

SECURITIES INDUSTRY ACT 2016 (ACT 929)

DRAFT

SECURITIES INDUSTRY (REITS) REGULATIONS 2017

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SECURITIES INDUSTRY (REITS) REGULATIONS 2017

PART ONE

Interpretation

1. Definitions

In these Regulations –

“Act” means the Securities Industry Act 2016 (Act 929);

“collective investment scheme” has the meaning given in section 216 of the Act;

“Commission” means the Securities and Exchange Commission established by section 1 of the Act;

“Companies Act” means the Companies Act 1963 (Act 179);

“company” means a company formed and registered under the Companies Act ;

“company’s Regulations” means the Companies Act Regulations made by the company pursuant to section 19 of the Companies Act ;

“constitution”, in relation to a REIT, means the company’s Regulations;

“custodian” means the person to whom the assets of the REIT are entrusted for safekeeping;

“custodian agreement” means the agreement between the REIT and custodian of the REIT relating to the appointment and functions of the custodian;

“formation documents”, in relation to a REIT, means its constitution, management contract and custodian agreement;

“licensed” means licensed under the Act;

“management contract” means the agreement between the REIT and the REIT manager relating to the appointment and functions, duties and obligations of the REIT manager;

“property valuer” means a person appointed as a property valuer for the purpose of Part Seven of these Regulations;

“prospectus” means any prospectus, notice, circular, material, advertisement, publication or other invitation offering to the public (or any section of the public however selected) for subscription or purchase any shares or debentures of a REIT;

“real estate” or “property” refers to land or buildings, whether the interest is a freehold or leasehold interest, including interests (options or rights) in real estate, and shares of real estate companies, and includes assets incidental to the ownership of real estate;

“REIT” means a real estate investment trust company that is incorporated as a public company under the Companies Act 1963 (Act 179) with the dedicated purpose of investing in real estate that generates recurrent rental income from operating, owning or financing income-producing real estate and real estate-related investments;

“REIT manager” means a person who provides real estate management services in respect of a REIT and, in relation to a REIT that is not self-managed, means the management company appointed by the board of directors of the REIT to manage the REIT under a management contract and, in relation to a REIT that is self-managed, means that company ;

“regulated activity” means a business activity in respect of which a person is required to be licensed under the Act;

“representative”, in relation to a company licensed under the Act, means an individual in the direct employment of, or acting for, or by arrangement with, a REIT or REIT manager to which he is accredited, who performs for that person any activity for which the REIT or REIT manager is licensed, other than work ordinarily performed by accountants, clerks or cashiers, whether the remuneration is by way of salary, wages, commission or otherwise;

and includes any director or officer of the REIT or REIT manager who performs for that person any regulated activity; and

“substantial shareholder” means a person who has an interest in shares in the company –

- (a) the nominal value of which is equal to or more than [30%] of the issued share capital of the company; or
- (b) which entitles the person to exercise or control the exercise of [30%] or more of the voting power at a general meeting of the company.

2. Determination of “fit and proper”

(1) For the purpose of these regulations in considering whether a person is a fit and proper person the Commission shall, in addition to any other matter that it may consider relevant, have regard to –

- (a) the financial status or solvency;
- (b) the educational or other qualifications or experience having regard to the nature of the functions which, if the application is granted, the person will perform;
- (c) the ability to carry on the regulated activity competently, honestly and fairly; and the reputation, character, financial integrity and reliability, of –
 - (i) where the person is an individual, the individual himself; or
 - (ii) where the person is a company, the company, its directors, chief executive, management, representatives and all other key personnel, and any substantial shareholder of the company.

(2) The Commission may in addition, in considering whether a person is a fit and proper person –

- (a) have regard to whether the person –
 - (i) has contravened the provision of any law designed for the protection of investors against financial loss due to dishonesty or incompetence of, or

malpractice by, persons engaged in the securities industry;

- (ii) was a director of a market operator that has been liquidated or is under liquidation, or whose licence is under suspension or has been revoked by the Commission;
 - (iii) has taken part in any business practice that, in the opinion of the Commission, was fraudulent, prejudicial or otherwise improper (whether unlawful or not) or which otherwise discredited his methods of conducting business; and
 - (iv) has taken part or been associated with any other business practice as would, or has otherwise conducted himself in such manner as to, cast doubt on his competence and soundness of judgment;
- (b) take into account any information in the possession of the Commission whether provided by the applicant or not, relating to –
- (i) any person who is to be employed by, associated with, or who will be acting for or on behalf of, the applicant for the purpose of the regulated activity;
 - (ii) where the applicant is a company in a group of companies –
 - (A) any other company in the same group of companies; or
 - (B) any substantial shareholder or officer of the company or any other company in the same group of companies;
- (c) take into account whether the applicant has established effective internal control procedures and risk management systems to ensure its compliance with all applicable regulatory requirements; and

- (d) have regard to the state of affairs of any other business which the person carries on or proposes to carry on.
- (3) For the purpose of this regulation “group of companies” means any two or more companies one of which is the holding company of the other or others (as the case may be).

PART TWO

Licensing, establishment and operation of REITS

3. Licensing requirement

- (1) No person shall carry on, or purport to carry on, the business of a REIT except under and in accordance with a licence granted for that purpose by the Commission under the Act.
- (2) The licence referred to in paragraph (1) shall be granted only to a company which –
 - (a) is a public company incorporated under the Companies Act, and which is determined by the Commission to be a fit and proper person to be licensed under the Act as a REIT; [or
 - (b) is an external company which is a fit and proper person with a place of business in the Republic within the meaning of Chapter V of the Companies Act 1963 (Act 179).];
 - (c) has a custodian who is independent of the REIT manager and satisfies the requirements of these Regulations;
 - (d) has a REIT manager and a custodian which are companies licensed for such purpose by the Commission; and
- € includes provisions in its company’s Regulations that –
 - (i) the company shall be engaged in the property rental business;
 - (ii) at least [75] % of its profits shall derive from its property rental business;

- (iii) at least [75] % of its total assets shall comprise real estate or cash involved in property rental business;
- (iv) at least [90] % of its taxable income, for each accounting period, shall be distributed to shareholders;
- (v) the company shall have a minimum of [100] shareholders after its first year as a REIT;
- (vi) the company shall have no more than [50]% of its shares held by [5] or fewer individual shareholders during the last half of its taxable year; and
- (vii) shall ensure that the property restrictions on its operations specified in (i) to (vi) above are expressly and clearly restated in its prospectus.

- (3) Any person who contravenes paragraph (1) is liable to pay to the Commission an administrative penalty of [four thousand five hundred] penalty units.

4. Applications for licence

- (1) An application to the Commission for a licence in respect of a REIT shall be made jointly by the REIT and the REIT manager.
- (2) The application shall be made in such manner as the Commission may prescribe and shall be accompanied by the following-
 - (i) its formation documents;
 - (ii) its prospectus;
 - (iii) the REIT manager's latest audited report;
 - (iv) the custodian's latest audited report; and
 - (v) the prescribed fee.
- (3) At any time after receiving an application and before determining it, the Commission may require the applicant to provide it with such further information as it considers necessary.

- (4) Information to be provided to the Commission under this regulation shall be in such form and verified in such manner as the Commission may direct.
- (5) The Commission shall not refuse to grant a licence without first giving the applicant an opportunity of being heard.
- (6) The fee paid for the processing of an application is not refundable.

5. Grant of licence

- (1) The Commission may, on an application that complies with the licensing requirements of regulation 3 and is made in accordance with regulation 4, and after being provided with all such information as it may require under that regulation, grant a licence in respect of a REIT under the Act if –
 - (a) the REIT is a fit and proper person to be licensed as REIT;
 - (b) the REIT meets and continues to meet the minimum unimpaired paid-up capital requirements specified by the Commission from time to time;
 - (c) the REIT will be able, if licensed, to comply with the Securities Industry (Financial Resources) Regulations 2017;
 - (d) the REIT complies with the requirements of these Regulations;
 - (e) the Commission has been provided with a copy of the formation documents, together with a certificate signed by an attorney to the effect that they comply with the requirements of these Regulations; and
 - (f) the REIT satisfies the requirements of paragraphs (2) to (4).
- (2) The REIT shall have a separate REIT manager (except where the Commission authorizes a self-managed REIT) and a

custodian who shall be persons who are independent of each other.

- (3) The REIT manager and the custodian shall each be licensed by the Commission in respect of their respective functions.
- (4) The name of the REIT shall not be undesirable or misleading and shall include the words “real estate investment company”.
- (5) A REIT licence granted by the Commission shall be subject to such reasonable conditions as the Commission may impose, and the Commission may at any time, by notice in writing served on the REIT, amend, suspend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.
- (6) A REIT licence granted by the Commission shall be valid for a period of one year from the date of issue and shall be automatically renewed for further periods of one year subject to payment of the prescribed annual fee on or before the anniversary of the date of grant of its licence.

6. Assets of REIT to be held by custodian

The assets of every REIT shall be held on behalf of the shareholders by a custodian licensed by the Commission for such purpose.

7. Changes of REIT manager or custodian

- (1) The REIT manager shall give written notice to the Commission of any proposal to replace the custodian of the REIT.
- (2) The custodian of a REIT shall give written notice to the Commission of any proposal to replace the REIT manager.
- (3) Effect shall not be given to any such proposal unless the Commission has given its approval to the proposal.
- (4) The Commission shall approve or disapprove the proposal not later than one month from the date on which notice was given under paragraph (1) or (2).

- (5) Neither the REIT manager nor the custodian shall be replaced except by persons who satisfy the requirements of these Regulations.

8. Avoidance of exclusion clauses

Any provision in the formation documents of a REIT shall be null and void in so far as it would have the effect of exempting the REIT manager or custodian from liability for any failure to exercise due care and diligence in the discharge of their functions in respect of the REIT.

9. Revocation or suspension of licence

- (1) The Commission may revoke a licence granted under the Act if it determines –
 - (a) that the REIT is no longer a fit and proper person to hold a REIT licence;
 - (b) that any of the other requirements for the granting of a licence are no longer satisfied;
 - (c) that it is undesirable in the interests of the shareholders or potential shareholders that the REIT should continue to be licensed; or
 - (d) without prejudice to subparagraph (c), that the REIT manager or custodian of the REIT has contravened any provisions of the Act, of any regulation made under the Act or, in purported compliance with any such provision, has furnished the Commission with false, inaccurate or misleading information or has contravened any prohibition or requirement imposed under the Act or these Regulations.
- (2) For the purpose of paragraph (1)(a) or (1)(b), the Commission may take into account any matter relating to the REIT, the REIT manager or custodian, a director or controller of the REIT manager or custodian or any person employed by or associated with the REIT manager or custodian in connection with the REIT.
- (3) In a case to which paragraphs (1) or (2) apply, the Commission may, instead of revoking the licence, suspend the licence for a specific period and may remove the suspension.
- (4) The Commission may revoke the licence of a REIT at the request of the REIT manager or custodian of the REIT; but it

may refuse to do so if it considers that any matter concerning the REIT should be investigated as a preliminary to a decision on the question whether the licence should be revoked or that revocation would not be in the interests of the shareholders.

10. Representations against revocation or suspension

- (1) Where the Commission proposes to revoke or suspend a licence under regulation 9 otherwise than at the request of the REIT manager or custodian of the REIT, it shall give the REIT manager and custodian of the REIT written notice of its intention to do so, stating the reasons for which it proposes to act and giving particulars of the rights conferred by paragraph (2).
- (2) A person on whom a notice is served under paragraph (1) may within 21 days of the date of service make written representations to the Commission and, if desired, oral representations to the Commission.
- (3) The Commission shall have regard to any representations made in accordance with paragraph (2) in determining whether to revoke or suspend the licence.

11. Winding up

- (1) Where the Commission revokes the licence of a REIT under regulation 9, the Commission may apply to the Court to appoint a person to wind up the REIT.
- (2) On an application made under this regulation the Court may make such orders as it sees fit.
- (3) The Commission shall give written notice of the making of an application under this regulation to the REIT manager and custodian and shall take such steps as it considers appropriate for bringing the making of the application to the attention of the shareholders.

12. Directions by Commission

- (1) If it appears to the Commission that –
 - (a) the REIT is no longer a fit and proper person to hold a REIT licence;

- (b) any other requirement for the licensing of a REIT is no longer satisfied;
- (c) the exercise of the power conferred by this regulation is desirable in the interest of shareholders or potential shareholders in the REIT; or
- (d) the REIT manager or custodian of the REIT has contravened any provision of the Act or these Regulations or, in purported compliance with any such provision, has furnished the Commission with false, inaccurate or misleading information, or has contravened any prohibition or requirement imposed under the Act or these Regulations, the Commission may give a direction requiring the REIT manager and custodian of the REIT to wind it up by such date as is specified in the direction or, if no date is specified, as soon as is practicable.

PART THREE

Directors of REITS

13. Directions by directors

- (1) Subject to the Companies Act the directors of a REIT shall determine the investment and general policies of the company and may give directions to the REIT manager.
- (2) A director shall not give a direction which is likely to make the REIT manager act in contravention of the Act or of these Regulations and the director shall act in accordance with the constitution of the REIT, the management agreement and these Regulations.
- (2) A director who contravenes paragraph (2) is liable to pay to the Commission an administrative penalty of [five hundred] penalty units.

14. Duties of directors

The directors of a REIT shall take reasonable care –

- (a) to ensure that the property of the REIT is managed by the REIT manager in accordance with the Act, these Regulations and the formation documents of that REIT;
- (b) that the REIT manager performs its functions and discharges its duties under the Act and these Regulations; and
- (c) that the custodian performs its functions and discharges its duties under the Act and these Regulations.

**PART FOUR
REIT managers**

15. Licensing requirement

- (1) Every REIT shall appoint and shall have at all times a REIT manager that has been licensed by the Commission to act as a REIT manager.
- (2) The formation documents of the REIT shall provide for the appointment, resignation and removal of the REIT manager.
- (3) No person shall act or purport to act as a REIT manager except under and in accordance with a licence granted for that purpose by the Commission.
- (4) Any person who contravenes paragraph (3) is liable to pay to the Commission a penalty of [four thousand five hundred] penalty units.

16. Eligibility for appointment as a REIT manager

To be eligible for licensing by the Commission as a REIT manager a person shall -

- (a) be a company incorporated in Ghana;
- (b) be a fit and proper person to be licensed as a REIT manager;
- (c) be independent of the REIT and the custodian;
- (d) be independently audited;

- (e) have key personnel with experience and skills to –
 - (i) manage the REIT; and
 - (ii) implement the objectives of the REIT and to enable it to undertake the role of and duties as a REIT manager;
- (f) have and maintain such minimum unimpaired paid-up capital as the Commission may specify from time to time; and
- (g) be able, if licensed, to comply with the Securities Industry (Financial Resources) Regulations 2017.

17. Grant of licence

- (1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, grant a licence to a company that meets the eligibility requirements of regulation 16 to act as a REIT manager.
- (2) A licence granted under paragraph (1) shall be subject to such reasonable conditions as the Commission may impose, and the Commission may at any time, by notice in writing served on the REIT manager, amend, suspend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.
- (3) The Commission may require an applicant to supply it with any further information that it considers necessary in relation to the application.
- (4) A licence granted by the Commission shall be valid for a period of one year from the date of issue and shall be automatically renewed for further periods of one year subject to payment of the prescribed annual licence fee on or before the anniversary of the date of the issue of the licence.
- (5) A REIT manager licensed in respect of REIT companies shall be engaged only in the business of collective investment scheme management unless otherwise expressly permitted in writing by the Commission.
- (6) The Commission shall not refuse to grant a licence without first giving the applicant an opportunity of being heard.

- (7) The fee paid for the processing of licensing in respect of an application is not refundable.

18. Appointment of REIT manager

- (1) The formation documents of a REIT shall provide for the appointment, resignation and removal of the REIT manager.
- (2) [Subject to paragraph (3)] every REIT shall appoint as a REIT manager a company that has been licensed by the Commission to act as a REIT manager of collective investment schemes.
- (3) The Commission may in its discretion permit a REIT to be managed by its own board of directors (a self-managed fund) provided that the board performs the functions of a REIT manager, and provided always that such directors shall be jointly bound and responsible to perform such functions.
- (4) Where the Commission permits a REIT to be self-managed under paragraph (2), references in these Regulations to a REIT manager or the directors of a REIT manager shall be deemed to include references to the directors of the self-managed REIT.]
- (5) The directors of a self-managed REIT are prohibited from dealing with the REIT.
- (6) The company's Regulations of a self-managed REIT shall include the following provisions –
 - (a) that shareholders may convene a meeting and, by way of an ordinary resolution, remove any director considered no longer fit and proper to manage the assets of the REIT; and
 - (c) that the directors' fees and remuneration shall be fixed by the shareholders at a general meeting.

19. Functions, duties and obligations of REIT managers

- (1) The formation documents of a REIT shall set out the functions, duties and obligations of the REIT manager in accordance with these Regulations.

- (2) The REIT manager shall, subject to the terms of the formation documents and any directions in writing received from the REIT or its custodian –
 - (a) acquire, manage, maintain and dispose of assets of the REIT –
 - (i) in accordance with the formation documents and these Regulations; and
 - (ii) to give effect to the objectives of the REIT;
 - (b) take all reasonable steps and exercise due diligence to ensure that the assets of the REIT are invested in accordance with the formation documents.
- (3) The REIT manager shall manage the REIT on a day to day basis, select investments to be owned by the REIT and carry out any other functions assigned to the REIT manager under its management contract.
- (4) The REIT manager shall in the performance of its duties act solely in the interests of shareholders and take reasonable care to protect those interests, and in particular shall –
 - (a) manage the property of the REIT in accordance with –
 - (i) the provisions of these Regulations;
 - (ii) the formation documents of the REIT; and
 - (iii) the most recently published prospectus;
 - (b) maintain or cause to be maintained the books and records of the REIT and have prepared in the prescribed form the financial statements and shall arrange for such accounts to be audited in accordance with regulation 59.
- (5) The REIT manager shall –
 - (a) ensure that the assets of the REIT are clearly identified and held separately from the assets of the REIT manager

- and the assets of any other collective scheme managed by the REIT manager;
- (b) ensure that the assets of the REIT are entrusted to a person licensed as a custodian for safe-keeping;
 - (c) ensure that the assets of the REIT are valued at regular intervals appropriate to the nature of the assets;
 - (d) ensure that its officers carrying on functions that require a licence are properly licensed;
 - (e) report to the Commission any breach of the formation documents or these Regulations that –
 - (i) relates to the REIT;
 - (ii) has had, has or is likely to have a materially adverse effect on the interest of shareholders; as soon as practicable after it becomes aware of the breach;
 - (f) carry out or comply with any other duty, not inconsistent with its formation documents or these Regulations, that is imposed on the REIT manager by its management contract or the constitution of the REIT;
 - (g) except in the case of a self-managed REIT have prepared in the form prescribed the accounts required by law and shall arrange for such accounts to be audited in accordance with these Regulations; and
 - (h) ensure that it has relevant and reasonable written policy in place to cater for conflict of interest.
- (6) The REIT manager is subject to the directions of the directors of the REIT and shall perform the normal functions performed by the managing director of a company.
- (7) Where the direction given to the REIT manager by the directors of the REIT contravenes its formation documents or these Regulations, the REIT manager shall refer the matter to the Commission for guidance.

- (8) The REIT manager shall take all reasonable steps and exercise all due diligence to avoid the assets of the REIT being used or invested contrary to its formation documents or these Regulations.
- (9) The REIT manager shall ensure that the directors or other persons concerned with the management of its business have the necessary qualifications and experience required by the Commission.
- (10) The REIT manager shall act in accordance with investment policies laid down by the directors of the REIT.

20. Fiduciary position of REIT manager

In his capacity as a fiduciary of the REIT shareholders, a REIT manager shall –

- (1) exercise the degree of care and diligence that a reasonable and skilled person would exercise in the position of a management company;
- (2) act in the best interests of the REIT shareholders;
- (3) observe high standards of integrity and fair dealing in managing the REIT to the best and exclusive interests of the REIT shareholders;
- (4) ensure that the property of the REIT is clearly identified and held separately from the assets of the REIT manager or any other person; and
- (5) establish and maintain risk management systems and controls and ensure that it has adequate resources and systems, including suitably qualified and equipped human resources to fulfil the functions and obligations of a REIT manager.

21. Appointment of property manager, etc

- (1) A REIT manager shall, with the approval of the custodian, appoint a property manager together with such other agents as they agree are considered necessary.
- (2) A REIT manager shall –

- (a) be responsible for the actions of any property manager and any other agents appointed by it; and
- (b) supervise the property manager and any other agent to ensure that they comply with the terms of the formation documents, the Act and these Regulations.

22. Accounting records

A REIT manager shall be responsible for –

- (1) keeping and maintaining proper accounting records to enable an accurate view of the REIT to be formed;
- (2) preparing accounts in accordance with regulation 59;
- (3) providing all assistance necessary to enable an audit of the accounts prepared under paragraph (2) to be carried out by the independent auditor;
- (4) taking all reasonable steps and exercising due diligence to assist and ensure that the assets of the REIT are valued as required under Part Seven.

23. Restrictions on activities of REIT managers

A REIT manager shall not engage in any activity other than the management of collective investment schemes.

24. Change of address

A REIT manager shall notify the Commission in writing of any intended change of address of its registered office or permanent place of business in Ghana.

25. Liability of REIT managers

- (1) The REIT manager shall be liable to the shareholders for any loss suffered by them as a result of –
 - (a) any unjustifiable failure by it to perform its obligations; or
 - (b) the improper performance by it of its obligations.
- (2) The REIT manager shall be accountable to the custodian and the REIT shareholders for any loss suffered by the REIT as a result of failure by the REIT manager, any director, officer or employee of the REIT manager, or agent appointed by the

REIT manager, to exercise the required standard of care and diligence necessary to operate and manage the REIT.

26. Custodian requests to REIT manager

The REIT manager, and any property valuer, administrator or investment adviser appointed by the REIT manager shall –

- (a) at the request of the custodian forthwith supply the custodian with such information concerning the administration of the REIT as it may reasonably require; and
- (b) comply with any directions given by the custodian for the purpose of satisfying regulation 33.

PART FIVE

REIT REPRESENTATIVES

27. Licensing requirement

- (1) No person shall act or purport to act as a representative of a REIT or a REIT manager except under and in accordance with a licence granted for that purpose by the Commission.
- (2) The Commission may, upon application by an individual in the prescribed manner and payment of the prescribed fee, grant to the applicant a licence to act as a representative of a licensed REIT, or of a licensed REIT manager to which he is accredited.
- (3) The Commission shall refuse to grant a representative's licence under paragraph (2) unless the individual satisfies the Commission that he is a fit and proper person to be so licensed in respect of a REIT.
- (4) The licence of a representative shall be subject to the condition specified in paragraph (5) and to any other reasonable conditions as the Commission may impose.
- (5) It shall be a condition of a licence granted to a representative that he shall –
 - (a) at all times keep the Commission informed of particulars of his contact details including, in so far as is

- applicable, his residential address, telephone and facsimile numbers and electronic mail address; and
- (b) inform the Commission of any change in the particulars within [7] days after the change takes place.
- (6) Any person who contravenes paragraph (1) is liable to pay to the Commission a penalty of [four thousand five hundred] penalty units.

PART SIX

REIT Custodians

28. Licensing requirement

- (1) Every REIT shall appoint and shall have at all times a custodian that has been licensed by the Commission to act as a custodian of the assets of collective investment schemes.
- (2) No person shall act or purport to act as a custodian of a REIT except under and in accordance with a licence granted for that purpose by the Commission under the Act.
- (3) Any person who contravenes paragraph (2) is liable to pay to the Commission a penalty of [four thousand five hundred] penalty units.

29. Eligibility for appointment as a custodian

- (1) A custodian shall be a company that is –
 - (a) a licensed bank;
 - (b) a trustee company which is a subsidiary of a licensed bank; or
 - (c) such other company as the Commission may license if the Commission is satisfied that the company has sufficient financial, technical and operational resources and experience necessary to enable it effectively to conduct its business and to carry out its obligations as a custodian.
- (2) A custodian shall –
 - (a) be a fit and proper person to be licensed as a custodian of the assets of a collective investment scheme;
 - (b) be independent of the REIT and the REIT manager;

- (c) be independently audited;
- (d) have and maintain such minimum unimpaired paid-up capital as the Commission may specify from time to time; and
- (e) be able to comply with the Securities Industry (Financial Resources) Regulations 2017.

30. Grant of licence

- (1) The Commission may, upon application in the prescribed manner and payment of the prescribed fee, grant a licence to a company that meets the eligibility requirements of regulation 29 to act as custodian of a specified REIT.
- (2) A licence granted under paragraph (1) shall be subject to such reasonable conditions as the Commission may impose, and the Commission may at any time, by notice in writing served on the custodian, amend, suspend or revoke any such condition or impose new conditions as may be reasonable in the circumstances.
- (3) The Commission may require an applicant to supply it with any further information that it considers necessary in relation to the application.
- (4) A licence granted by the Commission shall be valid for a period of one year from the date of issue and shall be automatically renewed for further periods of one year subject to payment of the prescribed annual licence fee on or before the anniversary of the date of the issue of the licence.
- (5) The Commission shall not refuse to grant a licence without first giving the applicant an opportunity of being heard.
- (6) The fee paid for the processing of licensing in respect of an application is not refundable.

31. Custody of Assets

- (1) The custodian of a REIT appointed under regulation 28 shall take into its custody or put under its control all the assets of the REIT by means of an agreement between the custodian and the REIT manager in which the custodian accepts custody of the assets of the REIT and agrees to observe the provisions of the formation documents.

- (4) The custodian shall hold and deal with such assets in accordance with the provisions of these Regulations and the formation documents of the REIT.

32. Custodian agreements

An agreement for the custody and safe-keeping of the property of the REIT shall provide for –

- (a) the custodian accepting custody of such property;
- (b) the custodian agreeing to observe the provisions of the REIT's constitution and prospectus and of the custodian agreement;
- (c) requirements with regards to the location of property;
- (d) the method of holding property;
- (e) the standard of care to be exercised by the custodian and its responsibility for loss;
- (f) a provision that only the REIT manager or the self-managed REIT may give instructions to the custodian;
- (g) the custodian to forthwith submit a report to the Commission, and a copy thereof to the REIT manager and REIT, in relation to any failure of the REIT manager or REIT to meet the requirements applicable to the conduct of its business activities.

33. Functions, duties and obligations of custodian

- (1) The custodian shall act solely in the interests of the REIT shareholders in the performance of its duties.
- (2) The custodian and the employees or officers of the custodian who undertake or supervise the carrying out of the role and functions of the custodian shall –
 - (a) perform its duties in accordance with the formation documents of the REIT and these Regulations;
 - (b) act honestly and in a fiduciary capacity as custodian in the best interests of the REIT shareholders;
 - (c) fulfil the obligations and duties set out in the formation documents and these Regulations;

- (d) maintain the custody of, hold and protect all the assets of the REIT, ensure they are held in the name of and registered, where required, in the name of the custodian as the assets of the REIT;
 - (e) ensure that the REIT assets are –
 - (i) clearly identified as the property of the REIT; and
 - (ii) segregated from any other assets of the custodian;
 - (f) supervise the activities of the REIT manager to ensure that it complies with the formation documents and these Regulations;
 - (g) ensure that –
 - (i) the assets of the REIT are invested in accordance with the terms of its formation documents and these Regulations;
 - (ii) the income of the REIT is applied in accordance with the terms of its formation documents;
 - (iii) the assets of the REIT which are insurable are adequately insured and valued as required by the REITS's formation documents and these Regulations;
 - (iv) all payments and distributions made out of the assets of the REUT are made in accordance with the terms of the formation documents and these Regulations;
 - (v) any borrowing restrictions set out in the formation documents and these Regulations are complied with.
- (3) The custodian shall –
- (a) carry out the instructions of the REIT manager in respect of investments unless they are in conflict with the provisions of the REIT particulars or formation documents;
 - (b) take all reasonable care to ensure that any investment and borrowing limitations set out in the formation documents and the conditions under which the REIT was licensed are complied with;
 - (c) issue a report to the shareholders, to be included in the annual report, on whether in the custodian's opinion, the REIT manager has in all material respects managed the

REIT in accordance with the provisions of these Regulations and the formation documents; if the REIT manager has not done so, the respects in which it has not done so and the steps which the custodian has taken in respect thereof;

- (d) take all reasonable care to ensure that the share certificates are not issued until subscription moneys have been paid;
- (e) take all reasonable care to ensure that the REIT has proper legal title to the real estate owned by the REIT;
- (f) ensure that any registrable investments of the REIT are properly registered in its name or, with the consent of the REIT, in the name of a licensed nominee, with an account number or other designation in the records of the custodian to establish that ownership of the assets is vested in the REIT; and
- (g) where title to investments is recorded electronically, to ensure that entitlements are separately identified from those of the REIT manager of the REIT in the records of the person maintaining records of entitlement.

34. Instructions from REIT manager

The custodian shall carry out the instructions of the REIT manager unless it has reasonable cause to believe that to do so would contravene its duties under regulation 33.

35. Change of address

A custodian shall notify the Commission in writing forthwith of any intended change of address of its registered office or permanent place of business in Ghana.

36. Liability of custodians

The custodian shall be liable to the REIT manager and to the shareholders for any loss suffered by them as a result of –

- (a) any unjustifiable failure by it to perform its obligations; or
- (b) any improper performance by it of its obligations.

37. Register of shareholders

(1) The custodian shall establish and maintain a register of shareholders in the REIT in a form approved by the Commission.

- (2) The custodian may, with the prior written approval of the Commission, appoint some other person to establish and maintain the register on its behalf.
- (3) The register may be formed, in whole or in part, of records maintained by a custodian approved by the Commission.

38. Notification of contravention

The custodian shall notify the Commission in writing forthwith after becoming aware of the matter, of any failure, act or omission of the REIT manager constituting a breach or contravention of any of the provisions of these Regulations or of the formation documents of the REIT and of the steps taken by it to ensure that the breach or contravention is rectified as soon as is reasonably practicable.

39. Retirement of custodian

- (1) The custodian shall not retire except on the appointment of a new custodian whose appointment has been the subject to the prior approval of the Commission.
- (2) The retirement of the custodian shall take effect at the same time as the new custodian takes up office.

PART SEVEN

PROPERTY VALUER

40. Appointment of property valuer

Every REIT for which a licence is applied for under regulation 4 shall appoint an independent property valuer (“property valuer”) who is eligible for appointment in accordance with regulation 41.

41. Eligibility for appointment as property valuer

The property valuer shall be a company that -

- (1) provides property valuation services on a regular basis;
- (2) carries on the business of valuing real estate in Ghana;

- (3) has key personnel who are members of the [Ghana Institute of Surveyors] and who are qualified to perform property valuations.
- (4) has sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities; in particular, it shall have such a minimum unimpaired issued and paid-up capital as the Commission may specify from time to time.
- (5) has robust internal controls and checks and balances to ensure its integrity of valuation reports and that these reports are properly and professionally prepared in accordance with international best practice;
- (6) has adequate professional insurance to cover its usual risks;
- (7) is independent of the REIT, the custodian and the REIT manager;
- (8) shall ensure that its opinion and valuation is independent of and unaffected by its business or commercial relationship with other persons;
- (9) the directors which shall be persons of good repute who possess the necessary experience for the performance of their duties.

42. General obligations of property valuer

- (1) The property valuer shall value all the real estate held under the REIT on the basis of a full valuation with physical inspection in respect of the site of the real estate and an inspection of the building(s) and facilities erected thereon not less than once a year.
- (2) The property valuer shall also produce a valuation report on real estate to be acquired or sold by the REIT.
- (3) The contents of the valuation report shall comply with the requirements of regulation 43.

43. Valuation report

The property valuer shall produce a valuation report which shall include as a minimum -

- (a) all material details in relation to the basis of valuation and the assumptions used;
- (b) describe and explain the valuation methodologies adopted;
- (c) the following particulars in respect of each property, such as –
 - (i) an address sufficient to identify the property, which shall generally include postal address, lot number and such further designation as is registered with the appropriate government authorities;
 - (ii) the nature of the interest the REIT holds in the property (e.g. if it is a freehold or leasehold, and the remainder of the term if it is a leasehold);
 - (iii) the existing use (e.g. shops, offices, factories, residential, etc);
 - (iv) 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;
 - (v) the options or rights of pre-emption and other incumbrances concerning or affecting the property;
 - (vi) the occupancy rate;
 - (vii) lease cycle duration;
 - (viii) lease expiry profile;
 - (ix) a summary of the terms of any sub-leases or tenancies, including repair obligations, granted to the tenants of the property;
 - (x) the capital value in existing state at the date the valuation was performed;
 - (xi) the existing monthly rental before profits tax if the property is wholly or partly let together with the amount and a description of any outgoings or disbursements from the rent, and, if materially different, the estimated current monthly market rental obtainable, on the basis that the property was available to let on the effective date as at which the property was valued;
 - (xii) the estimated current net yield;
 - (xiii) a summary of any rent review provisions, where material;

- (xiv) the amount of vacant space, where material;
 - (xv) 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
 - (xvi) any other matter which may affect the property or its value.
- (d) particulars (as set out in paragraph (c)) of any real estate for which the REIT has an option to purchase;
 - (e) a letter stating the independent status of the property valuer and that the valuation report is prepared on a fair and unbiased basis;
 - (f) a statement as to the valuation methodology and assumptions used, and justification of the assumptions; and
 - (g) an explanation of the rationale for choosing the particular valuation method if more than one method is adopted.
 - (h) whenever a valuation report is prepared for the REIT, the date of the valuation report shall be –
 - (i) the date the property is valued, if such report is prepared for the purpose of calculating the net asset value of the REIT; or
 - (ii) a date which is not more than three months before the date on which -
 - (A) a prospectus is issued; or
 - (B) a sale and purchase agreement (or other agreement to transfer legal title) is signed.

44. Retirement of property valuer

- (1) The property valuer shall retire after it has conducted valuations of the real estate of the REIT for three consecutive years provided that the same valuer may only be re-appointed after another three years.
- (2) The property valuer shall be subject to removal by notice in writing from the REIT manager in any of the following events –
 - (a) the property valuer goes into liquidation, becomes bankrupt or has a receiver appointed over its assets; or

- (b) for good and sufficient reason if the REIT manager states in writing that a change in the property valuer is desirable in the interests of the shareholders; or
 - (c) an ordinary resolution is passed by shareholders to dismiss the property valuer.
- (3) The property valuer shall retire in all other cases provided for in the formation documents;
- (4) On the retirement or dismissal of the property valuer, the REIT manager shall appoint a new property valuer that meets the eligibility requirements of regulation 41.

PART EIGHT

PUBLIC OFFERS OF REIT SECURITIES

45. Prohibition of public offers of REIT securities or admission to trading without approved prospectus

- (1) No REIT securities shall be -
 - (a) offered to the public; or
 - (b) admitted to trading,unless an approved prospectus has been published before the offer is made, or before a request is made for admission to trading, as the case may be.
- (2) Any person who contravenes paragraph (1) is liable to pay to the Commission an administrative penalty of [ten thousand] penalty units.
- (3) For the purpose of this Part -
 - (a) “approved prospectus” means a prospectus approved by the Commission in relation to the issue or offer of the securities;
 - (b) “admitted to trading” means admitted to trading on a securities market of the Ghana Stock Exchange;

- (c) a person “offers securities” if he invites another to enter into an agreement for or with a view to subscribing for or otherwise acquiring or underwriting any securities, or if he invites a person to make such an offer;
- (d) an offer of securities is a public offer if it is made to the public of Ghana, and includes any section of that public however selected; and
- (e) “expert” includes an accountant, lawyer, valuer, engineer and any other person whose profession gives authority to a statement made by him.

46. Approval of form and content of prospectus

- (1) The Commission may not approve a prospectus unless it is satisfied that -
 - (a) the prospectus contains the necessary information; and
 - (b) all of the other applicable requirements imposed by or in accordance with these Regulations have been complied with.
- (2) The necessary information is the information necessary to enable shareholders to make an informed assessment of -
 - (a) the assets and liabilities, financial position, profits and losses, and prospects of the issuer of the REIT securities and of any guarantor;
 - (b) the rights and liabilities attaching to the REIT securities; and
 - (c) such other information and particulars as may be specified by the Commission.
- (3) Without prejudice to the generality of paragraph (2), a prospectus shall contain the information specified in Schedule 1.
- (4) The necessary information shall be presented in a form which is comprehensible and easy to analyse.

- (5) The necessary information shall be prepared having regard to the particular nature of the securities and their issuer.
- (6) The prospectus shall include a summary which shall briefly, and in non-technical language, convey the essential characteristics of, and risks associated with, the issuer, any guarantor and the securities to which the prospectus relates.

47. Consideration of application for approval

- (1) The Commission shall notify the applicant of its decision on an application for approval of a prospectus before the end of the period for consideration.
- (2) The period for consideration -
 - (a) begins with the first working day after the date on which the application is received; but
 - (b) if the Commission gives notice under paragraph (4), is to be treated as beginning with the first working day after the date on which the notice is complied with.
- (3) The period for consideration -
 - (a) except in the case of a new issuer, shall be [10] working days;
 - (b) in the case of a new issuer, shall be [20] working days.
- (4) The Commission may by notice in writing require a person who has applied for approval of a prospectus to provide -
 - (a) specified documents or documents of a specified description;
 - (b) specified information or information of a specified description.
- (5) The Commission may require information provided under this paragraph to be provided in such form as it may reasonably require.
- (6) The Commission may require -

(a) any information provided, whether in a document or otherwise, to be verified in such manner, or

(b) any document produced to be authenticated in such manner,

as it may reasonably require.

(7) Failure by the Commission to comply with paragraph (1) shall not constitute approval of the application in question.

(8) “new issuer” means an issuer of securities which -

(a) does not have securities admitted to trading; and

(b) has not previously offered securities to the public.

48. Procedure for decision on application for approval

(1) If the Commission approves a prospectus, it shall give the applicant written notice.

(2) If the Commission proposes to refuse to approve a prospectus, it shall give the applicant written notice that shall state its reasons for the proposed refusal.

(3) If the Commission decides to refuse to approve a prospectus, it shall give the applicant written notice which notice shall -

(a) give the Commission’s reasons for refusing the application; and

(b) inform the applicant of his right to refer the matter to the Administrative Hearings Committee.

(4) If the Commission refuses to approve a prospectus, the applicant may refer the matter to the Administrative Hearings Committee.

(5) The Commission shall not be liable to any action in damages suffered as a result of any prospectus approved by the Commission.

49. Publication of prospectus

- (1) An issuer of REIT securities shall publish the prospectus by making it available to the public, free of charge from the time the securities are first offered until the end of the period during which the offer remains open.
- (2) No person shall issue, without the prior written approval of the Commission, an advertisement announcing a public offer of REIT securities unless a prospectus has been published and the advertisement gives an address in Ghana from which it can be obtained.
- (3) Any person who contravenes paragraph (1) or (2) is liable to pay to the Commission an administrative penalty of [ten thousand] penalty units.
- (4) A prospectus shall be deemed available to the public, when published either -
 - (a) by insertion in one or more newspapers circulated throughout, or widely circulated in Ghana, where the offer to the public is made or the admission to trading is sought;
 - (b) in a printed form to be made available, free of charge, to the public at the offices of the market on which the securities are being admitted to trading, or at the registered office of the issuer and at the offices of the dealer placing or selling the securities;
 - (c) in an electronic form on the issuer's website and, if applicable, on the website of the dealer placing or selling the securities; or
 - (d) in an electronic form on the website of the securities exchange where the admission to trading is sought.
- (5) The text and format of the prospectus, and any supplement to the prospectus, published or made available to the public, shall at all times be identical to the original version approved by the Commission.

- (6) Where the prospectus is made available by publication in electronic form, a paper copy shall nevertheless be delivered to an investor, upon his request and free of charge, by the issuer asking for admission to trading or the investment firm placing or selling the securities.

50. Criminal liability for defective prospectus

- (1) A person who -
- (a) makes a false, misleading or deceptive statement in a prospectus; or
 - (b) omits information or a statement from a prospectus that these Regulations require to be included, commits an offence and is liable on summary conviction –
 - (i) in the case of an individual, to a fine of not less than [??] penalty units or to a term of imprisonment of not less than [??] months or to both; and
 - (ii) in the case of a company, to a fine of not less than [??] penalty units.
- (2) In any proceedings against a person in respect of an offence under paragraph (1), it shall be a defence for that person to prove either that the statement was immaterial or that he had reasonable ground to believe and did, up to the time of the issue of the prospectus, believe that the statement was true.

51. Compensation for false or misleading prospectus

Every offeror, issuer, director of an offeror or issuer shall be liable to pay compensation to any person who acquires any of the REIT securities, in reliance upon the prospectus, including acquisition in the secondary market, to which the prospectus relates and suffers loss in respect of them as a result of any untrue or misleading statement in the prospectus or the omission from it of any matter required to be included by or under regulation 46.

52. Expert to be independent

No prospectus shall include a statement purporting to be made by an expert unless the expert is a person who is not, and has not been, engaged or interested in the formation or promotion, or in the management, of the company the subject of the prospectus.

53. Expert's consent to issue of prospectus

- (1) A prospectus that includes a statement purporting to be made by an expert or to be based on a statement made by an expert shall not be issued unless -
 - (a) the expert has given, and has not before delivery of the prospectus for the approval of the Commission withdrawn, his written consent to the issue of the prospectus with the statement in the form and context in which it is included; and
 - (b) there appears in the prospectus a statement that the expert has given and has not withdrawn his consent.

54. Continuing disclosure obligations

- (1) A REIT shall, generally and apart from compliance with all the specific requirements of these Regulations, forthwith publish a press release in at least [1] daily newspaper having a national circulation, and notify the Commission, its members and other holders of its securities 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 developments in its sphere of activity which are not public knowledge and which information –
 - (a) is necessary to enable them and the public to appraise the financial position of the issuer ;
 - (b) is necessary to avoid the establishment of a false market in its securities; or
 - (c) might reasonably be expected to bring about a material change in the value or market price of its securities.

- (2) Without limiting the general effect of paragraph (1), the REIT shall also comply with such further obligations and requirements as may be specified by the Commission.

55. Power of Commission to require production of records and documents

- (1) Where –
- (a) it appears to the Commission that there are circumstances suggesting that the business of the REIT has been or is being conducted –
 - (i) with intent to defraud its creditors, or the creditors of another person;
 - (ii) for a fraudulent or unlawful purpose;
 - (iii) in a manner oppressive to any of its members;
 - (b) it appears to the Commission that there are circumstances suggesting that a REIT was formed for a fraudulent or unlawful purpose;
 - (c) it appears to the Commission that there are circumstances suggesting that the persons concerned with the formation of a REIT or the management of its affairs have in relation to the formation or management been guilty of fraud, misfeasance or other misconduct towards it or its members; or
 - (d) it appears to the Commission that there are circumstances suggesting that the members of the REIT have not been given all the information with respect to its affairs that they might reasonably expect,
- the Commission may give directions –
- (i) to the REIT;
 - (ii) to a company that is substantially under the control of the same person as is the REIT,
- requiring it, at the time and place specified in the directions, to produce the records and documents specified in the direction.

- (2) The Commission may, when acting under paragraph (1), authorize a person, on producing (if required to do so) evidence of his authority, to require a company referred to in paragraph (1) to produce to him records and documents specified by him.
- (3) Where the Commission or authorized person may require production of records and documents from a REIT under this regulation, the Commission or authorized person may also require production of those records and documents from a person who appears to the Commission or authorized person to be in possession of them.
- (4) A power under this regulation to require a REIT or other person to produce records and documents includes the power –
 - (a) if the records and documents are produced –
 - (i) to take copies of them or extracts from them; and
 - (ii) to require that person, or any other person who is a present or past officer of the REIT, or is or was at any time employed by the REIT, to provide an explanation of any of them; or
 - (b) if the records and documents are not produced, to require the person who was required to produce them to state, to the best of his knowledge and belief, where they are.

56. Remedy in cases of unfair prejudice by REIT companies

- (1) If it appears to the Commission from any information, record or other document obtained under these Regulations, or any other legislative power, that the affairs of a REIT are being or have been conducted in a manner unfairly prejudicial to the interests of its members generally or of some part of the members, the Commission may make an application to the Court for an order under this regulation.
- (2) If on an application under this regulation the Court is of the opinion that the REIT's affairs are being or have been conducted in a manner unfairly prejudicial to the interests of its

members generally or of some part of the members, whether or not the conduct consists of an isolated act or a series of acts, the Court may, with a view to bringing to an end the matters complained of –

- (a) make an order restraining the carrying out of the act or conduct;
 - (b) order that the REIT shall bring in its name the proceedings the Court considers fit against the persons, on the terms, the Court orders;
 - (c) appoint a receiver or manager of the whole or a part of the REIT's property or business and may specify the powers and duties of the receiver or manager and fix his remuneration;
 - (d) make any other order it considers fit, whether for regulating the conduct of the REIT's affairs in future, or for the purchase of the shares of any members of the REIT by other members of the REIT or by the REIT and, in the case of a purchase by the REIT, for the reduction accordingly of the REIT's capital, or otherwise.
- (3) Where an order under this regulation makes an alteration in or an addition to the constitution of a REIT, the REIT shall not have power without the leave of the Court to make any further alteration in or addition to its constitution inconsistent with the order.

57. Power of Commission to issue directions to REITS

The Commission may, where it appears to the Commission that –

- (a) it is desirable for the protection of members or other holders of its securities;
- (b) the REIT is in breach of its listing agreement; or

- (c) the REIT is contravening, has contravened or is about to contravene, or has failed to comply with any provision or requirement under these regulations or rule of its listing exchange or, in purported compliance with any such provision or requirement, has furnished the Commission with information that is false, inaccurate or misleading, the Commission may issue directions to the REIT –
- (i) to cease and desist from the breach;
 - (ii) to do or not to do any matter as specified; or
 - (iii) with regard to or for any other matter that the Commission considers necessary,

and the REIT shall comply with the direction.

PART NINE

Audit of REITS

58. Appointment and eligibility of auditor

- (1) No REIT shall be licensed until it has appointed an auditor to audit, at least annually, its accounts and financial statements.
- (2) The auditor shall audit the accounts required to be included in the annual report and shall report on whether the REIT manager and custodian have complied with these Regulations.
- (3) In his report the auditor shall state whether or not in his opinion the accounts give a true and fair view of the financial position of the REIT as at the end of the accounting period to which they relate and of the transactions of the REIT for the period then ended.
- (4) A person shall not be qualified for appointment as the auditor of a REIT unless he is a member of the Institute of Chartered Accountants under the Chartered Accountants Act 1963 (Act 170), holds a valid practising certificate and is approved by the Commission for such purpose.
- (5) An auditor, who shall have a place of business in Ghana, shall not be eligible for appointment under paragraph (2) if he is –
 - (a) a director, officer, employee, shareholder or partner of the REIT, its REIT manager or custodian ; or

- (b) a partner or employee of such person.
- (6) A REIT shall, within seven days of the appointment of an auditor, notify the Commission in writing of the name and address of the auditor.
- (7) A REIT shall, within seven days, notify the Commission in writing of the removal or resignation of an auditor.

59. Audited accounts to be lodged with Commission

A REIT manager shall for each of the REIT's financial years prepare financial statements made up to the last day of the financial year which shall show a true and fair view, contain the information prescribed, and shall lodge those documents with the Commission not later than [3] months after the end of the financial year, together with an auditor's report.

60. Co-operation with auditor

The REIT manager, custodian, property valuer and any legal or other adviser or party appointed in relation to the REIT by the REIT manager shall –

- (a) provide such assistance as the auditor may reasonably require to discharge its duties;
- (b) allow the auditor, at all reasonable times, access to premises, documents, records, data and information including access to software and systems;
- (c) not interfere with the ability of the auditor to discharge its duties;
- (d) not provide false or misleading information to the auditor; and
- (e) report to the auditor any matter which may significantly affect the financial position of the REIT or the conduct of the audit.

61. Auditor to report to Commission in certain cases

- (1) If, during the performance of his duties as auditor of a REIT, an auditor –
 - (a) becomes aware of any matter which in his opinion adversely affects the financial position of the REIT to a material extent;
 - (b) discovers evidence of a contravention of any requirement under the Act or these Regulations; or
 - (c) is unable to exercise his legal powers and duties in respect of auditing a REIT,

he shall as soon as is practicable, and in any event within seven days, report it in writing to the Commission and to the REIT.

- (2) The Commission may require the auditor to supply it with such information as it may specify.
- (3) The auditor shall send to the board of the REIT and to the REIT manager a copy of any written report made by him to the Commission under paragraph (1).

62. Communication with Commission

No duty to which an auditor of a REIT is subject shall be regarded as contravened by reason of his communicating in good faith to the Commission, whether or not in response to a request from the Commission, any information or opinion on a matter of which the auditor has become aware in his capacity as auditor of the REIT and which is relevant to any function of the Commission under the Act or these Regulations.

63. Audit of REIT managers

Regulations 58 to 61 shall apply, so far as applicable, to the auditor of a REIT manager.

PART TEN

Preparation of periodic reports and accounts by REIT manager

64. Preparation of annual and semi-annual reports

- (1) A REIT manager shall prepare or cause to be prepared annual and semi-annual reports for the REIT including the accounts for the REIT during such periods.
- (2) The reports and accounts prepared under paragraph (1) shall comply with the content requirements specified in Schedules 2 and 3 and such other information as the Commission may require and shall include –
 - (a) in the case of –
 - (i) the annual report, audited financial statements certified by both the REIT manager and the custodian to be true and correct;

- (ii) the semi-annual report, financial statements which may be audited but shall be certified by both the REIT manager and the custodian to be true and correct;
- (b) a copy of the report by the custodian; and
- (c) a copy of the report by the auditor which shall include a compliance report.

65. Failure to prepare reports and accounts

- (1) Where the REIT manager fails to prepare or cause to be prepared the reports and accounts required under regulation 64, the custodian shall, without relieving the REIT manager of any obligation –
 - (a) advise the Commission of the failure of the REIT manager; and
 - (b) cause the accounts and reports to be prepared as soon as possible at the expense of the REIT manager.
- (2) The REIT manager, the property valuer and any other person appointed by the REIT manager or the custodian in connection with the REIT, or any person whose fees or costs have been paid out of the REIT or are recoverable from the REIT, shall provide the custodian and any person appointed by the custodian to prepare the accounts and reports with such information, assistance and access to information and data as the custodian or the person appointed by the custodian may require.

66. Submission of reports and accounts to the Commission and shareholders

- (1) A REIT manager shall, in consultation with the custodian –
 - (a) submit to the Commission, a copy of -
 - (i) the first half financial year reports and accounts within 30 days from the end of the half year;
 - (ii) the annual report and the audited accounts within 3 months from the end of the financial year;

- (b) provide such other information, statements, books, records or other particulars as the Commission may require; and
 - (c) publish in at least [2] daily newspapers having a national circulation –
 - (i) the first half financial year reports and accounts within 30 days from the end of the first half of the financial year; and
 - (ii) the annual report and the audited accounts within 3 months from the end of the financial year.
- (2) The REIT manager shall send to every REIT shareholder and debenture holder, free of charge, a copy of –
- (a) the first half financial year reports and accounts within 30 days from the end of the half year; and
 - (b) the annual report and the audited accounts within 3 months from the end of the financial year.

67. Distribution recommendations and statements

The REIT manager shall, whenever a distribution, including any interim distribution, is made, circulate to the Commission and REIT shareholders a notice of distribution and a statement authorised by the custodian which statement shall include details of –

- (a) the source and nature of the distribution;
- (b) the total returns of the REIT from income or capital gains;
- (c) the percentage of income distributed; and
- (d) the net asset value per share prior to, and subsequent to, the making of the distribution.

PART ELEVEN

Prospectuses, Financial Statements and Shareholders' Reports

68. Prospectuses

- (1) A REIT prospectus shall include –
 - (a) particulars of the matters specified in Schedule 1; and

- (b) such further information as may be necessary to enable shareholders to make an informed judgement as to the investment offered.
- (2) For the purpose of these Regulations, the management contract and custodian agreement shall form an integral part of the prospectus and shall be annexed thereto.
- (3) The prospectus shall be revised at least once in every twelve months but, if any significant change occurs in the matters stated therein or any significant new matter arises which ought to be stated therein before the offer document is due for such annual revision, it shall be revised immediately that change occurs or new matters arises so far as is necessary to take account of that change or matter.

69. Financial statements

- (1) The financial statements of a REIT shall include –
 - (a) a statement of assets and liabilities;
 - (b) an income and distribution account;
 - (c) a capital account;
 - (d) a copy of the report of the auditor of the REIT on the above mentioned accounts including any qualifications made by the auditor.

(2) The financial statements referred to in paragraphs 1(a), (b) and (c) shall comply with the requirements of Schedule 2.

70. Shareholders' reports

- (1) Shareholders' reports, which shall be sent to all shareholders and debenture holders, shall include –
 - (a) a report by the REIT manager to the shareholders on the activities of the REIT during the financial year;
 - (b) a copy of the report by the custodian to the shareholders as to the manner in which the REIT has been managed during the financial year; and

- (c) a copy of the report by the auditor.
- (2) The reports referred to in paragraph (1) shall comply with the requirements of Schedule 3.
- (3) The auditor and custodian shall deliver their reports to the REIT manager in good time to enable it to include such reports in the annual report.

SCHEDULE 1

(regulation 68)

THE PROSPECTUS SHALL STATE THAT THE COMMISSION TAKES NO RESPONSIBILITY FOR THE CONTENT OF THE PROSPECTUS AND SHALL NOT BE LIABLE TO ANY ACTION IN DAMAGES AS A RESULT OF THE PROSPECTUS

REQUIRED CONTENT OF PROSPECTUS

PART I

GENERAL REQUIREMENTS

- 1.** A statement that the company's Regulations are made under and governed by the laws of Ghana.
- 2.** A statement of the name of the REIT (which must include the words "real estate investment company"), the address of its registered office and the date of incorporation.
- 3.** Details of the REIT'S investment objectives and policy, including investment and borrowing restrictions.

State the fundamental investment objectives of the REIT, the types of property in which the REIT proposes to invest, as well as the investment policies and practices of the REIT in pursuing its objectives.

A discussion of the business plan for property investment and management covering the scope and type of investments made or intended to be made by the REIT including the types of real estate (residential, commercial, industrial, etc).

State any proposed programme for renovation or improvement to the real estate including the estimated costs and the method of financing to be used.

State the operating data of each of the real estate properties, including the occupancy rate, number of tenants and its mix in terms of residential occupation or business, the principal provisions of the leases, average annual rent per square foot, and schedule of lease expirations for the next [5] years.

The borrowing policy and the method or proposed method of operating and financing the REIT's real estate investments.

A valuation report prepared by the property valuer in accordance with regulation 43 with respect to all the REIT's interests in real estate, including particulars of each property owned by the REIT or contracted for purchase by the REIT.

Particulars of any bank overdrafts or similar indebtedness of the REIT, or if there is no such indebtedness, a statement to that effect.

The prospectus shall be accompanied by –

- (a) the REIT's most recently audited annual report and accounts (where applicable); and
- (b) the REIT's semi-annual report if published after the annual report (where applicable).

The effective date as at which the real estate was valued shall not be more than 3 months before the date on which the prospectus is issued.

Explain the nature of the risks, including minimum currency risk, exposure to the stock market, sensitivity to rate of interest risk, exposure to currency risk, concentration risk, investment in illiquid securities risk, etc

If the nature of the investment policy so dictates, a warning that investment in the REIT is subject to abnormal risks, and a description of the risks involved.

- 4.** A statement as to the names, registered addresses and responsibilities of the parties involved in the management, operation and valuation of the REIT including the following parties (where applicable) –

- (a) the board of directors of the REIT;
- (b) the REIT manager and its board of directors;
- (c) the custodian;
- (d) the property valuer;

- (e) the auditors;
- (f) the lawyers; and
- (g) any other persons to whom activities of the REIT may be outsourced and the nature of those activities.

- 5.** A statement that the assets of the REIT are held by the custodian on trust for the REIT.

A statement as to the obligations of the custodian to monitor the conduct of the REIT manager and to ensure that the interests of the shareholders are protected and safeguarded.

- 6.** A statement authorising the REIT manager to make payments to the custodian by way of remuneration for its services, relieving the custodian from any obligation to account for those payments to the shareholders or any of them and specifying the basis on which that remuneration is to be calculated and how it should accrue and be paid.

- 7.** A statement authorising any payments to the custodian by way of remuneration for its services to be paid (in whole or in part) out of the assets of the REIT.

- 8.** The descriptions of any expenses or disbursements of the custodian, including the fees of the registrar (if any) or any expenses or disbursements incurred by the custodian in itself performing the functions of registrar, which are payable out of the assets of the REIT.

- 9.** If the REIT manager may appoint an investment adviser, a statement authorizing it to do so, and setting out the proposed terms of such appointment

- 10.** A statement that shareholders may convene a meeting of a self-managed REIT and, by way of an ordinary resolution, remove any director considered to be no longer a fit and proper person to manage the assets of the fund.

11. A statement that shareholders shall have the right at a general meeting of a self-managed REIT to fix its directors' fees and remuneration.
12. A statement of the period of the REIT's financial year.
13. A statement as to particulars of what reports will be sent to shareholders and when.
14. A list of the formation documents and an address in Ghana where they can be inspected free of charge.
15. Information about measures to be taken to prevent money laundering and the financing of terrorism.
16. The date of publication of the prospectus.
17. A statement that the prospectus has been approved by the Commission.
18. A statement that the prospectus has been drawn up in accordance with these Regulations.
19. A statement that the Commission takes no responsibility for the contents of the prospectus and shall not be liable to any action in damages suffered as a result of any prospectus approved by the Commission.
20. Where the prospectus contains any statement by an expert, or any statement said in the prospectus to be based on a statement made by an expert, the prospectus shall state that the expert has given his consent, that such consent is filed with the Commission, and that the expert has not withdrawn his consent before the date the prospectus is lodged with the Commission for approval.
21. The following words, "If you are in any doubt about the contents of this document you should consult a person licensed under the Act who specialises in advising on the acquisition of shares and other securities", or words to that effect.

PART II

THE PERSONS RESPONSIBLE FOR THE PROSPECTUS AND ADVISERS

22. The names, addresses (home or business) and functions of those persons responsible for the prospectus or any part of the prospectus, specifying such part.
23. A declaration by the directors of the REIT that they accept responsibility for the contents of the prospectus and that, to the best of their knowledge and belief, and after making reasonable enquiries, the information contained in the prospectus is in accordance with the facts and that the prospectus makes no omission likely to affect the import of such information.

PART III

THE SECURITIES TO WHICH THE PROSPECTUS RELATES AND THE OFFER

24. A description of the REIT securities being offered, including the class to which they belong and a description of the rights attaching to them including (where applicable) –
 - (a) if the securities are shares, rights as regards –
 - (i) voting;
 - (ii) dividends;
 - (iii) return of capital on the winding up of the REIT;
 - (iv) redemption; and a summary of the consents necessary for the variation of any of those rights; and
 - (b) if the securities are debentures, rights as regards –
 - (i) interest payable;
 - (ii) repayment of principal.
25. The dividend policy of the REIT and whether the REIT expects to pay dividends over the next [2] years.
26. The date(s) (if any) on which entitlement to dividends or interest arises.

27. The procedure for the exercise of any right of pre-emption attaching to the securities.
28. Any restriction on the free transferability of the securities being offered.
29. A statement as to whether –
 - (a) the securities being offered have been listed on the Ghana Stock Exchange; or
 - (b) an application for listing has been made to the Ghana Stock Exchange.
30. The purpose for which the securities are being issued.
31. The number of securities being issued and offered and, in the case of shares, the net asset value per share.
32. The total proceeds that it is expected will be raised by the offer and the expected net proceeds, after deduction of the expenses, of the offer, stating the amount or the estimated amount of the expenses of the offer and by whom they are payable, including a statement as to any commission payable by the REIT to any person in consideration of his agreeing to subscribe for securities to which the prospectus relates or of his procuring or agreeing to procure subscriptions for such securities.
33. Details as to the use of the proceeds of the issue and in particular their use for capital expenditure, debt reduction, acquisitions, working capital or other.
34. Where the prospectus relates to shares , particulars as to –
 - (a) the minimum amount which, in the opinion of the directors of the REIT, must be raised by the issue of those shares in order to provide the sums (or, if any part of them is to be defrayed in any other manner, the balance of the sums) required to be provided in respect of each of the following –
 - (i) the purchase price of any property purchased, or to be purchased, which is to be defrayed in whole or in part out of the proceeds of the issue; and
 - (ii) any preliminary expenses payable by the REIT and any commission so payable to any person in consideration of his agreeing to subscribe for, or of his procuring or

agreeing to procure subscriptions for, any shares in the REIT.

- (b) the amounts to be provided in respect of the matters mentioned otherwise than out of the proceeds of the issue and the sources out of which those amounts are to be provided.
- 35. The names of any persons underwriting the offer.
 - 36. The amount or the estimated amount of the expenses of the offer and by whom they are payable, including a statement as to any Commission payable by the REIT to any person in consideration of his agreeing to subscribe for securities to which the prospectus relates or of his procuring or agreeing to procure subscriptions for such securities.
 - 37. The name and address of any paying, transfer or registration agent.
 - 38. The period during which the offer of the securities is open.
 - 39. The price at which the securities are offered or, if appropriate, the procedure, method and timetable for fixing the price.
 - 40. The allotment procedures.
 - 41. The arrangements for payment for the securities being offered and the arrangements and timetable for their delivery.
 - 42. The arrangements during the period prior to the delivery of the securities being offered relating to the moneys received from applicants including the arrangements for the return of moneys to applicants where their applications are not accepted in whole or in part and the timetable for the return of such moneys.

PART IV

GENERAL INFORMATION ABOUT THE REIT AND ITS CAPITAL

- 43. The date and place of incorporation of the REIT.

44. The legal form of the REIT (together with certified true copies of its constitutive documents).
45. A summary of the provisions in the REIT's constitution determining its objects.
46. The amount of the REIT's stated capital.
47. In the case of a debt issue, any borrowing limits to which the REIT is subject.
48. The number of shares of each class making up the stated capital and, in the case of the shares issued, the amount paid up on the shares.

PART V

THE REIT'S PRINCIPAL ACTIVITIES

49. A detailed description of the REIT's principal activities.
50. With regard to risk factors, list in order of importance the factors which the REIT considers to be the most substantial risks to an investor in this offering (e.g. cash-flow or liquidity problems, management inexperience, nature of business, etc.) and which constitute the greatest threat that an investment may be lost in whole or part, or not provide an adequate return.
51. Information regarding purchases or sales in progress or proposed and authorised by the directors where they are significant.
52. Information on any legal or arbitration proceedings, active, pending or threatened against, or being brought by, the REIT which are having or may have a significant effect on the REIT's financial position.

PART VIII

THE REIT'S ADMINISTRATION AND MANAGEMENT

53. A concise description of the directors' existing or proposed service contracts with the REIT, excluding contracts expiring, or determinable by the REIT without payment of compensation within one year, or an appropriate negative statement.

- 54.** The interests of each director of the REIT in the stated capital of the REIT, distinguishing between beneficial and non-beneficial interests, or an appropriate negative statement.
- 55.** Full particulars of any contract or arrangement existing at the date of the prospectus in which a director of the REIT is materially interested, or an appropriate negative statement.
- 56.** (1) A description (being his qualification or area of expertise or responsibility) of every director or proposed director (and any other person who performs an important administrative, management or supervisory function) and particulars of the principal functions performed by each.
- (2) A brief account of the business experience of each of these persons during the last 5 years.
- (3) The nature of any family relationship between the persons mentioned in sub-paragraph (1).
- (4) Indicate any other directorships held by each director or proposed director.
- 57.** Details as to the corporate governance of the REIT, and their conformity with, the Securities Industry (Corporate Governance) (Listed Companies) Regulations 2017.

SCHEDULE 2
(regulation 69)
FINANCIAL STATEMENTS

1. General

The annual report must contain, at a minimum, all the information items required in this Schedule.

REIT manager's discussions and analysis of financial conditions and results of operations with discussions on the strategy, plans and operations for the coming year.

Summary of real estate sales and purchases entered into during the relevant period.

Valuation report prepared in accordance with regulation 43.

Custodian's report as required by regulation 33 (3)©.

A set of financial statements comprising –

- (a) balance sheet;
- (b) income statement;
- (c) cash flow statement;
- (d) distribution statement;
- (e) statement of movements in capital;
- (f) comparative figures for the statements referred to in (a) to (e) above inclusive for the corresponding previous period (where applicable);
- (g) accounting policies and explanatory notes; and
- (h) auditor's report.

In addition to meeting the requirements of these Regulations, all reports and financial statements of a REIT are required to conform with International Financial Reporting Standards ("IFRS") and the International Auditing Standards ("IAS") as promulgated from time to time, or such other accounting standards and auditing standards as apply in Ghana from time to time.

The semi-annual report shall contain, at a minimum, the following –

- (1) The REIT manager's discussions and analysis of financial conditions and results of operations, and discussions on the outlook for the forthcoming half year;
- (2) A list of real estate held by the REIT;
- (3) A summary of real estate sales and purchases during the interim period.

All accounts must contain comparative figures for the previous accounting period (where applicable).

The items listed under the Balance Sheet, Income Statement, Cash flow statement, Distribution Statement, Statement of Movements in Capital Account and the Notes to the Accounts, where applicable, must be disclosed.

2. Balance Sheet

The balance sheet shall separately disclose, where applicable, at least the following items –

- (a) total value of all real estate
- (b) bank balances
- (c) formation costs
- (d) rentals and other receivables
- (e) amounts receivable on subscription
- (f) bank loans and overdrafts or other forms of borrowing
- (g) instruments creating or acknowledging indebtedness
- (h) distributions payable
- (i) total value of all assets
- (j) total value of all liabilities
- (k) net asset value
- (l) number of shares in issue
- (m) net asset value per share
- (n) the total net value of all assets of the REIT less the net value of the liabilities of the REIT.

3. Income Statement

The income statement shall separately disclose, where applicable, at least the following items -

- (1) Gross rental income from real estate.
- (2) Total other income, broken down by category.
- (3) Deficit/Surplus on revaluation taken to the Income Statement during the accounting period;
- (4) Profit or loss on disposal of any investment in real estate;
- (5) An itemised list of various costs which have been debited to the REIT including –
 - (a) fees paid to the REIT manager;
 - (b) remuneration of the custodian;
 - (c) amortization of formation costs;
 - (d) directors' fees and remuneration;
 - (e) safe custody and bank charges;
 - (f) auditors' remuneration;
 - (g) interest on borrowings;
 - (h) fees paid to property valuer;
 - (i) legal and other professional fees;
 - (j) any other expenses borne by the REIT.
- (4) Taxes.
- (5) Amounts transferred to and from the capital account.
- (6) Net income to be carried forward for distribution.

4. Cash Flow Statement

The cash flow statement shall include -

- (a) cash flows from operating activities;
- (b) cash flows from investing activities;
- (c) cash flows from/ financing activities.

5. Distribution Statement

The distribution statement shall separately disclose, where applicable, at least the following items -

- (1) Amount brought forward at the beginning of the period.
- (2) Net after tax income for the period.
- (3) Interim distribution per share and date of distribution.
- (4) Final distribution per share and date of distribution.
- (5) Undistributed income carried forward.

6. Statement of Movements in Capital Account

The statement of movements in capital account shall separately disclose, where applicable, at least the following items -

- (1) Value of the REIT as at the beginning of the period.
- (2) Number of shares issued and amounts received on such issuance.
- (3) Any items resulting in an increase/decrease in value of the REIT including –
 - (a) surplus/loss on sale of real estate;
 - (b) exchange gain/loss;
 - (c) unrealised appreciation/diminution in value of investments;
 - (d) net income for the period less distribution.
- (4) amounts transferred to and from the revenue account.
- (5) value of the REIT as at the end of the period.

7. Notes to the accounts

The following matters shall be set out in the notes to the accounts

1. Principal Accounting Policies

- (a) in respect of real estate, the basis of valuation, the treatment of changes in their value and the treatment of any revaluation on their sale;
 - (b) the revenue recognition policy regarding rental income, dividend income and other income;
 - (c) the basis of treatment of formation costs;
 - (d) taxation;
 - (e) any other accounting policy adopted to deal with items which are judged material or critical in determining the transactions and in stating the position of the REIT.
2. Any changes to the above accounting policies and their financial effects on the accounts shall also be disclosed.

SCHEDULE 3

(regulation 70)

SHAREHOLDERS' REPORTS

A: Report of the REIT manager

The following matters shall be set out in every annual and half-yearly report of the REIT manager –

1. The names and addresses of the following –
 - (a) the REIT;
 - (b) the REIT manager
 - (c) the custodian;
 - (d) the property valuer;
 - (e) the auditor; and
 - (f) any other agents appointed by the REIT manager.
2. The objectives of the REIT.
3. The REIT manager's policy for achieving the objectives of the REIT.
4. A statement that the REIT is licensed under the Act.
5. A review of the REIT's investment activities during the period to which the report relates.
6. Particulars of any significant change in the prospectus made since the making of the last report by the REIT manager and of any change in the directors of the REIT manager.
7. A statement of the amount (if any) to be distributed to shareholders or accumulated in respect of the period in question.
8. A statement of the total number of the shares in existence or deemed to be in existence at the beginning of the period to which the report relates and at the end of that period.

9. A statement of the mid-market value per share of the assets of the REIT at the beginning of the period to which the report relates and at the end of that period.
10. Any other significant information which would enable shareholders to make an informed judgement on the development of the activities of the REIT during this period and the results of those activities as at the end of that period.

B: Asset statement

The following matters shall be set out in the asset statement included in the report to shareholders -

- (a) any changes in the assets of the REIT since the end of the preceding accounting period showing whether they are new assets, or changes in existing assets, and giving a description of each such asset;
- (b) the total cost of purchases of real estate since the last portfolio statement;
- (c) the total proceeds of sales of real estate since the last portfolio statement.

C: Comparative table

The following matters shall be set out in the comparative table (if applicable) included in the report –

- (a) a comparative table covering the last three financial years and including, for each financial year, at the end of the financial –
 - (i) the total net asset value;
 - (ii) the net asset value per share.
- (c) a performance record over the last ten financial years or, if the fund has not been in existence during the whole of that period, over the whole period in which it has been in existence, showing the highest issue price during each of those years.

D: Report of the auditor

The report of the auditor to shareholders for any annual accounting period shall state –

- (a) whether in the auditor's opinion the accounts and financial statements prepared for that period have been properly prepared in accordance with generally accepted accounting principles and in accordance with these Regulations and the formation documents;
- (b) without prejudice to the foregoing, whether in the auditor's opinion a true and fair view is given of the financial position of the REIT as at the end of that period and of the transactions of the REIT for the period then ended.
- (c) if the auditor is of the opinion that proper accounting records have not been kept by the REIT or that the accounts are not in agreement with the REIT's accounting records, that fact shall be stated together with any resulting qualification;
- (d) if the auditor has not been given all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of his audit, that fact shall be stated together with any resulting qualifications; and
- (e) if the auditor is of the opinion that the information given in the report of the REIT manager for that period is inconsistent with the accounts, that fact shall be stated together with any resulting qualifications.

E: Report of the custodian

The report of the custodian to the shareholders for each annual accounting period shall state whether in the custodian's opinion the REIT manager has managed the REIT in that period –

- (a) in accordance with the limitations imposed on the investment and borrowing powers of the REIT by the formation documents, by the prospectus and by these Regulations; and
- (b) otherwise than in accordance with the provisions of the formation documents, the prospectus and these Regulations; and if so, the respects in which it has not acted in such accordance and the steps which the custodian has taken in respect thereof.