

SECURITIES AND EXCHANGE COMMISSION

DRAFT GUIDELINES FOR THE REGISTRATION/LICENSING AND OPERATIONS OF REAL ESTATE INVESTMENT FUNDS (REIF)

1.0. Introduction

The Securities and Exchange Commission (Commission) is mandated by the Securities Industry Act (the Act as passed by Parliament in July 2016) to formulate principles for the guidance of the securities industry. Pursuant to this, the Commission hereby publishes these Guidelines on Real Estate Investment Funds (REIF) in Ghana in accordance with section 209 of the Act.

2.0. Purpose

These Guidelines aim at regulating the establishment, offering and management of REIF, protection of shareholders rights and the application of disclosure and transparency rules.

3.0. General

- a) No person shall operate a REIF unless that person is registered by the Commission.
- b) A REIF shall be a Fund incorporated under the Companies Act, 1963 (Act 179).

4.0. Licence to operate a REIF

- a) A person who intends to operate a REIF in Ghana shall apply to the Commission for registration to conduct such business.
- b) Application for registration to operate a REIF shall be made in a form prescribed by the Commission.

5.0. Criteria for Licensing:

To be registered by the **Commission to operate a REIF**, the following particulars among others shall be submitted during application-

i. Particulars of the Manager of the REIF –

- Name of the Manager,
- List of all directors and their respective holdings in the company (if any).
- Directors shall be fit and proper persons with adequate professional experience and knowledge.
- Directors shall be independent of Fund, the Valuer and the External Auditor.
- Directors shall not be associated with any other real estate investment company unless they are on the board as an independent director.

ii. Regulations of the Manager

- iii. Certificate of incorporation and commencement of business from the Registrar- General's Department of Ghana (In case of a body corporate) together with a Regulation of the Manager with the management of real estate stated as the main and sole business objective.**

- iv. Rules of the Fund (Scheme Particulars).
- v. A letter of consent from any SEC licensed Custodian to act as a Custodian for the REIF.
- vi. A custody and service level agreement between the Board and the Custodian.
- vii. Name and particulars of the Custodian.
- viii. A management agreement between the Board and the Manager.
- ix. A letter of consent from the Manager to manage the assets on behalf of the REIF.
- x. A letter of consent from a SEC approved Property Valuer of the Fund
- xi. Name and particulars of the Valuer of the Fund's assets (Valuer must be a body corporate registered to provide valuation services on real estate and must have adequate professional insurance cover for all its usual risks. It must also be independent of the Fund, the Manager, and all associated persons.
- xii. A copy of the agreement between the Board and the valuer listing the obligations and length of tenure of the valuer.
- xiii. Non – refundable application fee (to be determined by the Commission)
- xiv. Evidence of minimum paid up capital (to be determined by the Commission).

5.2.1. CONTENTS OF SCHEME PARTICULARS: In addition to the requirements stated in **Schedule 7 of LI 1695 (2001)**, the Scheme Particulars shall contain the following;-

- i. provisions that safeguards the interests of shareholders.
- ii. provisions that will not limit or extinguish the obligations and liabilities of the REIF or Manager in relation to any Fund or the shareholders.
- iii. provisions that will not indemnify the board or the Manager or its directors for loss or damage caused to the shareholders by their acts of negligence or commissions or omissions.

- iv. true and fair view of the Fund and adequate disclosures to enable investors make an informed decision. This shall include but not limited to the following;-
- a) Nature of Fund including type of real estate market to be engaged in (e.g. commercial/residential/industrial and/or geographical scope of the Funds' coverage etc.), investment objectives, strategy for achieving stated objectives, and a statement that material changes to the investment objectives would require share holders' approval.
 - b) Management and advisory services to be employed by the Fund with details of their profile.
 - c) The offering period, minimum and maximum subscription, amount it seeks to raise under the Fund and price per unit.
 - d) Statements of intention of further property and other acquisitions during the first twelve months of listing or issue.
 - e) The process of allotment in case of over-subscription.
 - f) Escrow account agreement with collection bank(s).
 - g) Interest of all directors and promoters in the Fund along with interest in other companies etc.
 - h) The Fund's borrowing policy including maximum borrowing limit and the basis for calculating such limits.
 - i) As close ended Funds, all shares shall be issued through a licensed depository under the provisions of the Central Depository Act.
 - j) Appraisal report from an appraising agency if available.
 - k) Duration of the Fund and conditions relating to its termination and modification to its Scheme Particulars.
 - l) A statement that all persons and entities such as Directors, Valuers, and the Management Company accept liability and shall all be liable for any misleading, false or incorrect statement at the time of the issue of the Scheme Particulars.
 - m) That the Scheme Particulars may be revised every year to take account of any changes or occurrence of any material change (This may take the form of either complete substitution of the original

Scheme Particulars or a supplement to the original Fund particulars with the date prominently and boldly displayed).

- n) That all new changes shall require the approval of the shareholders and the Commission.

6.0 RIGHTS AND OBLIGATIONS OF THE BOARD:

- i. The Board shall have the right to :-
 - a) obtain from the Manager such information as is considered necessary by the Board as reported by the Custodian.
 - b) inspect books of accounts and other records relating to the Fund.
- ii. Board shall be responsible for the final valuation or calculation of the assets of the Fund.
- iii. Board shall ensure that the Manager has the necessary office infrastructure and has appointed all key personnel and submitted their Curriculum Vitae to the Commission which shall contain their educational qualifications, professional competence and experience in the areas relevant to the fulfillment of the objectives of the Fund (s).
- iv. The Board shall ensure that the Manager appoints a Compliance Officer who shall oversee the operations of the Fund is in compliance with these guidelines, rules, regulations and all applicable laws in connection with the REIF as well as address investor grievances.
- v. The Board shall ensure that the Manager has prepared operational and compliance manuals with adequate internal control mechanisms including internal audit systems.
- vi. The Board shall ensure that the Manager has taken adequate insurance policies to safeguard the security of the assets of the Fund
- vii. The Board shall ensure that the Manager operates the Fund in accordance with the provisions of the Scheme Particulars and managerial agreements, these guidelines and all applicable laws, rules and regulations.

- viii. Where the Manager is managing more than one Fund, the Board shall ensure that the Manager has taken steps to ensure that the interest of shareholders of one Fund is not compromised with the object of promoting the interest of shareholders of any other Fund. The Board shall also ensure that the Manager does not give any undue or unfair advantage to any associate or deal with any of the associates in any manner detrimental to the interest of shareholders.
- ix. The Board shall ensure that proper books of accounts are kept and the Fund's financial statements are prepared in accordance with Regulation 49 of L.I. 1695.
- x. The Board shall ensure that all un-audited half year financial results of the Fund shall be published in at least two (2) national daily newspapers of nationwide circulation. In addition, other media forms may be used to reach shareholders or investors of the Fund. The Fund must also have a website from which information about the Fund can be accessed.
- xi. The Board and Manager shall be responsible for convening General Meeting.
- xii. The Board shall ensure that the net-worth of the Manager is not deployed in a manner that is detrimental to the interest of shareholders and also that assets of the Manager are clearly segregated from that of the Fund.
- xiii. The Board shall immediately inform the Commission of any breaches and conduct put up by the Manager, Custodian, Valuer and any Director which is inimical to the viability of the Fund.
- xiv. The Board shall verify and ensure that clearances, no objection documents such as land title certificates and building permits in respect of properties of the REIF have been duly and legitimately obtained from the appropriate authorities.
- xv. The Board shall review on quarterly basis, all activities carried out by the Manager. In connection with this, the Board shall also review all service contracts and satisfy itself that such contracts are fair and reasonable in the interest of Shareholders.

- xvi. The Board shall be liable for acts of omissions and commissions of its nominees and agents in relation to assets forming part of the properties of the Fund.
- xvii. The Board shall take all reasonable steps and care to ensure that the REIF has proper and legal title to the real estate owned by the Fund as contracts such as property contracts, rental agreements, joint venture and partnership agreements entered into on behalf of the Fund and that such contract is legal, valid, binding and enforceable by or on behalf of the Fund.
- xviii. The Board must ensure that there are safe vaults and insurance cover for the custody of original documents of title relating to the properties of the REIF.
- xix. The Board shall ensure that in addition to compliance with internally laid down approval processes and procedures, all mortgages advanced by the Manager in respect of Mortgage REIFs and other Hybrid REIFs are covered by adequate collateral and /or adequate and proper due diligence and quality credit analysis.

7.0 OBLIGATIONS OF CUSTODIANS:

- i. Custodians shall be accountable for, and be custodians of the assets including properties of the respective REIF and shall hold same in custody for the benefit of shareholders.
- ii. Custodian shall file with the Commission every quarter, the state of all proprietary holdings in the Fund – that is, held by the Custodian itself, the Board, the Valuer and the Manager.

8.0. OBLIGATIONS OF THE FUND MANAGER:

The Manager shall:-

- i. Be responsible for managing the Funds' assets and/ or properties of the Fund on behalf of shareholders.
- ii. Take all reasonable steps to ensure that the net asset value per share of the Fund is calculated as and when a valuation report is issued by the Valuer for the relevant period and that such a net asset value shall be published in the annual report.
- iii. Not undertake any activity that would be in conflict with managing the Fund and its properties.
- iv. Take adequate steps to ensure that the Fund is managed in accordance with the provisions of this guideline, management agreement, Scheme Particulars and all applicable laws, rules and regulations.
- v. Be responsible and held liable for all acts of commissions and omissions by its employees or other parties whose services have been employed by it on behalf of the Fund.
- vi. Remain liable to the shareholders for its acts of commission and omissions, notwithstanding anything contained in any contract or management agreement.
- vii. Not to enter into any transactions with or through its associates on behalf of the Fund without the express permission of the Board.
- viii. Not to invest in any Fund floated or promoted by it (It may however invest in its own Fund if it makes a disclosure of its intention to invest in the scheme Particulars of the Fund and shall not charge any fees on its investment in that Fund).
- ix. Obtain adequate insurance cover against all properties of the Fund.
- x. The Manager shall ensure the holding of General Meetings as directed by the Board or by the Commission.

- xi. Shall keep and maintain the daily accounts of the REIF under its management.

9.0. GENERAL OBLIGATIONS OF A PRINCIPAL VALUER:

The Valuer shall -

- i. Undertake periodic physical inspection of sites in respect of the real estate and of the buildings and facilities erected thereon and report of their state and condition.
- ii. Value all the real estate held under the Fund every two years.
- iii. Value all Work-in-Progress annually.
- iv. Submit a valuation report on the real estate to be acquired by the Fund and a copy to the Manager.
- v. Use valuation methodology which shall follow established valuation standards on properties in Ghana or the international valuation standards established by the International Valuation Standards Committee.
- vi. retire after it has conducted valuations of the Fund for six years and be eligible for re – appointment after a cooling – off period of not less than five (5) years . The Valuer shall also retire when it goes into liquidation or is removed by the Board under justifiable reasons with the approval of the Commission.
- vii. be liable to shareholders for act of commission and omissions, not withstanding anything contained in any contract or agreement.
- viii. be responsible for the performance of sub-valuers he may appoint in the discharge of his duties.
- ix. submit to the Commission any other information that may be required by the Commission from time to time.

9.1. VALUATION REPORT:

The date of the valuation report shall be the date the Fund is valued for the purposes of calculating the net asset value of the Fund.

In case of a new issue or rights issue, the date of the valuation report should not be more than three months before the date on which the scheme particulars is issued.

The valuation report shall consist but not limited to;

- i.** All material details in relation to the basis of the valuation and underlying assumptions.
- ii.** Description and explanation of the valuation methodologies adopted. At least three valuation methodologies must be applied with the chosen one justified.
- iii.** General overview of the market, investment and environmental condition in relation to the real estate business.
- iv.** Particulars in respect of each property such as address, land/property reference number etc. sufficient to identify the exact location of the property.
- v.** The nature of interest held in the real estate or property (e.g. freehold, leasehold, tenancy, management agreement etc., remainder of leasehold or tenancy or management agreement etc.)
- vi.** Existing use of the property (e.g. shops, industrial, residential, hotel, hospital etc.).
- vii.** Brief description of the property such as age of the buildings, the site area, gross floor area and net lettable floor.
- viii.** Options or rights of pre-emption and /or other encumbrances affecting the property.
- ix.** Occupancy rate if applicable.
- x.** Summary of the terms of any sub-leases or tenancies including repair obligations etc.
- xi.** Summary of any rent review provisions.

- xii. Capital value of the existing state of the property as at the date of valuation.
- xiii. Existing monthly rental before tax together with breakdown of any deductions or disbursements made from the rental income if applicable.
- xiv. Estimated current net yield.
- xv. Amount of vacant space available where applicable.
- xvi. Particulars of any real estate of which the Fund has an option to purchase.
- xvii. A sworn statement indicating the independent status of the Valuer and that the valuation report has been prepared on a fair and unbiased basis.

10.0. PERMISSIBLE INVESTMENTS AND LIMITATIONS

The REIFs shall;

- i. Invest only in real estate and/or real estate- related assets (i.e., asset- backed securities, mortgaged- backed securities, debt securities and shares issued by real estate or property companies, debt securities and shares issued by local non-property companies, government securities, cash and cash equivalent securities.
- ii. Have at least 70% of its total assets invested in real estate, real estate related assets, shares in other Funds or listed property or real estate companies. In accordance with Regulation 36 of L.I 1695, immediately inform the Commission where the 70% condition is not met.
- iii. **Not undertake property development activities nor invest in unlisted property development companies, unless it intends to hold the developed property upon completion.**
- iv. Not invest more than 5% of its total assets in unlisted securities or a locally registered REIF belonging to one or the same issuer or Manager of another Fund.

- v. not invest in another Fund or property or REIF managed by any person or persons associated with the Fund such as a Director, the Manager, Valuer and their respective associates, unless with the prior approval of the Commission. Investment approval limit under this circumstance shall not exceed 5% of the total net asset value of the REIF.
- vi. not acquire any asset which involves the assumption of any liability that is unlimited
- vii. not make any investment in vacant land except for purposes of investment in real property development and such lands must be developed within 12 years after acquisition. Such investments shall be up to a maximum of 75% of its net asset value.
- viii. not invest the assets outside Ghana except with the prior approval of the Board and the Commission
- ix. not invest in real property involving illegal business, or in real property that may have negative environmental impact and any other prohibitions to be spelt out by the Commission
- x. The minimum period of real property holdings shall be one year from the day of investment, unless waived by the Commission due to unavoidable circumstances. In the case of real property development, the REIF shall hold the real property at least one year after completion of construction.
- xi. The Manager cannot invest more than 25% of its total assets in real estate, real estate related assets, shares in other REIFS or listed property or real estate companies in an associated company or the subsidiary of a parent company.

10.1 Real property investments may include any or a combination of the following:

- a) Office buildings
- b) Shopping malls or complexes
- c) Factory buildings for rent or industrial estates
- d) Warehouses

- e) Residential buildings e.g. serviced apartments, condominiums, dormitories, residential houses etc.
- f) Hotels/ lodges
- g) Convention/exhibition centres
- h) Large distribution centres
- i) Multi Storey Car parks
- j) Airports
- k) Recreational facilities incidental to real estate
- l) Others as specified by the Commission or specified in the Scheme Particulars approved by the Commission

11.0. LIMITATIONS ON BORROWING: - The following limitations on borrowing shall apply to the Fund:

- i. The Fund may borrow in accordance with section 202(7) of the Companies Act, 1963 (Act 179).
- ii. The Fund may mortgage or pledge its assets to secure such borrowings.

12.0. REPORTING REQUIREMENTS:

12.1. REPORTING REQUIREMENTS FOR THE MANAGER

In addition to the requirements in regulation 33 of LI 1728, the Manager shall submit the following reports:

- i. quarterly reports on proprietary holdings – that is, holdings with respect to shares held in the REIF under its management and interest in other associated companies as well as changes in their respective interests. The report on proprietary holding applies to the Manager as an organization, its directors and its employees.

All quarterly reports shall reach the Commission within 21 days after the end of the reporting quarter.

12.2 REPORTING REQUIREMENTS FOR THE BOARD

In addition to the requirements of section 49 and 50 of L.I 1695, the Board shall submit:

- i. A report to the Commission on the activities of the Manager in relation to the management of the REIF. This must include a report on whether or not a contravention of the Guidelines and applicable Laws, Rules and Regulations have occurred or if the Fund is being or not being managed by the Manager on sound commercial principles. The report must also include any difficulties encountered during the course of the period (half year) as well as future plans and action taken or to be taken by the Fund. This shall include particulars of its directors and their respective interest in the Fund and other associated companies as well as changes in their respective interests.
- ii. the Board together with the Manager shall submit any other report as the Commission may require from time to time.

The Board shall ensure that all un-audited quarterly financial results of the Fund shall be published in at least two (2) national daily newspapers of nation – wide circulation. In addition other media forms may be used to reach shareholders or investors of the Funds. The Fund must have a website from which information of the Fund can be accessed.

12.3 REPORTING REQUIREMENTS FOR CUSTODIANS

In addition to the requirements of Regulation 51 of L.I 1695, the Custodian shall submit to the Commission:

- i. quarterly reports containing the following;
 - a. the state of all proprietary holdings in the Fund by the Custodian itself, the Board, the Valuer, the Manager and employees of the Fund as well as changes in their respective holdings.
 - b. that the REIF has proper and legal title to the real estate owned by the Fund as contracts such as property contracts, rental agreements, joint venture and partnership agreements entered into on behalf of the Fund and that such contract is legal, valid, binding and enforceable by or on behalf of the Fund
 - c. that the Custodian has title deeds
 - d. the state of affairs of the Fund.
- ii. Annual report demonstrating that compliance with these Guidelines, the offering documents and the Scheme Particulars has been achieved.

All quarterly reports shall reach the Commission within 21 days after the end of the reporting quarter and an annual report not more than 90 days after the end of the reporting year.

12.4 REPORTING REQUIREMENTS FOR PRINCIPAL VALUERS

- i. The Valuer shall submit to the Commission, Manager and the Custodian an annual inspection report on all physical assets of the REIF under the management of the Manager. This shall include state of the condition of sites or land in respect of the real estate and facilities erected thereon.

- ii. The Valuer shall submit to the Commission, Manager, and Custodian every two years, a valuation report on the real estates of the REIF.
- iii. The Valuer and its Principal Officers shall file with the Commission details of all their interest or holdings in the Fund at the end of every year

13.0. TERMINATION OF APPOINTMENTS

13.1. TERMINATION OF THE APPOINTMENT OF A CUSTODIAN

In addition to the requirements under Section 87 of the Securities Industry Act, 2016, the following shall apply -

- a) The Custodian shall only be removed by the Board of the REIF in writing on the occurrence of the following events;
 - i. where the Custodian ceases to carry on business as a Custodian;
 - ii. where the Custodian is declared bankrupt;
 - iii. where a receiver or a liquidator is appointed over any of its assets;
 - iv. where it has its assets frozen by a court of competent jurisdiction; and
 - v. where it has been found guilty by a court of competent jurisdiction for fraud and /or any form of financial impropriety.

- b) A Custodian shall be removed where it fails or neglects after reasonable notice to carry out or satisfy any of its obligations specified in these guidelines, the Scheme Particulars, rules of the REIF, and other applicable Laws, Rules and Regulations related to the regulation and operation of REIFs.

- c) With the exception of circumstances under clause 13.1 a (ii-v), as above, a Custodian shall be removed by a written notice of not less than ninety (90) days.
- d) The Board of the REIF shall appoint a new Custodian licensed by the Commission within ninety (90) days of the written termination notice.
- e) Within the ninety (90) days termination notice period, the Custodian shall hand over all assets and documents of the REIF in its custody to the newly appointed Custodian in both digital and physical form where applicable.
- f) A Custodian may appeal against any termination notice to the Commission within 14 days upon receipt of the notice.

13.2. TERMINATION OF THE APPOINTMENT OF THE MANAGER

In addition to the requirements under Section 88 of the Securities Industry Act, 2016, the following shall apply -

- a) The appointment of the Manager shall be terminated under the following conditions:
 - i. where the Manager is declared bankrupt;
 - ii. where it is deemed that prevailing circumstances and /or certain unforeseen event(s) have rendered the Manager in-operational;
 - iii. where a receiver or a liquidator is appointed over any of its assets;
 - iv. where it has its assets frozen by a court of competent jurisdiction; and
 - v. where it has been found guilty by a court of competent jurisdiction for fraud and /or any form of financial impropriety
 - vi. if the Manager by a ninety (90) days written notice to the Board and the Commission voluntarily communicates its decision to resign;
- b) A Manager shall be removed where it fails or neglects after reasonable notice to carry out or satisfy any of its obligations specified in these guidelines, the Scheme Particulars, rules of the REIF, and other applicable

Laws, Rules and Regulations related to the regulation and operation of REIF.

- c) With the exception of circumstances under clause 13.2 a (ii-v), as above, a Manager shall be removed by a written notice of not less than ninety (90) days.
- d) The Board of the REIF shall appoint a new Manager licensed by the Commission within ninety (90) days of the written termination notice.
- e) Within the ninety (90) days termination notice period, the Manager shall hand over all assets and documents of the REIF in its custody to the newly appointed Manager in both digital and physical form if applicable.
- f) A Manager may appeal against any termination notice to the Commission within 14 days upon receipt of the notice.
- g) The Board shall within the three (3) months termination period and before the assets and documents belonging to the REIF are handed over or transferred as provided in section 13.2. (f) as above, cause the accounts and assets of the REIF to be audited and valued
- h) Within the 3 months termination period, the assets of the REIF may either at the discretion of the Board, continue to be managed by the Manager whose appointment is being terminated, or the Board may directly assume temporary management of the assets within the three months termination period.

13.3. TERMINATION OF APPOINTMENT OF A VALUER

In addition to the requirements under Section 87 & 88 of the Securities Industry Act, 2016, the following shall apply to the termination of an appointed Valuer:-

- a) The Valuer shall only be removed by the Board of the REIF in writing on the occurrence of the following events;
 - i. where the Valuer ceases to carry on business as a Valuer;
 - ii. where the Valuer is declared bankrupt;

- iii. where a receiver or a liquidator is appointed over any of its assets;
 - iv. where it has its assets frozen by a court of competent jurisdiction; and
 - v. where it has been found guilty by a court of competent jurisdiction for fraud and /or any form of financial impropriety.
- b) The appointment of the Valuer shall not be terminated without prior written approval of the Commission
 - c) The appointment of the Valuer shall be terminated after it has conducted valuations of the real estate of the Fund for six years as stipulated in section 9.0. (vi) of these Guidelines.
 - d) The Commission shall direct the removal of the Valuer, where in the opinion of the Commission, the performance and /or the activities of the Valuer is becoming prejudicial or injurious to the interest of shareholders.
 - e) The Value may be removed where it is deemed that prevailing circumstances and /or certain unforeseen event(s) have rendered the Valuer in - effective or non – operational.
 - f) A Valuer shall be removed where it fails or neglects after reasonable notice to carry out or satisfy any of its obligations specified in these Guidelines, the Scheme Particulars, rules of the REIF, and other applicable Laws, Rules and Regulations related to the regulation and operation of REIF.
 - g) With the exception of circumstances under clause 13.3 a), (ii-v), as above, a Valuer shall be removed by a written notice of not less than ninety (90) days.
 - h) If the Valuer has its professional license withdrawn.
 - i) If the Valuer by a three (3) months written notice to the Board and the Commission, voluntarily communicates its intentions and decision to resign.
 - j) Upon the resignation or retirement or termination of appointment of the Valuer, the Board shall appoint a new Valuer that meets the prescribed qualification for registration by the Commission within two (2) months.

14.0. TERMINATION OF A FUND (REIF)

Termination of a REIF will be in accordance with section 99 – 101 of the Securities Industry Act, 2016. The following shall also apply:-

- a) No Fund under these Guidelines shall be terminated without the prior approval of the Commission
- b) A Fund may be terminated only on the following grounds or for the following reasons:
 - i. on the occurrence of any event which in the opinion of the Board, requires the Fund to be terminated
 - ii. If Shareholders pass a special resolution that the Fund be terminated
 - iii. termination of the Fund under any of the above circumstances shall not be deemed to be valid unless shareholders of the Fund pass a special resolution to concur that the Fund be terminated

14.1. PROCESSES AND PROCEDURES FOR TERMINATION OF A FUND

- i. The Board shall be fully responsible for the termination of a Fund
- ii. All the necessary resolutions, approvals, consents and agreements must be secured before the commencement of any termination process and procedures for a Fund, securing all the above constitute clearance to commence the termination process
- iii. On obtaining full clearance as in 14.1. (ii) above, the Board shall cause to be published at least two (2) notices disclosing the circumstances leading to the termination of the Fund in at least two (2) different daily news papers with nationwide circulation
- iv. The Board shall cause the accounts of the Fund to be audited and assets valued to determine the net asset position of the Fund at the date of dissolution
- v. The Board shall ensure that the assets of the Fund are disposed of in the best interest of shareholders
- vi. The Board shall ensure that the proceeds of sale realized during the disposal of assets, are exclusively utilized towards the discharge of all such liabilities as are due and payable under the Fund and after making

- appropriate provisions for meeting the expenses associated with such termination.
- vii. The Board shall ensure that the register of interest is fully updated at the date of dissolution
 - viii. The winding up of the company shall be in accordance with the provisions of the Companies Act and section 102 of Securities Industry Act, 2016. Notwithstanding the Board shall submit to the Commission, a detailed report on the steps taken for the realization of assets of the Fund, liabilities of the Fund and expenses incurred in relation to the termination and net assets available for distribution to shareholders.
 - ix. All outstanding balances shall be paid to the shareholders on prorata basis or in proportion to their share holdings
 - x. The Auditor of the Fund shall after the distribution of proceeds to shareholders, submit to the Commission a certificate with a sworn statement to the effect that all the assets of the Fund were realized at full and fair value, and in addition, full details of the distribution of the proceeds or net assets.
 - xi. All monies unclaimed after termination and distribution shall be kept in a separate interest yielding bank account held by the Board of the Fund, or an appointed receiver for a period of two (2) years for the purpose of meeting shareholders claims.
 - xii. During the two (2) year period as referred to, in 14.1 (xi) above, the Board shall from time to time cause to be published in two (2) daily newspapers of nationwide circulation, a list of all unpaid claimants and unclaimed assets or monies to be claimed
 - xiii. If by the third month after the second year as directed by clause (xi) under this section (13.1) as above, there are still monies unclaimed, they shall be transferred by the Board to the Commission for safekeeping in an interest yielding or investment account for the purpose of meeting shareholders' claims.
 - xiv. The REIF, the Custodian, the Manager and the Valuer shall immediately cease to carry on any business activities in respect of the Fund after permission to do so from the Commission has been granted and to the fact

that the Commission is satisfied with the processes and outcome of termination.

- xv. Following immediately from 14.1(xiv) as above, the Commission shall cause a public announcement and publication in two (2) newspapers of nationwide circulation of termination of the Fund.
- xvi. If after 7 years, the monies transferred by the Board to the Commission for safekeeping, as provided under sub-section **xiii** of **clause 14.1 of these Guidelines** as above, remained unclaimed, the monies shall be transferred into a capital market development Fund set up by the Commission for the purposes of capital market development in Ghana.

DEFINITIONS

- a) **Real Estate Investment Funds** - Real Estate Investment Funds are defined as investment vehicles set up with the main objective of investing in real estate related assets and provide returns to shareholders or investors, derived mainly from the returns of those assets. The assets may include real estate related equities or interest on mortgages or mortgage related securities or rental income of real estate or a hybrid of these and those related to real estate.
- a. **Directors of the Fund** – The Directors shall constitute the governing board as overseers of the **REIF** and shall have the responsibility of registering the Fund, have the duty of obtaining an operating license for the **REIF**. They shall appoint a **Manager** to operate and manage the assets of the REIF. They shall also appoint an independent **Custodian** to the Fund. The **Board** shall also appoint a **Principal Valuer** for the Fund’s properties and an External Auditor to audit the Fund. After three years of the life of the REIF, the Governing Board

shall ensure that at least one third (1/3) of its composition shall comprise of independent directors.

- b. Custodian** - The **Custodian** shall be an independent body corporate incorporated under the Company Laws of Ghana as a Bank, Insurance Company, a subsidiary of a bank or an insurance company or any other financial services company the Commission deems fit. The **Custodian** shall be a licensee of the **Securities and Exchange Commission**.
- c. Real Estate Investment Fund Management Company (Manager)** - **Shall** be an independent body corporate licensed by the **Securities and Exchange Commission** to manage assets of REIF in Ghana. For the avoidance of doubt, a licensed **MANAGER** is permitted under these Guidelines to manage as many licensed REIF as possible either from the same Promoters or other Promoters or both. The Manager may also engage in other businesses incidental to its operations such as management of real estates.
- d. Valuer** : Shall be an independent body corporate registered by the **Commission** and licensed by a legally recognized body or institution, with a principal business objective of undertaking valuation of properties and properties acquired on behalf of REIF licensed by the **Commission**. For the avoidance of doubt, a registered **Valuer may** undertake valuation of the physical assets of as many licensed REIFs possible and is also permitted under these guidelines to value any other assets or undertake other activities in line with its business as a licensed Valuer.

DRAFT