Global REIT Survey

September 2010

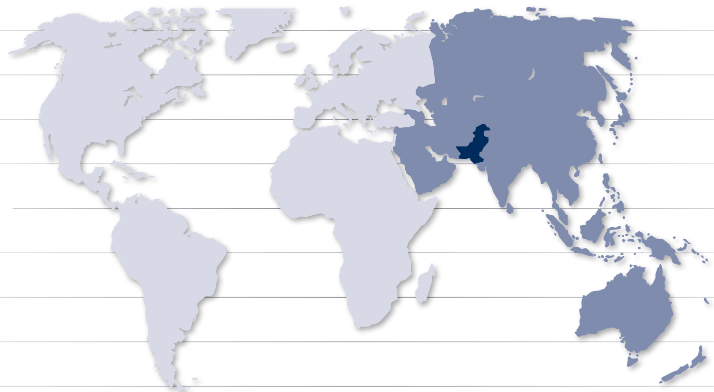
EPRA REPORTING

European Public Real Estate Association

Asia

Pakistan

(REIT)



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For any questions or feedback related to this survey, please contact:

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1 General introduction

	Enacted year	Citation	REIT type	REIT market
Pakistan REITs	January 31, 2008	Pakistan Companies Ordinance, 1984	Trust type	To be established

The Securities and Exchange Commission of Pakistan (SECP) enacted the Real Estate Investment Trust Regulations 2008 (the Regulations) vide S.R.O. 94(I)/2008 dated January 31, 2008 for the regulation of REIT management companies, and the registration and regulation of REIT schemes and connected matters. The Regulations were made within the framework of the Non-Banking Finance(NBF) business, which is an activity regulated directly by SECP under Part VIII A of the Companies Ordinance, 1984 for the promotion of real estate sector.

REITs in Pakistan are close-ended trusts with tax treatment similar to that of mutual funds in Pakistan in terms of tax exemptions.

2 Requirements

2.1 Formalities / procedure

Key requirements
- Licence application to the Security & Exchange Commission of Pakistan. - Appointment of a trustee & property valuer in accordance with the Regulations.

Firstly, the promoters of a REIT management company will need to submit an application together with the prescribed application fee to seek prior permission from SECP to incorporate a REIT management company under the provisions of the Companies Ordinance, 1984.

The promoters will then be required to submit a copy of the permission letter issued by the SECP together with the prescribed incorporation documents and information to the Registrar of Companies to incorporate the REIT management company. The Registrar of Companies will issue a certificate of incorporation to the REIT management company as conclusive proof of the incorporation of the REIT management company in Pakistan.

Consequently, upon incorporation, the REIT management company would need to apply for a licence from SECP in accordance with the Regulations to undertake its business. At the time of submitting the application to the SECP to obtain its licence, the minimum paid-up capital of the REIT management company should be at least Rs 50 million. The SECP may grant a licence to the company as a Non-Banking Finance Company (NBFC) to launch close-ended REIT schemes and provide REIT management services which may include development REIT schemes and rental REIT schemes.

Subject to prior approval of the SECP, the REIT management company will appoint its directors or chief executive.

The trustee of the REIT scheme should not be a connected person, associated company or associated undertaking of the REIT management company. All REIT assets are to be held by the trustee on behalf of the unit holders. All real estate and other assets of the REIT scheme should be acquired in the name of the trustee. A trustee and property valuer must be appointed with the prior approval of SECP for every REIT scheme.

A trustee of a REIT scheme may be a scheduled bank, development financial institution having a long-term rating of 'AA' by a credit rating agency, a subsidiary of a scheduled bank, a foreign bank, central depository company or any other person as the SECP may notify from time-to-time.

Trust Deeds should be in accordance with Schedule II of the Regulations, and provide for the time and modality of the extinguishment of the REIT scheme and the manner in which proportionate shares of the sale proceeds shall be transferred to its unit holders.

The promoters of a REIT management company must have at least 25% of the paid-up share capital, and should not withdraw their investment without prior approval of SECP and must be kept unencumbered.

Promoter refers to a person (as defined by the NBFC's Rules) who has made an application to the SECP to form a REIT management company under the proposed Rule-4.

The licence issued by the SECP shall be valid for one year from the date of issuance to the REIT management company, and shall be renewable upon expiry of the said period.

2.2 Legal form / minimum share capital

Legal form	Minimum initial capital
- Management company: Public Limited Company	Rs. 50 million as prescribed by the SECP at the time of applying for the licence. The paid-up capital should be further increased to at least Rs. 500 million within 30 working days of the registration of the REIT scheme.

Legal form

The REITs should be established as close-ended trusts.

A REIT management company should be incorporated as a public limited company under the Companies Ordinance, 1984 with at least three directors. At least one third of its directors must be independent directors. At least two directors must be from its promoters and one director must have at least five years experience in developing or managing real estate projects.

The REIT must commence its business within one year from the date of issuance of the licence.

The REIT management company must maintain adequate financial, technical, procedural, organisational, human resources, internal controls, compliance procedures and prepare accounts in conformity with the International Accounting Standards (IAS).

The REIT management company shall make a public offering of at least 25% of units of the REITs scheme.

The par value of the units to be offered shall be Rs. 10.

Management fee

The REIT management company will be entitled to receive an annual management fee not exceeding 1% of the initial REIT fund for the life of the REIT scheme. In the case of a Rental REIT scheme, the REIT management company shall be entitled to an annual management fee not exceeding 3% of the annual operating income of the REIT scheme. Annual operating income means annual revenue minus operating cost.

Annual monitoring fee

For Development REIT schemes, the annual monitoring fee should be 0.20% of the initial REIT fund paid annually to the SECP for the life of the REIT scheme.

For Rental REIT schemes the annual monitoring fee should be 0.10% of the initial REIT fund, paid annually to the SECP for the life of the REIT scheme.

Trustee fee

For Developmental REIT schemes, trustee fees should be an annual fee not exceeding 0.20% of the initial REIT fund.

For Rental REIT schemes, trustee fees should be an annual fee not exceeding one-fifth of the fee charged by the REIT management company.

Fee to quality assurance manager or property manager.
Fee as negotiated by the REIT management company.

2.3 Unit holder requirements / listing requirements

Unit holder requirements	Listing mandatory
None	Yes

The maximum number of units that may be subscribed by investors through the initial public offering shall not exceed 5% of the REIT fund.

Listing requirements
The REIT Management company must apply to list units of the REIT fund on the stock exchange(s). The units of the REIT fund should be listed in accordance with the listing regulations of the relevant stock exchange(s) and should be freely tradable.

2.4 Asset level / activity test

Restrictions on activities / investments
- Investments should only be made in real estate. - Restriction on transferring ownership of controlling shares, merger and take-over. - Restriction on obtaining management of another REIT scheme. - Investment in vacant land for development purposes is allowed. - Restriction on investing in unlisted securities and commodities.

Restriction on activities
A REIT Management Company - which manages the assets of a trust - shall only invest in real estate, real estate related assets and non-real estate assets in ratios prescribed by the SECP.

A REIT Management Company is not allowed to acquire management of another REIT scheme without prior approval from SECP. Similarly, it is not allowed to transfer ownership of controlling shares, merge with, acquire or take-over any other company unless received prior approval from the SECP.

The REIT scheme shall not invest in such assets which are specified by the SECP via its notification in the official gazette.

The REIT Funds or REIT Assets shall not be used directly or indirectly for:
- Lending or making an advance not connected to objects or furtherance of the REIT Scheme.
- Acquiring any asset that involves the assumption of any liability that is unlimited.
- Affecting a short sale in any security.
- Purchasing any asset in a forward contract.
- Purchasing any asset on margin.
- Participating in a joint account with others in any transaction.
- Trading in commodities or becoming involved in commodity contracts.
- Acquiring any security of which another REIT Fund.

2.5 Leverage

Leverage
In case of Development REIT scheme, the aggregate of: (i) borrowings from financial institutions and capital markets; and (ii) Customers Advances Shall not, at any time, exceed 60% of REIT Fund. In case of Rental REIT scheme, an RMC may borrow from financial institutions and capital markets provided that the aggregate borrowing shall not, at any time, exceed 30% of REIT Fund. 'REIT Fund' means the fund raised through the issuance of units.

2.6 Profit distribution obligations

Operative income	Capital gains	Timing
90% of the annual income.	90% of the annual income.	Annually

A REIT Management Company shall distribute not less than 90% of the profits arising out of the REIT Scheme to the unit holders as dividend in each financial year.

Dividend shall be paid in cash, or through the issuance of bonus units if allowed by the Commission, on a reasonable request made by the REIT Management Company.

2.7 Sanctions

Upon observing that the REIT Management Company is not pursuing its business according to the laws, rules and guidelines of SECP, the SECP may:

Penalties / loss of status rules
- Cancel or suspend the registration of the REIT scheme. - Remove the trustee in the circumstances as stipulated in the Regulation. - Remove the valuer in the circumstances as stipulated in the Regulation. - Impose a fine.

3 Tax treatment at the level of REIT

3.1 Corporate tax / withholding tax

Current income	Capital gains	Withholding tax
Tax-exempt, if 90% of net income distributed.	Capital gains on immovable property are tax-exempt.	- No tax withholding on receipt of dividend income, profit on debt (interest) or commission. - Other withholding tax due can be avoided by the exemption certificate.

Current income
Income of a duly registered REIT company is exempt from tax subject to distribution of a minimum of 90% of its accounting income of that year, reduced by capital gains whether realised or unrealised, among the unit holders.

Taxable at corporate tax rate if profit distribution of at least 90% as stated above is not made.

Capital gains
Generally, capital gains on moveable assets held for 12 months or less are taxable at full corporate tax rate. Capital gains on sale of moveable assets held for more that 12 months is exempt from tax up to 25% of the total gain. The remaining 75% gain is taxable at corporate tax rate. The effective tax rate works out to be 26.25% in this case.

As a general rule in Pakistan, capital gains on the sale of immovable property are not liable to income tax. Stamp duty is charged based on a schedule of charges, at the time of the transfer of the property. However, if the immovable property is purchased and sold for business purpose, the gains would be liable to corporate income tax.

Withholding tax
No withholding is required to be made on payments to the registered REIT companies on account of any dividend, profit on debt (interest) or commission. Other withholding obligations would be applicable on payments received by registered REIT companies. However, based on the general exemption from tax (subject to 90% distribution of profits) an exemption certificate from withholding of tax can be obtained from the tax authorities by the registered REIT company. A refund is possible.

Accounting Rules
No accounting rules prescribed.

3.2 Transition regulations

Conversion into REIT status
N/A

No rules prescribed.

3.3 Registration duties

Registration duties
Stamp duty.

There is a state stamp duty on transfer of real estate. However, this can vary state to state.

4 Tax treatment at the unit holder's level

4.1 Domestic unit holder

Corporate unit holder	Individual unit holder	Withholding tax
- 10% withholding tax final levy. - Capital gains tax-exempt.	- 10% withholding tax final levy. - Capital gains tax-exempt.	No credit possible.

Corporate unit holder
Subject to tax on dividend received at 10%.
Capital gain is exempt from tax.

Individual unit holder
Subject to tax on dividend received at 10%.
Capital gain is exempt from tax.

Withholding tax
The registered REIT company would be required to withhold tax at the rate of tax applicable to the unit holder. The tax so withheld would be considered to be the full and final discharge of the tax liability of the unit holder in respect of the dividend income received from the registered REIT company.

4.2 Foreign unit holder

Corporate unit holder	Individual unit holder	Withholding tax
- 10% withholding tax final levy. - Capital gains tax-exempt.	- 10% withholding tax final levy. - Capital gains tax-exempt.	No tax treaty relief available.

Corporate unit holder
Subject to tax on dividend received at 10%.
Capital gain is exempt from tax.

Individual unit holder
Subject to tax on dividend received at 10%.
Capital gain is exempt from tax.

Withholding tax
The registered REIT company would be required to withhold tax at the rate of tax applicable to the unit holder. The tax so withheld would be considered the full and final discharge of the tax liability of the unit holder in respect of the dividend income from the registered REIT company.

Tax treaty relief is not possible as the tax rate is already quite low.

5 Tax treatment of foreign REITs and its domestic unit holder

Foreign REIT	Corporate unit holder	Individual unit holder
35% tax on Pakistan source income.	10% tax on dividend received.	10% tax on dividend received.

Foreign REIT

Foreign REITs would not be liable to the tax benefits prescribed in the tax law as they are restricted to REIT companies registered in Pakistan.

A foreign REIT would be taxed on its Pakistan source income at a tax rate of 35%.

Corporate unit holder

Resident companies receiving dividend from foreign REIT companies would be liable to tax at 10%.

Individual unit holder

Individual unit holders would be liable to tax on dividend received from foreign REIT companies at 10%. ■

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