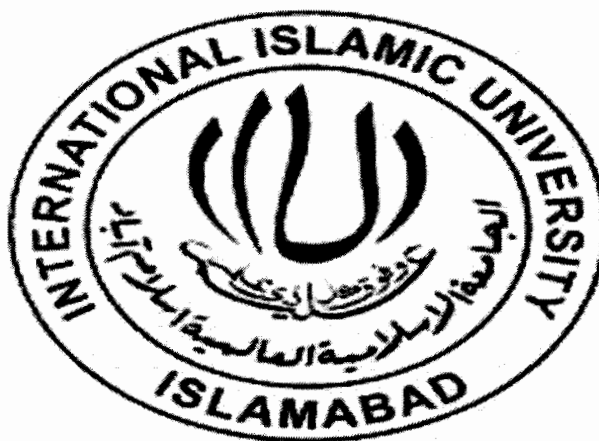


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*Legal Framework of Real Estate Sector in Pakistan*

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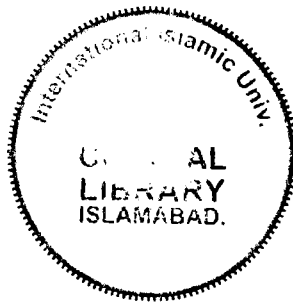
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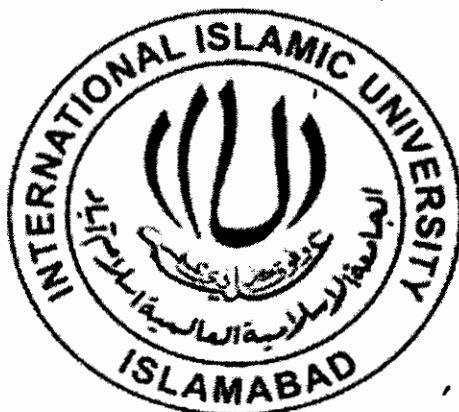
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*Legal Framework of Real Estate Sector in Pakistan*

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**Shahid Rizwan**

**Reg # 129-FSL/LLMCL/F06**

**A dissertation submitted in partial fulfillment of the requirements for  
the Degree of Master of Laws**

**FACULTY OF SHARIAH & LAW  
INTERNATIONAL ISLAMIC UNIVERSITY, ISLAMABAD  
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**FACULTY OF SHARIAH & LAW**  
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It is certified that we have read the dissertation submitted by Shahid Rizwan entitled Legal Framework of Real Estate Sector in Pakistan as a partial fulfillment for the award of degree of LL.M Corporate Law. We have evaluated the dissertation and found it up to the requirement in its scope and quality for the award of degree.

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**Dedicated to**

**My Father Mirza Riaz Ahmad**

**And**

**My Favourite Teacher**

**Professor Muhammad Nawaz Dogar**

**Associate Professor, Punjab University Law College**

**Lahore.**

## **ABSTRACT**

### **LEGAL FRAMEWORK OF REAL ESTATE SECTOR IN PAKISTAN**

**BY SHAHID RIZWAN**

There is huge potential in the real estate sector of Pakistan. The subject of housing falls neither in the federal legislative list nor in the concurrent legislative list of the Constitution of Pakistan. Housing being a residuary subject the provinces exercise complete authority over this subject. Most provinces had established under the provincial Acts development agencies in the urban areas which were responsible for preparation of master plan, site development plan, approval of site development scheme for housing and monitoring of projects under the laid down rules including bye laws and building regulations. The other areas were regulated by cantonment boards or concerned provincial line departments in the area.

When the Local Government Ordinance 2001 came into force on 14<sup>th</sup> August 2001 the structures and systems in place prior to this ordinance were supplanted by new structures and systems with simultaneous devolution of functions from the provinces to local governments. The devolved functions include among others, housing, urban and physical planning and public health engineering, local government and rural development.<sup>1</sup> Local Government Ordinance declares that on commencement of this ordinance the administrative and financial management of the office of the local government and rural development department, public health, engineering department and housing and physical planning department which were providing services at the regional, zonal, circle, divisional, district and tehsil levels shall stand entrusted to respective tehsil municipal administrations.<sup>2</sup> But the provincial governments have not completed the assigned task. As a result of it there the regulation of the real estate

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<sup>1</sup> Local Government Ordinance 2001, 1<sup>st</sup> Schedule, 1<sup>st</sup> Edition, Mansoor Book House, 2007

<sup>2</sup> Local Government Ordinance 2001, Section 15, 1<sup>st</sup> Edition, Mansoor Book House, 2007

sector is not up to the mark. The preamble of the Land Acquisition Act 1894 encourages the acquisition of land for housing but the prevailing practice in Pakistan is in disregard of the preamble of the Land Acquisition Act and the housing companies are made to acquire 80% land before the sanction of the scheme as a result of it the prices of the lands have increased many fold. Remaining 20% land is acquired under the Land Acquisition Act .There is no clear method of determination of market value of land due to which there is numerous litigation .Sponsors of the housing societies use the names of the Government Ministries to credibility in an unauthorized way to collect more money. The registration laws of the private housing companies and the cooperative housing societies do not contain any condition for possession of land before start of housing society .So any person without having an inch of land can start a housing society .The registration of the private housing societies is done with the Securities and Exchange Commission of Pakistan<sup>3</sup> .The constitution of the Islamic Republic of Pakistan 1973 clearly declares that the subject of housing is a residuary subject so it should be dealt by the provinces only<sup>4</sup> .The level of town planning is also very poor in our country and the regulatory framework of real estate does not pay attention to the environment aspect of the housing societies .Pakistan is situated on the fault line and there is a great risk of earthquake in our country but our legal framework of real estate sector does not pay any attention to this important aspect as well.<sup>5</sup>

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<sup>3</sup> Companies Ordinance 1984, section30, 3rd edition, Federal law house, 2007.

<sup>4</sup> Constitution of Islamic Republic of Pakistan 1973, 4th Schedule, 3rd Edition, Pakistan Law Times, 2002 .

<sup>5</sup> Building Codes of Pakistan Seismic Provisions 2007, issued by Ministry of Housing and Works, p 1.

The concept Of Real Estate Investment Trust has been introduced in Pakistan<sup>6</sup> .It is a revolutionary product because there is a huge potential in the real estate sector of Pakistan .Earlier this concept was introduced in the USA in 1960.

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<sup>6</sup> [www.secp.gov.pk](http://www.secp.gov.pk) visited on 18<sup>th</sup> August 2008.



## ACKNOWLEDGEMENT

The purpose of thesis besides the fulfillment of partial requirements of degree of L.L.M (Corporate Law) from International Islamic University, Islamabad is to explore and highlight the legal framework of the real estate sector of Pakistan and point out the areas needed attention with recommendations.

I wanted to work on any topic which is also a burning issue of Pakistan. I hope this humble effort will be helpful and beneficial not only to the students of Law, especially the policy makers and regulators for further improvement of the regulation of the real estate sector of Pakistan.

I would like to acknowledge my debt gratitude to Mr.Rizwan Saeed Dar, Chief Librarian Punjab University Law College, my friend M. Waseem Tariq, and my respectable teachers especially Mr.Chaudhry Mazhar Hussain, Mr. Yousuf Amanat, Mr. Abdul Rehman Qureshi, and in particular my supervisor Mr.Fakhar Mahmood Makhdoom.

May Allah reward them all for their help and coordination

SHAHID RIZWAN.

Islamabad.

25<sup>th</sup> May 2009.

## **LIST OF ABBREVIATIONS**

CDG	City District Government
DCO	District Coordination Officer
EDO	Executive District Officer
GDP	Gross Domestic Product
IFRS	International Financial Reporting Standard
IAS	International Accounting Standard
LGO	Local Government Ordinance
MDG	Millennium Development Goal
MTDF	Medium Term Development Framework
NBFC	Non –Banking Finance Company
NAV	Net Asset Value
NHA	National Housing Authority
NHP	National Housing Policy
OECD	Organization for economic corporation & Development
PPSR	Punjab Private Site Regulation
PSDP	Public Sector Development Programme
RICS	Royal Institute of Chartered Surveys
REIT	Real Estate Investment Trust
RMC	Real Estate Management Company
SECP	Securities & Exchange Commission of Pakistan
TMA	Tehsil Municipal Administration

## LIST OF CASES

- 1 A.Natesa Asari vs. State of Madras and another AIR1954 Mad481. (Page No.36)
- 2 Adusumilli Gopal Kirishna vs. Deputy Collector Land Acquisition AIR 1980SC187.  
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- 3 Deyal and another Vs. Union of India and others AIR1959Pun544. . (Page No.36)
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- 14 Mohammad Asim vs. Collector of Land Acquisition Act,PLD 1964 B.J30. . (Page No.22)
- 15 Pakistan vs. Abdul Hayee Khan,PLD1995 SC418. . (Page No.20)
- 16 Project Director vs. Murad Ali and Company,SCMR1999SC125. . (Page No.20)
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- 21 S.Somawanti and others Vs. The Secretary of Punjab and others.AIR1963SC151. (Page No.17)
- 22 Sheikh Manzoor Hussain Vs. The Multan Improvement Trust and others PLD1972Lah225. . (Page No.18)
- 23 Shrimati Kusumaguri Ramray Munshi and others Vs. The Special Land Acquisition Officer,Ahmedabad. AIR1963Guj92. (Page No.18)
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- 25 Veeraraghava Chariar and others Vs. The Sectary of State for India, AIR1925 Mad837. (Page No.17)
- 26 Water and Sanitation Authority, Quetta through M .D and another Vs. Niaz Muhammad and 7 others, PLD1992Quetta.75 . (Page No.19)
- 27 Yeshwantrao Govindrao Vs. The Collector of Nagpur,AIR1961Bom.129. (Page No.19)
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## **1.1 Introduction to Traditional Real Estate Sector in Pakistan:**

Shelter is one of the basic necessities of life and occupies the biggest portion of any human settlement. Housing ownership promotes social cohesion and citizens' participation in other development activities.<sup>1</sup> Good housing and home ownership tend to produce better citizenship and no single factor does more towards maintaining a higher standard of civilization than it.<sup>2</sup> Pakistan is signatory to Habitat Agenda and the Istanbul Declaration on Human Settlements promised "The full and progressive realization of the right to adequate housing".<sup>3</sup> There is a shortfall of 4.30 million housing units in the country and there is an annual demand of 570, 000 housing units as against supply of 300 000 units. There is a recurring annual shortfall of 270,000 housing units each year.<sup>4</sup> From this statement the potential of investment in the real estate sector of Pakistan is reflected. With immense potential excessive liquidity in the financial system of Pakistan after 9/11 incident proved fuel to the fire and the real estate market underwent an intense period of growth after September 11. The investors from the Gulf and Pakistanis in Europe pulled billions of dollars out of western markets. As a result of that development overseas remittances jumped from 1.5 billion dollars to 4 billion dollars in 2002.<sup>5</sup> Investment by the private sector in the real estate sector also stimulated the real estate sector. The central bank's decision to reduce interest rate also took a role in promoting real estate investment because interest rate reduced to 3% from 22% resulting in greater use of credit and financing options<sup>6</sup>.

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<sup>1</sup> Medium Term Development Framework 2005-2010, issued by Planning Commission of Pakistan, p-175.

<sup>2</sup> John M. Gries "Housing In The United States" The Journal of Land & Public Utility Economics, 1925, P 23-35.

<sup>3</sup> Lou Haysom, "No place Like Home", Agenda, No. 30, Provinces in Focus, 1996, p.87-90.

<sup>4</sup> National Housing Policy 2001, issued by Ministry of Housing & Works, National Housing Authority, P1.

<sup>5</sup> [www.finance.gov.pk](http://www.finance.gov.pk) visited on 1<sup>st</sup> March, 2008.

<sup>6</sup> Daily, Dawn 29 December, 2007. Zahid Iqbal. "Article", "Pakistan: The Housing Market Thrives as More Pakistani Capital Returns Home".

The general feeling among the people to make their future secure driven them to invest in the real estate sector. Due to declining performance in other sectors such as manufacturing and processing the power brokers and capitalists focused on land transactions as an enterprise. Land is an immovable asset and the risk in the temporal loss of investment is limited due to this reason it has become a roaring business<sup>7</sup>. The feeling among investor that in the age of hyper inflation the investment in housing and real estate was more beneficial was also another cause as it was considered in America that housing was a good investment and a best hedge against inflation and that thing increased the demand so many small investors entered the market<sup>8</sup>. The above factors contributed to diversion of funds to speculative trade in the real estate sector of Pakistan as it happened in case of America where along with other economic factors causing housing problems the chief factor was the belief that housing was a commodity which had speculative possibilities<sup>9</sup>. High population growth, inadequate attention toward construction of new houses, migration from rural to urban areas and break up of the traditional joint family system have largely contributed to the shortage of houses in the country.<sup>10</sup> In the above scenario there has been mushroom growth of cooperative housing societies as well as private housing companies. Most of these cooperative housing societies and private housing companies have registered themselves with registrar cooperative housing societies and with Securities and Exchange Commission of Pakistan even without having an ownership of one inch of land. These housing societies bypassed the laws, rules and regulations with impunity in inviting applications for allotment of land for housing in

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<sup>7</sup> Daily, The News, 6th December 2007, Alludin Masood, "Article", "Housing Deficit".

<sup>8</sup> Frederick P .Stutz and Arthur E .Karthman, "Housing Affordability and Spatial Price Variation in the United States", *Economic Geography*, 1982, P 221-235.

<sup>9</sup> Bernard J Newman, "Factors in the Housing Problem", *Annals of the American Academy of Political and Social Science*, 190, 1937, P1-6.

<sup>10</sup> Ibid.

these societies and have deprived the genuine investors from their money. Interesting thing to note is that the above practice was done because either there was no law or law was there but there was no authority to check the mal practices. Another group of housing societies have done the same kind of practice but with different strategy by inviting applications of plots far in excess of land held by them and by issuing fake allotment letters.

The subject of housing falls neither in the federal legislative list nor in the concurrent legislative list of the Constitution of Pakistan.<sup>11</sup> Housing being a residuary subject the provinces exercise complete authority over this subject. Most provinces had established under the provincial Acts development agencies in the urban areas which were responsible for preparation of master plan, site development plan, approval of site development scheme for housing and monitoring of projects under the laid down rules including bye laws and building regulations. The other areas were regulated by cantonment boards or concerned provincial line departments in the area. When the Local Government Ordinance 2001 came into force on 14<sup>th</sup> August 2001 the structures and systems in place prior to this Ordinance were supplanted by new structures and systems with simultaneous devolution of functions from the provinces to local Governments. The devolved functions include among others, housing, urban and physical planning and public health engineering, local Government and rural development.<sup>12</sup>

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<sup>11</sup> Constitution of Islamic Republic of Pakistan 1973, 4th Schedule, 3rd Edition, Pakistan Law Times, 2002 .

<sup>12</sup> Local Government Ordinance 2001, 1st Schedule, 1st Edition, Mansoor Book House, 2007.

Local Government Ordinance declares that on commencement of this ordinance the administrative and financial management of the office of the local Government and rural development department, public health engineering department and housing and physical planning department which were providing services at the regional, zonal, circle, divisional, district and Tehsil levels shall stand entrusted to respective Tehsil municipal administrations<sup>13</sup>. Devolution of these offices including housing is a new concept in Pakistan but in case of America it has been working successfully. President Nixon's Government laid the foundation for decentralizing the control over the implementation of national housing policy to local Government. The Regan Bush administration further decentralized it by giving local Government more decision making power and greater fiscal control.<sup>14</sup> Before discussing the legal framework of traditional real estate sector and problems faced by the real estate sector it is necessary to have a look on the structure of the local Government system because after coming into force of Local Government Ordinance 2001 local Governments are supposed to enact the legal framework of real estate sector as well as sanction the housing schemes.

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<sup>13</sup> Local Government Ordinance 2001, Section 15, 1<sup>st</sup> Edition, Mansoor Book House, 2007.

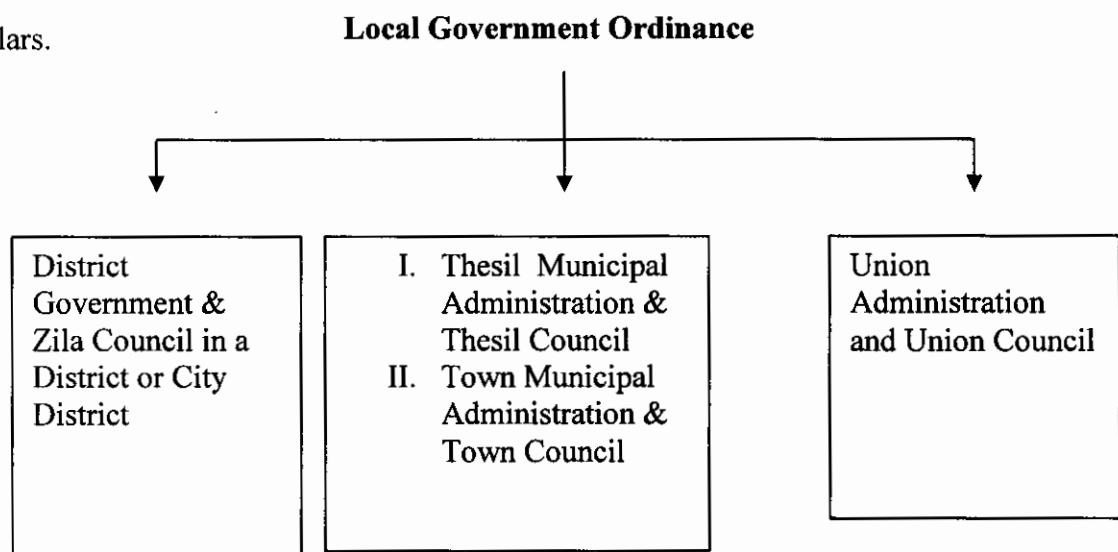
<sup>14</sup> Janet L. Smith, "The Space of Local Control in the Devolution of U.S Public Housing Policy", *Geografiska Annaler Series B, Human Geography*, 2000, p221-233.

## 1.2 Objects of Local Government Ordinance 2001

The objects of Local Government Ordinance 2001 can be determined from the preamble of the Local Government Ordinance. The main purpose of it is to devolve political power and decentralize administrative and financial authority to accountable local representatives.<sup>15</sup> Under the new legislation a lot of powers have been given to local Governments and its importance can be judged from this statement that whenever there is a conflict in relation to any matter of local Government between any other law and Local Government Ordinance then the later shall always prevail over the former.<sup>16</sup> Under the new local Government system the representatives of the people prepare the necessary legal framework for the regulation and control of housing sector. Under the new system the former distinction between rural and urban areas has been eliminated. A great level of importance has been given to new regulatory regime of real estate sector.

## 1.3. Three pillars Local Government System:

Under the newly formed local Government system the representative of the people controls the district bureaucracy. The local Government system is based on three pillars.



<sup>15</sup> Local Government Ordinance, 2001, Preamble, 1st Edition Mansoor Book House, 2007.

<sup>16</sup> Muhammad Ghais and others Vs. Market Committee, Kamalia, PLD1982Lah710.

### **1.3.1 1<sup>st</sup> Pillar District Government, Zila Council and City District:**

#### **A. District Government:**

First pillar consists of district Government which is the combination of Zila Nazim and district administration. District Government is a corporate entity and like a company it can acquire and sell property, enter into a contract in its own name and can sue and be sued in its own name.<sup>17</sup>

Administrative and financial authority for the management of the offices including cooperative societies, housing, urban development, and physical health and engineering department was decentralized to the district Governments of the respective districts.<sup>18</sup>

Furthermore the administrative and financial management of housing, urban development and public health which were functioning at the regional, zonal, circle, divisional, district and Tehsil levels will transfer to respective Tehsil municipal administration or town municipal administration.<sup>19</sup>

#### **B. The Zila Nazim :**

The Zila Nazim is the head of district Government. The procedure of its election is very simple, union council elects him indirectly. He formulates policies on district level to provide a better living standard to the people of the district.

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<sup>17</sup> Local Government Ordinance 2001, Section 13, 1st Edition, Mansoor Book House, 2007.

<sup>18</sup> ibid Section 14.

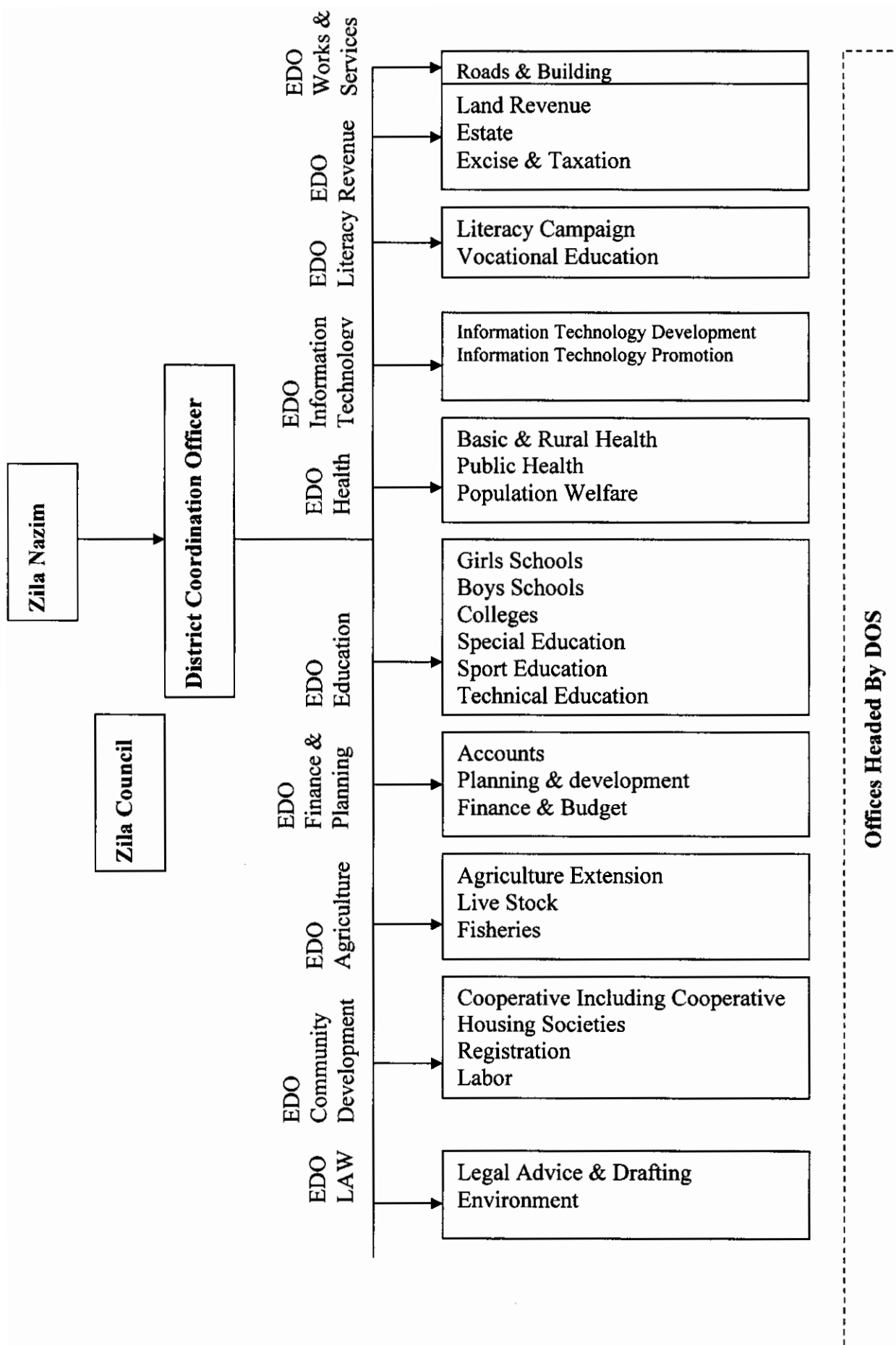
<sup>19</sup> ibid Section 15.

**C. District Administration:**

The composition of district administration consists of newly formed offices plus sub offices of the Government decentralized to the district Government. All the above offices have been grouped under the executive district offices and these are assisted and coordinated by district coordination officer in each district and district coordination officer heads the group of offices. Deputy district officer human resource management, Deputy District officer coordination, Deputy District officer civil defense are supporting offices of district coordination officer. District coordination officer being the head of the district, coordinates the activities of the offices of the district for effective functioning of district administration, for unidirectional planning, for supervision over projects, for the provision of services; he also provides the information required by the local Government .<sup>20</sup>

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<sup>20</sup> Local Government Ordinance 2001, Section 28, 1st Edition, Mansoor Book House, 2007.





#### **D. Zila Council:**

A Zila Council is a combination of all the union nazims in the districts, such number of women as to represent 33% of the unions in the district, such number of peasants and workers as to represent 5% of the unions in the district and such number of persons from minorities as to represent 5% of the total number of unions in the district.<sup>21</sup>

Zila Council performs very important function including approval of master plan, zoning and reclassification of land it also reviews the implementation of the rules and by laws governing land use, housing, markets, zoning, and infrastructure.<sup>22</sup>

#### **E. City Districts:**

The city reaches its maximum development when the opportunities it produces are offered in a well planned and unpolluted atmosphere. The Local Government Plan 2000 envisaged that bigger cities such like, Karachi, Lahore, Faisalabad, Bahawalpur, Rawalpindi, Quetta, Sukkur, Peshawar, Haiderabad, Multan and Gujranwala will be declared as a city districts stage wise. Spatial planning and municipal services are the exclusive functions of Tehsil Municipal Administration in the case of common districts but the city district Government handles some planning and macro municipal functions in addition to the functions of the common districts. City district Government has three pillars very similar to common districts, i.e. city district Government, town municipal administration and union administration.<sup>23</sup>

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<sup>21</sup> Local Government Ordinance 2001, Section 37, 1st Edition, Mansoor Book House, 2007.

<sup>22</sup> Ibid, Section 40.

<sup>23</sup> National Reconstruction Bureau, Local Government Plan 2000, p-18.

### **1.3.2 2<sup>nd</sup> PILLAR TEHSIL /TOWN MUNICIPAL ADMINISTRATION & COUNCILS.**

#### **A. Tehsil/ Town Municipal Administration.**

In each Tehsil there is a Tehsil municipal administration which is a combination of Tehsil nazim, Tehsil municipal officer, Tehsil officers, chief officers and officials entrusted to Tehsil municipal administration.<sup>24</sup>

In every town of a city district there is a town municipal administration which is a combination of town nazim, town municipal officer, town officers, chief officers and officials entrusted to Tehsil municipal administration.<sup>25</sup>

The most important development that took place in the Local Government Ordinance was the transfer of administrative and financial management of the offices of local Government and rural development, housing, urban development at the regional, zonal, circle, divisional, district, Tehsil and lower levels to Tehsil municipal administration.<sup>26</sup> The powers conferred on Tehsil municipal administration Tehsil nazim and Tehsil officers are applicable as it is to town municipal administration, town nazim and town officers.<sup>27</sup> Town municipal administration prepares spatial plans for the town in coordination with the zila and union councils including plans for land use and zoning. It also controls land use, land sub division, land development and zoning by public and private sectors for any purpose including agriculture, industry, commerce, markets, residential and parks.<sup>28</sup>

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<sup>24</sup> Local Govt. Ordinance, 2001, Section 49, 1st Edition, Mansoor Book House, 2007.

<sup>25</sup> Ibid, Section 50.

<sup>26</sup> Ibid, Section 52.

<sup>27</sup> Ibid, Section 51.

<sup>28</sup> Ibid, Section 54-A.

## **B. Structure of Tehsil/ Town Municipal Administration.**

The Tehsil Nazim is the head of Tehsil municipal administration and town nazim is the head of town municipal administration. The Government appoints Tehsil municipal officer who is the principal accounting officer of Tehsil municipal administration. He coordinates with the district Government and local Government commission.<sup>29</sup>

The Tehsil municipal officer acts as coordinating and administrative officer being in charge of the following Tehsil/ Town officers. i.e. Tehsil/ Town Officer, municipal regulators, Tehsil/ Town officer infrastructure and services, Tehsil/ Town officer finance and Tehsil/ Town officer planning , this officer is also responsible for spatial planning and land use control, building control and coordination of development plans and projects with union administration, village councils and other local Governments.

## **C. Tehsil/council.**

There is a Tehsil council in a Tehsil and a town council in a city district city district it is a combination of all naib nazims of all union councils in the Tehsil plus such number of women as to represent 33%of the total number of the unions or the Tehsil as the case may be, such number of peasants and workers as represent 5% of the total number of the unions in the Tehsil or the town and such number of persons from minority communities as represent 5%of the total number of the unions in the Tehsil or the town .<sup>30</sup>

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<sup>29</sup> Local Govt. Ordinance, 2001, Section 58,1<sup>st</sup> Edition, Mansoor Bsook House, 2007.

<sup>30</sup> Ibid, Section 65.

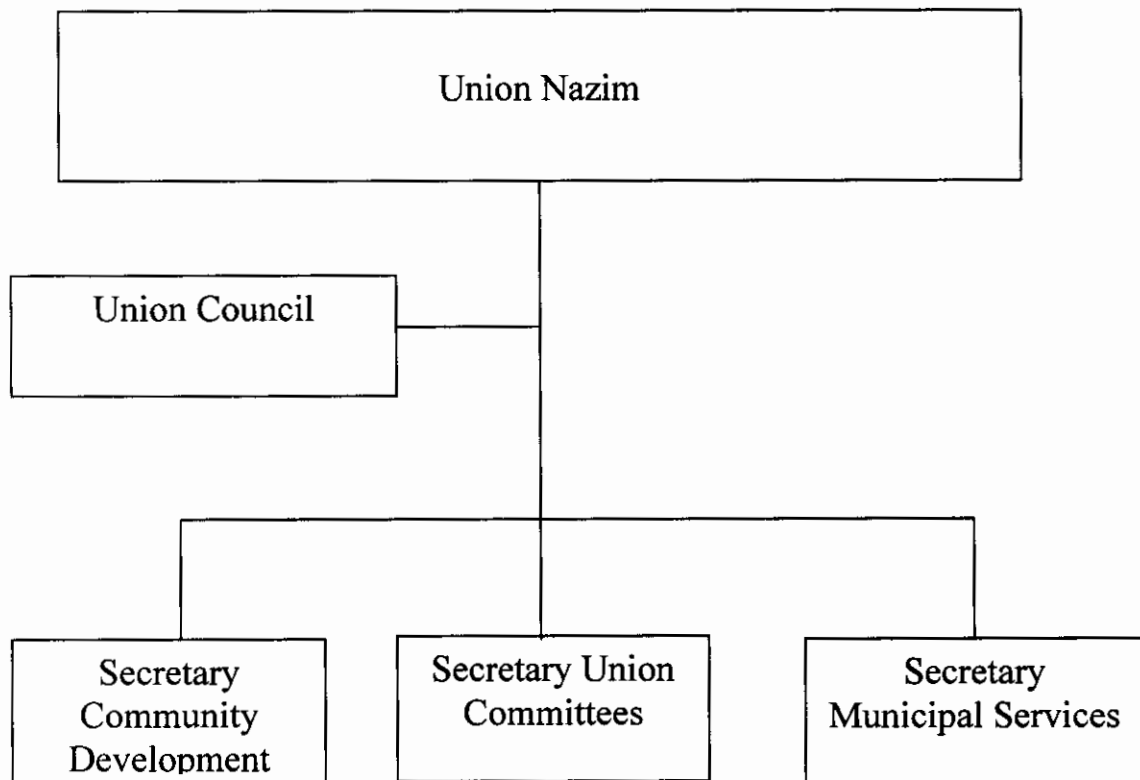
The Tehsil council approves taxes, cess, rates, rents, fees, user charges, and the most important it also approves land use, zoning, and master plan of the Tehsil development and maintenance programmes and projects proposed by the Tehsil municipal administration.<sup>31</sup>

### 1.3.3 3<sup>rd</sup> pillar union administration & union council

#### A. Union administration

There is a union administration for every union which has a separate legal entity; it is a combination of union nazim and not more than three union secretaries.<sup>32</sup>

#### UNION ADMINISTRATION



<sup>31</sup> Local Govt. Ordinance, 2001, Section 67, 1<sup>st</sup> Edition, Mansoor book house, 2007

<sup>32</sup> ibid Section 74.

## **B. Union council**

There is a union council in each union comprising the following members, six Muslims elected on general seats, including two reserved for women, four members elected to seats reserved for peasants and workers, including two reserved for women ,one member elected on seat reserved for minority communities and union nazim and naib union nazim who are elected as joint candidates.<sup>33</sup>

### **1.4 Regulatory Framework of real state sector:**

Government of Punjab has taken an initiative to protect the rights of buyers, landowners and to promote the development of housing schemes by issuing Punjab Private Site Regulations 2005. A cooperative housing authority or a private housing company which wants to start housing scheme shall submit the application along with the scrutiny fee, developer's title documents, non encumbrance certificate, location and layout plan, topographic survey, national identity card, statements regarding works and time period along with land yet to be acquired provided it does not exceed twenty percent, to the respective development authority or Tehsil municipal administration.<sup>34</sup> The final decision about the approval of application, designs and specifications will be made by the six member committee including district coordination officer, executive district officer works and services, executive district revenue, deputy director of Punjab housing and town planning agency, concerned Tehsil municipal officer and Tehsil officer planning, if all documents are complete as per law and access road is 30 feet or more, minimum area is not less than one hundred and sixty kanals and that area is not required by the Government , then the permission will be granted.<sup>35</sup>

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<sup>33</sup> Local Govt. Ordinance, 2001, Section 87, 1<sup>st</sup> Edition, Mansoor Book House, 2007.

<sup>34</sup> Punjab Private Site Development Regulation 2005, Section 3, 1<sup>st</sup> Edition, Mansoor Book House, 2007.

<sup>35</sup> Ibid Section 4

After inviting public objections, the six member committee will take decision within one month if the open spaces and graveyard are not less than seven percent and two percent respectively and commercial area is not more than five percent of the scheme, residential plots are not less than one thousand square yards, public buildings are within the range of two to ten percent.<sup>36</sup> On the recommendation of the scrutiny committee, development authority or the Tehsil municipal administration will take final decision about sanction of scheme. Scheme will be sanctioned when the developer will pay prescribed fee, mortgage 20% saleable area and transfer 1% area for public buildings in the name of development authority. After issuance of letter of sanction from development authority the developer can proceed to offer plots only when an advertisement is issued which contain total area of approved scheme, total number of residential and commercial plots, detail of mortgaged plots, time period of completion of work along with name of sanctioning authority and details of allocation of plots through ballot.<sup>37</sup>

Within the period of three months from the date of sanction of the scheme the developer shall submit the sanitation plan, natural gas, roads and streets, electricity and street lights system. Development authority will grant sanction after obtaining comments from the respective Government departments.<sup>38</sup> The area mortgaged with the development authority will be released after the completion of roads, electricity and water supply system to the extent of thirty percent and street lights and horticulture to the extent of ten percent.<sup>39</sup> Developer is bound to complete the task within stipulated time period and in accordance with the sanction granted by the developer. In the case of contrary development authority will take charge of scheme

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<sup>36</sup> Punjab Private Site Development Regulation 2005, Section 6, 1<sup>st</sup> Edition, Mansoor Book House, 2007

<sup>37</sup> ibid Section 8.

<sup>38</sup> Ibid Section 9.

<sup>39</sup> ibid Section 11.

and will develop it .The provision of taking charge of the scheme by the development authority will put a check and balance on the developer and it will prove very useful to avoid delays.

### **1.5 Problems Faced By the Traditional Real State Sector in Pakistan:**

A programme adequate to solve any social, economic or legal problem cannot be formulated until there is a clear understanding of the factors that create such a problem. Many programmes advocated for better housing are fundamentally unsound because this fact has been overlooked .This is only another way of saying that a false premise leads to false reasoning and delays or prevents correct solution.<sup>40</sup> The traditional housing sectors face these problems:-

#### **1.5.1 Acquisition of Land against the Intention of Legislatures of Land Acquisition Act 1894:**

The first step to launch housing scheme is the acquisition of land and the Land Acquisition Act encourages the housing companies for carrying out the housing activity as it is clear from the preamble of the Land Acquisition Act 1894. The Land Acquisition Act mentions the acquisition of land needed for public purposes and for companies.<sup>41</sup> There is no dichotomy between need and public purpose or a company. There is no justification for making such a dichotomy. By making so, the purpose of the law will be stultified. The expression must be regarded as one whole and the declaration held to be with respect to both the elements of the expression. The Land Acquisition Act in Pakistan does not incorporate the land needed for housing within the definition of public purpose as is the case in India. The public purpose can be

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<sup>40</sup> Bernard J .Newman, "Factors in the Housing Problem" Annals of the American Academy of Political and Social Science", 1937, p1-6.

<sup>41</sup> C.M. Yasin , Land Acquisition Act 1894, Preamble, 3rd Edition, Khyber Law Publications, 2005.

equated with any welfare contributing objective such as construction of road, railways, port, dam, school and the construction of houses for the poor. Such public welfare activity can be undertaken by the public sector as well as by the private sector. The inclusion of the words “and for the companies” connotes the intention of the law makers to encourage private sector to make investment in such schemes and projects which are beneficial to the public i.e. construction of houses for the poor. For the acquisition of land there has to be some public purpose and it must appear from preamble or may otherwise be clearly incorporated in the body of the Act itself, requirement of a public purpose in a statute can not be merely added on, by subsequent averments or affidavits by its authors, it is something which must spring from or be inherent in the statute itself.<sup>42</sup> Land acquisition Act is founded upon the doctrine of *salus papuli suprema lex*.<sup>43</sup> The expression public purpose is elastic and takes its colour from the statute in which it occurs; the concept varies with the time and state of society and its need.<sup>44</sup> Due to this reason the Indian legislatures have made an amendment in the Land Acquisition Act. The concept of public interest has been further elaborated by the judgment of Lahore High Court, purpose furthering general interest of community as opposed to particular interest of individuals and to be construed according to the spirit of times in which legislation enacted. It is not possible to define what a public purpose is but there can be no doubt that when there is acute shortage of houses and accommodation the provision of housing sites for relieving congestion is a public purpose.<sup>45</sup>

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<sup>42</sup> A.B.Puranik, Land Acquisition Act 1894, 2<sup>nd</sup> Edition, C.T.J. publications, 1994, p-198.

<sup>43</sup> Islamia University Bahawalpur Vs. Khadam Hussain & Five Others MLD1990, 2158.

<sup>44</sup> Harihara Prasad vs. Jagannadham. AIR, 1955, Andra 184.

<sup>45</sup> Sardar Mohammad Iqbal Khan Mokal, Land acquisition Act 1894, 1st Edition, Law publishing Company, 1979, p-54.



But it is not necessary to prove public purpose that each and every person of the society is benefited even when a section of the public only is benefited still the purpose does not cease to be a public purpose.<sup>46</sup> Due to this reason the court decided that public purpose cannot be defined strictly.<sup>47</sup> When proposed acquisition was intended to serve a public purpose in the Generic sense the acquisition primarily for a company will not affect the validity of its acquisition.<sup>48</sup>

Indian legislators by expressly recognizing the housing as a public purpose activity have made an amendment in the Act by incorporating the provision of land for residential purpose to the poor or landless within the definition of public purpose<sup>49</sup>. Term market value is not defined in Land Acquisition Act but can be described as owner though not obliged to sell is willing to accept and a vender not obliged to purchase is willing to pay.<sup>50</sup>

In order to obviate the difficulties faced in the acquisition of land for public purpose amendments have been carried out by each provincial Government in the Act according to its requirements. Out of these amendments the most important amendment was carried out by the West Pakistan so as to amplify the core bone of contention, relating to determination of the market value by adding an explanation .i.e. for the purpose of determining the market value the court shall take into account transfers of lands similarly situated and in similar use .The potential value of land to be acquired if put to a different use shall only be taken into consideration if it is proved that land similarly situated and previously in similar use has before the date of notification under section 4 (1) of The Land Acquisition Act, 1894 been transferred with a view to be put to the use relied upon as effecting the value of the land to be

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<sup>46</sup> Veeraraghava Chariar and others Vs. The Secretary of State for India , AIR 1925 Mad 837.

<sup>47</sup> Mullah Ghulam Ali and 3 others Vs. Commissioner of Karachi and 3 others PLD 1983 Kar 87.

<sup>48</sup> Smt. Somawanti and others Vs. The Secretary of Punjab and others. AIR 1963, SC 151.

<sup>49</sup> Indian Land Acquisition Act 1894. Section 3 (f) (v), 2<sup>nd</sup> Edition, CTJ publications, 1994.

<sup>50</sup> M.A. Malik ,The land Acquisition Act 1894,1<sup>st</sup> Edition,P.L.DPublishers,1995 , p-40.

acquired. The most contentious point which has been subject to litigation in the courts is regarding criteria used by the collector in determining compensation.

The term market value is not defined and it has led to a lot of litigations. It was held by the court that the best method to work out the market value is the practical method of prudent man of section 3 of the Evidence Act to examine and analyze all the material and evidence available on the point and to determine the price which a willing purchaser would pay to a willing seller for purchase of acquired land in the prevailing normal circumstance without bargain being influence by any extra news consideration.<sup>51</sup>

Market value of land is to be taken as existing on the date of publication of the notification under section 4(1). Price in preceding year instead of 6/7 years will be considered along with potential value of land.<sup>52</sup> In awarding compensation for land the court has to determine the market value of the land in question on the basis that all the interests in that land have combined. In other words valuation is to be put in that piece of land; irrespective of the different interests which several persons might posses in regard to any portion of the concerned piece of land.<sup>53</sup> Factors to be taken into account for assessment of compensation include the nature of land, its present use and capacity for a higher potential, its location and impact of such use on the land.<sup>54</sup>

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<sup>51</sup> Sheikh Manzoor Hussain Vs. The Multan Improvement Trust and others, PLD 1972 Lah. 225 .

<sup>52</sup> Land Acquisition Collector Abbottabad and others Vs Muhammad Iqbal and Others, SCMR1992 SC 1245.

<sup>53</sup> Shrimati Kusumgauri Ramray Munshi and others Vs. The Special Land Acquisition Officer. AIR 1963 Gujrat 92.

<sup>54</sup> Adusumilli Gopal Kirishna vs. Deputy Collector Land Acquisition, AIR 1980 SC 187.

Compensation to be paid to land owners for their acquired land would be determined on the basis of one year average sale in the vicinity to the date of notification.<sup>55</sup> Court is to consider evidence brought on record by the parties and by the land acquisition collector while determining compensation of acquired land in addition to one year average price.<sup>56</sup> Under the land acquisition the market value which has to be determined for the purpose of compensation which includes estimate of actual speculative advances in the values of lands in consequence of improvements, already made in the locality. The market value in villages, takes into account the use already made up of similar lands in the locality. If the land has further potentialities, the market value includes the value of such further potentialities.<sup>57</sup>

Mere past sales could not legitimately form basis for calculating compensation, landowner were also bound to satisfactorily establish the potential value and use to which such land could be put in near future so that real value could be appropriately ascertained.<sup>58</sup> Due to these problems the procedural and legal bottlenecks in the acquisition process should be removed and land acquisition laws should be suitably amended to make provision for unified, transparent and market value oriented systems and procedures which would also minimize litigation.<sup>59</sup>

Along with this ambiguous criterion for determination of market value the position has become more complex because land revenue department officials are involved in underhand dealings for arranging conversion of agricultural land to housing or other uses.

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<sup>55</sup> Govt. of Pakistan through Secretary Ministry of Defense and others Vs. Sardar Muhammad Sami and others. PLD 1987, Peshawar, 77.

<sup>56</sup> Muhammad Saeed and others vs. Collector Land Acquisition and others. , SCMR2002, SC, 407.

<sup>57</sup> Yeshwantrao Govindrao Vs. The Collector of Nagpur. AIR 1961, Bom, 129.

<sup>58</sup> Water and Sanitation Authority Quetta through M .D and another Vs. Niaz Muhammad and 7 others. PLD 1992 Quetta 75.

<sup>59</sup> National Housing policy 2001, Issued by Ministry of Housing and Works, p-15.

Due to this reason the court decided that entry in the revenue record as to the nature of the land may not be conclusive.<sup>60</sup> Developers are required to submit layout plan for the whole land of the scheme including land yet to be acquired, provided it is up to maximum limit of twenty percent. After grant of sanction from development authority when the developer proceed to purchase the twenty percent portion of land the owners of the land charge exceptionally high prices as the developer is bound to purchase that piece of land at any cost. Constitution of Pakistan guarantees that no action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with law.<sup>61</sup>

The owners of the land by exercising the right provided by the constitution make reference to the court if the amount of compensation is less.<sup>62</sup> But the aggrieved housing company or the cooperative society has no remedy if the amount of compensation is high because the reference by a beneficiary is not allowed.<sup>63</sup>

The apex court of Pakistan has declared that a reference under section 18 of the Land Acquisition Act 1894 before the court by a beneficiary is not competent.<sup>64</sup> A contrary view taken by the apex court of India is very important. It declared that the definition of person interested given in section 18 of Land Acquisition Act 1894 is an inclusive one and must be liberally constructed so as to embrace all persons who may be directly or indirectly interested either in the title of the land or in the question of compensation. It is not disputed that the lands were actually acquired for the purpose of the company and once the land vested in the Government after acquisition it stood transferred to the company under the agreement entered into between the company

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<sup>60</sup> Project Director vs. Murad Ali and Company, 1999 SCMR 125.

<sup>61</sup> Constitution of Islamic Republic of Pakistan 1973, Article 4 (2) (a), 4th Edition, Pakistan Law Times, 2002.

<sup>62</sup> The Land Acquisition Act 1894, Section 18, 1<sup>st</sup> Edition, P.L.D Publishers, 1995.

<sup>63</sup> Pakistan vs. Abdul Hayee Khan, PLD1995, SC 418.

<sup>64</sup> Defense Department of Pakistan Vs Province of Punjab and another, 2006 SCMR 402.

and the Government. Then it can not be said that the company had no claim or title to the land at all. Secondly under the agreement the company has to pay compensation, it was most certainly interested in seeing that a proper compensation was fixed so that the company had not to pay a very heavy amount of money.

How it can be said that a person for whose benefit the land is acquired and who is to pay the compensation is not a person interested. Company was thus held to be person interested within the meaning of section 18 of the Land Acquisition Act, 1894.<sup>65</sup> The position in Pakistan is that the acquisition of land for companies including housing companies has become an elusive exercise.

Universal Declaration of Human Rights declared “Adequate Shelter for all” and it was subsequently reaffirmed in 1996 at Habitat Conference<sup>66</sup>. Shelter is one of the basic necessities of life and occupies the biggest portion of any human settlement<sup>67</sup>. There is a backlog of 270,000 housing units each year and the demand in 2010 will be 8, 00,000 housing units per year.<sup>68</sup> Meeting the backlog in housing is beyond the financial resources of the Government. This necessitates putting in place a framework to facilitate financing in the sector by the private sector and for the mobilization of non Government resources. An investment of rupees Rs.950 billion is envisaged in the Medium Term Development Framework for the development of housing including 920 billion investments by the private sector and rupees 30 billion by the public sector<sup>69</sup>. Government alone can not meet the housing shortfall so Government will Act as a facilitator instead of a developer.<sup>70</sup>

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<sup>65</sup> Indo Swiss Time Ltd. vs. Umro and Others. AIR 1981, HAD 213.

<sup>66</sup> [www.unhabitat.org](http://www.unhabitat.org) visited on 15<sup>th</sup> August, 2008.

<sup>67</sup> Medium Term Development Framework 2005-10, issued by Planning Commission of Pakistan, p-175.

<sup>68</sup> National Housing Policy 2001, issued by Ministry of Housing & Works, p-1.

<sup>69</sup> Ibid, p183.

<sup>70</sup> Ibid, p-9.

The Land Acquisition Act does not provide for prior possession of land by private housing company as reflected by the preamble of the Act as declared by the court that the preamble of the statute has been set to be a good means of finding out its meaning as it is a key to the understanding of it and it usually states or profess to state the general object, any intention of the legislature in passing the enactment.<sup>71</sup>

However the development authorities in the provinces have been applying different rules for issuance of no objection certificate to these housing companies. The condition of possession of at least 80% possession of land before grant of no objection certificate is mandatory. There is a dichotomy in the Land Acquisition Act and Punjab Private Site Regulations 2005. Under these rules the developers are bound to own 80% land and submit layout and location map of 100% scheme before grant of sanction for the scheme. As a result of this clash between these two enactments the developers are bound to purchase a major portion of land before sanction of the scheme and as a result of it the price of land has increased many folds. Housing companies can afford to purchase a major portion of land before sanction of the scheme but cooperative societies cannot afford to purchase it due to its members of modest means.

Layout plan of 100% land is submitted in advance for the grant of sanction of the scheme and the remaining 20% land is acquired under Land Acquisition Act.<sup>72</sup> The acquisition of this 20% land becomes very difficult because the owners of this 20% land take full undue advantage of the weakness of developers and charge very high prices. Under the above scenario when the companies and cooperative societies are forced to acquire remaining 20% land on very high prices and they have no recourse to the court, the private sector is being discouraged so the apex court of

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<sup>71</sup> Mohammad Asim vs. Collector of Land Acquisition Act, PLD 1964 B.J. 30

<sup>72</sup> Local Government Ordinance 2001, Section 3(2) (g), 1<sup>st</sup> Edition, Mansoor Book House, 2007.

Pakistan by looking into the ground realities and bitter truths in housing sector should provide relief as Indian courts are providing relief to developers in India.

In the case of America when housing companies are faced with the problem of land acquisition these companies adopt any one of these three ways these companies either refuse to pay high prices to land owners and seek land else where or pay the price or request the Government to take the land from unsympathetic owners.<sup>73</sup> In India a very good approach is used for the acquisition of land all the land in the undeveloped growing city is notified at an early stage and acquired by public authority at the prevailing agricultural price. This would prevent the undesirable speculation that would otherwise occur in situation of lands changing from agriculture to non agriculture nature.<sup>74</sup>

### **1.5.2 Absence of Any Single Office to Monitor Housing Societies:**

If the legacy of the past is taken as an example, Pakistan should have been excellent in the field of town planning indeed one of the earliest cities in the world to display conscious design in its layout and functioning is our Harappa Civilization. Similarly the cities of Indus valley in Pakistan are the earliest examples of deliberately planned and managed cities in history. At the same time Muslims are accepted as pioneer of rational planning of cities and empires and are credited to have originated the idea of formal zoning.<sup>75</sup>

There is a common agreement that the existence and enforcement of zoning designed to set standards, are prerequisites to a successful rehabilitation programme.<sup>76</sup>

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<sup>73</sup> Arthur C.Holden, "The Land Problems in relation to Housing", Annals of American academy of political and social science, 1937, p-50-59.

<sup>74</sup> Rakesh Mohan, "Housing and Urban Development", Economic and Political Weekly, 1992, p-1990-1996.

<sup>75</sup> Daily The Nation 16<sup>th</sup> january2008, Syed Ali Zafar, "Article", "Cities without Constitution".

<sup>76</sup> Building Codes, Housing Codes and the Conservation of Chicago's Housing Supply, the University of Chicago Law Review, 1963, p-180-203.

The function of physical planning and housing neither being in federal list nor in concurrent list of the constitution of Pakistan so the provinces enjoy complete autonomy for performing these functions when the local Government ordinance came into force in 2001 housing became the exclusive jurisdiction of local Government and the role of the provincial Government was only to monitor the working of the local Government.<sup>77</sup>

The role of the provincial Government has been increased by amendments in the Local Government Ordinance in 2005 but the main functional responsibility for physical planning and housing continues to rest with the local Government.

On the promulgation of local Government ordinance 2001 the functional responsibility for preparation of spatial plans including plans for land use including classification and reclassification of land stood transferred to district Government s.<sup>78</sup>

The control of the development authorities, water and sanitation agencies and solid waste management was passed on to the district Government s.<sup>79</sup> Preparation of master plan, structural and outline development plans were required to be prepared within one year by town and union councils, within two year by the district Government and within three years by the city district Government s.<sup>80</sup>

Spatial plans were not completed by the local Governments within the time. The reason is that the functionaries of the local Government lack the skill needed in the field of urban planning. In addition to necessary qualifications, town planning needs vision for the future. It is hardly surprising that there were and still are very few people in our planning departments who have this attribute.<sup>81</sup>

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<sup>77</sup> Constitution of Pakistan 1973. 6<sup>th</sup> Schedule, 3rd Edition, Pakistan Law Times, 2002.

<sup>78</sup> Local Government Ordinance 2001, 1<sup>st</sup> Schedule Part C, 1st Edition, Mansoor Book House, 2007.

<sup>79</sup> *ibid*, Section 52.

<sup>80</sup> National Housing Policy 2001, issued by Ministry of Housing and Works, p-29.

<sup>81</sup> Daily, The Nation 16<sup>th</sup> January 2008, Syed Ali Zafar, "Article", "Cities Without Constitution."



Another reason for this neglect was inaction on the part of the provincial Government s. Punjab Government has issued Punjab Private Site Regulations in 2005 and the subject of housing was devolved to the local Government s in 2001. For the application of Punjab Private Site Regulations, classification and reclassification along with master plan is necessary. The level of importance given by the Government can be judged from this fact that Punjab Government has issued Punjab land use, Classification, reclassification and redevelopment, Rules 2008 just recently on 12, March 2008. While one of the most important functions of the local Government is its control over the use of land.<sup>82</sup>

But in case of Pakistan no attention has been given to this important task. Under the new rules land has been classified into six classes including residential, commercial, industrial, peri urban, agriculture and notified areas and each one of these has been further classified into permitted use, permissible use and prohibited use.<sup>83</sup> City District Government and a Tehsil Municipal Administration are required to prepare a land use classification map of the approved schemes and established built up area in a district or Tehsil by employing the land use classification and reclassification rules. Local Government is also required to prepare a land use classification map by using satellite image of the area. From the start of local Government till this day master plans, zoning, land use including classification and reclassification has not been done and for such a technical issue time period of only one year has been prescribed. It seems that Government is not paying the due attention to this subject or because the status quo suits the interests of our rulers. The spatial plans were not completed by the local Government s within the time frame provided by the law as a result of it two sets of regulatory framework (As before

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<sup>82</sup> John M. Gries, "Housing in the United States", The Journal of Land, Public Utility and Economics, 1925, p-23-35.

<sup>83</sup> The Punjab Land Use Rules 2008, Section 4, 1<sup>st</sup> Edition, Mansoor Book House, 2007

Local Government Ordinance 2001) one of development agencies and other of Tehsil Municipal Administration are operating in the country. A well planned and organized city not only ensures the wellbeing and good health of its habitants but equally has a direct positive impact on the motivation, attitude, habits and professionalism of the people which equally reflects in the character of the nation as a whole.<sup>84</sup> Central Government has to play a vital role by helping local Government s in preparing spatial planning.

On the event of Habitat Conference the participants by recognizing local authorities as their closest partners in implementing the Agenda stated that they must work to strengthen their financial and institutional capacities in accordance with the conditions of the countries.<sup>85</sup> Provincial spatial development plans, District structure plans, Tehsil master plans and action plans for specific local areas would be prepared under vision 2030 by the proposed urban policy research centre.<sup>86</sup> One of the first steps that should be taken in any community is to make a careful study to determine the best use that can be made of the land and this should be followed by a comprehensive city plan and a zoning code.<sup>87</sup>

Central Government should play an active role by providing financial and technical assistance to local Government s. In order to support the local Government s' central Government should hire experts from all over the world to prepare new master plans both at national and city levels. Due to limitation imposed by the Constitution of Pakistan the central Government can not perform this function itself but it should not leave this job on the sweet will of the local Governments.

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<sup>84</sup> Daily The Nation 16<sup>th</sup> January 2008, Syed Ali Zafar, "Article", "Cities Without Constitution."

<sup>85</sup> www.un.org. visited on 9<sup>th</sup> August 2008

<sup>86</sup> Medium Term Development Framework 2005-10, issued by the Planning Commission of Pakistan, p-182.

<sup>87</sup> John M. Gries, "Housing in the United States", The Journal of land public utility Economics, 1925, p-23-35.

Because in the case of America ,the Government in order to provide a decent home and a suitable living environment for every American family has extended its activities to zoning, comprehensive building codes and housing codes.<sup>88</sup>

### **1.5.3 Unauthorized use of the Name of Govt's, Ministries to Gain Credibility:**

Humans are gregarious in nature; they prefer to live and work together. The primitive man was a natural practitioner of collectivism which is cooperation in a very primary form. All great religions of the world have emphasized the need of cooperation. Islam also mentions about cooperation most vividly and emphasis the people to cooperate and be helpful to each other for good cause. Cooperation was helpful to meet all kind of human needs revolving around food, shelter and clothing.<sup>89</sup> Cooperative housing societies are based on the principles of voluntary and open membership, democratic member control, member economic participation, autonomy and independence, education, training, and independence and on the principle of concern for the community.<sup>90</sup>

The importance of cooperative housing societies was also realized by the Russian Government when the Government directed the citizens, in order to combat the housing crisis, by developing house building and to assist the best economic use of existing residential buildings on the principles of self help of the toiling masses, citizens of the U.S.S.R might voluntary unite in cooperative housing societies.<sup>91</sup>

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<sup>88</sup> James Philpot, "Building codes, housing codes and the conservation of Chicago's housing supply", *The University of Chicago Law Review*, 1963, p 180-203.

<sup>89</sup> Daily, *The Nation*, 28<sup>th</sup> April 2008, Manzoor Ahmad, "Article", "Cooperative Housing Problems" .  
<sup>90</sup> [www.ica.coop](http://www.ica.coop). visited on 16<sup>th</sup> August 2008.

<sup>91</sup> Alexander Block, "Soviet Housing: The Historical aspect: Some Notes on Problems of policy", *University of Moscow Law Review*, 1952, p246-277.

After the destruction of houses during Second World War many observers viewed cooperative housing as the ultimate source of shelter for practically every income group.<sup>92</sup>

Cooperative developers entered the housing sector in the 70's and onward, since then it has been common practice .Cooperative housing is primarily the utilization of human resources. Low income families who could not otherwise afford homes are organized into cooperative groups to build their own homes backed by technical guidance, loans of equipment and financing for land and materials.<sup>93</sup> The Government functionaries serving in a Ministry/Division become sponsors and formed housing societies and got these societies registered. While doing so the nomenclature of the Ministry/Division is used for registration i.e. central board of revenues' employees cooperative housing societies, National assembly secretariat employees' cooperative housing society national assembly secretariat employees' cooperative housing society, Air force cooperative housing society.

The sponsors of these cooperative societies have used the name of these prestigious departments to gain public confidence and to get more money from the public. And this practice of using name has been without getting no objection certificate from these institutions.

When these cooperative societies commit embezzlement of funds the name of these institutions are defamed. Punjab Private Site Regulations has prescribed that no scheme should be advertised in any forum, media, and press prior to its sanction.<sup>94</sup>

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<sup>92</sup> Tom L Davis, "Cooperative self help Housing", Law and Contemporary Problems", 1967, p409-415.

<sup>93</sup> Osborne T Boyd, "International Cooperative Administration Worldwide Housing Programmes", Land Economics, 1969, p77-80.

<sup>94</sup> Punjab Private Site Regulations 2005, Section 8 (7), 1st Edition, Mansoor Book House, 2007.

This is a welcome step but to make the system more compact and foolproof it must be included in the relevant laws of Pakistan electronic regulatory authority that unapproved and unregistered housing society's advertisement does not constitute advertisement at all.<sup>95</sup>

#### **1.5.4 Lacuna in the Pre requisite conditions for the Registration of Developers of Housing Societies:**

The fundamental purpose of the Government is to protect the health, safety, and general welfare of the public .Whenever there arises in the state a condition of a substantial menace to public health, safety or general welfare, it becomes the duty of the Government to apply whatever power is necessary and appropriate to check it.<sup>96</sup>

Supreme Court of Pakistan in the case of Shehla Zia versus WAPDA held that it is the duty of the Government to ensure that all Pakistanis are provided with all amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally<sup>97</sup>. It is well recognized that the owner of a house enjoys a sense of security from the fact that he has a permanent residence that he is proud of his status as a property holder, and he cherishes the independence and the privacy it gives to his personal life.<sup>98</sup>

<sup>95</sup> Pakistan Electronic Media Regulatory Authority, 2002. Section 2, 1<sup>st</sup> Edition, Khyber law publishers, 2007.

<sup>96</sup> Philip H.Hill, "Housing Legislative Proposals", Law and Contemporary Problems, 1947, p173-185.

<sup>97</sup> Shehla Zia vs WAPDA, PLD1994S.C.693.

<sup>98</sup> Ira S. Robbins, "Methods of Holding Residential Property", 1937, p109-119.

Shelter is one of the basic necessities of life<sup>99</sup> but in this regard the situation in Pakistan is very poor and can be seen from the below figures: -

**Demand and Supply National Highway Authority's estimate upon the basis of 1998 census.<sup>100</sup>**

<b>Years</b>	<b>Population</b>	<b>Required Housing Units</b>	<b>Total housing Units in Million</b>	<b>Housing Backlog in Million</b>
1996	13.05	23.7	19.3	4.4
1999	13.39	24.3	19.6	4.7
2000	13.74	24.9	19.9	5
2001	14.10	25.6	20.2	5.4
2002	14.47	26.3	20.5	5.8
2003	14.85	27	20.8	6.2
2004	15.24	27.7	21.1	6.66
2005	15.63	28.4	21.4	7
2006	16.4	29.1	21.7	7.4
2007	16.46	29.9	22	7.9
2008	16.89	30.7	22.3	8.4

There are many factors due to which there is a huge gap in demand and supply side, among these, high population growth, inadequate attention toward construction of new houses, migration and break up of the traditional joint family system are important<sup>101</sup>.

<sup>99</sup> Medium Term Development Framework 2005-10, issued by Planning Commission of Pakistan, p-175.

<sup>100</sup> www.nha.gov.pk visited on 1<sup>st</sup> April 2008.

<sup>101</sup> Daily, The News, 6th December 2007, Alludin Masood, "Article", "Housing deficit".

Historically land was considered as a communal asset and was safeguarded and carefully distributed according to the needs of the people. Gradually this trend has changed in Pakistan due to declining performance in other sectors such as manufacturing and processing the power brokers and capitalists focused on land transactions as an enterprise<sup>102</sup> Real estate sector was further accelerated after the incident of 9/11 when overseas remittance jumped from 1.5 billion to 4 billion in 2002<sup>103</sup>.

The decision of lowering the interest rate from 22 % to 3 % was also a reason to increase the speculation in real estate sector<sup>104</sup> Due to these factors housing societies have been formed at large scale and these housing societies have offered plots to the applicants far in excess of the land in their possession. The aim was to collect as much money as possible from the public. The practice was endemic and went unchecked on account of loopholes in the registration laws. Cooperative societies are registered under Cooperatives Societies Act 1925.

It prescribed the condition that no society should be registered under the Act unless it consists of at least ten persons and if it has object to raise funds from its members then the persons who want to form cooperative society must reside in the same town or village, tribe, class, caste, or occupation and no society can use the word bank or can conduct banking unless it is registered under this Act and has a paid up capital of rupees 20,000 or more and societies with limited liability should use limited as a last word of their names.<sup>105</sup>

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<sup>102</sup> Daily, the News, 16th December 2007, Dr. Noman Ahmad, Article, "Nothing for the Masses".

<sup>103</sup> [www.finance.gov.pk](http://www.finance.gov.pk) visited on 1<sup>st</sup> March, 2008

<sup>104</sup> Daily Dawn 29 December, 2007. Zahid Iqbal. "Article", "Pakistan: The Housing Market Thrives as More Pakistani Capital Returns Home".

<sup>105</sup> Cooperator Societies Act 1925, Section 7, 1<sup>st</sup> Edition, New Fine Printing Press, 2008.

Similarly Cooperative Societies Rules 1927 prescribe that every application for the registration of a society should contain, name, address, liability clause, area of operation, objects, par value of share, leverage scheme along with three copies of the bye laws. Further more if a member of the proposed society is also a society then an authorized member of the society must sign the application for the registration of the cooperative society.<sup>106</sup> It is very interesting to note that a cooperative housing society can be registered even without having an inch of land by the housing society.

Similarly private housing companies are registered under the Companies' Ordinance 1984. For registration of a housing company Memorandums of Association and Articles of Association are filed with the registrar along with the declaration by the proposed director in the Articles of Association that all the requirements of the Ordinance and rules have been complied with. If the registrar is satisfied that the company is being formed for a lawful profession, objects are not inappropriate, or deceptive or insufficiently expressed and all the requirements of the Ordinance and rules have been complied with in respect of registration of the company then the company will be registered.<sup>107</sup> Similarly Companies General Provisions and Forms Rules 1985 prescribe that three copies of Memorandum and Articles of Association duly subscribed and witnessed should be stamped as per Stamp Act along with the declaration made by an advocate of High Court or Supreme Court or a member of institute of Chartered Accountant of Pakistan or a member of institute of Cost Management and Accounts of Pakistan and proposed director in the Articles of Association. Out of these persons the registrar can demand from any person a clarification or document to satisfy him.<sup>108</sup>

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<sup>106</sup> Cooperative Societies Rules 1927, Section 2, 1<sup>st</sup> Edition, New Fine Printing Press, 2008.

<sup>107</sup> Companies Ordinance 1984, Section 30, 3<sup>rd</sup> Edition, Federal Law House, 2007.

<sup>108</sup> Companies General Provisions and Forms Rules 1985, Section 2, 3<sup>rd</sup> Edition, Awaiz Publications, 2003.



From the above two sections of the companies laws it is very clear that there is no condition of land for the registration of a housing company. A housing company without having any piece of land can be incorporated under the prevailing legal framework.. In the past private housing companies and cooperative housing societies took advantage of these loopholes in the registration process of housing societies and they offered plots without having any piece of land.

When the people demanded a proof of the genuineness from these housing societies they were shown registration certificate issued under the registration laws and the people became satisfied as they did not understand the difference between permission to incorporate housing company and permission granted to start housing society. As a result of that a lot of people were deprived of their hard earned income. This practice is still going on because legal framework is still very poor.

These registration laws should be amended on urgent basis and no housing society should be registered without having ownership of land. The next step is how these provisions of law should be amended because making possession of land as a pre-requisite for registration is of paramount importance due to two reasons. Firstly, this new development will help to confine registration to the extent of genuine private housing companies and cooperative housing societies. Secondly, the registration laws being very liberal it will close the door of registration of housing societies by spurious sponsor. If the condition of possession of land as a pre condition for registration is made a new issue arises what should be the percentage of land whether 80% as prescribe by the law or no condition as to possession of land <sup>109</sup>. There is a need to strike a balance between these two extremes in such a way that fake and greedy

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<sup>109</sup> Punjab Private Site Regulation 2005, Section (3)(2) (g), 1st Edition, Mansoor Book House, 2007.

developers are discouraged and genuine and fair developers are encouraged. The condition of 80 % possession of land by housing societies before the sanction of the scheme is not in the best interest for a number of reasons.

Firstly, housing has been accorded a top priority for its beneficial effects on economic growth and employment generation; housing activities boost the economic activity in forty allied industries.<sup>110</sup>

Affordable housing for low income groups contribute to poverty alleviation measure.<sup>111</sup> Real estate and construction industry can be called the mother of all industries as it triggers activities in the supporting industries.<sup>112</sup> Due to investment in real estate sector Gross Domestic Product increased to 5 % in 2006.<sup>113</sup> Housing and construction sector have been notified by the Government as a priority industry in “C” Category<sup>114</sup>. Thus this condition of 80% possession of land before the sanction of the scheme in the law is against the national policy as Medium Term Development Framework is prepared after consultation of the four provinces. The success to any policy lies in the unidirectional proceeding for the achievement of a settled goal. So the above condition is a deviation from the mainstream policy.

Secondly, the private sector is assigned the main role in the development of housing sector for public welfare. Pakistan is also a party to Habitat agenda in which private sector is identified as backbone of “Shelter for All” policy<sup>115</sup>.

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<sup>110</sup> National Housing Policy 2001, issued by Ministry of Housing and Works, preface.

<sup>111</sup> Medium Term Development Framework 2005-10, issued by Planning Commission of Pakistan, p-177.

<sup>112</sup> National Housing Policy 2001, issued by Ministry of Housing and Works, p-17.

<sup>113</sup> [www.finance.gov.pk](http://www.finance.gov.pk), visited on 1<sup>st</sup> March 2008.

<sup>114</sup> Ibid, p-2.

<sup>115</sup> [www.un.org](http://www.un.org), visited on 16th August 2008.

The inclusion of the words “and for the companies” in the preamble of the Land Acquisition Act connotes the intention of legislatures to encourage the private sector to make investment in the projects and schemes which are beneficial to the public i.e. construction of roads, schools, health facilities and housing.

If the entire budget of the current annual Public Sector Development by leaving no money for any other Public Sector projects is used only for housing even then housing target can not be achieved.

**Total amount allocated for housing and physical planning in the public sectors development program (PSDP) is as under<sup>116</sup>**

Years	Amount Allocated (Million)
2004-05	9
2005-06	7.5
2006-07	7.9
2007-08	8.5
2008-09	9.7
2009-10	10.5
Total	44.1

This necessitates putting in place a framework to facilitate financing in the private sector and mobilize non-Government resources.<sup>117</sup>

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<sup>116</sup> [www.planningcommission.gov.pk](http://www.planningcommission.gov.pk) visited on 17<sup>th</sup> August 2008.

<sup>117</sup> National Housing Policy 2001, p-17.

When the acquisition of land is for a public purpose the consideration that the state has undertaken the task at the instance of a private entrepreneur or agency or a private institution is not germane. If the acquisition of land could materially help the national economy or the promotion of public health, or the furtherance of general welfare of the community or something of the like the acquisition will be deemed to be for a public purpose.<sup>118</sup> The condition of acquisition of land for public purpose is met when land is acquired by the company for building or work which would serve public purpose.<sup>119</sup>

Acquisition of land by the Government on the expense of the society for construction of residential accommodation for defense and civilian personal is for public purpose.<sup>120</sup>

Where the notification not only state that the land is to be acquired for a company but the purpose is also expressly mentioned the notification cannot be said to be contrary to the provisions of section 4 of the land acquisition Act.<sup>121</sup> Where there is a public purpose the powers of the Government to acquire land are not excluded because acquisition is for the benefit of the company.<sup>122</sup> It is the opinion of the provisional Government that land is acquired for the public purpose by the company.<sup>123</sup>

Allah Abad High Court went on to this extent that it declared that if land is required by the company for the construction of houses procedure in part VII of the Act need not to be followed.<sup>124</sup>

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<sup>118</sup> Ram Narain Singh and others Vs. The State of Bihar and others. AIR 1978 Pat 136.

<sup>119</sup> State of West Bengal and another Vs. Surendra Nath Bhattacharya and another. AIR 1980 SC 1316.

<sup>120</sup> Dr. Muhammad Naseem Javid vs. Lahore Cantonment Housing Society Limited through the Secretary Foretress Stadium, Lahore Cantt. and 2 others. PLD1983Lah 552.

<sup>121</sup> R.L. Aurora Ram Ditta Mal vs. State of Uttar Pradesh and others. AIR 1958 All 126.

<sup>122</sup> A. Nates Asari vs. State of Madras and another AIR 1954 MOD 481.

<sup>123</sup> R.A Aurora vs. State of Uttar Pradesh and others AIR 1958 All 872.

<sup>124</sup> Bhagwat Deyal and another Vs. Union of India and others AIR 1959 Pun 544.

The condition of 80% possession of land and submission of site development plan for the entire housing scheme makes the society captive of 20 % land which is yet to be acquired under Land Acquisition Act. The price of this 20% land is dictated by the owners in collusion with the officials of revenue department. The condition of 80%possession of land is against the intention of the legislatures of Land Acquisition Act 1894 which aims at encouragement of companies and cooperative societies in the economic activities for public welfare such as housing. The condition of prescribing 80 % ownership of land is also in utter disregard of ground realities in Pakistan. The members of the cooperative society are generally poor people and lower grade officials and due to low income they cannot afford to purchase land for their houses in defense housing authority or in a private housing company, the only way left for them is to have a house through cooperative housing society. The condition of 80% which is very high so it will close the last door open for the poor because they can not afford to accumulate so much funds from their own resources. It is inequitable as it will only encourage members with adequate financial means to form cooperative societies and discourage under privileged classes.

Lastly, is also against the spirit of the Medium Term Development Framework 2005-10 passed by the planning commission in which all the four provinces are parties and which is prepared after a detailed consultation by the Federal Government. So this condition is an example of divergence from the national policy.

A separate law for registration of private housing companies should be enacted by each province in which each province can prescribe a pre condition of land for registration of housing companies by keeping in view its local conditions and development priority as every province has its development priority due to its specific geographic, economic and social differences with respect to other provinces.

Revenue department is empowered to permit change in land use from agriculture to industrial, commercial or housing purpose without intervention of development authorities<sup>125</sup>. As a result of that when information leaks out that housing society is being launched in the particular area the inhabitant of the adjoining lands do the above practice with the help of Patwaris. All land record must be computerized because poor land record system is the major cause of litigation in our country.<sup>126</sup> As a short term measure when notification under section 4 of the Land Acquisition Act 1894 is issued, the land record of that particular area should be sealed to stop the revenue department from doing this unlawful practice

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<sup>125</sup> Registration Act 1908, Section 21(1), B to Z Publishers, Lahore, Edition 2008.

<sup>126</sup> KASB Securities Limited, December 2005, "Research Paper on Real Estate Investment Trust".

### **1.5.5 Low standard of Town Planning, Basic Civic amenities and poor environmental conditions.**

Humankind is not only biologically dependent on its environment but it also derives from it the resources necessary for its life, economic activities and economic growth.<sup>127</sup> Planning is a process of consciously exercising rational control over the development of the physical environment, and of certain aspects of the social environment, in the light of a common scheme of values, goals and assumptions. Planning is concerned with guiding both public and private action and may be on a local, metropolitan, or regional basis.<sup>128</sup> The old accepted view of planning was that the Government knew best and would regulate the physical environment properly for the benefit of everyone. As such the town planning continued to be based on survey, analysis and plan without its linkage with environment and economic and social system of the town. Following rapid urban growth in the cities since 1950, the planning system in the country (cities) has collapsed. In almost all cities the authorities could not respond adequately to rapid urbanization phenomena and, in particular, to provide adequate basic urban services a situation is emerging which is proving detrimental to the maintenance of a congenial and health living environment. Under the pressure of rapid population growth, an increasing proportion of housing stock is hurriedly built. For this reason the cities that have experienced this rapid growth are largely unplanned in the country. In many of these rapidly growing cities, the rate of increase of slum dwellers and squatters is twice the (very high) overall urban growth rate and environment condition has become very poor. It is perceived that if housing construction is done by complying with the environmental standards

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<sup>127</sup> Commoner, "The Environmental Costs of Economic Growth", *Economics of the Environment*, 1977, p. 331-353.

<sup>128</sup> Curtis J Berger, "Land Ownership and Use", 2nd Edition, Little Brown and Company Publishers, 1975 p-634.

the cost of construction with increase many fold and as a result the economic activities will halt. The experience of the Organization for Economic Cooperation and Development (OECD) countries shows that both environmental and economic objective can be achieved and reconciled at the same time.<sup>129</sup>

Over the last 20 years the Organization for Economic Cooperation and Development (OECD) countries almost doubled their Gross Domestic Product.<sup>130</sup> Another reason due to which housing developers are not following environmental standards is that the existing large scale system evolved during a period when environmental concerns were not serious and now retain their economic dominance partly due to economies of scale and partly through influence over the political system.<sup>131</sup> As a result of it there is pollution, poor sanitation, water shortages and lack of solid waste management. And this trend of housing is impacting upon economic and social systems of the cities. Now it is the time to realize that there is no clash between economic growth and environmental protection and they are compatible and mutually supportive.<sup>132</sup> This problem is not only with Pakistan, the whole Asia has the Worlds fastest growing economies but prosperity brought by Asia's industrial development is at the cost of ecological devastation.<sup>133</sup>

Very interesting to note that the Government of Pakistan instead of emphasizing the housing developers to conform to environmental standards has exempted the private sector from environmental impact statement.<sup>134</sup>

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<sup>129</sup> Beckerman, Wilfred, "Economic Growth and Environment: Who's Growth? Who's Environment?" 1992, p 481-496.

<sup>130</sup> Juhasz Farence, "Guiding Principles for Sustainable Development in the countries fair Principles for Sustainable Development", Cambridge, 1993, p, 33.

<sup>131</sup> Ayres Robert, "Evolutionary Economic and Environmental imperatives" Structure Change and Economic Dynamics, 1991, p. 268.

<sup>132</sup> Butler, Alison, "Environmental Protection and free Trade: Are They Mutually Exclusive?" Federal Reserve Bank of ST. Louis Review, 1992, p, 3-16.

<sup>133</sup> Daily, The News, 6<sup>th</sup> October 1990, Editorial, "Environmental Concerns".

<sup>134</sup> Yearbook of International Environmental Law, 1992, p437-438.



Perhaps the reason for not complying the environmental laws with industries including housing is that the developing countries consider pollution as a by product of industrialization. The need for economic and social development by far outweighs their ability or desire to pay for pollution reduction necessary to achieve a clean environment.<sup>135</sup>

Developing countries are facing a unique dilemma between economic development and environmental degradation. It is true that their quest for development would add to existing pollution.<sup>136</sup> Medium Term Development Framework of the Planning Commission of Pakistan admits this trend as a result of inadequate attention to spatial planning at the national, provincial and local levels, urbanization phenomena and urban development are not being addressed comprehensively. With indiscriminate conversion of the rich agricultural land for urban uses, there has been haphazard growth around big cities and along national highways. Most of the cities in the country are dominated by areas of poor housing, inadequate infrastructure and social services and poor transport with a large proportion of the residents living in Katchi Abadis or informal settlements.

In large cities in particular, the problem of high land values is one of the biggest constraints on poor family's ability to acquire shelter. It was in this context that UN Conference on Human Settlements – Habitat II – was held in Istanbul, Turkey in June 1996 for discussing the current state of urbanizing world and adopted two documents of great political importance for the sustainable development of cities, towns and communities, namely, Habitat Agenda and 'Istanbul Declaration'. Sub-Para (c) of Para 43 of the Commitments is particularly significant for the topic of low

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<sup>135</sup> KettelWell, Ursula, "The Answer to Global Pollution? A Critical Examination of the Problems and Potential of the Polluter Pays Principle" *Journal of Environmental law and Policy*, 1992, p 452-462.

<sup>136</sup> "Magnitude of Environmental problems Causing Pollutin-Induced Health Problems", *International Environmental Reporter*, (BNA) 245, May 8, 1991.

standard of town planning and lack of basic civic amenities and poor condition of Environment.

It declared the need to integrating urban planning and management in relation to housing, transport, employment opportunities, environmental conditions and community facilities.<sup>137</sup> In the context of a change in percepts of town planning all over the globe, the old planning system of a town based on merely physical survey, analysis and plan with a regulatory framework cannot ensure sustainable development of a town. It has to be changed in a larger context of social, economic and environmental sustainability. Although housing is poverty minimizing measure in our country but poverty should be addressed directly and parallel with environmentally sound policy.<sup>138</sup>

We have to look for such ways of housing construction which are environmentally sustainable. Because we need development that meets the needs of the present without compromising the ability of future generations to meet their own needs.<sup>139</sup>

The solutions offered for tackling the problem of low standard of town planning and provisioning of basic civic amenities generally revolve around strict compliance with the laid down regulatory framework by the housing societies for grant of the no objection certificate. This framework includes submission of town planning, distribution plan of the scheme as per Town Planning Standards, which include physical survey plans and infra structure design as per laid down standards. These standards which differ from development authority to authority are aimed at ensuring basic civic amenities such as water supply, sewerage, roads, pavements,

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<sup>137</sup> [www.unhabitat.org](http://www.unhabitat.org). Visited on 27 August 2008.

<sup>138</sup> Lutz , Ernest and Young, Michael , “ Integration of Environmental Concerns into Agricultural Policy of the Industrial and Developing Countries”, 20 World Development, 1992, p 244.

<sup>139</sup> World commission on Environment and Development our common future, Oxford university press, 1987, p8.

parks etc in the housing society. It will be pertinent to mention here that the Punjab Government has recently institutionalized for the whole province the planning standards under Punjab Private Site Development Schemes Regulation 2005<sup>140</sup> .

A glance of these rules reveals that the emphasis is placed on physical features of the proposed housing society without any linkage with socio economic and environmental factors. This is largely on account of the fact that the provincial spatial development plans, district structure plans or Tehsil master plans have not yet been prepared.

Lack of basic infrastructure such as link roads, electricity, gas and telephones in the housing societies constructed in the cities and around it is also very important issue which is being neglected. Recognizing this lacuna, the Government of Pakistan has had recommended, besides other measures, that public and private development schemes within planned areas shall only be undertaken/approved when the availability of trunk infrastructure is ensured for such developments.<sup>141</sup> However, it is observed that the authorities have continued to grant approval to the housing schemes without obtaining clearance from the utility and other agencies regarding availability of the services. This is an administrative issue and the provinces must ensure its strict compliance by the development agencies and Tehsil Municipal Administrations .In order to tackle the above issues as *a long term measure*, the planning standards need be revisited in the light of the concept of sustainable human settlement. However, this will only be possible when national spatial strategy is prepared by the Planning Commission under which provincial spatial development plans, district development plans and Tehsil master plans will be formulated. *As a short term measure*, The Punjab Private Site Development Scheme Regulations 2005 relating to planning

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<sup>140</sup> Punjab Private Site Regulations 2005, Section 6, 1<sup>st</sup> Edition, Mansoor Book House, 2007.

<sup>141</sup> Housing National Policy 2001, issued by Ministry of Housing and Works, p37.

standards may be adopted by the provinces with such modification as deemed appropriate by them in the context of their development plan. No housing scheme should be entertained by the regulatory authority for scrutiny unless it is submitted by a town planning firm, duly approved by the Pakistan Council of Architecture and Town Planners .The regulatory authority should establish a department for monitoring the execution of the scheme in conformity with the terms of sanction. The regulatory authority should be empowered to take action against developer in case of non-completion of scheme within the stipulated period or in case of violation of terms of the sanction. The Punjab Government has already provided a provision to this effect in the Punjab Private Site Development Schemes (Regulation) Rules, 2005<sup>142</sup>. The other provinces may adopt these provisions or may adopt them with such modifications as deemed appropriate.

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<sup>142</sup> Punjab Private Site Regulations 2005, Section 13(2), 1<sup>st</sup> Edition, 1<sup>st</sup> Edition, Mansor book house, 2007

### 1.5.6 Registration of Private Housing Companies:

The subject of housing fell neither in the federal list nor in concurrent list.<sup>143</sup>

Being a residuary subject the provinces exercise complete control through provincial laws and rules on the land and housing. When the Local Government Ordinance 2001 came to force, the structures and systems in place were supplanted by new structures and systems with simultaneous devolution of these functions from the provinces to local Governments.

The devolved functions include housing, urban and physical planning and public health engineering<sup>144</sup>. Local Government Ordinance 2001 clearly declare that on commencement of this ordinance the administrative and financial management of the offices of local Government and rural development department, public health, engineering department and housing which were providing services at the regional, zonal, circle, divisional, District and Tehsil levels shall stand entrusted to respective town municipal administrations<sup>145</sup>.

Private housing companies are registered under the Companies' Ordinance 1984 with the Securities and Exchange Commission of Pakistan.

The powers conferred by this ordinance on the federal Government, or commission shall in relation to companies which are not trading corporation and **the objects of which are confined to a single province, be the powers of the provincial Government.**<sup>146</sup>

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<sup>143</sup> Constitution of Islamic of Pakistan 1973, 4th Schedule, 3rd Edition, Pakistan law times publications, 2002.

<sup>144</sup> Local Government Ordinance 2001, Second schedule, 1st Edition, Mansoor book house, 2007.

<sup>145</sup> Ibid, Section 15.

<sup>146</sup> Companies Ordinance 1984, Section 5, 3<sup>rd</sup> Edition, Federal Law House, 2007.

The Constitution of Pakistan declares that federal Government can legislate only about those corporations the objects of which are not confined to a single province.<sup>147</sup> How far the registration of private housing companies with Securities and Exchange Commission of Pakistan is valid?

A closer examination of the above provisions reveal that one point is common i.e. companies with objects confined only to a single province is the exclusive jurisdiction of the provincial Government and after promulgation of the local ordinance 2001 exclusive jurisdiction of local Governments.

It is beyond any doubt that private housing companies with housing scheme situated and confined to a single district comes under the exclusive jurisdiction of the concerned local Government the point that needs explanation is whether housing activity amounts to trading or non-trading activity?

A solution to this issue can be offered if we make a bold decision whether housing should be treated as a profit making or commercial venture activity. Housing is one of the basic necessities of life. If the close analysis of the ground realities of Pakistan is made there is a back log of 2, 70,000 housing units each year which is accumulating each year and the demand of housing will be 800, 000 housing units in 2010. If the total amount including all sectors is used only to cater the housing back log and to provide the basic necessity of house to all homeless people the Government cannot meet the deficit. Meeting the housing the target is beyond the financial resources of the Government.<sup>148</sup> Funds from zakat funds will be used to solve housing problems.<sup>149</sup> It means housing activity amounts to poverty alleviation measure. So, the Government must encourage housing activity as non trading activity.

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<sup>147</sup> Constitution of Islamic Republic of Pakistan 1973, 4<sup>th</sup> Schedule, 3rd Edition, Pakistan Law Times, 2002.

<sup>148</sup> National Housing Policy 2001, issued by Ministry of Housing & Works, p-9.

<sup>149</sup> *ibid*, p -36.

It is also mandated by Millennium Development Goals.<sup>150</sup>

Indicators (Million)	2001-02	2002-03	2005-06	2011	2015
Population of Kachi Abadi to be regularized in percentage	50%	55%	60%	75%	95%

It is target of the Government to achieve by 2020 a significant improvement in lives of at least 100 million “slum dwellers” and meeting the back log in housing sector is beyond the financial resources of the Government<sup>151</sup>.

This necessitates the declaration of housing activity performed by housing companies as a non-trading activity because by treating the housing activity as trading activity the Government cannot achieve the above mentioned target. So, for registration purposes the case falls under section 5 of the Companies’ Ordinance which declare the incorporation, regulation and winding up of the housing companies to be done by the respective Provincial Government s. As housing is a devolved function of the local Government. Another problem is once the private housing companies are registered with the Securities and Exchange Commission of Pakistan, there is no regulatory mechanism in the Companies Ordinance to monitor and regulate the activities of the private housing companies because it is a devolved subject of local Governments. Local Governments do not intervene in the affairs of private housing companies because these companies are dealt with by the Securities and Exchange Commission of Pakistan. There is no regulatory mechanism to regulate the activities

<sup>150</sup> [www.planningcommission.gov.pk](http://www.planningcommission.gov.pk) visited on 29May2008

<sup>151</sup> National Housing Policy2001, issued by Ministry of Housing & Works, Preface.

of the private housing companies in the Companies Ordinance, 1984 and the net result is that the affairs of the private housing companies are unregulated.

If the housing activities conducted by the private housing companies are treated as trading activity then the Section 5 of the Companies Ordinance, 1984 does not apply and the case for registration purpose falls under Section 4 of the Companies Ordinance, 1984.<sup>152</sup> Whether the case for registration falls under section 4 or 5 of the Companies' Ordinance 1984 in both these cases the registration of housing companies with the Securities and Exchange Commission of Pakistan is invalid.

Constitution being the supreme Law of the land and it is also the scheme of the constitution that the subject of the housing should be handled exclusively by the provinces.

Only public limited housing companies should be allowed to perform the housing activities because the public limited companies are required to conduct audit of accounts, publish profit and loss account, balance sheet and more disclosure requirements apply to it. The Government can have more check and balance on its activities. This development will help a lot to stop embezzlement of public funds committed by the private housing companies.

Registration of housing companies must be done by the respective provinces because construction of houses in Pakistani perspective amounts to welfare contributing objective, so housing companies are doing welfare activity, mostly the companies established not for profit and having welfare objects are incorporated with the provinces<sup>153</sup>. It will not only enable each provincial Government to enact the registration law according to its development priority as each province has its own development priority according to its economic, geographic, and social difference

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<sup>152</sup> Companies Ordinance 1984, Section 4, 3<sup>rd</sup> Edition, Federal Law House, 2007.

<sup>153</sup> Nazir Ahmed Shaheen, Practical approach to the Companies Ordinance, 1984, 3<sup>rd</sup> Edition, Federal Law House, 2007, p25.



with respect to other provinces but it will also result in a better check and balance by each provincial Government as the subject of housing is the exclusive domain of the provinces.

The present law of registration of housing companies does not provide any condition for possession of land before registration by the private housing companies, so the present law of registration is not going to work so it should be amended. If an amendment is made in the present law of registration of housing companies by stipulating a condition of land before registration the constitutional limitation will remain there. Under these circumstances, the ideal solution lies in the enactment of new registration law for housing companies by each provincial Government.

#### **1.5.7 Acquisition of land on the pattern of Defense Housing Authority**

These days the major obstacle in the way of development of real sector is the acquisition of land. When the developers of the housing societies proceed to acquire land they observe that either the land is not free from encumbrances or if the land is free from encumbrances the owners of the lands charge exceptionally high prices. Defense Housing Authority is adopting a very transparent approach for the acquisition of land and it is the most successful experience in Pakistan before discussing the procedure adopting the authority for the acquisition of land let's have a look on the origin of DHA Lahore.

LCCHS (Lahore Cantt Cooperative Housing Society) was established on 19 March 1975 with the registrar Cooperative Punjab. The affairs of the Society were run by the management Committee consisting of 11 to 15 members. During 1989 in the general meeting of the members a by Law, authorizing serving Army officers to cast Vote through postal ballot for electing the Management Committee and making policy was passed. This did not suit to some members due to their vested interest.

They challenge the decision in the Lahore High court in 1991 in the Lahore High Court. The Court suspended the Management Committee and entrusted all the powers of the Management committee to Commander Lahore CORPS. In order to improve the efficiency of LCCHS, the society was converted into Defense Housing Authority on 2 July 1999, firstly, through provincial Ordinance and finally through DHA order of 19 September 2002.<sup>154</sup> The secret of successful working of the Defense Housing Authority is its very unique method of acquisition of land. The procedure of acquisition of land adopted by DHA Lahore is very simple, the Authority acquire a piece of land from the adjoining land owner. Half of the piece of land is retained by the Authority and half of the land is returned to the owner. The consideration for the land owners is that when their lands become part of the Authority the prices of the land increase many folds. In this process of acquisition of land an approach of converge of interest is adopted. The present approach adopted by the housing societies for the acquisition of land is not working so the approach adopted by the Defense Housing Authority should be adopted.

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<sup>154</sup> [www.yahoo.com](http://www.yahoo.com) visited on 23<sup>rd</sup> May 2009.

### **1.5.8 Protection of property rights against land Mafia.**

The Constitution of Pakistan guarantees that no body should be deprived of his life, Liberty, reputation and Property accept in according with Law.<sup>155</sup> Supreme Court of Pakistan in the case of Shehla Zia versus WAPDA held that it is the duty of the Government to ensure that all Pakistanis are provided with all amenities and facilities which a person born in a free country is entitled to enjoy with dignity, legally and constitutionally<sup>156</sup>. It is well recognized that the owner of a house enjoys a sense of security from the fact that he has a permanent residence that he is proud of his status as a property holder, and he cherishes the independence and the privacy it gives to his personal life.<sup>157</sup> The fundamental purpose of the Government is to protect the health, safety, and general welfare of the public .Whenever there arises in the state a condition of a substantial menace to public health, safety or general welfare, it becomes the duty of the Government to apply whatever power is necessary and appropriate to check it. The Provision of secure property is the function of the Government without this protection the people can not enjoy property rights. Disputes between individuals over tile to or possession of immovable property and illegal or forcible dispossession of a rightful owner or occupier from some property possessed by him are not unusual or extraordinary phenomena but unfortunately of late a new phenomenon has emerged in our society wherein a class of persons called “Property grabbers”, also commonly known in local parlance as “Qabza Group” or “land mafia”, has come to surface whose primary chore or errand is to illegally or forcibly take possession of immovable properties belonging to others. The sole aim of the class of persons is undue enrichment at the cost of other, rights and the took employed by

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<sup>155</sup> Constitution of Islamic Republic of Pakistan 1973, Article 9, 3rd Edition, Pakistan Law Times, 2002.

<sup>156</sup> Shehla Zia vs WAPDA, PLD1994S.C.693.

<sup>157</sup> Ira S. Robbins, “Methods of Holding Residential Property”, 1937, p109-119.

them for achieving such nefarious end, more often than not, is nothing but brute force. In cases of run on the mill dispossession of one person from a some immovable property by another the law of the land already provides many remedies in both civil and criminal spheres, including a regular civil suit under the Code of Civil Procedure, 1908, a civil suit with summary procedure under section 9 of the Specific Relief Act, 1877, proceedings under section 145 of the Code of Criminal Procedure, 1998, criminal prosecution for offences relating to property, trespass and violence contained in the Pakistan Penal Code, 1860 and proceedings before the Revenue Courts and authorities under the Land Revenue Act, 1967, etc. however, faced with the new challenge posed by the menace of property grabbers/Qabza Groups/land mafia the Parliament rose to the occasion and in the year 2005 the Illegal Dispossession Act, 2005 was passed and enacted in order to provide a speedy and effective remedy and relief to the innocent people deprived of possession of immovable properties by property grabbers/Qabza Groups/land mafia.<sup>158</sup> A serious mistake was being committed by the lower courts while Applying this act against the parties other than land mafia. Lahore High courts in this judgment made it clear that lower court must draw align between the cases of dispossession of land committed by the ordinary people and the dispossession committed by land mafia. After coming into force of this enactment the citizens of the Pakistan can enjoy property rights granted by the constitution of Pakistan.

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<sup>158</sup> Zahoor Ahmad Vs State PLD 2007Lahore231.

### **1.5.9 Improvement in the land Record System.**

Every Government levies some taxes on various sectors to run day to day affairs of the state. For this purpose the Government collects land revenue from the real state situated rural areas and for this purpose Province have been divided into Division and each Division has been further divided into various Tehsils. In order to collect the land revenue the regulatory system has been classified into these classes i.e. the board of revenue, the Commissioner, the assistant Collector, of the first grad and the assistant collector, of the second grad.<sup>159</sup> For the purpose of the collection of land revenue all lands are liable to the payment of the land revenue to the Government except lands exempted by special contract, lands included in village site, area of cantonment limits, lands subject to property tax, base and barren lands not subject to cultivation for period of six years. The assessment of land revenue is base on the estimate of the average money value of the gross produce of an estate are a group of estates. It is responsibility of the land owners to make payment of the land revenue within the prescribed time period and according to the prescribed rates. The present land record system is very old and it is unable to meet the needs of the current age. An improvement in the land record system is the need of the hour. The special syntax for land parceling and revenue data recording is meant to make it secure from alteration and piracy; however this is being exploited because a few individuals can understand this syntax (Patwari being the central figure in the manipulation of numbers and records). His intimate knowledge of nomenclature leads to strengthening of his sovereignty over the system. The consent of Patwari became the prerequisite to interact with system. Since Patwari is the only person who can demarcate the extent of landholding actually on ground, his authority remains

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<sup>159</sup> M. Ehsan-ul-Haq, Section 7, Land Revenue Act, 1967, National Law Book Service, 1999.

unquestioned. That is why the role of Patwari is greatly misused in this system. A Patwari then becomes a key person to temper records and parcel boundaries in the absence of checks on him or he knows the ways to mold the things accordingly. Notwithstanding the aberrations in the system, land records data is maintained at three different levels (Patwar, Tehsil and district levels) to protect against unauthorized alteration. Various levels of access are also defined. The temporal archives are only stored at district level record room. Still there are occasion when the entire record is wiped out due to fire or floods. Some of the flaws and shortcomings of existing system of land records are highlighted hereunder; Data is unsafe and stored in dilapidated conditions. Maps do not follow cartographic rules. Manually generated records have poor accuracy, Approximate Measurements, Conventional mapping and survey is slow and time consuming, Records again need to be updated at the completion of survey, System is complex, Data is Widely Distributed<sup>160</sup>

The solution of the problems relating to land revenue and development of real estate sector of the rural area demands the preparation of computerize land record system after a careful study of the existing system of land record system.

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<sup>160</sup> S.F.Raza,M.Almas and Kamran Ahmed, Land Records Information Management System, available at [www.google.com](http://www.google.com). Visited on 23<sup>rd</sup> May 2009.

## **2.1. Origin of Real Estate Investment Trusts in U.S:**

Real Estate Investment Trusts (REITs) legislation was introduced in the House of Representatives on June 8, 1960 and passed from the Parliament on 29<sup>th</sup> June 1960. On 14 September 1960 President Eisenhower signed into a law a bill which provided a pass through tax treatment for certain real estate investment trusts.<sup>161</sup> Real Estate Investment Trusts (REITs) were introduced to offer retail investors a possibility to invest in diversified property portfolio. Overregulation resulted in a sluggish start to it.<sup>162</sup> One of the main reasons due to which American Congress created real estate investment trusts (REITs) was to provide economies of scale to individual investors. Internal Revenue Code 1954 has prescribed these conditions for qualifying as a Real Estate Investment Trusts in United States :- it must be unincorporated trust or an unincorporated association and it must be managed by one or more trustees, it must have its beneficial ownership evidenced by transferable shares. It must be a type of entity that would ordinarily be taxable as a domestic corporation. It should be owned by at least one hundred persons. It must not be a personal holding company and it must not hold property primarily for sale in the ordinary course of its trade as business. It must distribute at least ninety percent of its ordinary income.<sup>163</sup> A real estate investment trust shall not change to any accounting period other than the calendar year and a corporation or association may not elect to be a real estate investment trust for any taxable year beginning after October 4, 1976, unless its accounting period is the calendar year.

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<sup>161</sup> Marvin. S Khan, "Taxation of Real Estate Investment Trusts ", Virginia Law Review, 1962, p 1011-1047.

<sup>162</sup> Ulricg Schcht and Jens Wimschulte, "German Property Investment Vehicles and the Introduction of G-REITs an Analysis", Journal of property Investment and Finance, 2008, p232-246.

<sup>163</sup> William L.Martin, "Federal Regulation of Real Estate Investment Trusts: A Legislative Proposal", University of Pennsylvania law Review 1978, p316-390.

The high payment is an attractive feature for investors seeking to take advantage of the income potential of indirect commercial real estate.<sup>164</sup> Three key elements are of essential importance in the structure of Real Estate Investment Trusts, Firstly, their assets and revenues are closely restricted to real estate plus a limited portfolio of securities. Secondly, they are usually public companies; they can avoid paying corporate taxes so that their owners are not subject to the double taxation associated with public corporations. Thirdly, Real Estate Investment Trusts are required to distribute essentially all of their accounting earning so that they become taxable of the investor level.<sup>165</sup> Due to illiquidity, indivisibility and lack of flexibility associated with the direct property investment, purchase of shares in it offers an easy and relatively liquid method of investing in real estate. Buyers of its shares purchase assets that have characteristics different from most common stocks while the return earned as in the case of mutual funds can be expected to be determined by the productivity of the assets owned by the trusts.<sup>166</sup> Direct investment in real estate determines the marketplace in the United States of America. The total market value of equity in American commercial real estate in 2003 was approximately 2.5 trillion dollars. Of this total just 0.5 percent i.e. 168 billion dollars was held in publicly traded form while the balance of almost 2.4 trillion dollars was privately held.<sup>167</sup>

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<sup>164</sup> Shelter R.M. and Anderson D.C, "The financial performance of REITs : Following Initial Public Offering," *Journal of Real Estate Research*, 1998, p 230-245.

<sup>165</sup> Robert D. Cambell and C.F Sirmans, "Policy Implications of Structural Option in the Development of Real Estate Investment Trust in Europe", *Journal of Property Investment and Finance*, 2002, p388-405.

<sup>166</sup> Redman A.L and Manakyan, "A Multivariate Analysis of REITs Performance by Financial and Real Estate Portfolio Characteristics," *The Journal of Real Estate Finance and Economics*, 1995, p 137-148.

<sup>167</sup> Ling DC and Archer, "Real Estate principles", A value Approach McGraw Hill Irwin New York 2005, p227-288.



There are two hundred publicly traded REITs in the U.S and in 2007 total assets amounted to 475 billion dollars almost eight hundred REITs are not registered with Securities Exchange Commission of United States.<sup>168</sup>

## **2.2. Origin of Real Estate Investment Trust in Pakistan**

Securities and Exchange Commission of Pakistan had set up a 14 member task force in December 2004 which was then divided into two committees, one headed by financial sector expert Jahangir Siddiqui to work on product development and the other headed by Economist Shahid Karder to review and develop a regularity framework.<sup>169</sup> In the end of 2004 first draft of proposed REITs laws was prepared by Securities and Exchange Commission of Pakistan and was presented to the Government of Pakistan. After the time period of year and a half in September 2006 the commission presented the second draft of proposed Real Estate Investment Trust laws to the Government of Pakistan. A task force created under the chairmanship of Dr. Salman Shah, came up with an investor friendly Real Estate Investment Trust model after considering the basic legal issues.<sup>170</sup> It could not be introduced because real estate is a provincial subject and much time was spent in convincing the provinces to launch it. Federal Government by various amendments in Finance Act 2007 enhanced the powers of the Securities and Exchange Commission of Pakistan. In exercise of powers conferred by sub section (2) of section 282 of the Companies Ordinance 1984 the commission issued REITs regulations on 31 January 2008 through S.R.O 94(1)2008.

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<sup>168</sup> www.secp.gov.pk visited on 18<sup>th</sup> August 2008.

<sup>169</sup> Daily, Dawn, 10<sup>th</sup> June 2005, Naweena A Mangi, Article, "Real Estate Investment Trust on the Cards".

<sup>170</sup> Daily, Business Recorder, 18 March, 2008, Zaigham Mahamood Rizvi, "Real Estate Investment Trust".

### **2.3. Importance of Real Estate Investment Trusts for Pakistan:**

In Pakistan there was an estimated backlog of 6 million housing units in 2005 and the incremental housing need during the period 2005-10 was estimated to 3 million housing units. There was an annual demand of 3, 000, 000 units in 2005 and in it would reach to 800, 000 units by 2010.<sup>171</sup> There is unprecedented boom in Pakistan's property prices, real estate, construction business and construction activity during last three years has been 14% per annum of Gross Domestic Product.<sup>172</sup> The rental yield of 3.5% to 5% is amongst the lowest in the world. This is a result of the prevailing joint family system which results in lower number of first house buyers per annum and large number of dwellers per house. Forty industries are engaged by the construction activity and it provides job opportunities for skilled and unskilled labour.<sup>173</sup> In last five years Pakistan has grown at the rate of 7% Gross Domestic Product per annum and the population is growing at the rate of 2.6% per annum and urbanization is at the rate of 3.5 %<sup>174</sup>.

### **2.4. Orientation of Real Estate Investment Trusts in Pakistan:**

Real estate investment trust is a mutual fund that invests in properties and derives income from such investment for its unit holders. Under Islamic mode of finance it is close to the concept of specific purpose modarbah. It is for the first time that an emerging market has launched a modern financial sector product in a sector which so far was the undiluted domain of the developed countries.<sup>175</sup>

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<sup>171</sup> National Housing Policy 2001, issued by Ministry of Housing and Works, p1.

<sup>172</sup> Najam Ali, 13th February 2008, Presentation, "Real Estate Investment Trusts Opportunities and Challenges".

<sup>173</sup> Ibid,

<sup>174</sup> KASB Securities Limited 1<sup>st</sup> December, 2005, "Research Paper on Real Estate Investment Trust".

<sup>175</sup> Dr. Salman Shah, "Inaugural Address at the Launching of Real Estate Investment Regulations 2008".

Real Estate Investment Trust in Pakistan is a closed ended trust form. The logic behind the trust form instead of corporate type is that trust form avoids comprehensive legal and regulatory requirements. Closed ended scheme in Pakistan is because Real Estate Management Company is stopped to transfer its shares for a specific period of time due to which it is called closed ended Real Estate Investment Trust .Closed ended funds possess a strategic advantage to other investment vehicles as it is possible to pass on tax benefits to the investor within the categories of income and royalties.<sup>176</sup> It can be launched with limitation of area confined to federal capital and four capitals of the provinces. It was expected that those centers would offer the best opportunities as well as provide the best administrative framework for dealing with unforeseen legal and transitional issues as they arise.<sup>177</sup> Ninety percent profits will be distributed among unit holders under this scheme. This condition has been prescribed to provide level playing field to those companies which pay tax on corporate level. Real Estate Investment Trusts can be started with fund size of 5 billion rupees. Pakistan aims to attract 20 billion rupees in 12 months by drawing investors to a property market where prices have tripled in three years.<sup>178</sup>

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<sup>176</sup> Jim Berry and Jim Berry, "An Assessment of Property Investment Vehicles with Particular Reference to German Funds "Journal of Property Investment and Finance", 1999, p 430-442.

<sup>177</sup> [www.google.com](http://www.google.com) visited on 7<sup>th</sup> September 2008.

<sup>178</sup> [www. Bloomberg-com India and Pakistan](http://www.Bloomberg-com India and Pakistan) visited on 8<sup>h</sup> September 2008.

## 2.5 Advantages of Real Estate Investment Trusts (REITs):

Real Estate Investment Trusts offer a number of advantages to unit holders. When REIT was launched in United States among other factors the idea was to make available to retail investors certain advantages previously reserved for investors with great resources. These advantages include diversification through pooling of funds, access to the benefits of professional investment advisers and the ability to finance large scale properties.<sup>179</sup>

It allows accessible indirect investment in real estate and enables participants to broaden their investment portfolio and diversify risks. REITs allow ninety percent dividend to unit holders. Units are saleable in the stock exchange and it provides low volatility. REITs tend to be stable so offer an attractive return for investors.<sup>180</sup> Two arguments are generally given to motivate the decision of including real estate in portfolio of financial assets (stocks and bonds). These arguments are diversification and better protection against inflation.<sup>181</sup> The benefits of including REITs stock in an investment portfolio are higher yields, better liquidity, hedge against inflation and diversification.<sup>182</sup> REITs are property securitization vehicles which enable small investors to obtain the economic benefits of commercial real estate investments as well as offer greater investment flexibility to react to the changing market conditions.<sup>183</sup> The common man who otherwise could not participate in the real estate boom would be able to do so.<sup>184</sup>

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<sup>179</sup> John Corgel and Scott Gibson, "Real estate private equity: the case of US unlisted REITs", *Journal of property investment and finance*, 2008, p132-150.

<sup>180</sup> KASB Securities Limited 1<sup>st</sup> December, 2005, "Research Paper on Real Estate Investment Trust.

<sup>181</sup> Mortin Hoesli, "Real Estate As A Hedge Against Inflation learning From Swiss Case", *Journal of Property Valuation and Investment*, 1994, p 51-59.

<sup>182</sup> Scherrer and Mathison C. "Authorized property unit Trusts", *Journal of property Finance*, 1991, p 107-129.

<sup>183</sup> Newell G and Fife A, "Major Property investor attitudes to property securitization" *Journal of Property and Finance*, 1995, p 91-108.

<sup>184</sup> Ibid.

As an alternate asset class it will provide the people of Pakistan in general and small and middle class investors in particular an opportunity to benefit from real estate. REITs will broaden and diversify the supply side of securities and will provide depth to the capital markets.<sup>185</sup>

Investment in REITs shares offers opportunity of returns from capital appreciation through rising property prices and an income from rent while maintaining liquidity in the hands of investors. REITs will provide quality large scale projects with access to more competitively priced capital, it will maximize efficiency of property utilization, and it will make available much needed specialized financial intermediation to the real estate market. REITs will promote foreign direct investment, and it will unlock the value of large properties.<sup>186</sup>

Former Federal Finance Minister Dr. Salman Shah while expressing the benefits of REITs declared that capital can be raised by purchasing certificates of real estate. The fastest growth in the world is in the REITs and it gives good returns in the capital market and is a safe investment.<sup>187</sup> REITs can provide returns that are better than those of equities.<sup>188</sup>

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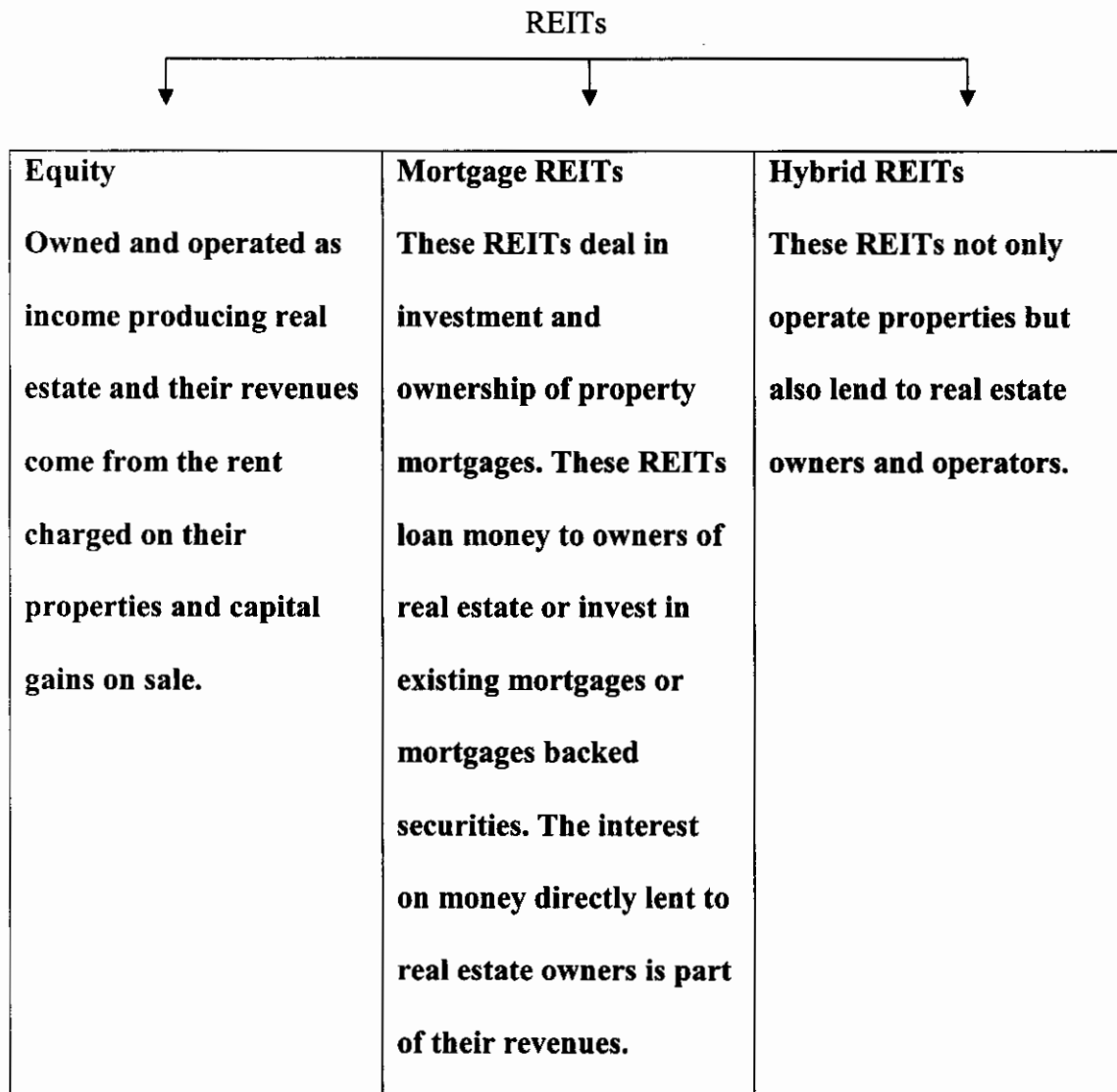
<sup>185</sup> [www.secp.gov.pk](http://www.secp.gov.pk), visited on 18<sup>th</sup> August 2008.

<sup>186</sup> Najam Ali, 13th February 2008, Presentation, "Real Estate Investment Trusts Opportunities and Challenges".

<sup>187</sup> Ibid.

<sup>188</sup> Sagalyn L. B., "Real Estate Risk and the Business Cycle: Evidence from Security Markets", *Journal of Real Estate Research*, 1990, p 155-173.

## 2.6. Kinds of Real Estate Investment Trusts:



## **2.7. Procedure for Formation of a Real Estate Investment Trust in Pakistan:**

Firstly, a REIT management company will register itself as a public limited company and then it will make an application for the approval of the real estate which is to be transferred to the proposed REIT scheme.<sup>189</sup> As contrast to traditional housing schemes a safe and fair approach will be adopted to avoid frivolous litigation and approval will be granted only when real estate will be free from all encumbrances. An application along with approvals, registered trust deed, audited accounts and balance sheet of Real Estate Management Company, list of directors, names of shareholders, consent of valuer, valuation report of real estate, location map and drawing of real estate, copy of title documents, auditor's certification about acquisition of land, name and address of the valuer, auditor, registrar, legal adviser, application fee and an affidavit by the chief executive that all the information is true.<sup>190</sup> On submitting the above mentioned information along with the application the REIT scheme will be registered.

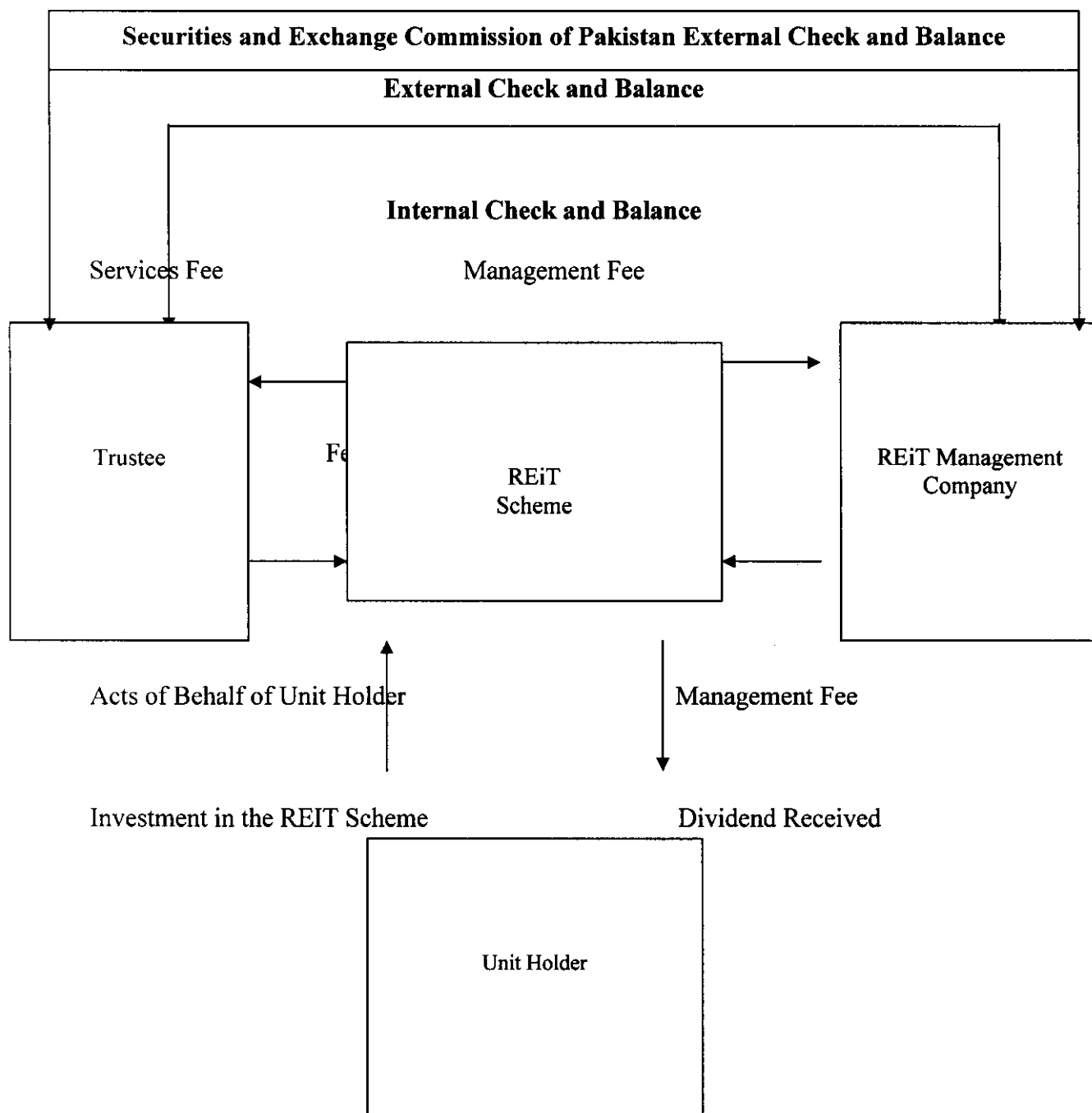
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<sup>189</sup> Real Estate Investment Trust Regulations, 2008, Section 6, 1<sup>st</sup> Edition, Ideal Publishers, 2008.

<sup>190</sup> Ibid, Section 8.

**Structure of Real Estate Investment Trust (REIT) is given below:**

Real Estate Investment Trust is a new concept in Pakistan. The structure of this new corporate product is given below. The detail of each and every step and heading is given in the coming pages in detail.





## **2.8. Following are the pillars of Real Estate Investment Trusts:-**

### **2.8.1. First Pillar of Real Estate Investment Trust, the Management Company:**

When Real Estate Management Company will apply for the start of the scheme it must have a paid up capital of fifty million rupees and within one month of the registration the capital should be increased to five hundred million rupees. Management structure of Real Estate Investment Trust fuses financial capability, professional expertise and independence.

Its composition allows combination of expertise from all fields which is otherwise not possible in the case of traditional Real Estate Developer. A very welcome development about REIT is the stipulation of fit and proper criteria for promoters, directors; chief executive and key executives'. It means that these persons must possess the criteria of integrity, track record, financial soundness, competence and capability and no conflict of interest. It will save the Real Estate Investment Trust to become dormant like public limited companies where sixty percent companies are dormant because school going and college going students and near and dears become members of board of directors.<sup>191</sup>

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<sup>191</sup> Daily, Business Reorder, 4th February 2008, Syed Shabbar Zaidi, Article, "A Step towards Proper Accounting in the Real Estate Business".

Under the present combination of Real Estate Management Company the services of many experts have been grouped together, Real Estate Management Company can retain minimum 20% and maximum 50% units and it is bound to retain 20% units till the life of the REIT scheme. Real estate Management Company can not appoint a person as its director if the person is director of any other Real Estate Management Company or is on the list of board of directors of ten or more companies. Real estate Management Company can neither manage another REIT scheme nor can take over any other scheme in the presence of one Scheme.<sup>192</sup> Regulations have imposed several obligations on Real Estate Management Company which include vesting assets in the name of trustee, to appoint a quality assurance manager, to appoint a valuer, manage only one scheme in the presence of one scheme, to distribute proceeds on completion of scheme but it is not clear from regulations whether Real Estate Management Company will also dissolve or not<sup>193</sup>. It is also its duty to ensure that value of the real estate is not more than fifty percent value of REIT scheme and to ensure that REIT has fund size of five billion, to ensure that all transactions take place on arms length basis, i.e. it is between parties who do not have a particular or special relationship (For Example Parent and subsidiary Company or landlord and tenant) that may make the price level uncharacteristic of the market or inflated because of an element of special value<sup>194</sup>. It is also its duty to ensure that real estate valuation report is accompanied with invitation document. It is also its duty to get prior approval of the Commission before delegating any function and if it delegates then it will be responsible for all the acts of the delegate as well as remuneration of the delegate.

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<sup>192</sup> Real Estate Investment Trust Regulations, 2008, Section 3, 1<sup>st</sup> Edition, Ideal Publishers, 2008.

<sup>193</sup> Daily, Business Reorder, 4th February 2008, Syed Shabbar Zaidi, Article, "A Step towards Proper Accounting in the Real Estate Business".

<sup>194</sup> The Board of Valuers, Appraisers and Estate Agents, Malaysian Valuation Standards, 2008, p-3.

It is also its responsibility to prepare books of accounts, to intimate the concerned parties about books of accounts, get and publish rating of the scheme, this development helps the lending institutions as well as new investors to know the financial soundness of the company.<sup>195</sup> In the case of German REIT, Management Company is not only allowed to manage the REIT property but it is also allowed to provide real estate related services for third parties like service of management or project development but only via a specific fully owned subsidiary.<sup>196</sup> In Pakistan Real estate Management Company can manage the REIT as contrast to United States, where Real Estate Management Company was not allowed to manage REIT itself.<sup>197</sup> In the case of Malaysia the Real Estate Investment Trust must be managed and administered by a management company approved by the Securities Commission. Management company must be a company involved in the financial services industry in Malaysia or a property development company or a property investment holding company or any other institution which the Securities Commission permit.<sup>198</sup>

#### **2.8.2. Second Pillar of Real Estate Investment Trust, the Trustee:**

There is a segregation of management and safe keeping of assets to prevent conflict of interests. Before the registration of REIT scheme, Real Estate Management Company will apply to the commission to appoint a trustee.<sup>199</sup>

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<sup>195</sup> Real Estate Investment Trust Regulations, 2008, Section 4, 1<sup>st</sup> Edition, Ideal Publishers, 2008.

<sup>196</sup> Ulrich Schacht and Jens Wimschulte, "German Property investment vehicles and the Introduction of G-REITs: an Analysis", Journal of property investment and Finance, 2008, p 232-246.

<sup>197</sup> Phillip S. Scherrer, "Financing and Investing Consideration for REITs", Emerald Group Publishing Limited, 2004, p 78-82.

<sup>198</sup> [www.sc.com.my](http://www.sc.com.my) visited on 10<sup>th</sup> September.

<sup>199</sup> Real Estate Investment Trust Regulations, 2008, Section 12, 1<sup>st</sup> Edition, Ideal Publishers, 2008.

The trustee must be a schedule bank, trust company, or a foreign bank working for last five years, or a depository registered with the commission or a person prescribed by the commission.<sup>200</sup> Trustee acts on behalf of its unit holders to safeguard their interests so it is under obligation to exercise due diligence and vigilance, to keep safe custody of assets, not to hold any unit of the scheme, to deposit money of the scheme in the bank, to ensure the appointment of valuer, not to delegate its functions, to carry out instructions of the Real Estate Management Company with respect to investment and payments, to act as a vigilant and inform any irregularity committed by the Real Estate Management Company to the commission.<sup>201</sup> The trustee was allowed to transfer its duties under the United States model of REIT. An effort was made to adopt a standard of liability for the REIT trustee who is consonant with standards already accepted for business trusts.<sup>202</sup> Trustees are not required by the regulation to delegate or contract out their fiduciary duty to manage the trust itself in contrast with servicing or operating the trust property.<sup>203</sup>

### **2.8.3. Third Pillar of Real Estate Investment Trust, The Units Holders:**

In our country mostly the people are poor and can not purchase properties. By REITs the ownership of property is split up and is managed by an organized corporate sector. As contrast to other companies the investor in the REIT scheme are called unit holders instead of shareholder .The concept of unit holder is a new concept in Pakistan. Units can be offered to the unit holders when the document inviting

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<sup>200</sup> Real Estate Investment Trust Regulations, 2008, Section 14, 1<sup>st</sup> Edition, Ideal Publishers, Lahore, 2008.

<sup>201</sup> Real Estate Investment Trust Regulations, 2008, Section 15, 1<sup>st</sup> Edition, Ideal Publishers Lahore, 2008

<sup>202</sup> J. B. Riggs Parker, "REITs trustees and the independent contractor", Virginia Law Review, 2007, p 1048-1068.

<sup>203</sup> Marin S. Khan, "Taxation of real estate investment trust", Virginia Law Review, 1962, p 1011-1047.

investment is cleared by the commission. More than twenty five percent of the units can be offered to the general public by initial public offering and no investor can purchase more than five percent shares in it. Initial public offering must not exceed fifty five percent and a single investor can invest only up to the maximum limit of ten percent and the face value of each share is ten rupees.<sup>204</sup> In the case of Germany at least fifteen percent of the G-REIT shares must be owned by shareholders and each shareholder can hold only less than three percent of the voting rights of the G-REIT so at least six shareholders are needed to meet this requirement.<sup>205</sup> In the case of United States the REIT is required to have a minimum one hundred shareholders and no more than fifty percent of shares must be held by five or fewer individuals or private foundations during the last half of the taxable year.<sup>206</sup> In the case of Malaysia there is no minimum requirement of shareholders.<sup>207</sup> There is no minimum requirement of shareholders in the case of Australia as well.<sup>208</sup>

## **2.9. Internal Check and Balance in Real Estate Investment Trust:**

The structure of the REIT has been designed in such a way that there is segregation of assets keeping from the management of the REIT scheme. REIT structure has a balance between the investor interest and the development of the real estate sector. Custody of assets by the trustee helps to prevent fraudulent activities by the management company.

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<sup>204</sup> Real Estate Investment Trust Regulations, 2008, Section 34, 1<sup>st</sup> Edition, Ideal Publishers, Lahore, 2008.

<sup>205</sup> Ulrich Schacht and Jens Wimschulte, "German Property Investment Vehicles and the Introduction of G- REITs: an analysis", Journal of Property Investment and Finance, 2008, p232-246.

<sup>206</sup> [www.sec.gov](http://www.sec.gov). visited on 11<sup>th</sup> September 2008

<sup>207</sup> [www.sc.com.my](http://www.sc.com.my). visited on 11<sup>th</sup> September 2008

<sup>208</sup> [www.asic.gov.au](http://www.asic.gov.au). visited on 11<sup>th</sup> September 2008.

Real Estate Management Company is required to hold the units of the scheme from twenty percent to fifty percent for the whole time period of the scheme.<sup>209</sup> This condition of keeping custody of a fix portion of units by the real estate management company will increase the level of confidence of investors and it will also keep the interests of Real Estate Management Company alive during the whole period of the scheme. All bills are required to be countersigned by the quality assurance manager.<sup>210</sup> All transaction will be conducted on an arms length basis and it is a transaction between parties, who do not have a particular or special relationship i.e. parent, and subsidiary companies or landlord and tenant that may make the price level uncharacteristic of the market or inflated because of an element of special value.<sup>211</sup> Real Estate Management Company is bound to maintain a proper record of the accounts of the scheme to reflect the profit and loss and payments and receipts in respect of transactions of the REIT. It is also its duty to send a copy of the accounts to all related and concerned parties.<sup>212</sup>

Rating of the REIT scheme is compulsory in Pakistan and this condition contains an inherent quality of accountability to the shareholders. The rating policy will help the internal as well as external parties including financial institutions to know the financial health of the institution.<sup>213</sup> Unit holders have a check and balance on the management in such a way that the management can not be changed without the approval of the unit holders.<sup>214</sup>

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<sup>209</sup> Real Estate Investment Trust Regulations, 2008, Section 3(2), 1<sup>st</sup> Edition, Ideal Publishers Lahore, 2008

<sup>210</sup> Real Estate Investment Trust Regulations, 2008, Section 4 (1) 1<sup>st</sup> Edition, Ideal Publishers Lahore, 2008.

<sup>211</sup> The Board of Valuers, Appraisers and Estate Agents, Malaysian Valuation Standards, 2008, p-3

<sup>212</sup> Real Estate Investment Trust Regulations, 2008, Section 4(hh), 1<sup>st</sup> Edition, Ideal Publishers, 2008

<sup>213</sup> Ibid, Section 4 (mm).

<sup>214</sup> Ibid, Section 5.

The unique quality of the REIT is that trustee keeps check and balance on the running of Real Estate Management Company and it keeps itself aloof from the scheme by not investing in the scheme. It also makes appointment of a valuer and property manager, and it also ensures that borrowing limits are not exceeded 60% and 30% in case of development REIT and rental REIT scheme respectively. This system of internal check is the secret for the successful working of the REIT.<sup>215</sup>

REIT scheme is required to disclose the fair price of the property and interest of the management company has been attached with it in these two ways. Firstly, Real Estate Management Company is bound to retain units from twenty percent to fifty percent and the system has been designed in such a way that Management Company in order to get a fair level of share of units will reflect the true price of the real estate. Secondly, its system is designed in such a way that its structure per se is unmanageable and non workable if the value of the real estate is other than real values. The aggregate fair value of all such real estate being the net asset value (NAV) will be reflected in the values of units, this is an inbuilt mechanism for proper accounting.<sup>216</sup>

There is convergence of interest of Real Estate Management Company and unit holders. Real Estate Management Company charges fee for providing services. It is better to link the Management fee of the Real Estate Management Company with profit earned by the REIT scheme because higher compensated Manager tends to outperform lesser compensated Managers.<sup>217</sup>

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<sup>215</sup> Real Estate Investment Trust Regulations, 2008, Section 15, 1<sup>st</sup> Edition, Ideal Publishers Lahore, 2008.

<sup>216</sup> Daily, Business Reorder, 4th February 2008, Syed Shabbar Zaidi, Article, "A Step towards Proper Accounting in the Real Estate Business".

<sup>217</sup> James Philpot and Craig Peterson, "Manager Characteristics and Real Estate mutual fund returns, risk an fees", Emerald Group Publishing Company, 2006, p 988-996.

## **2.10. External Check and balance system of Real Estate Investment Trust:**

Under the Companies Ordinance 1984 and REIT regulations 2008 Securities and Exchange Commission of Pakistan has a vast power as well as jurisdiction to control and supervise the working of the non banking finance companies .i.e. Real Estate Management Company as well as the trustee of the REIT scheme. The structure of the REIT has been designed in such a way that intervention of the Commission is necessary on every crucial stage of the scheme. The property on which the scheme is going to be launched must be sanctioned by the commission to ensure that it is clear from each and every encumbrance.<sup>218</sup> Real Estate Management Company can not make invitation to public for subscription of units unless the approval of the Commission is received. Real estate Management Company can not delegate any function of it to any third party without the approval of the commission. The accounts and balance sheet of the scheme are required to be submitted to the commission and stock exchange so no irregularity can be concealed and all external parties i.e. incoming units holders, and financial institutions can get a fair view of the financial health of the REIT scheme. No major change can be made by the management company in the business plan of the REIT scheme without the approval of the Commission.<sup>219</sup>

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<sup>218</sup> Real Estate Investment Trust Regulations, 2008, Section 6, 1<sup>st</sup> Edition, Ideal Publishers, 2008.

<sup>219</sup> Ibid, Section 4 .



No REIT scheme can be launched unless approval of the commission is sought after submitting valuation report, approval of the name, approval of trustee, submission of draft deed and in case of developmental REIT unless the real estate has been purchased in the name of trustee and in case of rental REIT unless the period of lease is more than thirty years and a down payment of twenty five percent has been made.<sup>220</sup> Appointments of trustee and valuer are made by the consent of the commission and if the interest of the unit holders, demand the Commission can remove the above two officers. Proper valuation is the foundation for the successful working of the REIT and if the fair value of the real estate is not reflected the Commission can itself make valuation of the real estate.<sup>221</sup> The Commission has powers to issue directions to Management Company dealing with REIT scheme in public interest and for the interest of unit holders whose interests are likely to be affected and the Real Estate Management Company is bound to follow the directions of the commission.<sup>222</sup> The commission has the power to supersede the board of directors of any Non Banking Finance Company.<sup>223</sup>

Securities and Exchange Commission of Pakistan may at any time by notice require any Non Banking Finance Company to furnish any information within the time specified by the Securities and Exchange Commission of Pakistan; this provision can be very useful to put check on the unfettered powers of the Real Estate Company of the REIT.<sup>224</sup>

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<sup>220</sup> Real Estate Investment Trust Regulations, 2008, Section 7, 1<sup>st</sup> Edition, Ideal Publishers, 2008

<sup>221</sup> Ibid, Section 26.

<sup>222</sup> Companies Ordinance 1984, Section 282-D, Federal law house, 2007.

<sup>223</sup> Ibid, Section 282 F.

<sup>224</sup> Ibid, Section 282-G.

Commission monitors the general financial condition of a Non Banking Finance Company and may order special audit to carry out detailed scrutiny of the accounts of the Non Banking Finance Company.<sup>225</sup> Commission may order inquiry to be made by any person appointed by it into the constitution, working, financial condition and any other affair of the Non Banking Finance Company and the Commission also has the power to issue direction to adopt specific measures.<sup>226</sup> If board of directors or any officer of Real Estate Management Company or any person being a chairman, director or chief executive gives false statement that person can be punished with imprisonment for three years and can be liable to fine of one hundred rupees.<sup>227</sup> Commission can also cancel the registration of REIT scheme if it is against the interest of the unit holders, or unit holders pass special resolution or trustee satisfies the Commission that it should be resolved. Hence as contrast to traditional real estate sector this project has been regulated by the organized corporate sector with strict check and balance by the commission.<sup>228</sup>

## **2.11. Origin of Valuation of Real estate:**

In the nineteenth century, academic economists began the development of the theory of valuation as an applied exercise as contrast to the prior notion of academics with the theory of 'value' as a conceptual construct. Richard T Ely was the first person who declared that land has both private and social benefits so it required substantial societal involvement for the proper pricing and allocation of such resources.<sup>229</sup>

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<sup>225</sup> Companies Ordinance 1984, Section 282-H, Federal law house, 2007.

<sup>226</sup> Ibid, Section 282 I.

<sup>227</sup> Ibid, Section 282-K.

<sup>228</sup> Ibid, Section 10.

<sup>229</sup> Sing Cheong Liu and Mark Wang , “ What We do and Can Do For A Living World Expanding the Role of Real Estate Profession”, Journal of Property Investment and Finance, 2007,p468-481.

The first book named as “Fisher’s principles of Real Estate” was written by Ernest Fisher in 1923 then it was followed by “Elements of Land Economics by Ely and Mohr in 1924. There was a third book on the same subject named as “The Appraisal of Real Estate” by Babcock in 1924.<sup>230</sup>

## **2.12. Valuation Of property Of Real Estate Investment Trusts:**

Throughout the history of the development of the appraisal profession and the procedures it uses, the primary purpose of the typical appraisal assignment has been to produce the best possible value of a single individual property.<sup>231</sup>

This is the most important aspect of the REIT scheme because the success or failure of the REIT will depend a lot on this single factor in Pakistan. Most of the national crises exposed wide variations in valuation approaches that led to vastly different often unrealistic estimates of similar assets and the dangers of fraud or dishonest conduct, the concern to avoid such collapses led to the emergence of valuation standards firstly, on a national and then on an international level. International valuation standards will integrate the cross border method of valuation.<sup>232</sup>

In Pakistan valuation of the property is done under the Land Acquisition Act of 1894 by the very incompetent persons so the calculation of market value of land has become a very elusive exercise and it has led to numerous litigation and the procedure of law which was enacted to acquire land for real estate sector has become the major obstacle in the development of real estate sector. Actually the calculation of market value which is being performed under the Land Acquisition Act was not intended by the legislatures of the Act. The purpose of the Act was to acquire cheap

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<sup>230</sup> Barry Gilbertson and Duncan Preston, “Practice Briefing a Vision for Valuation”, Journal of Property Investment and Finance, 2005, p123-140.

<sup>231</sup> David Geltner, “The use of appraisals in portfolio valuation and index construction”, Journal of property valuation and investment, 1997, p 423-447.

<sup>232</sup> Barry Gilbertson and Duncan Preston, “Practice Briefing a Vision for Valuation”, Journal of Property investment and finance, 2005, p 123-140.

land for the Government and companies. In Pakistan there is neither a single qualified valuer nor a single institution for providing qualification about valuation. Very interesting to note in Pakistan valuation is supposed to be conducted by the patwaris, engineers and the experts of town planning. United Kingdom developed Royal Institute of Chartered Surveyors (RICS) which initially started as an association of literally surveyors in 1863 and in United States of America the National Association of Realtors was organized in 1908 in Chicago. Now the national Association of Real Estate Exchange is doing appraisal of Real Estate in United States of America.

### **2.13 Reasons for Unfair Valuation in Pakistan:**

Real estate is a very important segment of any economy but for Pakistan the importance of it has increased many folds due to immense need of housing units currently there was a backlog of 270, 000 housing units each year.<sup>233</sup> In Pakistan the values of real estate are grossly reduced up to 900 percent of the actual value.<sup>234</sup>

In Pakistan prices of real estate are grossly reduced due to a number of reasons. The first reason is that there is no method of price discovery. Valuation of the property is done by uneducated persons under the Land Acquisition Act 1894 which has miserably failed to determine the market value and has lead to litigations.

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<sup>233</sup> National Housing policy 2001, issued by Ministry of Housing and Works, p1.

<sup>234</sup> Salman Sheikh, 31th January 2008, Presentation, "Real Estate Investment Trust".

Second reason is very high transaction cost of real estate transaction. From the following figures this thing is evident.

Items	Description	Percentage	Base
1	Registration Fee	1%	Sale deed Value
2	Stump duty	2%	Sale deed Value
3	Transfer Fee	1%	Sale deed Value
4	CVT	2%	Sale deed Value
5	Commercialization Charges	20%	Sale deed Value
Total		26%	

The above mentioned rates will apply if a real estate transaction is made in the territory of Lahore. Due to high rates of taxes no body likes to make a transaction on the fair value of the land. Government exchequer is losing a high amount of revenues. In the field of valuation of lands the other countries have developed to such an extent that in China computer assisted mass appraisal system is working to establish benchmark values of land, land needed for housing, office, retail, and factory.<sup>235</sup>

But as contrast to it in our country the land record system is still maintained manually and is full of errors. Patwari is the king; he can change the nature of land from agriculture to commercial over night. As real estate is a provincial subject and provinces exercise complete authority over it and the provinces have exempted the capital gain tax so due to this exemption greedy investors have been investing in the real estate to earn abnormal profits by way of speculation.

Under these circumstances no rational investor would like to make a transaction on fair value because the tax rates are very high and there is no penalty for

<sup>235</sup> Sing Cheong Liu and Mark Wang , “ What We do and Can Do For A Living World Expanding the Role of Real Estate Profession”, Journal of Property Investment and Finance,2007,p 468-481.

undervaluation and Government is playing the role of a silent spectator to see the loss being done to the exchequer. Imposition of high rate of taxes on the Real Estate transition have made the unfair valuation of land a very attractive practice and very interesting to note that Government being aware of the above practice is playing no role.

#### **2.14. Market Value Basis for Valuation for Real Estate Investment Trust:**

In the case of REIT the basis of the valuation of land shall be the market value based on the realistic, relevant and adequately assumptions to be stated in the valuation report.<sup>236</sup> Market value has been defined as the estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arms length transaction after proper marketing wherein the parties had each acted knowingly, prudently and without compulsion.<sup>237</sup>

Estimated amount refers to a price expressed in terms of money payable for the property in an arms length market transaction. A property should exchange means that it is a price at which the market expects a transaction to take place rather than a predetermined amount. On the date of valuation means the value of the property on the particular day as the market value changes with the change in time. The buyer of this property must not be compelled to buy as he is neither an over eager nor a forced seller. It is also assumed that the Parties had acted knowingly and prudently and both the willing buyer and the willing seller are reasonably informed about the nature and characteristics of the property and its actual and potential uses.

But in Pakistan there is neither a single qualified valuer nor an institution to provide qualification on this subject. These conditions are compulsory to act as a

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<sup>236</sup> Daily, Dawn, 9th March 2008, Mohamad Iqbal Patel, Article, "REITs Documenting the Real Estate Business".

<sup>237</sup> Appraisal Institute, "International Valuation Standards", 8th Edition, 2007, p-76.

valuer in Malaysia i.e. necessary qualification, appropriate experience, independence, no conflict of interest and other conditions as imposed by the client or their advisors or users of the valuation reports or certifications.<sup>238</sup>

### **2.15 .Qualifications of a Valuer:**

In the case of REIT the valuation of land on the market value is compulsory but in the case of Pakistan there is not a single institution to spread the education of valuation. Professional bodies have a crucial role to play in spreading education of valuation. It means developing faculties in the universities to educate new valuers. Professional education, training and standards are the key for giving more scope and expansion to valuation services into new geographical markets.<sup>239</sup> A skilled valuer must have an academic professional qualification, membership of a professional body, practical experience and compliance with any other state regulations governing the right to practice valuation.<sup>240</sup>

In the case of Malaysia a valuer must possess necessary qualification, appropriate experience, independence, no conflict of interest and he must meet any other conditions as imposed or required by the client or advisers.<sup>241</sup>

### **2.16 .Importance OF Valuation of Land:**

The process of valuation is not only confined to the valuation of land,

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<sup>238</sup> The Board of Valuers, Appraisers and Estate Agents, Malaysia, Malaysian Valuation Standard, p-3.

<sup>239</sup> Barry Gilbertson and Duncan Preston, "Practice Briefing a Vision for Valuation", Journal of Property Investment and Finance, 2005, p123-140.

<sup>240</sup> Royal Institute of Chartered Surveys, "International Valuation Standards", 8th Edition, 2007, p- 55.

<sup>241</sup> The Board of Valuers, Appraisers and Estate Agents, Malaysia, Malaysian Valuation Standard, 2007, p-17.

globalization and fast pace growth in the real estate sector has increased the importance of valuation many folds. Valuation is necessary for banks that use property as collateral for loans, valuation of assets on regular basis is necessary to save the company from being taken over, for house buyers, future pensioners whose savings are invested by funds and whole economies that depend on stable banking system.<sup>242</sup>

### **2.17 .Approaches for Determination of Market Value:**

Following are the three approaches to determine the market value:

#### **(a) .The Cost Approach for the Valuation of Land:**

This approach is used in most number of cases for the valuation of land. The cost approach is based on the logic that a buyer would consider purchasing a parcel of land and constructing a new building instead of buying an existing building.<sup>243</sup> A prudent investor takes into account two important factors .i.e. replacement cost and reproduction cost. Reproduction is the estimated cost to construct as of the effective appraisal date, an exact duplicate of the building being appraised by using the same material, construction standard, design layout and quality of workmanship. Replacement cost is the estimated cost to construct as of the effective appraisal date a building with utility equivalent to the building being appraised by using contemporary materials, standard, design and layout.<sup>244</sup>

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<sup>242</sup> Barry Gilbertson and Duncan Preston, "Practice Briefing a Vision for Valuation", Journal of Property Investment and Finance, 2005, p123-140.

<sup>243</sup> Mork R. Ratterman , "The Students Hand Book To The Appraisal of Real Estate", Appraisal institute ,5<sup>th</sup> Edition , 2007, P-167

<sup>244</sup> Appraisal Institute, "The Appraisal of Real Estate", 12th Edition, 2007, P-357.



While calculating cost value, land value entrepreneurial profits are added. Entrepreneurial profits are those which a developer expects to receive and for this purpose the depreciation costs are excluded from the total value of lands.<sup>245</sup> The cost approach is more persuasive than other approaches when market comparisons are difficult to make. Cost approach has fallen out of fashion because depreciation theory is still largely adhoc and even if correctly developed, is poorly understood by the majority of professional appraisers.<sup>246</sup>

#### **2.18(b) .The Sales Comparison Approach for the Valuation of Land:**

The sales comparison approach is often called the historical approach to value. This refers to the analysis of historical sales of similar real estate which is the basis of this approach.<sup>247</sup> To apply this method the valuer researches the competitive market for information on sale transactions, listings and offers to purchase or sell properties that are similar to the subject property. Then the valuer verifies the information by confirming that the data obtained is factually accurate. Comparative analysis of each unit is made by selecting relevant units of comparison. Then difference between comparable sale properties and the subject property is made and the price of each sale is adjusted to reflect how it differs from the subject property or eliminates that property as comparable. As a last step the reconciliation of various values of land is made.

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<sup>245</sup> Mork R. Ratterman , "The Students Hand Book To The Appraisal of Real Estate", Appraisal institute ,5<sup>th</sup> Edition ,2007, P-173

<sup>246</sup> Kery D. Vandell, "Expanding the Academic Discipline of Real Estate Valuation", Journal of Property Investment and Finance, 2007, p 427-443.

<sup>247</sup> Ibid, P-205.

The first level of analysis pertains to the derivation of a value indication from the adjusted prices of two or more comparables expressed in terms of a single unit of comparison and the second level of analysis is required when the appraiser derives two or more value indications expressed in different units of comparison.<sup>248</sup> This approach is useful when some market activity is going on even when typical buyers base their decisions on the potential income of a property.

### **2.18(c) .The Income Capitalization Approach for Valuation of Land:**

In the income capitalization approach, appraisers convert periodic expected income into a lump sum capital value today in other words appraisers the amount a person would pay today for an anticipated income each year in the future plus the reversion .The income capitalization approach is limited when the income estimates are weak, when sales data is not available to extract or confirm capitalization rates, and when buyers consider other issues more than the property's income potential.<sup>249</sup> In the income capitalization approach an appraiser analyzes a property's capacity to generate future benefits and capitalizes the income into an indication of present value. The principle of anticipation is fundamental to the approach. Techniques and procedures from this approach are used to analyze comparable sales data and to measure obsolescence in the cost approach .The income capitalization approach supports two basic methodologies: direct capitalization, which uses the relationship of one year's income to conclude a value, and yield capitalization, which considers a series of cash flows over time together with any reversion value or resale proceeds..<sup>250</sup>

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<sup>248</sup> Appraisal Institute, "The Appraisal of Real Estate", 12th Edition, 2007, P-428.

<sup>249</sup> Mork R. Ratterman, "The Students Hard Book to the Appraisal of Real Estate", 5th Edition ,Appraisal institute, 2007 , p-249

<sup>250</sup> Ibid , page-493.

The income capitalization approach is applicable when the income potential of the property is a primary consideration of buyers. A single family home buyer typically does not consider the property's income potential when making a purchase decision. This approach is not used when income estimates are weak, when sales data is not available and when the buyers consider other issues more than the property's income potential.

#### **2.18 .Future of Valuation of Land in Pakistan:**

In the case of Pakistan there is neither any condition of qualification for doing valuation nor any institution to provide the education of valuation. In the case of United States of America after a two to three year experience requirement anybody who has passed the basic state test can work as a certified appraiser.<sup>251</sup> In case of United Kingdom there is Royal Institute of Chartered Surveys lead by experts which trained on a broader university education in property and valuation as a discipline tends to be more highly regarded by clients and institutions.<sup>252</sup> As contrast to Pakistan the rest of the world has developed to such an extent that in many countries the process of drawing up a register of valuation based land taxes is going on.<sup>253</sup> It has two main practical implications for the future direction of appraisal and development of indices of commercial property values.

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<sup>251</sup> Barry Gilbertson and Duncan Preston, "Practice Briefing a Vision for Valuation", *Journal of Property Investment and Finance* 2005, p 123-140.

<sup>252</sup> Wyatt. P, "An Investigation of the Nature OF the Valuation Service Offered to Business Occupiers", *Journal of Property and Finance*, 2001, p 100-127.

<sup>253</sup> Ibid, P 123-140.

Firstly, appraisal procedures will continue to focus on individual property valuation but appraisers in conducting such valuation, will make increasing use of publicly traded property company share value information. Secondly, aggregate level valuation and index development for measuring commercial property investment procedure will drift toward regression by keeping appraisal based construction dormant.<sup>254</sup> This brave new world of real estate valuation provides considerable promise of finally treating real estate not as the poor orphan stepchild relative to other economic goods and financial assets but as a full fledged member of the club.<sup>255</sup>

In case of Pakistan valuation of the property is made by the land revenue officer, Patwari, is the king and there is no computerized land record system. The land record depends on the sweet will of the Patwari, keeping the status quo is in reality going backwards. It is need of the hour to promote the qualification of valuer as a discipline in the universities and make the whole land record computerized.

## **2.19 .Tax Treatment of Real Estate Investment Trusts:**

The Real Estate Investment Trust has been provided tax exemption if 90 percent of the income is distributed among the unit holders. REIT income is exempted from tax but the dividends to be paid to the unit holders are taxable.<sup>256</sup> Real estate is a residuary matter as it falls neither in federal legislative list nor in the concurrent list so it is the exclusive domain of the provinces and the provinces have exempted the capital gain from the tax.<sup>257</sup>

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<sup>254</sup> David Geltner, "Academic Papers the Use Of appraisals in portfolio valuation and index construction", *Journal of Property and Investment*, 1997, p 423-447.

<sup>255</sup> Kerry D. Vandell, "Expanding the Academic Discipline of Real Estate Valuation", *Journal of Property Investment and Finance*, 2007, p427-443.

<sup>256</sup> Daily, Dawn, 18th February 2008, Sher Baz Khan, Article, "Real Estate Trusts In Uncharted Territory".

<sup>257</sup> Constitution of Islamic Republic of Pakistan 1973, 4th schedule, 3rd Edition, Pakistan law times, 1973.

In Pakistan the prices of real estate are lowered up to 900% of the real values of the lands.<sup>258</sup> Unit holders are required to pay tax on the dividends of Real Estate Investment Trust. This payment of the tax is a disadvantage for unit holders because by investing in the direct property they can avoid this tax as it is exempted by the provinces. This matter requires consideration from an economic viewpoint rather than through legislative eyes of fiscal and corporate authorities. This disincentive effectively means that gain on disposal of real estate is being indirectly taxed by way of dividend. If it would have been any direct sale of real estate then there had been no such tax. Conducive development of Real Estate Investment Trust demands such disincentive to be removed.<sup>259</sup>

The federal Government has no right to tax gains on the sale of immovable property. It is right of the provinces.<sup>260</sup> So, the advantage given to the income of the REIT has been taken back by imposing tax on dividends. An incentive given to the REITs is that a property sold to the REIT is exempt from tax till 2010.<sup>261</sup> The above incentive is no incentive as the federal Government has no right to impose tax on the sale of immovable property except when money is received from the sale of property by sale and purchase business and it is a question of fact which is very hard to be proved. It is reiterated that this aspect needs an economic dynamics rather than a legislative view. For providing an economic level playing field such dividends are not to be subject to tax.<sup>262</sup>

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<sup>258</sup> Salman Sheikh, 31th January 2008, Presentation, "Real Estate Investment Trust".

<sup>259</sup> Daily, Business Recorder, 4th February 2008, Syed Shabbar Zaidi, Article, "A Step towards Proper Accounting in the Real Estate Business".

<sup>260</sup> Daily, Dawn, 9<sup>th</sup> March, 2008, M. Iqbal Patel, Article, "REITs Documenting Real Estate Business".

<sup>261</sup> Salman Sheikh, 31th January 2008, Presentation, "Real Estate Investment Trust".

<sup>262</sup> Daily Business Recorder, 4th February 2008, Syed Shabbar Zaidi, Article, "A Step towards Proper Accounting in the Real Estate Business".

In Malaysia REITs are not required to make any minimum distribution of income but REITs will not be taxed on their income if at least 90% of their total income for the year is distributed to its investors. There is no requirement to distribute capital gains every year.<sup>263</sup>In U.S.A a REIT is required to pay 90% of the income to its investors and if REIT declares a dividend in the last quarter of the year but pays it by the end of January the dividend distribution is treated as if it had occurred the previous December. Tax (excise tax) at the rate of 4% is imposed if the REIT fails to distribute at least 85% of its income within the year the income is generated.<sup>264</sup>

## **2.20. Borrowing Limitations on Real Estate Investment Trusts:**

Developmental REIT can borrow money upto a maximum limit of sixty percent of the REIT fund and the rental REIT can borrow up to the limit of thirty percent of the fund<sup>265</sup>REITs in Pakistan are bound not to exceed the borrowing limit and this condition is a good safety measure against the insolvency and bankruptcy. As contrast to Pakistan in the case of America there is no upper limit on the borrowing power of the REIT in U.S.A<sup>266</sup>.

The unfetter borrowing by the U.S REIT is because U.S Government believes in independent economy with no intervention on the part of U.S Government and the forces of demand and supply make the future course. As contrast to Pakistan in U.S REITs are required to pay 95% of their income to investors and this condition limits their ability to use internal funds to finance new investment. This limitation forces REITs to seek external financing for new Projects.<sup>267</sup>

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<sup>263</sup> [www.sc.com.my](http://www.sc.com.my), visited on 1<sup>st</sup> August 2008.

<sup>264</sup> [www.sec.gov](http://www.sec.gov), visited on 2<sup>nd</sup> August 2008.

<sup>265</sup> Real Estate Investment Trust Regulations 2008, Section 28, 1<sup>st</sup> Edition, Ideal Publishers Lahore, 2008

<sup>266</sup> Ibid

<sup>267</sup> H. Swint Friday, Shawn D. Howton, and Shelly W. How ton, "Anomalous Evidence on Operating Performance Following Seasoned Equity Offerings The Case of REITs", Journal of Financial Management, 2000, p 76-87.

The process of this unfettered borrowing has not only shaken the economy of the U.S.A but also has affected the whole world. Unbridled borrowing and lending by the U.S households and banks respectively enabled the poorest Americans to have their own houses but after down payment when the remaining amounts were not paid to American banks, these banks foreclosed the houses and this lead to hundreds and thousands of foreclosures of houses and properties and the houses taken over from the defaulters were dumped on the market. This situation lead to more defaults so a vicious circle began and shortage of currency took place and now illiquidity wave is in full swing in the international financial markets. The present restriction of sixty percent and thirty percent borrowing in the case of Pakistani model of REIT is a wise step by the Securities and Exchange Commission of Pakistan. In the case of Hong Kong the borrowing limit is up to the level of forty five percent of the gross asset value.<sup>268</sup> In the case of Malaysian model of REIT borrowing can not exceed thirty five percent of the net assets of the fund unless securities commission grants approval for the excess borrowing.<sup>269</sup> Borrowing strategy also varies from the nature of the activity undertaken by one company to other companies and firms with liquid assets use more leverage and shorter maturities.<sup>270</sup>

## **2.21 .Real Estate Investment Trust is the Best Hedge against Inflation:**

For a developing country like Pakistan inflation needs to be stabilized in order to ensure sustainable growth as well as macroeconomic stability.<sup>271</sup> Due to declining performance in other sectors such as manufacturing, and processing, the power brokers and capitalists focused on land transactions as an enterprise.<sup>272</sup>

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<sup>268</sup> [www.sfc.hk](http://www.sfc.hk), visited on 16<sup>th</sup> August 2008.

<sup>269</sup> [www.sc.com.my](http://www.sc.com.my), visited on 1<sup>st</sup> August 2008.

<sup>270</sup> Erasmo Giambona, John P. Harding and C.F. Sirmans, "Explaining The Variation in REIT Capital Structure: The Role of Asset Liquidation Value", *Journal of Real Estate Economics*, 2008, p111-137.

<sup>271</sup> Pakistan Economic Survey 2007-2008, issued by Ministry of Finance, p 117.

<sup>272</sup> Daily, The News, 16<sup>th</sup> December 2007, Dr. Noman Ahmad, Article, "Nothing For The Masses".

Another important factor that made investment in the real estate sector very attractive was the decision of the central bank to lower the interest rates to of 3% from 22%.<sup>273</sup>

With hyper inflation and depreciation of Pakistani currency REIT is the ideal choice for investors. If money is invested in the bank for a fixed period of time the return an investor will receive after one year will be neutralized due to the inflation and the depreciation of currency.

Now the position of inflation in Pakistan can be seen from the following chart.

Year	Inflation %
1998-99	5.7
2002-03	3.1
2003-04	9.3
2006-7	7.8
2007-08	10.3

**Source:** Pakistan Economic Survey 2007-08

There is a positive relation between stock returns and future inflation rate charges and a positive relation between stock returns and future interest rate charges as well.<sup>274</sup>

Size of the REIT also plays an important role in the decision to hedge and firms with large size hedge more as compare to firms with smaller size.<sup>275</sup>

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<sup>273</sup> Daily, Dawn, 29th December 2007, Zahid Iqbal, Article, "Pakistan: the housing market thrives as more Pakistani capital returns home".

<sup>274</sup> Sheridan Titman and Arthur Warga, "Stock Returns as Predictors of Interest Rates and Inflation", The Journal of Financial and Qualitative Analysis, 1989, p 47-58.

<sup>275</sup> Mine Ertugrul. Ozcan Sezer.C.Sirmans, "Financial Leverage, CEO Compensation, and Corporate Hedge :Evidence From the Reaal Estate Investment Trusts", University of Toledo Law Review, 2008, p 53-80.



If money is invested in the REIT like bank investment the unit holders will get return on units plus benefit due to the appreciation in the prices of real estate owned by the REIT scheme. Both REITs and stock are affected by interest rates respectively indirectly and directly but the effect appears to be less on REIT than on the stock.<sup>276</sup>

### **2.23 .Legal Form of REIT and Reason for Closed Ended REIT in Pakistan:**

In Pakistan Real Estate Investment Trust is a mutual fund that invests in properties and derives income from such investment for unit holders. The reason for trust type as contrast to corporate type is that trust type avoids comprehensive legal and regulatory requirement that a company faces.<sup>277</sup> REITs in Pakistan are closed ended because the management of the REIT is bound to keep twenty to fifty percent units till the life of the REIT.<sup>278</sup> REIT in Hong Kong is of trust type.<sup>279</sup> REITs in Malaysia are also of trust type<sup>280</sup>. In Japan REIT is both trust as well as corporate type.<sup>281</sup> Globally REITs are open ended but in case of Pakistan REITs are closed ended. A deliberate attempt has been made to make convergence of interest of unit holders and Management Company. The open ended REIT provides more flexibility to REIT sponsors and managers to create innovative product. In Pakistan later on open ended REITs will be allowed.<sup>282</sup>

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<sup>276</sup> Chiang Yat- Hung ,So Chung-Kei Joinkey and Tang Bo Sin, "Time Varying Performance of four Asia Pacific REITs", Journal of Property Investment and Finance,2008,p210-231.

<sup>277</sup> Salman Sheikh,31th January 2008,Presentation, "Real Estate Investment Trust".

<sup>278</sup> Real Estate Investment Trusts Regulations 2008, Section 3, 1st Edition, Ideal Publishers, 2008.

<sup>279</sup> [www.sfc.hk](http://www.sfc.hk),visited on 16<sup>th</sup> August 2008

<sup>280</sup> [www.sc.com.my](http://www.sc.com.my),visited on 1<sup>st</sup> August 2008.

<sup>281</sup> Ulrich Schacht an Jens Wimschutle, "German property investment vehicles and the introduction of G-REITs;an analysis", Journal of property investment and finance,2008,p232-246.

<sup>282</sup> Ibid.

## 2.24 . Minimum Initial Capital Requirement:

In Pakistan the minimum requirement to start REIT is fifty million rupees and within one month Real Estate Management Company is bound to raise it to the limit of five hundred million rupees. Under the Pakistani environment this condition is very high and in disregard of the ground realities of Pakistan. This strict condition of huge capital along with high transaction costs on the fair values of the real estate will increase the cost of REIT exceptionally high as contrast to real estate business in the traditional real estate sector where prices of real estate are lowered up to the limit of 900 percent<sup>283</sup>. There is no check on speculation of real estate as capital gain tax is already exempted by the provinces. In the case of Malaysian REIT the minimum limit for REIT is hundred million Malaysian ringet<sup>284</sup>. There is no minimum capital limit for REIT in U.S.A.<sup>285</sup> and in the case of Japanese REIT the minimum limit for REIT is one hundred million yen.<sup>286</sup>

Comparatively speaking Pakistan is the least developed country with respect to other countries but the minimum capital requirement for REIT is very high plus the connecting factors are very unfavorable, so this condition should be reviewed.

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<sup>283</sup> Salman Sheikh, 31st January 2008, Presentation, "Real Estate Investment Trust".

<sup>284</sup> [www.sc.com.my](http://www.sc.com.my), visited on 1<sup>st</sup> August 2008.

<sup>285</sup> [www.sec.gov](http://www.sec.gov), visited on 2<sup>nd</sup> August 2008

<sup>286</sup> Ibid, p232-246

## **2.25 .Condition OF Listing of Real Estate Investment Trust on Stock Exchange:**

In Pakistan initially REIT has been allowed to be launched in the cities of Islamabad, Karachi, Rawalpindi, Lahore, Peshawar and Quetta.<sup>287</sup> When REIT was launched in U.S the investor was neither familiar with it nor had trust over it. Under this situation sponsors of unlisted REITs reached retail investors through existing broker dealer channel.<sup>288</sup> Real estate is the most illiquid asset and in order to counter this problem the units of the REIT scheme are tradable on one of the stock exchanges in Pakistan i.e. Lahore, Karachi or Islamabad. There is a transparent and efficient exit mechanism through financial markets. The listing requirement will impose more disclosure obligations on REIT and it will create confidence of the investors. This is a welcome step as Pakistan has not a good track record in real estate sector there is a history of scandals in the real estate sector.<sup>289</sup> U.S.A has a free kind of financial market with no or very less control on it by the U.S Government and there is no requirement of listing of REIT on the stock exchange.<sup>290</sup> REITs that are advertised or offered to public in Hong Kong must be listed on the Hong Kong stock exchange.<sup>291</sup> There is no requirement for listing of REIT in the case of Malaysian model of REIT as well.<sup>292</sup>

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<sup>287</sup> [www.secp.gov.pk](http://www.secp.gov.pk) visited on 18<sup>th</sup> August 2008.

<sup>288</sup> John Corgel and Scott Gibson, "Real estate private equity: the case of U. S unlisted REITs", *Journal of Property Investment and Finance*, 2008, p 132-150.

<sup>289</sup> Salman Sheikh, 31<sup>st</sup> January 2008, Presentation, "Real Estate Investment Trust".

<sup>290</sup> [www.sec.gov](http://www.sec.gov) visited on 2<sup>nd</sup> August 2008

<sup>291</sup> [www.sfc.hk](http://www.sfc.hk) visited on 16<sup>th</sup> August 2008

<sup>292</sup> [www.sc.com.my](http://www.sc.com.my) visited on 1<sup>st</sup> August 2008.

## **2.26. Application OF International Financial Reporting Standards:**

Accounting information developed within a business is made available to management. Supplying general purpose financial information about a company to people outside the organization is called financial reporting.<sup>293</sup> In Pakistan the prices of real estate are reduced up to the limit of 900%.<sup>294</sup> The REIT regulations stipulate to determine the market value of the real estate on market values. International Accounting standards have applied on the REIT financial reporting system since first January 2005. The European Union has already made it compulsory for all listed companies in Europe to prepare their accounts in line with International Financial Reporting Standard (IFRS) by January 2005. IFRS are also being adopted in Australia, China, Russia, Thailand and parts of the Middle East and Africa.<sup>295</sup> The purpose of these standards is to prescribe the accounting treatment for investment property and related disclosure requirements. These standards shall be applied in the recognition, measurement and disclosure of investment property. Investment property includes land or a building or part of a building or both held by the owner or by the lessee under a finance lease to earn rentals profits or profits as a result of capital appreciation or both rather than for use in the production or supply of goods or services or for administrative purposes or sale in the ordinary course of business. Owned property is property held for use in the production or supply of goods or services or for administrative purposes.<sup>296</sup>

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<sup>293</sup> Robert F. Meigs and Water B. Meigs, "Accounting the Basis for the Business Decisions'9<sup>th</sup> Edition, Little Brown and Company Limited Publishers, 9<sup>th</sup> Edition, 2006, p-6.

<sup>294</sup> Salman Sheikh, 31<sup>th</sup> January 2008, Presentation, "Real Estate Investment Trust".

<sup>295</sup> Barry Gilbertson and Duncan Preston, "Practice Briefing a Vision for Valuation", *Journal of Property Investment and Finance*, 23, 2005, p 123-140.

<sup>296</sup> International Accounting Standard 40, Section 5, International Accounting Standard Board, 2008.

Currently the practice in accounting system of Pakistan is to follow the cost price for the properties but a departure from this practice has been made and valuation of investment properties in the case of REIT will be made according to the fair value. Fair value is the amount for which an asset could be exchanged between knowledgeable willing parties in an arms length transaction. Investors and creditors compare the financial statements of many different companies before dealing with the company. For such comparisons to be valid the financial statements of these different companies must be reasonably comparable by the Application of International Accounting Standards. Permissible accounting practices concerning how to measure economic activity, the time when to measure and record it, the disclosures about it, and the manner of preparation and presentation of information in financial statements is called the generally accepted accounting principles.<sup>297</sup> Another characteristic of REIT is to conduct REIT transactions in a fair manner. In the case of REIT the transactions with the related parties are conducted on an arms length basis related parties includes, Real Estate Management Company, the trustee, the valuer and quality assurance manager and property manager.<sup>298</sup> This list of related parties is not exhaustive but inclusive and this list has been expanded by adding parties with joint control over the entity, joint venture and post employment benefit plans for the benefit of employees of an entity.<sup>299</sup> The above mentioned parties are required to make disclosure of interest before making any transaction with REIT. The purpose of related party disclosures are that in the presence of these the entity's financial and operating policies may be affected and a related party relationship could have an effect on the profit or loss and financial position of an entity.

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<sup>297</sup> Syed Aftab Haider , "Global Accounting Standards Not Relevant To Pakistan",PTCL,2003,p 154-157.

<sup>298</sup> Real Estate Investment Trust Regulations 2008, Section 30, 1st Edition, Ideal Publishers, 2008.

<sup>299</sup> International Accounting Standard Board, "International Accounting Standard 24", Section 8, 2008.

To produce accounting information in a similar format the financial statements are prepared in conformity with generally accepted accounting principles and the assets are valued on the basis of cost value.<sup>300</sup> When the assets will be valued on the basis of market value in case of REIT the comparability problem will arise for the new investors. Sharply varying customs and legislation in different real estate markets have led to various interpretation issues in practice and International Accounting Standard 40 will help to provide a level playing field for all problems of such kind.<sup>301</sup> As contrast to traditional real estate sector where the prices are reduced up to the limit of 900 percent,<sup>302</sup> when the real estate will be reflected on fair value and tax at the rate of 26 % will apply, the REIT business will become very costly. All other connecting factors i.e. land record system etc are also unfavorable, so under these circumstances the REIT must not switch over to market value of land. Once REIT will switch over to market value then valuation of land on the basis of cost value will not be permissible but vice versa is allowed. For a short period of time Securities and Exchange Commission of Pakistan should allow to make valuation of land on the basis of cost value of land. The US, Canada and South Korea still record their investment properties at cost and this represents US 355 billion \$by market capitalization or 58.8 %of the REIT market.<sup>303</sup>

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<sup>300</sup> Robert F. Meigs and Water B. Meigs, "Accounting the Basis for the Business Decisions", Little Brown and Company Limited Publishers, 9th Edition, 2006, p-7.

<sup>301</sup> Ernst & Young, "Real Estate IFRS Financial Statement Survey 2007,"p 6.

<sup>302</sup> Sulman Sheikh, 31<sup>st</sup> Jan, 2008, Presentation, "Real Estate Investment Trust".

<sup>303</sup> Riding Out the Storm Global Real Estate Trust Report 2008,p-46.

**Recommendations:**

There is a huge potential in the real estate sector of Pakistan .These recommendations have been made for the improvement of the real estate sector of Pakistan.

**3.1. Recommendations of General Nature for Improvement of Real Estate Sector of Pakistan:**

The real estate laws must be applied strictly and all the provincial Government s must ensure their strict application in all districts through the regulatory mechanism. Attention must be given to the regulation of new as well as old housing societies.

**3.1.1 Clearance Report by Every District.**

In order to stop illegal practice each and every district must give a report, that no unapproved housing scheme exists in its area and laws are being implemented strictly.

**3.1.2 Issuance of Notices to Law Breakers.**

All old schemes should be given a three months period to fulfill the legal requirements otherwise legal proceedings should be taken against the law breakers.

**3.1.3 Regulation under the Regulatory Laws.**

The regulatory laws should regulate standardization of application forms, formats, allotment letters, title documents, sale deeds, and sale of lease.

#### **3.1.4 Introduction of Financial Consultant.**

The housing sector's regulatory and monitoring mechanism should have a financial consultant in the scrutiny committee and for this purpose the composition of the scrutiny committee should be changed. The purpose of this amendment is to check the feasibility of a business model by exploiting all finance generating avenues.

#### **3.1.5 Introduction of Environmentalist.**

A person from the Ministry of Environment must be included in the scrutiny committee and initial environment assessment should be compulsory for every housing scheme .The purpose of this amendment is to stop the development at the cost of environment.

#### **3.1.6 Fair Distribution of Plots.**

Regulatory and monitoring law must ensure that the plots of the members are not distributed due to adverse possession. The purpose of this recommendation is to avoid frivolous litigation and preserve the prestige of the housing society.

#### **3.1.7 Reformation of Tax Laws.**

Income tax laws should be helpful to treat housing schemes at par with other industry because of its value addition activity, forty industries are engaged in by it and increasing employment opportunity, both skilled and unskilled labour is engaged, for the general public. Tax laws should be friendly towards housing developers and strict towards speculators.



### **3.1.8 Fair Mode of Land Transactions.**

All transactions of land should be entered in the deeds of transaction on the basis of certified copies of fard issued by District Government. The purpose of this development is to promote transparency in the land transactions.

### **3.1.9. Check on the Escalating Prices of Lands.**

The housing schemes should not increase the prices of the land and keep the prices of land as approved originally. However development charges should be enhanced, but it should be done through resolutions passed by general body meeting in case of cooperative housing societies and by the regulatory authority in case of private developers.

### **3.1.10 Promotion of Transparency in the Land Transactions.**

All Transactions in connection with sale and purchase of plots by the society or by individual members should be made through cheques and pay orders or bank draft only and the use of cash should be discouraged.

### **3.1.11 Check on Double sale of Plots.**

The plot should be allotted to the members only after on ground demarcation of land and this development will help to stop the practice of sale of one plot more than one times. Each and every sale and purchase of plot must be approved by a decision in Board of Directors meeting.

### **3.1.12 Check against Monopolization.**

The term of the Board of Directors should be restricted to two times only and the period of each term should not be more than 2 years.

### **3.1.13 Protection of the Right of Allotment of Plots.**

The Housing Society should not cancel the allotment of plot of any member except by stating the reason and approval of the Board of Directors. Any such action should be intimated to the allottee through a registered letter and for this purpose Section 32 of the Cooperative Rules should be amended for cancellation of plot without approval of the registrar.

### **3.1.14 Protection of the Rights of the Defaulters.**

If the property is foreclosed due to non payment of dues, the property should be auctioned in a transparent process in which all persons should be allowed to bid in the presence of an observer appointed by the court. The housing society has a claim to its dues but it should be to the extent of the amount of debt .The present practice is that if default is committed by any member the possession of the plot is taken over by the housing society and in this way the housing societies are taking more than their claims. Even defaulters have rights. The provision of secure property rights is the function of the Government. Without these rights the people cannot enjoy property rights.

### **3.1.15 Protection against Cancellation of Plots.**

Against cancellation order, each allottee must be given a right of representation to the Board of Directors and right of approval to the regulatory and monitoring authorities. In case the cancellation of allotment is due to non-payment of price of land then at least one opportunity must be given to the allottee.

### **3.1.16 Allotment of New Plots at Prevailing Rates**

If the cancellation of the plots is made then these plots should be allotted on prevailing rates instead of original rates.

### **3.1.17 Formulation of Development Plan.**

For making payments every housing society must prepare a development programme and should abide by it. Penalty must be imposed by keeping in view the time of delay.

### **3.1.18 Financial Check and Balance System.**

The law must specify annual, internal and external audit system enforceable by the regulatory authority and the regulatory authority should also conduct periodic audit.

### **3.1.19 Protection of Environment.**

Environment factors such as waste disposal, water purification and road cleaning must be made as an important part of each housing society and the housing authority should abide by the laws of the Pakistan Environmental Protection Authority. Initial Environmental Examination should be compulsory for the start of every housing society.

### **3.2. Recommendations for the Improvement of the Statutory Laws:**

#### **3.2.1 Consolidation of Laws.**

Relevant portion of law on real estate should be consolidation into a single enactment.

#### **3.2.2 Defining the Roles of Regulatory Bodies.**

The role of the federal Government should be minimized and the role of the local Government s should be strengthened. The role of the federal Government should be of a facilitator and the local Government s should play a vital role.

#### **3.2.3 Encouragement of the Genuine Housing Societies.**

In order to encourage the new developers, laws should be strengthened and the subordinate staff of regulatory and monitoring authorities should be dealt with strictly for delaying tactics, and interruption in the development of schemes launched by the authorized developers.

#### **3.2.4 Provision of Utility Services.**

Maintenance of utility services i.e. electricity , sui gas, water supply, telephone service and road repairing should be done by concerned Government departments as all the related taxes are collected by them. If the developers of the scheme do not provide these services within the prescribed period then the scheme should be taken over by the development authority, this has been included in the Punjab Private Site Regulations 2005 and the other provinces should follow this practice.<sup>304</sup>

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<sup>304</sup> Real Estate Investment Trust Regulations, 2008, Section3 (2), 1st Edition,Ideal Publishers,Lah,2008.

### **3.2.5 Prior Approval of the Authority.**

An amendment should be made in the Cooperative Societies Registration Act 1925 that every housing society should before announcing a housing scheme for its members, should get its scheme approved from the local civic agency i.e. the Development Authority.

### **3.2.6 Integration of the Functions of Various Departments.**

Amendment should be made in the regulatory laws to integrate the function of utility provision agencies such as WAPDA, Sui Gas, PTCL and WASA for provision of services.

### **3.2.7 The Right of the Society to Pass Title.**

The right of the private society to pass on the title should be provided in the rules and the members must be notified before passing the title to next purchaser. This must be done under the control of the regulatory authority.

### **3.2.8 Encouragement of Housing Sector.**

The rules should provide protection to the investment by the developers and the acquisition of land by the Government and the housing companies should be encouraged as it is envisaged by the preamble of the Land Acquisition Act 1894.

Indian legislators by expressly recognizing the housing as a public purpose activity have made amendment in the Act by incorporating the provision of land for residential purpose to the poor or landless within the definition of public purpose<sup>305</sup>.

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<sup>305</sup> Indian Land Acquisition Act 1894. Section 3 (f) (v), 2<sup>nd</sup> Edition, CTJ publications, 1994.

### **3.2.9 Protection of the Rights of the Members.**

In order to protect the public interests, the rules should provide a provision for taking over the scheme by regulatory and monitoring authorities if developers do not develop the scheme within committed time frame or deviate from original scheme. Although Punjab Government has taken an initiative but its implementation position should be improved.

### **3.2.10 Encouragement of Private Sector in the Housing Sector.**

The rules should provide for the joint venture of public to private or foreign investors. The rules should encourage the foreign investors to invest in private housing schemes in the province because there is a huge potential in the real estate sector of Pakistan and if the foreign investment is made forty industries can be engaged.

### **3.2.11 Acquisition of Land According to Land Acquisition Act.**

An amendment should be made in section 3(2)(g) of the Punjab Private Site Regulations 2005 and the condition of at least 80% possession of the land before the sanction of the scheme should be reviewed because the acquisition of land in such a manner is against the spirit of the Land Acquisition Act 1984 .The problem with the above condition is that when a housing society is launched in an area the developers of the housing society purchase 80% land and submit the layout plan of 100% land .When the developers after getting sanction of the scheme proceed to acquire the remaining 20% land the owners of this 20% land charge very high price of this

portion of land . As a short term measure the housing laws should have specific provision about the acquisition of 20% required land for housing schemes at market rate by the Government.

### **3.2.12 Check on the Unauthorized Practice of Revenue Officials.**

Description of property sufficient to identify the property is the only condition for the registration of the non-testamentary document relating to immovable property.<sup>306</sup> Similarly true copy of the map or plan and of the property if the land is situated in more than one district then copies equal to that number of districts are provided for registration of a non testamentary document pertaining to map or plan of any property<sup>307</sup>. For this reason when a housing society is launched in an area the owners of the adjoining lands with the help of the officers of the land revenue change the nature of their lands from the agriculture to commercial etc in order to stop this exercise an amendment should be made in the sections 21(1) and section 21(4) of the Registration Act 1908 in such a way that Revenue Authorities should not be allowed the conversion of agriculture land into housing colonies and plots without the prior approval of Tehsil Municipal Administrations and the Development Authorities .

### **3.2.13 Enhancement of Punishment.**

In section 32 of the Punjab Development of Cities Act 1976, contravention of the provisions of the Act has been made punishable with simple imprisonment for a term which may extend to one month or with fine or with both. In order to impose control on the illegal and unapproved housing schemes, it is proposed that Section 32 of the Act should be amended in such a way that high pecuniary punishment in addition to imprisonment is also imposed.

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<sup>306</sup> Registration Act 1908, Section 21 (1), B to Z Printers Lahore, 2008.

<sup>307</sup> Ibid, Section 21 (4).

#### **3.2.14 Check on the Advertisement of Unauthorized Schemes.**

An amendment is proposed in Section 2(a) of the Pakistan Electronic Media Regulatory Authority Ordinance 2002 to save the general public from the exploitation on the part of the unauthorized developers and also to save the media from becoming an instrument for spreading the bad intentions of the developers. The definition of the Advertisement should be changed in such a way that unapproved and unregistered message does not come within the definition of advertisement.

#### **3.2.15 Acquisition of Land for Public Purpose.**

In the case of Pakistan it is the need of the hour to amend the law in order to declare the acquisition of land for housing within the definition of public purpose and for the encouragement of the housing companies because the public purpose is an elastic concept which varies with the needs of the society , Indian Legislatures have realized this thing ,now it is the time for our parliament to think over this aspect.

#### **3.3 Recommendations for the Improvement of the Regulatory Mechanism:**

Regulating and monitoring the housing projects is essentially a function of the Government and fall in the purview of good governance. The registration and regulatory authorities are responsible to ensure that the rights of general public and their investments in the housing sector are protected. Both the development authorities, like LDA & TMA as the case may be, and the Registrar Cooperatives in case of cooperative housing societies and the SECP in case of private societies, are the main components of the regulatory/monitoring mechanism.



### **3.3.1 Structural Deficiency of Regulatory Authorities.**

Regulatory authorities, particularly the development authorities (LDA) and the SECP do not have any specified resources dedicated to attend to the subject of housing schemes / societies. The planning wing / directorates of the LDA are supposed to process the proposals for launching of housing schemes and accord clearance in their respective areas of jurisdiction. Within the purview of their overall functions, the subject of housing schemes assumes a lesser significance. There is no particular desk within their organization / establishment which is assigned a dedicated responsibility to monitor and regulate the housing schemes. Consequently, there is an environment of adhocism and tendency to respond to situations only on required basis. There is, therefore, a need to review the existing organizational structures of the regulatory bodies and affect appropriate changes.

### **3.3.2 Functions of Tehsil Municipal Authorities (TMA).**

TMA's act as the regulatory bodies in areas, which are not covered by other authorities like LDA. TMA's do not have the requisite technical expertise to scrutinize and approve site / development plans of housing societies and subsequent monitoring during execution. Most of the housing societies located in the areas controlled by TMA's are notorious for management problems. All provincial Governments should advise that TMA's might be strengthened with Technical Manpower particularly scrutiny and monitoring teams of TMA's.

### **3.3.3 Functions of Securities and Exchange Commission of Pakistan (SECP).**

The memorandum of agreement used by the SECP to register private companies provides a long list of permissible activities, which includes launching of housing schemes. While SECP authorizes the registered companies to launch housing schemes, it does not have any mechanism to monitor or regulate the activities of the company. In case the company defaults, it does not have effective means to recover the loss and compensate the affectees. Thus the SECP performs minimal functions in protecting the investments of the members. There is therefore a need to review the legal provisions available to the SECP and their proper implementation with creating a dedicated cell for monitoring of the private housing companies.

### **3.3.4. Imposition of Penalty against Developers.**

Penalty should be imposed against the developers for not ensuring continuous maintenance of the scheme as mentioned in the advertisement such as sanitation service, neat and clean surroundings, maintenance of the roads and flow of continuous electric supply .

### **3.3.5 The Development of Public Areas.**

The public utility areas i.e. schools, hospital, graveyard, mosque, market should be developed and controlled by the Government and not by the developers.

### **3.3.6 Strengthening of the Institution of General Meeting.**

The general meeting should be held regularly and the quorum of the meeting should be not less than 20 percent of the total members of the society.

### **3.3.7. Implementation of the Decisions of the General Meeting.**

The regulatory and monitoring authority should ensure that the decisions of general body meeting of the Housing Sector Cooperative Societies are implemented.

### **3.3.8 Permission of Housing Activity to Public Limited Companies.**

Only public limited companies should be allowed to conduct housing activity because in this form of housing society there is more check and balance and the public interests can be protected in a better way.

### **3.3.9 Action against Unauthorized Start of New Phase.**

Strict action should be taken against a housing society, which announces the sale of next phase without purchase of sufficient land and permission from regulatory authority.

### **3.3.10 Check against Double Transfer of Plots.**

Copy of allotment and transfer document of a plot must be submitted to the regulatory and the monitoring authorities to reduce chances of double transfers.

## **3.4 Recommendations for the improvements of the Regulatory Agencies:**

### **3.4.1 Performance of Roles in the Respective Spheres.**

The Federal Government, Provincial Government and the District Government should perform their duties in their respective spheres. Although housing sector is essentially a provincial subject so the provincial and local Government s should perform the main role and the federal Government should play the role of the facilitator.

### **3.4.2 Formulation of Policies by the Federal Government.**

The duty of the federal Government should be to formulate policies at the national level and these policies should be used by the provincial Government s as a touchstone while enacting the real estate rules at each provincial level. By doing so the laws of all the provinces can be streamlined and the situation of departure from the main policy can be avoided. A clear example of this departure can be seen from the condition of 80% possession of land before the sanction of the housing society under Punjab Private Site Regulations 2005. In our country policies at national level

are not formulated and once these are prepared i.e. Medium Term Development Framework, they should be implemented in letter and spirit.

#### **3.4.3 Preparation of Master Plans.**

Under the Punjab Private Site Regulations all the local Government s are required to prepare master plans, and classification of land in their respective areas. It is a very complicated task when the local Government s will perform this task again, the problem of coherency and uniformity can arise so the solution lies in hiring experts from the whole world to provide necessary input to each provincial Government.

#### **3.4.4 Provision of Necessary Funds.**

The local Governments are in lack of funds as well as lack of skill to accomplish these targets. Local Government s should be provided funds and the required skill.

#### **3.4.5 Improvement in the Land Record System.**

. To make the land revenue record foolproof the whole record of land revenue must be computerized. As a short term measure to combat this issue of conversion of nature of land by land revenues department, before the issuance of notification under section 4 of the land acquisition Act 1994, the record of the concerned area should be sealed to stop the Patwaris from making unauthorized changes in the record. The most suitable time to take this step is when the collector is of the view that the land be acquired by the acquiring agency after examination of feasibility<sup>308</sup>. Pages of mutation must be signed in order to stop the practice of replacing and adjusting the pages containing unauthorized entries in the record.

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<sup>308</sup> C.M. Yasin, Punjab Land Acquisition Rules 1983, Section 5, 1<sup>st</sup> Edition, Khyber Law Publications, 2005.

### **3.5. Recommendations for the development of the Real Estate Sector at the Federal Government Level**

As Pakistan is a party to the Habitat Agenda so it is the responsibility of the Federal Government to fulfill the obligations through the respective provincial Governments and after coming into force of the Local Government s through the local Governments.

#### **3.5.1 Supporting Environment for the Sector.**

Federal Government should take steps for creating a good environment for the growth of the housing sector. It should give directions to the federal departments to give priority to provide services of water, power, electricity and roads to the authorized housing societies.

#### **3.5.2 Provision of Parameters for the Up gradation of Legal Framework.**

Provide parameters to the provincial Government to update their legal framework for the housing societies so that interests and investments of the public are fully protected.

#### **3.5.3 Amendment in the Registration Laws.**

An amendment should be made in the registration laws, with a view to protect the people from investing in the bogus housing societies and an effective check should be imposed against the practice of starting a housing society without having any piece of land.

#### **3.5.4 Relief to Victims of Fake Societies.**

Provincial and District Government should be legally empowered to structure procedures and dedicate resources to provide relief to the affected persons.

#### **3.5.5 Enactment of a New Law for the Housing Companies.**

An amendment should be made in the existing legal process of registration of housing companies and in order to eliminate loopholes in the system the solution lies in the

enactment of a separate law of registration of the housing companies at each provincial level.

### **3.5.6 Issue of Directions to Provincial Governments.**

Federal Government should Issue directions to the provincial Governments on the financial management of the housing sector with mandatory periodic audits and scrutiny of accounts.

### **3.5.7 Creation of New Desks.**

Ministry of Housing and Works should restructure its setup and create desks to deal with the regulatory authority on issues pertaining to housing societies. Institute a process to standardize byelaws of housing societies to prevent framing and enforcement of their laws to protect their own interests. Also institute a process for standardization of rules to be followed by all regulatory authorities in the province.

### **3.5.8 Creation of a Database of Land Record.**

There is need to carryout an analysis of the present land information system and formulate recommendations for lunching a project to develop a database having complete information on the land. The Government should identify lands for housing development in the urban and rural areas.

## **3.6. Recommendations for the development of the Real Estate Sector at the Provincial Government Level.**

The Punjab Government has initiated measures to handle the problems facing the real estate sector. Punjab Government has issued the Punjab Private Site Regulations for the regulation of the real estate sector and to protect the rights of the general public.

### **3.6.1 Involvement of Local Government s.**

Provincial Government s should take steps to involve the district administration (Nazims and District Coordination Officers) in the monitoring process. The

Government should review organization structure of monitoring mechanism at District and Tehsil level to include Registrar Cooperatives and Tehsil Municipal Authority (TMA).

#### **3.6.2 Prevention of Unauthorized Housing Societies.**

There is need to enforce monitoring measures to prevent advertisement and launching of housing schemes without fulfilling legal formalities.

#### **3.6.3 Compensation of Affected Persons.**

There is need to Initiate administrative and legal measures to expedite the process of default declaration and liquidation of defaulted companies and societies to compensate the affected persons.

#### **3.6.4 Monitoring of the Societies.**

The provincial Government should direct the district administration to monitor the financial aspects of the housing societies and exercise periodic audits and furnish reports to the Provincial Government.

#### **3.6.5 Monitoring of the Land Acquisition Process.**

The Government should exercise inspection to monitor the process of land acquisition by the societies and transfers by the revenue department. There is need to take strict action against revenue officials involved in unlawful practices. Directions should be issued to the district administration to give support to the housing societies by removing impediments in acquisition of land.

#### **3.6.6 Identification of Potential Areas for the Housing Societies.**

District Government should be ordered to carryout detailed survey of the urban areas and identify areas for developing housing schemes.

### **3.6.7 Services of the Experts.**

Provincial Government s should hire the services of the experts to study the ecological and environmental factors and develop master plans by considering the population growth and urban migration.

### **3.7.\_Recommendations for the development of the Real Estate Sector at the District and Tehsil Level:**

The District and Tehsil administrations should be fully integrated into the monitoring mechanism.

#### **3.7.1 Establish a Monitoring Setup.**

They must establish a monitoring setup to verify and report advertisement of illegal and unauthorized housing schemes in their areas of jurisdiction. Also monitor societies using names of the Government's departments in an unauthorized way to mislead general public.

#### **3.7.2 Initiation of Police Actions Against Promoters.**

Take immediate police actions against promoters involved in fraudulent housing societies. A processing system for receiving complaints should be established. Complaints against corrupt officials particularly against the revenue staff (Patwari ) should be given a priority for taking actions.

#### **3.7.3 Maintenance of Coordination with the Sub-Registrar Office.**

Maintain coordination with the Sub-Registrar office on all matters pertaining to the housing societies. Full support should be given to the registrar office to address complainants and reports on irregularities by the management and members of the housing societies.



#### **3.7.4 Monitoring the Process of Audit.**

Monitor the process of audit and submission of audit reports to the Registrar office by the societies. Assign district audit authorities to conduct audits of societies reported for mismanagement of funds.

#### **3.7.5 Establishment of a Method of Inspection and Management.**

Establish a method of inspection and management of the district land revenue department on yearly basis by team of experts and take an action on the recommendation. Land information system at Tehsil and District level should be established to start new housing societies.

### **3.8. Recommendations for the Improvements of the Organizational Structure:**

The organizational structure of development and regulatory authorities should be improved and made according to the requirements of the real estate sector.

#### **3.8.1 One Window Operation of the Regulatory Authorities.**

It must be designed to operate and function on a one window concept to deal with all issues related with housing societies.

#### **3.8.2 Inclusion of Technical Staff in the Organization Structure.**

The organization structure should have staff and technical experts who can respond to the proposals submitted by the sponsors of housing societies and take decisions.

### **3.8.3 Creation of an Enforcement Cell in the Organization Structure.**

The organizations should create an enforcement cell to monitor the stage wise development of approved projects. Enforcement cell must take effective monitoring measures to stop violations.

### **3.8.4 Detailed Survey of the Area.**

Regulatory authorities should prepare a detailed survey of complete land in their area to prepare development master plans and point out specific areas, where cooperative and companies may develop their housing societies.

### **3.8.5 Preparation of Master Plans.**

One thing that has been neglected in our country is that the master plans have been prepared without respond to town planning but now the time has come to pay the due attention to this important aspect.

## CONCLUSION

There is a huge potential in the real estate sector of Pakistan but there are few problems in the development of real estate sector .It seems that our Government does not understand these problems or does not want to understand these problems. The problems faced by the real estate sector of Pakistan can be solved by making suitable amendments in the relevant laws. The first step to start any housing society is the acquisition of land. One of the first steps that should be taken in any community is to make careful study to determine what is the best used that can be made of land and this should be followed by comprehensive city plan and a zoning law.<sup>309</sup>

In the newly settled areas the problem of land acquisition can be solve by distributing the unutilized lands to homeless people. This approach was also adopted by Junejo Government in 1985 and also included in the National Housing Policy of 1994. Under this approach the Government distributed 2.2 million seven Marla plots among the homeless in rural areas and distributed 3 Marla plots among homeless people in urban areas and the allotment of three Marla plots among homeless in the urban areas at nominal rates<sup>310</sup>.

This is also emphasized in the housing policy of 2001 that provincial, metropolitan and local authorities shall identify parcels of state and other lands for housing development.<sup>311</sup>

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<sup>309</sup> John M. Gries , “Housing in the United States” ,The Journal of Land and Public Utility Economics ,1925,p 23-35 .

<sup>310</sup> Daily, The News, 6th December 2007, Alludin Masood, Article, “Housing Deficit”.

<sup>311</sup> National Housing Policy 2001, issued by Ministry of Housing and Works,p 15.

The second issue is to acquire land in the settled areas. The present practice of large scale acquisition of land (80%) before sanction of the scheme is against the spirit of Land Acquisition Act 1894 .Land can be acquired on ten percent over the declared price as is being done in one province (Karnattka) of India.<sup>312</sup> The acquisition of land in this way will not only help to acquire cheap land but it will also put an end to the practice of reflecting unfair prices of the lands as well as to control speculation of land .This approach was adopted In Singapore where strict policy of compulsory land acquisition limited speculation in real state.<sup>313</sup>

The functions of the various departments of the Government should be coherent, because lack of integrated and unified institutional framework is resulting in shifting of liabilities from one department to other department .The function of each institution i.e. local Government, development authorities and other institutions should be well defined and clear.<sup>314</sup>

A serious difficulty in enforcement of housing legislation is the division of authority between different departments of state and city Governments. Often it is not clear with which authority enforcement lies<sup>315</sup> . An effective check and balance system should be placed on the unauthorized use of the names of the Government's departments because the names of these prestigious institutions are being defamed. In order to stop this practice an amendment should be made in the relevant registration laws to make it obligatory on the registrar not to register any private housing society bearing the name of any institution of the Government. .The relevant provisions of the registration of the cooperative housing societies and private housing companies should be amended in such a way that only those housing developers

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<sup>312</sup> Daily, Business Recorder, 4<sup>th</sup> February 2008, Syed Shabber Zaidi, Article "Pakistan perspective a step towards proper accounting in real estate business".

<sup>313</sup> Bae Gyon Park, "Where Do Tigers Sleep at Night? The State's Role in Housing Policy in South Korea and Singapore" ,Journal of Economic Geography ,1998,p 272-288.

<sup>314</sup> Ibid, p 45.

<sup>315</sup> James Ford, "The Enforcement of Housing Legislation", Political Science Quarterly, 1927, p549-560.

should operate which possess land and the registration of the housing companies should be done to the respective provinces because the subject of housing is a residuary matter in the Constitution of Islamic Republic of Pakistan , so it should be dealt exclusively by the provinces<sup>316</sup>.The role of the local Government s would be important in enabling, promoting and facilitating the provision of housing to all segments of the population within their respective jurisdictions.<sup>317</sup>Meeting the housing backlog is beyond the financial capability of the Government.<sup>318</sup>Registrar Housing Societies should be vested with the sole authority to register all housing societies irrespective whether they are private or cooperative. Increased attention should be given to the private sector involvement in the delivery of housing services and land development<sup>319</sup>.

.All registered societies should be governed and regulated on the same rules and procedures for the purpose of standardization and uniformity. When the registration of the housing companies will be done so two important things will arise, firstly , it will be in line with the spirit of the constitution, secondly, more check and balance can be put on the activities of these companies currently federal Government cannot handle this issue being the provincial subject and the provincial Government s do not deal it because it is being dealt by the federal Government and the net result is that it is being neglected so there is no check and balance on its activities.

By the early 20<sup>th</sup> centaury the public health and housing professionals had identified association between poor health and poor housing as measured by their crowding and dampness as a result of low standard of town planning and poor standard of environment.<sup>320</sup>

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<sup>316</sup> Constitution of Islamic Republic of Pakistan 1973, 4th Schedule, 3rd Edition, Pakistan Law Times.

<sup>317</sup> Medium Term Development Framework 2005-2010, issued by Planning Commission of Pakistan, p182

<sup>318</sup> National Housing Policy 2001, issued by National Housing Policy, Preface.

<sup>319</sup> Ibid, p182.

<sup>320</sup> H. Patricia Hyness, Doug Bruge, "Where Does the Damp Come From? Investigations into the Indoor Environment and Respiratory Health in Boston Public Housing", 2003, p401-426.

The Provincial Government s, development agencies and other bodies were required to prepare the master, structural and outline development plans within the time period of 1, 2, and 3 years respectively but the task has not been completed within the stipulated time period.<sup>321</sup> The position of the master plan of the city is just like the constitution of the country .Unfortunately in our country no attention has been paid to this important aspect as a result of it there is congestion, overcrowding, pollution and rise in the crime rate as a result of growth of slums<sup>322</sup>.Developing countries should not repeat those mistakes with respect to city and regional planning which we did in the ninetieth and twentieth century and which we are now trying to correct<sup>323</sup>. Town planning is the combination of planning to meet temporary circumstances as well as the future. Central Government should help the local Government s in hiring experts from the whole world to prepare new master plans by keeping in view future needs. The Central Government of Pakistan must encourage planning to promote coherency in the functions of the state organs as is being done by American Government with a view to coordinating federal, state and local community development authorities.<sup>324</sup>Initial Environmental Examination should be compulsory for every housing society before the start of the housing scheme.

Town planning must be done with coordination of the environment department as is the case in America where the central authority for this purpose lies with the department of Environment<sup>325</sup>. Legal framework also neglects the seismic position of the country. Geologically, Pakistan lies in an area of high seismic hazard.<sup>326</sup>

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<sup>321</sup> National Housing Policy 2001, issued by National Housing Policy,, p 29.

<sup>322</sup> Daily, the Nation, 16th January 2008, Syed Ali Zafar, Article "Cities without Constitution".

<sup>323</sup> Osborne T. Boyd, "Review of International Cooperation Administration's World wide Housing Programmes", Journal of Land Economics, 1959, p 77-80.

<sup>324</sup> Dwight A. Ink, "Establishing the New Development of Housing and Urban Development", Journal of Public Administration Review, 1967, p224-228.

<sup>325</sup> E.H. Burn, "Modern Law of Real Property"13<sup>th</sup> Edition, Butterworth and Company Publishers, 1982, p879.

<sup>326</sup> Building Codes of Pakistan Seismic Provisions 2007, issued by Ministry of Housing and Works, p 1.

Pakistan is located at the Indian tectonic plate that is slowly plugging into the European plate .The resulting friction has generated massive amounts of energy that occasioning triggers earth quakes once it is released .Even after such a major earthquake as the one that took place on October 2005 the energy lying trapped could still cause major earthquakes during the next 50 years .Being located in a web of tectonic fault lines ,Pakistan is bound to experience earthquakes about three to four in next 50 years .<sup>327</sup> The first principle for the design of code both building and housing is that they must bear a reasonable relation to existing conditions<sup>328</sup>. In this context it is the need of the hour to amend the relevant provisions of the laws to put a check against the dangers of the earthquake. The present laws are unable to serve this end, the reason is that Punjab Private Site Regulations 2005were issued before the earthquake of November 2005 and since then no amendment has been made in the regulatory laws. The imposition of very high tax rate is also an important aspect and amendment should be made in the tax laws to encourage and develop the housing sector. Due to very high tax rates the people of Pakistan are not willing to make real estate transitions on the market price of the lands and the high tax rate is the major cause of conversion of white money to black money<sup>329</sup>. Due to high tax rates the market values of the lands are reduced up to the level of 900%<sup>330</sup>.As a result of it Government is losing a huge amount of money .Government should take a wise step by reducing the tax rates and by expanding the tax base by bringing more people into the tax net in this way the Government can increase the tax revenues .When the tax rates will be reduced, there will be no incentive for the people to avoid tax and the

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<sup>327</sup> Daily, Business Recorder, 16th February 2007, Editorial “New Building Codes” .

<sup>328</sup> “Building code, housing codes and the conservation of Chicago’s housing supply”, The University of ChicagLaw Review, 1963, p 183 - 203.

<sup>329</sup> Najam Ali ,13<sup>th</sup> February 2008,Rearch Paper , “ Real Estate Investment Trusts opportunities and challenges ”.

<sup>330</sup> Salman Sheikh, 31th January 2008, Presentation, “Real Estate Investment Trust”.

transactions will be made on the fair values of lands. Government has already declared that housing and construction companies shall be charged via presumptive tax regime which shall not exceed 1% on yearly receipts further more stamp duties and registration fees should be reduced to an aggregate total of 1%<sup>331</sup>. To earn some revenue under the head of taxes is better than receiving no revenues so the tax rates should be reduced to encourage real estate sector. Capital gain tax on the sale of land has already been exempted by the provinces and this exemption has lead to speculation in the real estate sector.<sup>332</sup>

In order to encourage the housing practice this tax is exempted from the housing sector but capital gain tax should be imposed on the speculation of the properties plus non utilization tax should be imposed on the land held for speculation purposes. Consideration should be given to the taxation of vacant land in order to stop speculation<sup>333</sup>. At this moment there is no tax on the profit earned from the sale of the land but if the same investor invests in the Real Estate Investment Trust tax is imposed on the dividend received on the units of the scheme so a tax has been imposed on the real estate in an indirect way so infact no incentive has been given.

Tax exemption has been provided on the sale of property to Real Estate Investment Trust till 2010. The imposition of the tax on the capital gain is the domain of the provinces and the provinces have already exempted this tax so in realty the federal Government has provided no tax exemption to the scheme. After 2010 the profit earned on the transfer of land to Real Estate Investment Trust will not be exempted from tax, the owners of the land can be given units of the Real Estate Investment Trust instead of cash and this

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<sup>331</sup> National Housing Policy 2001, issued by Ministry of Housing and Works, p 5.

<sup>332</sup> Daily, Dawn 29 December, 2007. Zahid Iqbal. "Article", "Pakistan: The Housing Market Thrives as More Pakistani Capital Returns Home".

<sup>333</sup> Rakesh Mohan, "Housing and Urban Development :Policy Issues for 1990's", Economic and Political Weekly, 1992, p1990-1996.



approach is being adopted in the case of America where a subsidiary of a Real Estate Investment Trust is created and the owners of the lands transfer the property to the subsidiary of the Real Estate Investment Trust in exchange of partnership shares that are convertible into the shares of the Real Estate Investment Trust, private sellers are able to gain most of the advantages of Real Estate Investment Trust in exchange for their properties, while deferring the capital gain <sup>334</sup>. If a land transaction is made in the area of Lahore, 26% tax is imposed on the value of the land .In the case of traditional real estate sector this tax can be avoided by recording very low price of the land in the documents but it is not possible in the case of real estate investment trusts ,where the working of the scheme is almost impossible if the value of the land is recorded other than the market value of the land <sup>335</sup>.In the case of Real Estate Investment Trust when, 26% tax rate will apply on the market value of the land it will be very difficult almost impossible for any investor to invest in the scheme .The present rate of tax will lead to isolation of the REIT scheme and the start of the scheme looks impossible .Land record system should be computerized because under the present system the major cause of civil litigation in the housing sector is due to the poor land record system <sup>336</sup>.On the acquisition of the land for the housing the determination of the market value has become an allusive exercise and it has lead to numerous litigation . There is neither a single qualified valuer in our country nor a single institution to provide the education of valuation of land .Excluding private valuers there are 750 official valuers on the panel of securities commission of Malaysia<sup>337</sup>. The other countries have developed to such an extent that taxation of the land is done

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<sup>334</sup> Robert D. Campbell, C .F .Sirmans , “Policy Implications Of the Structural Options in the Development of Real Estate Investment Trusts in Europe”, *Journal of Property Investment and Finance* ,2002,p388-405.

<sup>335</sup> Daily, Business Reorder, 4th February 2008, Syed Shabbar Zaidi, Article, “A Step towards Proper Accounting in the Real Estate Business”.

<sup>336</sup> KASB Securities Limited ,December 2005, “Research Paper on Real Estate Investment Trust ”.

<sup>337</sup> [www.sc.com.my](http://www.sc.com.my),visited on 1<sup>st</sup> September 2008.

on the basis of the computerized land record system.<sup>338</sup> In British Columbia, Canada, some firms offer electronic valuations online for 29.95\$ and delivered within ten seconds.<sup>339</sup> To spread the education of real estate valuation is the need of the hour as the Appraisal Institute of Canada has outsourced its education component and is now working with selected universities to provide a broad based property education that will enable a new generation of appraisers to work in a much wider property market.<sup>340</sup> Now the time has come to make valuation of land on fair price because in the age of globalization, Pakistan cannot remain aloof from the rest of the world. It is a reciprocal process, the people will conduct valuation of land on fair value only when the Government will reduce the cost of the real estate transactions. Government must realize the fact that to earn less revenue is better than earning no revenue. Transparency and development of real estate demand an initiative to be taken by the Pakistani Government.

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<sup>338</sup> Barry Gilbertson and Duncan Preston, "Practice Briefing Vision For Valuation", Journal of Property Investment and Finance, 2005, P 123-140.

<sup>339</sup> Standard and Poor's, "Guidelines for the use of Automated Valuation Models for UK RMBS Transactions", Standard & Poor's, New York, 2004,

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