

Capital Market Authority

Real Estate Investment Traded Funds Instructions

**Issued by the Board of the Capital Market Authority
Pursuant to its Resolution Number 6-130-2016 Dated 23/1/1438H
Corresponding to 24/10/2016G Based on the Capital Market Law
Issued by Royal Decree No M/30 dated 2/6/1424H**

Contents

Part 1: Preliminary.....	3
Part 2: Definitions.....	3
Part 3: General Provisions	4
Part 4: REIT Conditions	8
Part 5: Offering Requirements	9
Part 6: Unitholders' consent on the fundamental changes:.....	11
Part 7: Meetings of Unitholders.....	11
Part 8: Disclosure Requirements.....	13
Part 9: Trading Halt and Cancelation of Listing.....	18
Part 10: Terminating the REIT:.....	18
Part 11: Publication and Entry into Force.....	19

Part 1: Preliminary

- A. These instructions aim to regulate the offering of the Real Estate Investment Traded Funds.
- B. These instructions shall be read in conjunction with and in addition to the Capital Market Law and its Implementing Regulations.

Part 2: Definitions

- A. Any reference to the “Capital Market Law” in these Instructions shall mean the Capital Market Law issued by the Royal Decree No. M/30 dated 2/6/1424H.
- B. Expressions and terms in these Instructions have the meaning which they bear in the Capital Market Law and the Glossary of defined terms used in the Regulations and Rules of the Capital Market Authority and the Real Estate Investment Funds Regulations, unless the contrary intention appears.
- C. For the purpose of implementing these Instructions, the following expressions and terms shall have the meaning they bear as follows, unless the contrary intention appears:

Real Estate Investment Traded Fund (REIT): a real estate investment fund that is publicly offered and the units of which are traded on the Exchange, whose primary investment objective is to invest in constructionally developed real estates qualified to generate periodic and rental income, and distribute a prescriptive percentage of the fund's net profit in cash to the unitholders at least annually.

Constructionally Developed Real Estate: real estates that are developed and ready for use. This includes residential, commercial, industrial, agricultural and other types of real estates.

Fund's Net Profit: the total fund's returns after deducting total expenses incurred by the fund.

Unitholders from the Public: means in these instructions unitholders who own units in the REIT other than the following:

- 1) any unitholder owning (5%) or more of the REIT's units.
- 2) the Fund manager and its affiliates.
- 3) the Fund's board of directors.

Part 3: General Provisions

- A. The offering, operations and management of the REIT in the Kingdom shall be in accordance to these instructions and the provisions of the Real Estate Investment Funds Regulations to the extent that they apply to the nature of REIT.
- B. The fund manager must appoint one or more custodians, who shall be authorised persons to conduct custody activity in the Kingdom, to take custody of the assets of the fund and their documentation. The fund manager must be appointed pursuant to a written contract. The appointed custodian must not be the fund manager or a fund sub-manager of the relevant fund, or an affiliate of the fund manager or of the fund sub-manager.
- C. The Custodian who is appointed pursuant to paragraph (b) of Part (3) of these Instructions must segregate each REIT's assets from its own assets and from the assets of its other clients, and must maintain all necessary records to support the performance of its contractual responsibilities. These assets must be separately identified, by registering the securities and other assets of the relevant investment fund in the name of the custodian for the benefit of the relevant investment fund, and the real estate assets of the fund shall be

registered in the name of a subsidiary of the custodian, and the assets of the REIT are owned collectively by the unitholders in that fund.

- D. The custodian may assign one or more third parties or any of its affiliates to be a sub-custodian for any REIT whose assets is under its custody. The custodian shall pay the fees of any sub-custodian from his own resources.
- E. A sub-custodian from outside the Kingdom may be assigned to hold the fund's external investments, given that it is incorporated, licensed and subject to a regulatory oversight by a regulatory authority in accordance to regulatory standards and requirements equivalent at least to those of the Authority. The sub-custodian shall be assigned pursuant to a written contract.
- F. The real estate assets of the REIT can be registered in the name of a subsidiary of a licensed lender, that has extended a loan to the fund as guarantee for the debt.
- G. The fund manager must appoint one or more real estate companies specialized in managing properties (Property management company), after ensuring that approvals and licenses required by the relevant governmental agencies are obtained, to manage the property held for investment. This company should possess the necessary experience in real estate management, and shall be responsible for carrying out property management activities including, but not limited to, property management, property maintenance, leasing services and rent collection. The fund manager may- under a leasing contract- agree with the lessee that the latter would manage the property and do any maintenance during the leasing contract period.
- H. The fund manager may, after obtaining the Authority's approval on the fund offering, prepare a road show for the initial subscription in the REIT.
- I. The unitholders of REIT are deemed to have read and accepted the funds terms and conditions upon purchasing a unit of REIT from the Exchange.

- J. The units of REIT must be registered with the Depository Center.
- K. The unitholder shall be entitled to exercise all rights in relation to the units including, but not limited to, the right to vote at meetings of unitholders, rights issues and accepting in-kind contributions related to increasing the fund's capital.
- L. The capital increase mechanism of the fund will be through offering tradable rights issue or accepting in-kind contributions or both as in the case of listed companies in accordance with the Regulatory Rules and Procedures issued pursuant to the Companies Law to the extent they apply to the nature of the REIT.
- M. As an exception from sub-paragraph (L) of this part and the Regulatory Rules and Procedures issued pursuant to the Companies Law, and in case eligible unitholders did not participate in the subscription, the fund manager may offer the remaining units to the public.
- N. The fund manager must publish all information that must be disclosed as per part (8) of these Instructions on the fund manager's website and the Exchange's website, and such information must be complete, clear, accurate and not misleading.
- O. The fund manager shall not invest more than (25%) of the fund's total assets value according to the last audited financial statements in properties outside the Kingdom.
- P. If any of the limitations set forth in these Instructions or in the fund's terms and conditions are breached due to a change of circumstances that is beyond the control of the fund manager, and the breach has not been rectified within one month from the date of the breach occurrence, the fund manager must immediately notify the Authority of such event in writing, indicating the taken

action and period of time required to rectify the matter. The Authority may at its absolute discretion vary the time limit for rectifying such breach.

- Q. The Authority may waive a provision of these Instructions in whole or in part as it applies to a person either on an application from such person to whom the relevant provisions of this paragraph would otherwise apply or on the Authority's own initiative.
- R. The fund manager must provide the Authority with an updated version of the fund's terms and conditions within (10) days of making any changes to it. The custodian shall also receive a copy once updated.
- S. The fund manager must publish a copy of the fund's terms and conditions on the fund manager's website and the Exchange's website. The fund manager must also announce the updated version of the fund's terms and conditions on the fund manager's website and the Exchange's website within (10) days of making any changes to them, including the annual update of the fund's performance.
- T. The fund manager must announce the details of the material changes on the fund's terms and conditions , on the fund manager's website and the Exchange's website (10) days prior to these changes enter into force.
- U. The fund manager must provide the Authority within (10) days after the end of the offering period, with the results of the offering and to disclose it on the fund's manager website.

Part 4: REIT Conditions

A. The following must be satisfied when submitting an application to the Authority to offer REITs units:

- 1) **Fund Type:** the REIT must be closed-ended fund.
- 2) **Minimum Initial Offer:** the minimum amount that must be raised must be at least SAR 100 million.
- 3) **The nominal value per unit:** the nominal value per unit must be SAR 10.

B. The fund Manager must comply with the following at all times:

- 1) **Investment Policy:** at least (75%) of the fund's total assets value according to the last audited financial statements must be invested in constructionally developed real estates qualified to generate periodic and rental income.
- 2) **Fund Registration and Admission to Listing:** For units' registration and admission to listing, these units shall have sufficient liquidity as per the following:
 - a) at least 50 unitholders from the public; and
 - b) at least 30% of the total REIT units are owned by unitholders from the public.
 - c) the two requirements set forth in sub-paragraph (2/a) and in sub-paragraph (2/b) of this paragraph shall constitute a continuous obligation on the fund manager.
 - d) If the fund manager at any time, following having its units listed, becomes aware that the requirements of the sub-paragraph (2/a) and sub-paragraph (2/b) of this paragraph are no longer met, the fund manager must take the necessary remedial actions to ensure that the relevant requirements are met.

- 3) **Distributions:** at least (90%) of the fund's net profits must be distributed annually to the unitholders.
- 4) **Asset Restrictions:** the fund manager is prohibited from investing in vacant lands. The fund manager is allowed to invest up to a maximum of (25%) of the fund's total assets value according to the last audited financial statements in real estate development whether on real estates owned by the fund manager or not, and to renovate or redevelop these properties.
- 5) **Leverage:** the borrowing of the fund's must not exceed (50%) of the total assets value of the fund.

Part 5: Offering Requirements

- A. The fund manager seeking to offer and list REITs units in the Exchange must submit an application to the Authority.
- B. In addition to the requirements set forth in Article (3) of the Real Estate Investment Funds Regulation, the offer application must include a REIT terms and conditions containing all information necessary for all potential unitholders to make an informed judgment based on sufficient information regarding the investment being offered to them. This terms and conditions shall contain the information provided in Annex (1) of the Real Estate Investment Funds Regulation to the extent that they apply to nature of the of REIT, in addition to the following information:
 - 1) key dates and initial subscription procedures: this section must include the following information:
 - a) a timetable showing the expected dates of the initial offer.
 - b) a description of the initial subscription procedures.
 - c) unit allocation method.

- 2) mechanism of the fund's capital increase through accepting in-kind contributions or offering tradable rights issue, or both, in accordance with the Regulatory Rules and Procedures issued pursuant to the Companies Law.
 - 3) policy regarding meetings of unitholders:
 - a) resolutions that call for holding unitholders meetings.
 - b) invitation procedures of the unitholders' meeting.
 - c) voting method for unitholders and rights issue holders in the unitholders meetings.
 - 4) list of the unitholders' rights.
 - 5) dividends policy: This section must include an explanation on the REIT policy for the distribution of dividends to the unitholders in pursuance to sub-paragraph (3/b) of Part 4.
 - 6) the terms and conditions shall clearly state that the jurisdiction over any dispute arising from investing in REIT is vested in the Committee for the Resolution of Securities Disputes.
 - 7) the terms and conditions shall include the procedures to terminate and liquidate the fund, along with the liquidation timeframe.
- C. When submitting an application to offer, the fund manager shall provide the authority with a binding agreement to sell the property subject to investment or to transfer its interest upon the completion of fund units offering as determined in the terms and conditions of the fund.
- D. When submitting an application to offer, the fund manager must provide the authority with a memorandum of understanding between the fund manager and the property management company to manage the fund's property or a leasing contract if agreed with the lessee that he is responsible for managing the property.

Part 6: Unitholders' consent on fundamental changes:

- A. A fund manager must obtain the consent of the unitholders in the relevant fund to the proposed fundamental change.
- B. A fund manager, having obtained the approval of the unitholders specified in paragraph (a) of this Article, must obtain the consent of the Authority on the proposed fundamental change.
- C. for the purpose of these instructions, a fundamental change refers to any of the following:
 - 1) a change which significantly changes the purposes or nature of the fund.
 - 2) a change which may have a material adverse effect on the unitholders or their rights in relation to the fund.
 - 3) a change which alters the risk profile of the fund.
 - 4) Increasing the fund's capital.

Part 7: Meetings of Unitholders

- A. The fund manager may call for a meeting of unitholders on its own initiative.
- B. The fund manager must call for a meeting of unitholders within (10) days of receiving a written request from the custodian.
- C. The fund manager shall call for a meeting of unitholders by announcing it on its website and on the exchange's website, and by sending a notice in writing to all unitholders and the custodian giving (1) not less than (10) days' notice of the meeting; (2) and no more than (21) days' notice before the meeting. The announcement and notice must specify the date, place and time of the meeting and the resolutions proposed. The fund manager must at the same time as sending a notice to unitholders regarding any meeting, provide a copy of any such notice to the Authority.

- D. The fund manager must call for a meeting of unitholders within (10) days of receiving a written request from a unitholder or more who individually or collectively hold at least 25% of the units in the fund's unit value, and the fund manager must state this in the fund's terms and conditions.
- E. The quorum required to conduct a meeting of the unitholders shall be such number of unitholders holding together at least 25% of the units' value unless a greater percentage is specified in the terms and conditions of the fund.
- F. If the quorum requirements set out in paragraph (e) of this Part are not met, the fund manager shall call for a second meeting by announcing this on its website and on the exchange's website and shall send a notice in writing to all unitholders and the custodian giving not less than (5) days' notice of the second meeting At the second meeting, any number of unitholder(s) holding any number of units present in person or represented by a proxy is a quorum.
- G. Every unitholder shall be entitled to appoint a proxy to represent such unitholder at a meeting of the unitholders.
- H. Every unitholder shall be entitled to exercise one vote at the meeting of the unitholders for each unit which the unitholder holds as at the time of the meeting.
- I. The unitholders meetings and its deliberations and voting on decisions may be conducted through modern technology in accordance with requirements set by the Authority.
- J. The resolution is enforceable upon the consent of unitholders who own %50 of the total units attended the meeting either in person, proxy or via contemporary technology.

Part 8: Disclosure Requirements

A. Disclosing material developments:

- 1) the fund manager must disclose to the Authority and the unitholders without delay any material developments in its sphere of activity which are not public knowledge and which may affect the assets and liabilities or financial position or on the general course of his business or any change affects the status of the fund or causes the fund manager to voluntarily quit his position as a fund manager and which may considerably lead to movements in the price of the listed units; or significantly affect a fund's ability to meet its commitments in respect of debt instruments.
- 2) In determining whether a development falls within the scope of this paragraph, the fund manager must assess whether any investor would be likely to consider information about the development in making his investment decisions.

B. Disclosing specific events:

The fund manager must disclose to the Authority and the unitholders without delay any of the material developments (whether it is Material developments as per paragraph (1)) of part (8) or not), as following:

- 1) any transaction to purchase, sell, lease or mortgage an asset at a price equal to or greater than 10% of the fund's total assets value according to the latest reviewed interim financial statements or audited annual financial statements, whichever is later.
- 2) any losses equal to or greater than 10% of the fund's net assets; according to the latest reviewed interim financial statements or audited annual financial statements, whichever is later;
- 3) any changes in the composition of the board of directors or the fund's committees.

- 4) any dispute including any litigation, arbitration or mediation where the value involved is equal to or greater than 5% of the net assets of the fund according to the latest reviewed interim financial statements or audited annual financial statements, whichever is later;
- 5) the increase or decrease in the net assets of the fund equal to or greater than 10% according to the latest reviewed interim financial statements or audited annual financial statements, whichever is later;
- 6) the increase or decrease in the gross profit of the fund equal to or greater than 10% according to the latest audited annual financial statements;
- 7) any transaction between the fund and a related party or any arrangement through which the fund and a related party invest in any project or asset or provide financing therefor if this transaction or arrangement is equal to or greater than 1% of the gross revenues of the fund according to the latest audited annual financial statements;
- 8) any interruption in the principal activities of the fund equal to or greater than 5% of the gross revenues according to the latest audited annual financial statements.
- 9) any change in its external auditors;
- 10) appointing a replacing custodian.
- 11) the passing of any judgment, decision, order or declaration by a court or tribunal, whether at first instance or on appeal, which may adversely affect the fund's utilisation of any portion of its assets which in aggregate value represents a value exceeds 5% of the net assets of the fund according to the latest reviewed interim financial statements or audited annual financial statements, whichever is later;
- 12) Any suggested change to the fund's capital.

- C. In addition to the disclosure requirements set forth in the Investment Real Estate Investment Funds Regulation (including unitholders reports, interim and annual financial statements) the fund manager shall disclose the following at least once every six months:
- 1) Any fundamental or material or important changes that might affect the fund's business.
 - 2) A statement of the fund's dividends distributed to unitholders.
- D. The fund manager must prepare and provide annual reports to the unitholders containing the following information:
- 1) assets in which the fund invests.
 - 2) assets in which the fund is aiming to invest.
 - 3) Clarifying the percentage of the leased and unleased real estate to the total owned real estates.
 - 4) A comparison sheet of the fund's performance over the last three fiscal years (or since the incorporation of the fund) that includes:
 - a) the fund net assets value at the end of each fiscal year.
 - b) the fund net assets value per unit at the end of each fiscal year.
 - c) the highest and lowest net assets value per unit for each fiscal year.
 - d) the number of issued units at the end of each fiscal year.
 - e) income distribution per unit.
 - f) the percentage of the expenses incurred by the fund.
 - 5) a performance record that covers the following:
 - a) the total return for 1, 3 and 5 years (or since incorporation).
 - b) the annual total return for each of the last 10 fiscal years (or since incorporation).

- c) a table showing the fees and fund expenses incurred by the fund to external parties during the year. The total expenses percentage must also be clearly disclosed. If there are any circumstances in which a fund manager decides to waive or reduce any fees, this must also be disclosed.
 - 6) if there were material changes occurred during the period that affected the performance of the fund, these must be clearly disclosed.
 - 7) the fund's board annual report including, but not limited to, the discussed topics and the issued resolutions, including the fund's performance and the extent of achieving its objectives.
 - 8) a statement on any special commissions received by the fund manager during the period, clearly identifying its nature and the manner in which they were utilized.
- E. The Clarity, Correctness and Completeness of the Disclosed Information:
- 1) all disclosures made by the fund manager must be complete, clear, accurate and not misleading. The disclosure shall be published through the mean specified in the Real Estate Investment Funds Regulations and these instructions.
 - 2) where, in the opinion of the fund manager, disclosure of any matter required by these instructions would be unduly detrimental to the fund and omission is not likely to mislead unitholders with regard to facts and circumstances, knowledge of which is essential for the assessment of the securities in question, the fund manager may apply to postpone the relevant requirement or waive it. The fund manager must in that case provide the Authority on a strictly confidential basis with a statement of the its request together with the reasons why the fund manager believes that the information should not be disclosed at that time. The Authority

- may approve the application for postponing or waiving the relevant requirement or reject it. If the Authority approves the application, the Authority may at any time require the fund manager to disclose any information on the waiver or postponement in relation.
- 3) all information and material developments set forth in this part shall be deemed confidential until they are announced. Before the announcement, the fund manager shall not reveal such information to any party not bound by a confidentiality obligation and an obligation to protect such information. The fund manager must also take all necessary steps to ensure no information or material developments is leaked before announcing it as per this REIT instruction.
- F. The fund manager must determine the need for publishing an announcement to the public to counter rumors related to any material developments, the Authority may also request such publication to be made by the fund manager as it deems appropriate.
- G. The fund manager shall make the interim financial reports available to the public, free of charge, within (25) days from the end of the period to which the report relates, in such locations and by such means as specified in the terms and conditions as well as in the fund manager website and on the exchange's website.
- H. The fund manager shall make the annual financial reports available for the public, free of charge, within (40) days from the end of the period to which the report relates, in such locations and by such means as specified in the terms and conditions as well as in the fund manager website and on the exchange's website.

Part 9: Trading Halt and Cancellation of Listing

- A. The Authority may at any time suspend the trading of REIT's units or cancel its listing as it deems appropriate, in any of the following circumstances:
- 1) the Authority considers it necessary for the protection of investors or the maintenance of the orderly market.
 - 2) If the Fund Manager or the custodian fails, in a manner which the Authority considers material, to comply with the Capital Market Law and its implementing regulations.
 - 3) If the liquidity requirements set out in sub-paragraph (2/a) and in sub-paragraph (2/b) of the paragraph (b) of Part (4) of these Instructions are no longer met.
 - 4) If the Authority considers that the fund or its assets do not have a sufficient level of operations to warrant the continuous trading of its securities on the Exchange.
- B. The fund manager may request in writing to the Authority a temporary trading halt or cancellation of listing the REIT's units. The request should include specific reasons for the request. The Authority may accept, reject or conditionally accept the request for the trading halt or cancellation as it deems appropriate.

Part 10: Terminating the REIT:

- A. Without prejudice to the Real Estate Investment Funds Regulation, the listing of the fund units shall be cancelled when such fund is terminated.
- B. Without prejudice to the fund's term and conditions, the fund manager shall start the liquidation procedures without delay once the fund's units listing is cancelled.
- C. The fund manager shall terminate the fund and notify the Authority and the unitholders if the requirement set out in sub-paragraph (2/A) of part (4) of

these instructions is not satisfied within (12) months of the notice referred to in paragraph (p) of part (3) of these instructions.

- D. The fund manager shall announce the termination and liquidation timeframe of the fund on the websites of the fund manager and the Exchange.

Part 11: Publication and Entry into Force

These instructions shall be effective upon their publication.