audited and shall contain, as much as possible, information prescribed under paragraph 3 of the Third Schedule) prepared in accordance with International Financial Reporting Standards; and
- a report from the CIS manager providing details of the activities of the REIT for the past 6 months, forecasts and future course.

The requirement to file half-yearly report with the Commission **shall not apply** for the period where the closing date coincides with the balance sheet date of the REIT.

The financial statements of a REIT shall be approved by the governing body of the REIT and the contents of the Annual Report shall be as per the Third Schedule.

The report from the CIS manager should be approved by the board of the CIS manager and signed by **at least 2** directors of the CIS manager.

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## 6.2 Disclosure of arrangements

Where forecasts of distribution yields are provided in prospectus, circulars, announcements, marketing materials or other relevant reports or documents to participants, there should be clear and prominent disclosure of any existing or proposed arrangement that materially enhances short-term yields while potentially diluting longer-term yields.

In addition, for prospectus and circulars, disclosures shall include:

- the risks associated with such arrangements; and
- an analysis of how the arrangements may affect current and future yields. The analysis shall include a computation of the forecast distribution yield assuming that the arrangements are not in place.

## 6.3 Requirement to make documents available

The CIS manager shall submit to the Commission, on request, all information relevant to the reports and accounts of the REIT and any other information as may be required by the Commission.

Any prospectus, advertisement or other information promoting a REIT in Mauritius shall indicate where those documents or particulars may be accessible to the public.

The CIS manager shall not cause a sale of shares/units/interests in the REIT to any person unless it has offered to that person:

- a copy of the prospectus of the REIT;
- the most recent annual management report and the audited financial statements, where not included in the management report; and
- any subsequent interim management report.

The CIS manager shall make copies of:

- the REIT's prospectus;
- the constitutive documents, where not annexed to the REIT's prospectus; and
- the latest annual and interim management reports available for inspection by potential participants at the place specified in the prospectus.

The CIS manager shall, at the request of **any participant** in the REIT, provide to that person, free of charge, a copy of the most recent REIT's prospectus, annual management report and any subsequent interim report.

## 7 RELATED PARTY TRANSACTIONS

A REIT, subject to the conditions, may

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- acquire assets from related parties;
- sell assets or securities to related parties;
- lease assets to related parties;
- lease assets from related parties;
- invest in securities issued by related parties; and
- borrow from related parties.

All related party transactions carried out by or on behalf of the REIT shall be:

- carried out at arm's length;
- in the best interests of investors;
- valued, in relation to a property transaction, by the valuer in accordance with rule 12;
- consistent with the investment objectives and strategy of the REIT; and
- properly disclosed to investors and the Official Exchange where the REIT is listed, in accordance with the listing requirements of the Official Exchange and these Rules.

A REIT may engage a related party as a property management agent or a marketing agent for the REIT's properties provided that any fees or commissions paid to the related party are not higher than market rates.

Where any related party provides services, such as renovation and maintenance work, to the REIT in the ordinary and usual course of business, these services shall be contracted on normal commercial terms and subject to the prior approval of the governing body of the REIT.

### **7.1 Disclosure requirements in relation to related party transactions**

Where a REIT enters into a related party transaction which is equal to or more than 5 per cent of its net asset value, adequate **disclosures** shall be made to the investors in the prospectus (if it is at the first launch or offer of the REIT) or circular (if it is during the life of the REIT) and the Official Exchange where it is listed.

The value of all transactions which are entered into by the REIT (or any of its subsidiaries) with the same related party (and any of its associates) during the current financial year shall be aggregated.

The disclosures made to investors shall include:

- the identity of the related parties and their relationships with the REIT;
- the details of the assets to be acquired or sold, including a description of these assets and their location;
- the prices at which these assets are to be acquired or sold;
- the details of the valuations performed in accordance with rule 12 (including the name of the valuer, the methods used to value these assets and the dates of the valuations) and their assessed values;
- the current/expected rental yield;
- details of any fees or commissions received or to be received by the related party; and

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- any other matter that may be relevant to a prospective investor in deciding whether or not to invest in the REIT, or that may be relevant to a participant in deciding whether or not to approve the proposed transactions.

The governing body of the REIT shall provide a written confirmation that it is of the view that the transaction is on normal commercial terms and not prejudicial to the interests of participants, where participants' approval for the transaction is not required.

A summary disclosure of the total value of all related party transactions, their nature and the identities of the related parties shall be made in the REIT's annual report.

## 7.2 Approval of participants

A REIT shall, where a proposed transaction is equal to or greater than 10 per cent of its net asset value, obtain a majority vote at a participants' meeting.

The value of all transactions which are entered into by the REIT (or any of its subsidiaries) with the same related party (and any of its associates) during the current financial year shall be aggregated.

- a person who has an interest, whether commercial, financial or personal, in the outcome of the transaction, other than in his capacity as a participant, will not be allowed to vote on the resolution to approve the transaction;
- there should be an opinion rendered by an independent expert stating whether or not the transaction is on normal commercial terms and whether the transaction is prejudicial to participants, based on an assessment of the impact of the transaction on the REIT on an overall basis; and
- the independent expert should also draw the participants' attention to any possible disadvantages of the transaction.

## 7.3 Commencement

These Rules came into operation on **04 September 2021**.

## 8. CONTACT US

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