REAL ESTATE INVESTMENT TRUST AND ITS IMPLICATIONS IN PAKISTAN

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This thesis is dedicated to

My Parents,

My Brother, and

My Sisters,

For their endless love, support and

Encouragement.

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"And if you would count Allah's favors, you will not be able to number them; most surely Allah is Forgiving, Merciful".(An-Nahl 16:18).First and foremost, I bow myself in front of Allah almighty for his blessings and enabling me to complete my research work.

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It is pertinent to mention here that in spite of comments and recommendations of the individuals mentioned above, I am solely responsible for errors, omissions or imperfections of this work.

GLOSSARY OF ABBREVIATIONS

ASX	Australian Stock Exchange
BOR	Board of Revenue
CNIC	Computerized National Identity Card
CVT	Capital Value Tax
DHA	Defence housing society
DLR	Director Land Records
IPO	Initial Public Offer
KLSE	Kuala Lumpur Stock Exchange
LAS	Land Administration System
LRMISP	Land Record Management Information System Project
NAV	Net Asset Value
NBFC	Non Banking Finance Company
PIS	Participatory Information System
REIT	Real Estate Investment trust
RMC	Real Estate management Company
SCMR	Supreme Court Monthly Review
SECP	Securities and Exchange Commission of Pakistan
TOPA	Transfer of Property Act, 1882
YLR	Yearly Law Review

Abstract

The governmental efforts of today's world to build a modern legal framework and to overcome the flaws of existing laws could be seen from the steps taken by the concerned governments. Laws have economic as well as social impact over the human society and after due process only that law prevails which have positive aspect for social and economic circles. In Pakistan in our daily life we came across different types of laws with different aspects, some laws have modern mechanism and some are outdated in nature. Pakistan's land/property laws are not just dysfunctional and obsolete but actually have high economic cost. These laws hurt economic and social development because they make the transfer of assets difficult and highly risky.

This thesis is about the Real Estate Investment Trust Regulation 2008 and its desired implementation in Pakistan without any change or amendment in old fashioned land related laws. SECP has launched REIT regulation to regulate the activities of real estate sector in the country. Although it is good piece of work but without overhauling outdated land laws, expected results of REITs and real economic potential of real estate sector could not be discovered.

Introduction of Real Estate Investment Trnst regulation in Pakistan is a positive step to enhance the investors and financial institutions confidence in Real Estate Sector however, there is need to improve the existing land related laws in order to make them in conformity with the REIT regulation's objectives, so that the desirable results could be achieved. Although REIT Regulation is a piece of legislation by a security market regulator and existing land laws are statutes and statutes are not usually bound to follow the subordinate legislation but, reason for the above mentioned theory is that existing land laws are not able to cope the requirements of present age regarding the perfect title of land and accurate valuation of land etc.

During the research of the thesis I have gone through the REIT regulation 2008, The Transfer of Property Act, 1882, Land Revenue Act, 1967, Stamp Act 1899, Registration Act 1908 and different rent laws of Pakistan .All these laws are although different from each other but they affect REITs in Pakistan. After detailed study of laws, it revealed that they are unable to guarantee the perfect title and accurate evaluation of land. As far as registration of the land documents is concerned, it is just a registration of document and it does not amount to registration of title of land.

Initially my research was focused on the core theory that whether REIT Regulation could fetch the desired objects without overhauling the existing land related laws but later on upon the guidance of Mr.Akif Saeed, I have included a separate chapter for analytic approach towards different REIT regimes around the world, so that a comparative approach could be drawn towards the REIT regulation 2008, launched by SECP for the better performance of real estate sector in the country.

REITs concept is present in various jurisdictions around the globe. Most of the developed and developing countries have introduced REITs in their jurisdictions but with different working structure. Australia, Brazil, Canada, USA, Malaysia, India, United Kingdom, Philippines, Hong Kong, Germany, Japan, Singapore. Nigeria and United Arab Emirates etc. have successfully launched REITs in their respective jurisdictions. Some countries have very old history of REITs such as Australia and United States.

In Pakistan a comprehensive legal framework for land related issues is missing and we have an outdated collection of land related laws, which are not serving the purpose rather creating hurdles for accurate valuation and conclusive and risk free land transactions. These laws hurts the efforts for the development of an organized real estate sector, because they make the transfer of land difficult and doubtful.

There were many sources available for doing this research. Some of them were primary and others were secondary. The primary sources include statutes, regulations and case laws. The main statutes include Banking Companies Ordinance 1962, REIT regulation

2008, The Transfer of Property Act, 1882, Land Revenue Act, 1967, Stamp Act 1899, Registration Act 1908 and different rent laws of Pakistan because all these laws are co related to each other. Similarly, there are some leading cases on the issue which will be discussed in this research work. The secondary sources which were available for this research include books and articles written by domestic and foreign writers.

The research has mainly relied on the study of relevant literature and different studies conducted. The relevant statutes, regulations and case laws available on the issue have been studied in detail. Similarly, the regulatory mechanism of REITs provided in United Kingdom, Australia and Malaysia has been discussed. This gives difference of the regulatory mechanism provided in different jurisdictions. The problems in our regulatory and legal regime have been highlighted and suggestions given at the end to solve these problems.

The core theory of the research is that although REIT regulation is a good piece of law to bring un documented real estate sector within the ambit of economy, but to get the desired results of this law we have to introduce the modern and up to date land related laws otherwise REIT regulation would not provide the expected outcome. This must be done to get rid of the complex and out dated laws, which have cumbersome procedure for the land related transactions.

Research work is consists of five chapters; first chapter is about the introduction of the core theory of thesis and an introduction to REIT regulation, Land laws, benefits of REITs and all other relevant aspects of the hypothesis .Chapter two is about the Real Estate investment regulation 2008 and few of its weak areas. Chapter three is about the comparative analysis of different REIT regimes. Chapter four is the key chapter of the thesis, which is about the current situation and ability of present land related laws of Pakistan. In this chapter I have also discussed the prospects of REIT in Pakistan, Opportunities and strategies for improved land laws and case law study to highlight the negative impact of present land related laws in Pakistan. Chapter four also contains a discussion about LAS model of England. Chapter five contains recommendations and conclusion.

The lacunas in the legislation and incompetence of enforcement efforts are the causes of inefficiencies in land administration in Pakistan. There must be a uniform procedure in Pakistan for all types of land transactions and a single agency must be responsible to regulate the process of taxation, transfer, and registration of land titles and documents at provincial level.

Research emphasis on two main issues, firstly, it concludes that REIT Regulation does not work in isolation, although there are few areas in the regulation which require clarity but overall it is a positive piece of law for the development of modern concepts in real estate sector. Secondly, there is need to introduce the modern land laws, so that land transactions could be safeguarded and transparency in land title, ownership, possession and accurate valuation may be ensured.

CHAPTER NO.1

INTRODUCTION

1. Introduction to REIT

REIT is a kind of mutual fund which invests in real estate and properties and then generates income from such assets for its unit holders[1].Pooled capital of investors is used to purchase and manage the property and in turn, REIT makes profit for unit holders through rents and capital gains. REITs enjoy tax exemptions in all jurisdictions because it is tax pass through vehicle, if it allocates ninety percent of its income for unit holders.[2]RMC could be treated as mother organization which initiates REIT Scheme or REIT project but both work subject to their limitations without intervening each other affairs.

REITs worldwide could be public or private in nature. Public REITs are those which are listed on stock exchanges and their shares could be traded just like shares of other public limited companies. Trading of shares of REITs is treated in same manner by the Stock exchanges as shares of other public companies. REITs are traded as "Closed-End Mutual Fund[3]. The difference between a closed end mutual fund and REITs is that a share holder in mutual fund owns a portfolio of listed companies, whereas in REITs a unit holder owns underlying assets of real estate[4].

REITs in Pakistan have Characteristics of closed ended funds because they have limited units for issue. New units could not be issued, after initial subscription[5]. REITs are not only an investment tool through which share holders gets 90% of the profit of business as dividend, but also gets an opportunity to benefit themselves from the value appreciation of the underlying real estate as same is reflected in traded price

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[1]<http://www.secp.gov.pk/investor_edu.asp> (Accessed January 12, 2011).
[2]<http://www.investorglossary.com/reit.htm> (Accessed December 10, 2010).
[3]<http://financial-dictionary.thefreedictionary.com/reit> (Accessed June 12, 2010).
[4]<http://www.atlascapital.com.pk/ourservices/inbestbulletin/Bulletin-Oct07.pdf> (Accessed May 12, 2009).
[5]<http://www.secp.gov.pk/investor_edu.asp> (Accessed January 12, 2011).

of REITs units. REIT accumulates funds, through "Initial Public Offer" and after "IPO" REITs units could be traded on the stock markets[6].

The main aim of REIT is to allow small investors to buy a stake in Real Estate by pooling their money via a trust vehicle. Investors will hold units which will be listed on the stock exchange. Investors may hold, buy and sell the units of REIT like any other security, but here the underlying asset will be Real Estate[7].A REIT Management Company identifies a project and raises public money through an Initial public offering[8]. In Rental REIT Scheme the RMC buys a property and rents it out. The rent is then distributed to the unit holders (shareholders). In developmental REIT Scheme a RMC identifies the project, raises public money through IPO, and constructs and then either sells the project or rents it out. The money received due to sale or rent is distributed among the unit holders[9].

The concept of REITs was initially emerged in 1960 in the USA and then in 1971 in Australia but in Pakistan this concept was introduced by SECP in 2008 to regulate and organize the real estate sector in the country. Role of all the players associated with the working of REIT project pursuant to trust deed could be understood through the diagram, which clearly elaborates the working structure of REIT projects.

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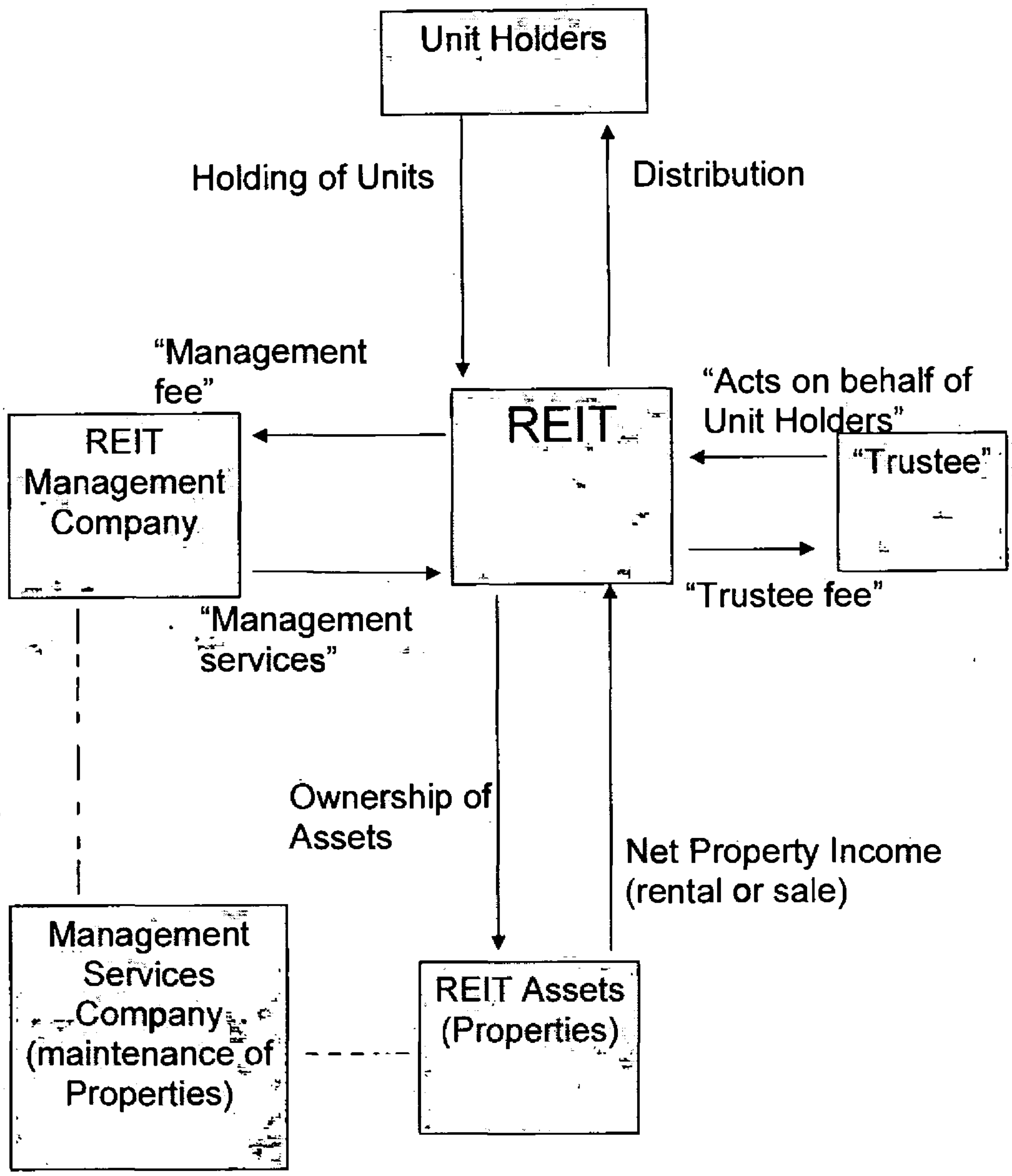
[6]<http://www.atlascapital.com.pk/ourservices/inbestbulletin/Bulletin-Oct07.pdf> (Accessed May 12, 2009).

[7]Ibid.

[8] The First Sale of Stock by a Company to the Public. <http://www.investorwords.com/2475/Initial_Public_Offering.html#ixzz1afuHjfTF> (Accessed October 13, 2011).

[9]<http://www.secp.gov.pk/investor_edu.asp> (Accessed January 12, 2011).

1.1 Diagram: Typical Operation of REITs in Pakistan



2. Types of REIT

Worldwide REITs have many kinds, which include Developmental REITs, Rental REITs, Hybrid REITs, Equity REITs, and Mortgage REITs. Different types of REITs could be defined as;

Equity REITs: It is widespread type of REIT. It holds and invests in real estate assets and generates rents as profit from such assets[10].

Mortgage REITs: This type of REIT typically lends money to owners or developers and invests in financial instruments that are secured through mortgages. Their main revenue is interest earned from mortgage loans[11].

Hybrid REITs: This type of REIT is always an amalgamation of any two REITs[12]. Hybrid REITs invests in a different real estate projects, such as residential, office, Commercial, medical, industrial and hotel buildings..

Developmental REITs: This REIT Scheme invests in real estate for the development of industrial, commercial or residential projects, through erection or renovation of existing building structure with the object to get benefit through capital gains.

Rental REIT: A Rental REIT scheme is developed for investments in commercial or residential estates with the object to generate rental income.

[10] <http://www.streetdirectory.com/travel_guide/19093/investment/the_many_types_and_uses_of_eal _estate_investment_trusts.html> (Accessed October 12, 2011).

[11] Ibid.

[12] Ibid.

3. Pakistan Legal Structure And REIT Regulation

The Securities and Exchange Commission of Pakistan (SECP) has initiated a framework for the establishment of Real Estate Investment Trust. The regulations aim at safeguarding the property rights of people and economy. Pakistan is only developing country which has initiated REITs[13].

REIT projects are carried through RMC. RMC is a REIT management company licensed by the SECP as a NBFC to initiate REIT Scheme and provide REIT Management Services[14]. The RMC is licensed under the NBFC Rules, 2003 and it is obligatory for RMC to abide by the provisions of the Companies ordinance 1984, NBFC Rules 2003 and the REIT Regulations 2008.Under the REIT Regulations 2008 a REIT scheme is a project of RMC having the characteristics of Closed-end scheme[15], which means RMC could offer only limited and fixed number of units or shares to public for subscription. In REIT regulations, the schemes are visualized as Developmental, Hybrid and Rental.

In developmental REIT, the RMC will undertake a construction plan and after selling the property, sale proceeds are to be distributed among the unit holders. In Rental REIT the RMC buys a portfolio of properties and then receive rental income[16].Whereas Hybrid REIT is combination of both Rental and development REIT. As per regulation RMC has at least 20% stake in the scheme and is entitled for management fee for its services rendered to RMC or REIT Scheme. Investment in REIT could be made through IPO or purchase of units floated on stock exchange[17].

REIT in Pakistan has a trust structure, established through trust deed. This trust deed contains the working arrangement between the RMC, the Trustee, and the investors. The trust form has trustees, RMC and investors. The trust is established by REIT Management Company and the trustee. The trustees of REIT fund hold its property

[13]Government of Pakistan Finance Division, Year Book for Financial Year 2005-2006, 56, 98.
[14]<http://www.aaj.tv/news/Business/131352_detail.html> (Accessed May 22, 2009).
[15]<http://www.secp.gov.pk/investor_edu.asp> (Accessed January 12, 2011).
[16]<http://www.thenews.com.pk/daily_detail.asp?id=94164> (Accessed May 22, 2009).
[17]<http://livenreal.com/news/index.php/"secp"-introduces-two-types-of- reitschemes/ >(Accessed May 10, 2009).

and keep an eye on the operations of a particular REIT Scheme. REIT Management Company (approved by SECP) manages the scheme as per provisions of the trust deed and the offering document. REITs enjoy tax exemption on distribution of ninety percent profits to its unit holders. This prevents double taxation as income derived from REITs is taxed only at the individual level[18].

The trustee acts as a caretaker of the REIT assets and ensures that the REIT Scheme is managed as per stipulations contained in trust deed because it is necessary to avoid any chance of mismanagement by the RMC. The involvement of the trustee mitigates the risk of any malpractices that may be harmful for the interests of the unit holders and the general public at large[19].

The money rose through issuance of units i.e. REIT fund is utilized in either buying property or constructing property. The return to unit holder is received when the property is either sold or is rented out. The unit holder receives the return on investment either through dividend or capital gain. Usually when the property of REIT Scheme is rented out, the rent of the property is received which is then distributed to the unit holders in form of dividend. Unit holders also can sell the units in stock market. This is known as the capital gain on a unit. The price of unit increases either due to speculation or increase in net asset value (NAV). The RMC is entitled to a remuneration of an amount as permissible by the SECP under the REIT Regulations, 2008.

Pakistan being an underdeveloped economy is facing problems in developing the basic civic structure for its people. Food, health and education are the basic necessities but shelter is the most important need to develop an organized nation. Introduction of Real Estate Investment Trust regulation in Pakistan is a positive step to enhance the investors and financial institutions' confidence in Real Estate Sector; however, there is need to improve the existing land related laws in order to make them in conformity with the REIT regulation's objectives, so that the desirable results could be achieved. Laws have great impact over the economy and it is fact that undesirable

[18]http://livenreal.com/news/index.php/secp-introduces-two-types-of- reit schemes/ (Accessed May 10, 2009).

[19]<http://www.secp.gov.pk/investor_edu.asp> (Accessed January 12, 2011).

economic consequences are outcome of bad laws. Pakistan's land/property related laws are obsolete and destructive and hurt economic development because they make the transfer of assets complex and highly risky[20].REIT Regulation has enhanced the public trust in real estate sector activities because they have suffered a lot due to property Scams and fraudulent property transactions. Pakistan is the only developing country which has initiated REITs[21]. The RMC is allowed to launch REITs projects in Islamabad/Rawalpindi, Karachi, Lahore, Peshawar or Quetta. The investment policy of a REIT Scheme must be affirmed by RMC in business plan.

RMC is required to present valuation report of real estate to SECP and to get approval of same, before applying for the registration of the REIT Scheme. The RMC would also obtain approval of the name of the REIT scheme, appointment of trustee from Commission and shall submit the business plan of the REIT Scheme for the approval of the SECP[22]. Approval of trust deed by commission is also necessary. Dividend could be paid to unit holders in cash or through issuance of bonus units, if allowed by SECP[23].

RMC identifies a project and raises public money through an IPO. The RMC then buys a property (in case of Rental REIT Scheme) and rents it out. The rent is then distributed to the unit holders (The shareholders of REIT Scheme are known as unit holders)[24].

In developmental REIT Scheme, RMC identifies a project, raises public money through IPO, constructs and then either sells the project or rents it out. The money received due to sale or rent is distributed among the unit holders[25]. REITs are very diverse and are generally used to bolster investment activity in corporate, commercial and industrial projects etc.[26]. REITs are flow through entities which are tax exempt

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[20]<http://bnrlaw.net/Publications_Download/The%20Law%20of%20Land.pdf> (The law of land *Feisal Naqvi) daily times, dec 29 2006* (Accessed April 17, 2009).

[21]Government of Pakistan Finance Division, Year Book for Financial Year 2005-2006", 56, 98.

[22]<www.secp.gov.pk/corporatelaws/pdf/ reit_Regulation.pdf> (Accessed May 02, 2009).

[23]<http://livenreal.com/news/index.php/secp-introduces-two-types-of-reit-schemes/> (Accessed May 18, 2009).

[24]<http://www.secp.gov.pk/investor_edu.asp> (Accessed January 12, 2011).

[25]Ibid.

[26]Ibid.

provided the management company distributes at least ninety percent of the annual profit as dividend to the unit holders[27].

REIT is not helpful to provide cheap shelter to poor and low income people rather it is a tool for maximization of profits of individuals. The Real Estate Investment Trust regulation is the positive step to enhance the investors and financial institutions' confidence in Real Estate Sector; however, there is need to improve the existing land revenue laws in order to make them in conformity with the REIT regulation's objectives so that the desirable results could be achieved.

Civilized world have introduced laws and regulations and developed customs to facilitate the conduct of the society. Laws are always subject to changes whenever there is need to bring them in conformity with new trends and requirements. New laws are usually introduced by developed countries in accordance with their own requirements and infrastructure, but the dilemma is that developing countries like Pakistan are always keen to adopt or adapt the said laws without viewing of the suitability, requirements of society, state of economy and existing legal framework. The lacunas in the legislation and inefficiency of enforcement are the roots cause of failure and destruction of real estate sector.

[27]<http://www.secp.gov.pk/investor_edu.asp> (Accessed January 12, 2011).

4. Benefits of REIT

Real Estate Investment Trust offers a number of advantages to investors/unit Holders:

1. REIT allows accessible indirect investment in real estate. Participants can invest in a professionally managed portfolio of real estate. This serves to open up real estate investment to the small investor who otherwise could not have had this investment opportunity[28].

2. Through investment in REIT investors can expand investment portfolio and diversify risk of investment[29].

3. REIT does not pay tax if it distributes 90% profit among unit holders who subsequently at individual level pay tax on dividends received from REIT Project[30].

4. REIT units are traded on a stock exchange hence they are highly liquidated as compare to traditional real estate assets[31].

5. REIT has less instability as compare to other securities[32].

6. Real Estate Investment Trusts offer to small investors advantages of diversification through pooling of funds, access to the benefits of professional investment advisers and the ability to finance large scale properties[33].

7. REIT provides an opportunity for indirect investment in real estate sector[34].

8. REITs allow ninety percent dividend distribution to unit holders[35].

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[28]http://www.secp.gov.pk/corporatelaws/pdf/reitsResearchPaperKASBSecuritiesLimited.pdf (Accessed November 17, 2010).

[29]http://www.secp.gov.pk/corporatelaws/pdf/reitsResearchPaperKASBSecuritiesLimited.pdf (Accessed November 17, 2010).

[30] Ibid.

[31]Ibid.

[32]Ibid.

[33]John Corgel and Scott Gibson, "Real Estate Private Equity: the Case of US Unlisted REITs", Journal of Property Investment and Finance, 2008, p.132-150.

[34]<http://www.secp.gov.pk/corporatelaws/pdf/reits_ResearchPaperKASBSecuritiesLimited.pdf> (Accessed November 17, 2010).

9. Investment in REITs is a hedge against inflation[36].

10. REITs are property securitization vehicles which enable small investors to get fiscal benefits of profitable real estate investments[37].

11. Investment in REITs units offer 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[38].

12. Real Estate Investment Trusts offer several investment benefits for the individual investors, who can earn dividend income as well as capital gains by investing in REIT.

13. Independence of all players of REIT ensures the transparency in the REIT Projects[39].

Real Estate Investment Trust has lot of benefits which a stock investment lacks; hence investment in REITs could be more beneficial for the investors as compare to other stock investment. REITs provide income more than other equities[40]. Former Federal Finance Minister Doctor Salman Shah while expressing the benefits of REITs declared that capital can be raised by purchasing certificates of real estate.

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[35]<http://www.secp.gov.pk/corporatelaws/pdf/reits_ResearchPaperKASBSecuritiesLimited.pdf> (Accessed November 17, 2010).

[36]Scherrer and Mathison C. "Authorized Property Unit Trusts," *Journal of Property Finance*, 1991, 107-129.

[37]Newell G and Fife A , "Major Property investor attitudes to property securitization,"*Journal of Property and Finance*, 1995, 91-108, 184.

[38]<www.js.com/uploads/JSNewsletter200708.pdf> (Accessed July 13, 2011).

[39]<http://www.reitbuyer.com/blog/default.aspx> (Accessed February 12, 2011).

[40]"Sagalyn L B", "Real Estate Risk and the Business Cycle: Evidence From Security Markets," *Journal of Real Estate Reasearch*, 1990,155-173.

CHAPTER NO. 2

REAL ESTATE INVESTMENT TRUST REGULATION 2008

1. Real Estate Investment Trust

REIT is a mutual fund[41] which invests in different kinds of real estate including shopping centers, office buildings, hotels and commercial properties[42]. Securities and Exchange Commission of Pakistan (SECP) has set up a framework for the establishment of Real Estate Investment Trusts in Pakistan. These regulations are relating to the establishment of REIT, the regulations aim at safeguarding the property rights of people and also facilitating the business community. Pakistan is the only developing country which has initiated REITs[43]. REITs will help to organize a well developed real estate sector in the country.

2. Types of REIT in Pakistan

In 2008 when first time REITs regulation was introduced in Pakistan, there were only Developmental REIT and Rental REIT, later on through an amendment in 2010 Developmental Hybrid REIT and Rental Hybrid REIT were launched. The Securities and Exchange Commission of Pakistan has launched three types of Real Estate Investment Trusts schemes which are elaborated further below.

2.1 Developmental REIT

Developmental REIT is established for investment in real Estate for the development industrial, commercial or residential projects, through erection or renovation.

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[41] An Investment Vehicle That is Made up of a Pool of Funds Collected From Many Investors for the Purpose of Investing in Securities Such as Stocks, Bonds, Money Market Instruments and Similar Assets". "Mutual Funds are Operated by Money Managers, who Invest the Fund's Capital and Attempt to Produce Capital Gains and Income for the Fund's Investors". "A Mutual Fund's Portfolio is Structured and Maintained to Match the Investment Objectives Stated in its Prospectus". <http://www.investopedia.com/terms/m/mutualfund.asp#ixzz1aaklq7oL>(Accessed October 12, 2011).

[42] <http://www.sec.gov/answers/REITs.htm> (Accessed June 07, 2011).

[43] "Government of Pakistan Finance Division, Year Book for financial Year 2005-2006", 56, 98.

In a Developmental REIT scheme, land is acquired by the REIT for the purpose of development of commercial, industrial, residential Real Estate through construction or refurbishment and subsequently sold or rented. The proceeds from sale/rent of the property are then distributed to the unit holders[44].

2.2 Rental REIT

A Rental REIT scheme is established for investment in real estate with a purpose of generating rental income. In a Rental REIT, a fully constructed property is first bought by the RMC and than rented. The rental income derived through is distributed to the unit holders[45].

2.3 Hybrid REIT

REITs in Pakistan can also be a combination of Rental and developmental which are known as Hybrid REITs[46].

3. REIT Management Company

A REIT Management Company is introduced by SECP as an NBFC to initiate REIT Scheme and to provide REIT Management Services. RMC is licensed under the NBFC Rules, 2003 and is obligated upon RMC to abide by the provisions of the Companies ordinance, 1984, NBFC Rules, 2003 and the REIT Regulations, 2008[47].

3.1 Conditions for RMC

REIT Regulation three is consist of two mandatory parts, first is about the conditions which are to be fulfilled by RMC and second part is about the prohibited acts for the RMC.RMC is a mother organization of REIT Scheme, as firstly it has to apply for the registration of REIT Scheme to SECP and subsequently it has to launch REIT Scheme.[48]

[44]<http://www.secp.gov.pk/investor_edu.asp> (Accessed January 12, 2011).
[45]Ibid.
[46]Ibid.
[47]Ibid.
[48]REIT Regulations 2008, R.3.

3.1.1 Registration and Capital Requirements of RMC

REIT Management Company operates as Non-Banking Finance Company[49] licensed by SECP but before getting the licence as NBFC, it has to meet certain conditions as mentioned in the regulation. At the time applying to commission for license as NBFC, RMC must have at least 50 Million Rupees capital which has to be increased, up to 500 Million Rupees or such amount as specified by commission at the time when it apply for approval of offering document and thereafter limit of capital has to be maintained to at least 200 million rupees. Objective of RMC to launch REIT Scheme and REIT Management Services must be stated in Memorandum of association.[50]

3.1.2 Internal Control and Limitation of RMC

Chief Executive and proposed director appointments are subject to confirmation by SECP, after examining the said appointments as per fit and proper criteria. Key executives of RMC must fulfill the fit and proper criteria mentioned in SCHEDULE I and Annex A and B of the regulation but said appointments are not subject to confirmation by SECP. Schedule 1 contains four basic principles to assess the fitness and propriety of RMC executives. At least two promoters of RMC should be the directors of Company and at least one director must have minimum 5 year experience in real estate development or managing projects. Furthermore it is duty of RMC to ensure compliance of all regulatory requirements, Maintenance of internal controls, adequate maintenance of financial, technical, organizational and human resources, to provide REIT management services. Payment of application fee as provided in scheduled 5 is duty of RMC.[51]

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[49] Non-banking Financial Companies or NBFCs are Financial Institutions that Provide Banking Services but do not Hold a Banking License. These Institutions are not Allowed to Take Deposits From the Public. Nonetheless all Operations of These Institutions are Still Covered Under Banking Regulations. <http://www.investopedia.com/terms/n/nbfcs.asp#ixzz1aamHI72A> (Accessed October 12, 2011).

[50] REIT Regulations 2008, R.3.

[51] Ibid..

There are certain acts which could not be performed by RMC such as, it can not hold less then 20% and more than 60% units of REIT scheme in any case. The Units held by RMC are to be treated as blocked securities which are not transferable without prior written permission of commission. RMC can not appoint any person who is director of any other RMC except as independent director. Furthermore a person, who is director of 10 or more public companies at a time, can not hold office as director of RMC. RMC cannot take over the possession of any other RMC without prior permission of commission and can not sell units other then cash consideration except the units allotted to RMC in lieu of real estate provided for REIT Scheme, at the price as approved by the Commission.[52]

3.1.3 Management Fee Payable to RMC

RMC is entitled for 1 percent annual management fee of initial REIT fund in case of developmental REIT scheme for the life of REIT scheme and 3 percent of annual operating income in case of rental REIT scheme. In case of hybrid REIT scheme for the development component of hybrid REIT scheme management fee shall not be exceeding 1 percent of the developmental component forming part of initial REIT fund and in case rental portfolio of hybrid REIT scheme annual management fee not exceeding 3 percent of annual operating income from the rental portfolio of hybrid REIT scheme.[53]The said annual fee is payable as arrears at the end of every quarter of an accounting year of REIT scheme and shall be considered as expense for that accounting year of REIT scheme.[54]

3.2 Obligations of RMC

REIT regulation 2008 imposes certain obligations upon RMC regarding fairness and correctness of affairs of REIT scheme launched by it.[55]

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[52]REIT Regulations 2008, R.3.
[53]REIT Regulations 2008, R.37.
[54]Ibid.
[55]REIT Regulations 2008, R.4.

3.2.1 Appointments and Annual Fee of Quality Assurance Manager or Property Manager

As per regulation RMC has to ensure that REIT assets are vested in trustee as per trust deed and it shall appoint a quality assurance manager or property manager and a valuer for the affairs of REIT Scheme[56].

Annual fee of quality assurance manager and property manger depends upon the negotiated rate of RMC and same shall be incorporated in offering documents. Fee paid to quality assurance manager and property manger shall be considered as expense of REIT Scheme[57].

As per standards of transparency in REITs matters, role of every player is independent of each other. Annual fee/ remuneration of every player is fixed in the regulation except quality assurance manager and property manger, rather it depends upon negotiation, which could cause serious threat to the transparency and quality of the REIT project. Trustee, RMC, Valuer and Commission are also entitled for annual fee, but rate and ratio of their remuneration is fixed in regulation on the other hand fee of quality assurance manager and property manger is not fixed rather it depends upon the negotiation which could compromise the quality and transparency of REIT scheme projects. In my opinion ratio of fee of quality assurance manager and property manager for their services shall be clearly stated in regulation number 40 of REITs regulation[58].

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RMC has to appoint an auditor with the consent of trustee for one year or on any future situation and that auditor must be selected form the list of commission and shall not be the auditor of RMC, Valuer, further said auditor shall not be auditor of REIT scheme for consecutive three years[59].

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[56] REIT Regulations 2008, R.4.
[57] REIT Regulations 2008, R.40.
[58] Ibid.
[59] REIT Regulations 2008, R.4.

3.2.2 Scope and Extent of Business

RMC has to guarantee that REIT Scheme is not engaged in many projects at a time and Project proceeds are distributed among Unit Holders. After completion of project, REIT scheme shall be dissolved; further RMC has to ensure that the approved value of real estate of developmental REIT scheme is not more then 60% of REIT fund. Trust deed should be according to Schedule II and it must clearly state, the procedure for distribution of sale proceeds upon dissolution of REIT scheme mechanism for rectification of trust deed, utilization of REIT fund, Audit procedure, listing procedure, taxes applicable to REIT scheme and procedure for arbitration. At least 90% profit of REIT scheme shall be distributed among unit holders in every fiscal year as dividend[60].

All the running bills are to be signed by the quality assurance manager or property manager of REIT scheme. All business activities should be carried out in accordance with the law including circulars, notifications, guidelines, and directives issued by SECP. Business and financial aspects of REIT must be treated professionally[61].

All contracts and agreements of REIT scheme should be legal, valid and enforceable by law on behalf of trustee. Insurance cover for real estate, acquired for REIT scheme must fulfill the requirements of SECP. RMC has to secure approval of business plan of REIT scheme; further it remains responsible for all the affairs of developmental, rental or hybrid REIT as the case maybe. Customer advances must be properly recorded and no borrowing is allowed on REIT assets[62].

It is obligatory for the RMC to inform the Commission any vacancy or post of director if he is disqualified due to fit and proper criteria. Major changes could take place in business plan of REIT scheme with the prior approval of commission and permission of unit holders through special resolution is to be required and in voting process RMC and promoters will not participate. Further RMC has to ensure that

[60]REIT Regulations 2008, R.4.
[61]Ibid.
[62]REIT Regulations 2008, R.28

NAV of REIT assets are quarterly assessed and Code of Corporate Governance is observed. NAV of REIT assets shall be published in annual and quarterly accounts of REIT scheme[63].

3.2.3 REIT Fund, Listing and Real Estate Requirements

Rental and developmental REIT scheme fund should be at least 2 billion and hybrid REIT scheme it shall be 3 billion and same shall be incorporated in trust deed. REIT scheme units are to be registered as per stock exchange regulations and should be freely tradable on the stock exchange, except those mentioned in section 3(2) (a) as blocked securities, which could be only sold or transferred with the prior permission of the Commission. Approval of Commission for initial public offer of units of REIT scheme is necessary and all units must be issued in consideration of cash except mentioned in regulation 3(2) (f) and such subscription amount must be deposited in to REIT fund. RMC can transfer REIT scheme Units in its own name after registration of REIT scheme[64].

Commission shall approve the real estate acquired for REIT scheme, if it is free from all encumbrances and is vested in the name of trustee[65].Units issued by RMC in dematerialized form shall be deposited with the Commission under Central Depository Companies Rules 1996.All issuance and transfer of units should be carried out after registration of REIT scheme by the Commission[66].

3.2.4 Delegation of Powers and Offering Document Requirements

RMC can delegate its one or more function of REIT scheme with the Prior approval of Commission. RMC shall ensure that delegates have enough skill to conduct the delegated function and have due diligence and management to perform properly. There should be clear demarcation between functions of RMC and delegates and payable consideration to delegates must be determined. RMC shall pay to delegates from its own account and if power to maintain register is delegated then this act should be communicated to Commission within two days of such delegation.

[63]REIT Regulations 2008, R.4.
[64]Ibid.
[65]REIT Regulations 2008, R.6.
[66]REIT Regulations 2008, R.4, 7.

Furthermore RMC shall remain responsible for any omission or loss caused to the assets of REIT scheme by whom functions were delegated by it, or RMC itself. In this respect RMC shall be liable to trustee for any loss caused to the assets of REIT scheme[67].

Prospectus or other offering documents shall contain valuation report of real estate and approved business plan of REIT scheme. Further a register shall be maintained of unit holders and an agent should be appointed for this purpose[68].

3.2.5 Accounts and Annual Rating Requirement

RMC is responsible to prepare proper books of REIT assets, liabilities, profit and loss of REIT scheme, all transactions, any receivables or payables at its registered office so that a clear picture of fiscal matters of scheme could be drawn[69].

RMC is duty bound to transmit within 3 months after close of fiscal year a statement of profit and loss, balance sheet, and cash flow statement etc. to unit holders, trustee, Commission and stock exchange along with trustee report, auditor report and valuation report of real estate. Balance sheet and statement of profit loss, cash flow statement and statement of changes in NAV are also to be transmitted to Commission unit holder, trustee and stock exchange, within one month of the close of first and third quarter and within two months of close of second quarter of financial year of REIT scheme, and the details of such accounts could be published on the website for the knowledge of unit holder, subject to permission of Commission. RMC is responsible to preserve the accounts of REIT scheme after its dissolution for five years[70].

RMC must obtain the ratting for it self and for REIT scheme as per rating criteria and it should be updated annually and published in annual and quarterly accounts and in all advertisements etc. Rating results should be into the knowledge of the Commission and respective stock exchange[71].

[67]REIT Regulations 2008, R.4.
[68]Ibid.
[69]Ibid.
[70]Ibid.
[71]Ibid.

3.2.6 Transfer of REIT Scheme and Cancellation of License of RMC

RMC can transfer management of its owned REIT scheme to other licensed RMC but for this purpose it has to obtain prior approval of unit holders through special resolution and in voting process RMC and promoters shall not participate. RMC could also apply for cancellation of its license after transfer of REIT scheme to other RMC[72].

4. Real Estate Investment Trust Scheme

Real estate investment scheme is a business activity which is carried out by the RMC. REIT scheme could be developmental, rental or hybrid. RMC is required to get registered REIT scheme with the Commission but before making such an application it has to acquire a written consent of the Commission for the real estate which is to be transferred to the proposed REIT scheme. Characteristics of REIT scheme are following[73].

1. Closed-end scheme launched by the RMC, whether it is developmental REIT scheme, rental REIT scheme or a hybrid REIT scheme.

2. A REIT scheme is listed on the stock exchange[74].

4.1 Legal Form and Application for Registration of REIT

REITs in Pakistan have a trust structure and as per definition of trust, REITs have three parties. The REIT scheme has trustees, RMC (As Settlor) and investors (As Beneficiaries). The trust is established by the REIT management company and the trustee. The trustees of REIT fund holds property and keep an eye on the operations of a REIT scheme. RMC manages the scheme in accordance with the provisions of the trust deed and prospectus[75].

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[72]REIT Regulations 2008, R.5.
[73]<http://www.secp.gov.pk/investor_edu.asp> (Accessed January 12, 2011).
[74]Ibid.
[75]Ibid.

After completion of requirements contained in regulation number seven, RMC is required to submit an application along with some important documents to the Commission for the approval of proposed REIT scheme. Registration conditions could be divided into three parts[76].

4.1.1 General Conditions

Application of registration of REIT scheme must be accompanied by the approval of regulation seven, approved registered trust deed, latest audited balance sheet and profit and loss account of RMC, and list of directors of RMC along with their consent to act as director, list of share holders of RMC and trustee along with percentage of their shares. Furthermore RMC has to submit consent of valuer and valuation report of real estate and real estate approval by Commission all relevant documents are to be submitted with the application for registration of REIT scheme[77].

Name and addresses of valuer, auditor, legal advisor of REIT scheme and regulatory authorities must be accompanied with the application for the registration of REIT scheme. Non refundable registration fee is to be paid by the RMC as mentioned is schedule V[78].

4.1.2 Conditions for Developmental REIT Scheme or Developmental Component of Hybrid REIT Scheme

In developmental REIT scheme or developmental component of hybrid REIT scheme a certificate of REIT scheme auditor is required, to ensure that the real estate is in the name of trustee, further RMC is required to obtain all the requisite approvals regarding the clearance of real estate for the project from all concerned local authorities. RMC is required to submit before the Commission preliminary engineering design for developmental REIT scheme or developmental component of hybrid REIT scheme as approved by SECP[79].

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[76]REIT Regulations 2008, R. 8.
[77]REIT Regulations 2008, R.6- 8.
[78]REIT Regulations 2008, R8.
[79]Ibid.

4.1.3 Conditions for Rental REIT Scheme or Rental Portfolio of Hybrid REIT Scheme

In case RMC is going to undertake a project of rental REIT scheme or rental portfolio of hybrid REIT scheme then a certificate from an independent auditor that RMC has entered to a binding purchase agreement with the owner of real estate on ten (10) percent down payment is required for the registration of REIT scheme[80].

4.2 Approval of the Real Estate and Registration of REIT Scheme

Prior to registration of REIT scheme, RMC must obtain approval of the real estate, from the Commission. RMC shall not propose a piece of land for REIT scheme, which is a shared land. The Commission shall not approve the real estate unless and until it is free form all type of encumbrances. RMC has to submit location documents of proposed real estate, which shows that real estate is situated within the limits of Islamabad, Rawalpindi, Karachi, Lahore, Peshawar, or Quetta etc, or any other documents required by SECP[81].

Before applying for the registration of REIT scheme, RMC is required to submit valuation repot of real estate, proposed name of REIT scheme, appointment of trustee, business plane of REIT scheme , draft trust deed to the Commission for approval. If RMC is going to undertake developmental REIT scheme or developmental component of hybrid REIT scheme then it has to obtain the real estate in the name of trustee after full payment of price and all fees and approval for construction of project form the concerned authorities. After the registration of REIT scheme, RMC can receive cash for units over and above 20 % units, against the remaining value of real estate transferred to the trustee, subject to provisions of business plan[82].

In rental REIT scheme or rental portfolio of hybrid REIT scheme, the remaining minimum lease period of real estate acquired for REIT scheme shall be at least thirty year and there should be a binding purchase agreement for real estate in the name of

[80]REIT Regulations 2008, R8.
[81]REIT Regulations 2008, R.6.
[82]REIT Regulations 2008, R.7.

trustee after approval of the Commission, and purchase shall be executed upon payment of 10 percent of the total value of real estate, whether in form of cash or units of REIT scheme, RMC is required to obtain a completion certificate of real estate from concerned authorities and a non encumbrance certificate of the real estate and a certificate of due diligence from a lawyer regarding clearance real estate[83].After its due satisfaction the Commission, registers the REIT scheme or otherwise asks RMC to resubmit the application after certain amendments. Commission may impose certain other conditions while registering REIT scheme[84].

4.3 Cancellation of REIT Scheme and Its Effects

Commission may cancel the registration of REIT scheme at any time after informing the trustee and after providing an opportunity to RMC of being heard. For cancellation of REIT scheme, there should be certain reason. e.g. cancellation is in the interest of the unit holders or unit holders through special resolution request the Commission for cancellation or if the trustee satisfies the Commission, that working of REIT scheme is not in the interest of unit holder[85].After the cancellation of REIT scheme, Commission revokes the trust as per trust deed. Trustee shall distribute the REIT scheme assets in accordance with the trust deed and after disposal of REIT assets trust shall be dissolved. These provisions have not overriding affect upon the Ordinance or any other law administrated by the Commission[86].

5. Trustee

The RMC shall appoint a trustee under the provisions of regulation and then it shall apply to the Commission for its approval and this should be done prior to application for the registration of the REIT scheme. The Commission before giving approval for appointment of trustee shall examine all eligibility aspects of trustee[87].

[83]REIT Regulations 2008, R.7.
[84]REIT Regulations 2008, R.9.
[85]REIT Regulations 2008, R.10.
[86]REIT Regulations 2008, R.11.
[87]REIT Regulations 2008, R.12.

5.1. Status and Qualifications of Trustee

Trustee shall not be related to or part of RMC and It should be an independent body[88].To become the trustee of REIT scheme regulation has envisaged a criteria of qualification, in view of that a trustee of REIT scheme shall be;

A scheduled bank incorporated under Banking Companies Ordinance 1962

Or

Subsidiary trust company of scheduled bank

Or

A developmental financial institution with the long term minimum rating of 'AA' and has been in the business for last five years.

Or

Foreign bank operating in Pakistan for last five years with minimum investment grade rating or working as trustee internationally for last five years

Or

A depository registered with the Commission

Or

Any other person specified by the Commission through circulars issued time to time under the Ordinance[89].

5.2 Fee Payable to Trustee

Trustee is entitled for annual fee not exceeding 0.20 for development REIT scheme from initial REIT fund and in rental REIT scheme not exceeding then one fifth of fee charged by RMC and same is to be paid as arrears on annual basis. In case of developmental component of hybrid REIT scheme Trustee is entitled for 0.20 % fee of the development component forming part of the initial REIT fund and for the rental portfolio of hybrid REIT scheme, fee shall not exceed one fifth of the fee charged by RMC on rental component forming part of the REIT fund. The said annual fee is payable after closing of accounting year of REIT scheme[90].

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[88]REIT Regulations 2008, R.13.
[89]REIT Regulations 2008, R.14.
[90]REIT Regulations 2008, R.39.

5.3 Trustee and REIT Scheme Assets

Trustee must exercise its function with due diligence and vigilance as per constitutive document and all other applicable laws. It is duty of trustee to take care of REIT scheme assets on behalf of unit holders as mentioned in trust deed and all other relevant laws. Title of all REIT scheme assets should be vested in trustee. Trustee can not own the units of REIT scheme[91].

5.4 Relationship of Trustee with RMC and Commission

Trustee is under obligation to follow the instruction of RMC regarding investments and execution of REIT scheme, unless instructions are not in clash with the constitutive documents or any other relevant law. Trustee is duty bound to release project payment upon the instructions of RMC, if bills are signed by quality assurance manager in case of developmental REIT scheme or developmental component of hybrid REIT scheme, or property manager in case of rental REIT scheme or rental component of hybrid REIT scheme[92].

Trustee shall communicate to the Commission that RMC has appointed a valuer and quality assurance manager or property manager, further Trustee shall confirm the Commission that insurance premium has been paid by RMC and insurance policies are up to date. Trustee has to send an annual assets report of REIT Scheme to the Commission and trustee is bound to inform the Commission about any violation of regulation or any other applicable law by the RMC during the project of REIT scheme[93].

5.5 Customer Advances and Delegation of Powers by Trustee

Money received by trustee from the business of REIT scheme shall be deposited in any scheduled bank having minimum "A" rating. Further the trustee has to ensure that customer advance limit is as per regulation and trust deed and a report in this

[91]REIT Regulations 2008, R.15.
[92]Ibid.
[93]Ibid.

regard must be issued by the trustee so that it could be included into quarterly and annually maintained accounts report[94].

Trustee can not delegate its powers but subject to trust deed, if provided. If trustee delegates its function then it shall pay to delegates from its own account and shall remain liable for any omission or negligence of delegates or its own[95].

5.6 Retirement and Removal of Trustee

Trustee could be retired from its responsibilities of custodian of REIT assets after getting required approval of the Commission. Proposed new trustee shall takeover the charge of REIT scheme after its approval SECP. Retirement of previous trustee shall take effect after the transfer of REIT assets in the name of new trustee, and all expenses in this regard shall be born by retiring trustee. After appointment of new trustee trust deed is to be amended according to Trust Act 1882 provisions[96].Other then the provision of retirement of trustee, it could also be removed by Commission after serving notice to the RMC and trustee, if, Trustee goes in to liquidation, becomes bankrupt or receiver or administrator is appointed over the assets of the trustee ,then Commission at its own or on application of RMC ,after writing of reasons ,may decide that appointment of new trustee is in the interest of unit holder, or after special resolution of the units holder for removal of trustee.

In both the situation mentioned above trustee shall be given an opportunity of being heard. All the cost shall be born by the REIT scheme with respect to change of trustee. Meeting of unit holders could be called by the Commission, on the request of units holder, holding not less the twenty percent of units to bring a special resolution to remove the trustee. In voting process trustee and any connected person of trustee shall not vote. If trustee is removed by the Commission in result of liquidation etc. then RMC shall appoint new trustee for better and proper functioning of trust. Cost incurred for removal of trustee shall be born by REIT scheme or as directed by the Commission[97].

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[94]REIT Regulations 2008, R.15.
[95]Ibid.
[96]REIT Regulations 2008, R.16.
[97]REIT Regulations 2008, R.17.

6. Valuer

As pre terms of reference approved by the Commission, RMC is required to appoint a valuer before making the application for the registration of REIT scheme under regulation eight. Valuer is a person appointed under regulation 18 of REIT to assess and evaluate the price of real estate of REIT scheme. A valuer could be appointed only for two years and any subsequent appointment of the same valuer is not possible until expiry of two year form its first retirement[98].

In case RMC is managing more then one REIT schemes then it has to appoint a separate valuer for each REIT scheme. Appointment of valuer shall be transmitted to SECP within 2 working days of such appointment and copy of contract between RMC and Valuer is to be submitted to the Commission[99].

Securities and Exchange Commission of Pakistan has put into practice global values of regulation and best practice for real estate investment trust valuation. SECP is following international standards in the field of valuation. The SECP has built a strong REIT implementation team, which is multi-disciplinary and includes a civil engineer and a real estate broker[100].

6.1 Conditions Applicable to a Valuer

A valuer could be a company incorporated as limited by share or which undertakes to translate it self into company limited by shares within six months after of appointment as a valuer. A valuer must be member of Pakistan Engineering Council or Pakistan Council of Architects and Town Planners or has minimum three engineers or architects as permanent employees registered with the Pakistan Engineering Council or Pakistan Council of Architects and Town Planners[101].

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[98]REIT Regulations 2008, R.18.
[99]Ibid.
[100]<http://www.nation.com.pk/pakistan-news-newspaper-daily-english-online/Business/03-Jul-2008/reit-valuation- secp-implements-world-standards> (Accessed June 08, 2009).
[101]REIT Regulations 2008, R.19.

Valuer should be listed as approved valuer on panel I and panel II maintained by Pakistan Banks Association with unlimited valuation category. Valuer should have at least 10 permanent employees as surveyors and engineers to conduct valuation of real estate[102].

Valuer should be independent of RMC, trustee, director or key executives and there should be no professional or financial interest, which could affect its ability to work as valuer of the REIT scheme and furthermore its promoters, directors have no conviction or involvement in any offence of moral turpitude. A foreign valuer could be appointed as valuer upon the fulfillment of conditions as Commission may specify, irrespective of the conditions mentioned for appointment of a valuer by the regulation[103].

6.2 Obligations of the Valuer

Valuer of REIT scheme is not authorized to own any units of REIT scheme. Valuer is bound by the regulation to prepare a valuation report of REIT scheme real estate before registration of REIT scheme and after that at least once in each quarter, in accordance with schedule IV. While conducting valuation, valuer has to follow international methodology of valuation of real estate and valuation report must be objective and independent of any interest of valuer. Valuer shall communicate to RMC and trustee, any factor affecting the accuracy of last conducted valuation by the valuer[104].

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[102]Ibid.
[103]Ibid.
[104]REIT Regulations 2008, R.20.

6.2.1 Declaration and Method of Valuation

Valuer is required to furnish a declaration on its appointment and after that at the end of each quarter to the RMC and trustee, that it fulfills requirements contained in regulation 19[105].

Valuer shall evaluate the REIT scheme's real estate on market rate and all the assumptions followed for valuation, shall be realistic relevant and be stated in valuation report[106].

Acceptance of any documents by the Commission containing valuation report of real estate and any subsequent approval or permission depending upon that document does not amount to the fact that the valuation report is accurate. A valuer is required to perform its duty with honesty and professionalism[107].

6.2.2 Annual Fee of the Valuer and Re-Valuation of Assets by the Commission

Commission may appoint, if deems necessary, a special valuer to reassess the value of REIT scheme assets or real estate and such valuation shall be final. Fee paid for the valuation, prior to registration of REIT scheme is be paid by the Commission .subsequently it could be claimed by Commission from particular RMC, if REIT scheme is not permitted. If REIT scheme is approved then REIT scheme shall pay fee to the Commission. Any valuation fee after registration of REIT scheme shall be born by REIT scheme[108].

Valuer in entitled for annual fee against the services rendered for the valuation of real estate and this fee shall not dependent on the worth of real rstate as assessed by valuer , but it should be pre-determined[109].

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[105]REIT Regulations 2008, R.21.
[106]REIT Regulations 2008, R.22.
[107]REIT Regulations 2008, R.24.
[108]REIT Regulations 2008, R.26.
[109]REIT Regulations 2008, R.23.

6.2.3 Removal of Valuer

Valuer could only be removed by the Commission if it becomes insolvent, or a receiver or administrator is appointed over its assets or on report by RMC or trustee that removal is in interest of unit holders or upon resolution of units holders for removal of valuer or if it has violated any condition of ordinance .Commission shall call meeting of unit holders to remove the valuer upon petition of 20% units holders .If valuer is removed by the Commission in result of special resolution of units holders or upon the request of trustee or RMC, then valuer should be given opportunity of being heard. RMC shall appoint a new valuer after removal of first valuer and shall communicate said appointment to the Commission, as required under regulation No.18 (4)[110].

7. Investment, Customer Advances and Dividend Policy

Investment, customers advances and dividend policy is an important aspect of REITs regulation and regulation is very clear about the above mentioned policies. It is mandatory for RMC to describe and include the investment policy of REIT scheme, in business plan and constitutive documents. RMC is bound to select the investment areas form the list as provide by SECP[111].

Policy of customer advance and maximum limit of advances is to be mentioned in constitutive documents of REIT scheme by RMC. REIT scheme can utilize up to 30% of customer advance for the scheme. RMC is forbidden to borrow money for REIT scheme and no borrowing is permitted against the assets of REIT scheme. Development REIT scheme or development component of hybrid REIT scheme may gather up to 90% of sale value as customer advances. Disclosure of customer advances is necessary in books of accounts of REIT scheme[112].

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[110]REIT Regulations 2008, R.25.
[111]REIT Regulations 2008, R.27.
[112]REIT Regulations 2008, R.28.

At least 90% of the profits of REIT scheme must be distributed among the unit holders as dividend and this policy should be incorporated in constitutive documents of REIT scheme. Distribution of dividend could be in cash or as bonus units if requested by RMC, and allowed by commission[113].

8. Related Party Transactions and Disclosure Requirements

Related party transactions are most important provisions of the regulation as these provisions depict the conscious efforts for transparency of business transactions. Related parties for the purpose of this regulation are RMC, trustee, valuer or any connected person, associated company, any executive of RMC or trustee, valuer, quality assurance manager or property manger or any close person associated to above mention all. It is important that if above mentioned are working within the mandate as provided by constitutive document then those will not be considered as related party[114].

Offering documents and accounts of REIT scheme shall reveal beneficial interest of related party to the REIT scheme, if any, or conflicts of related party with the interest of REIT scheme. Further if related party is in competition with o REIT scheme then it should be incorporated in accounts for the knowledge of unit holders, so that they could know the impact of such competition over the business of REIT scheme. Offering document must show all details is REIT scheme acquires or sells real estate to related party, and price of real estate received or paid[115].

8.1 Prerequisites With Regard to Related Party Transactions

These transactions shall be carried out in a care full manner and shall be permitted if these are in accordance with the investment objective of REIT scheme and if in the interest unit holders and all related party transactions must be revealed to unit holders by RMC. RMC its delegates, valuer and other related parties are not authorized to

[113]REIT Regulations 2008, R.29.
[114]REIT Regulations 2008, R.30.
[115]REIT Regulations 2008, R.31.

draw advantage, financial or otherwise form property agent or developer to whom execution of REIT project is assigned[116].

9. Application of Ordinance and REIT Scheme

Provisions of company ordinance are applicable to REIT scheme in respect of annual meetings, right shares, allocation and transfer of shares, prospectus, accounts and audit and distribution of dividend etc. If a unit holder has a conflict of interest in the issue presented in the meeting of REIT scheme for approval, then that unit holder shall not participate in voting and RMC may call meeting on requisition of at least 20 percent unit holders and for the purpose of meeting, RMC company secretary shall act as REIT scheme secretary. Accounting standards for of REIT scheme shall be as per international standards, notified for listed companies[117].

9.1 Offer of Units

RMC shall not offer units to public, unless prospectus is cleared by stock exchange and approved by Commission and prospectus must contains all the information required i.e. approved valuation report of real estate , approved business plan of REIT scheme and engineering design along with construction schedule of project[118].Schedule III have detailed guidelines for the offering documents. Such information is necessary for the investor to know the worth of scheme[119].

RMC shall offer at least 25 percent of REIT scheme units and an individual can not by more than 5 percent of units of REIT fund. Further more public offer is not allowed unless and until three underwriters approved by RMC have not entered into underwriting arrangements and underwriters should not be connected person of trustee, valuer, quality assurance manager etc. Any single underwriter can hold maximum 20 percent of REIT scheme Units. RMC is not allowed to issue more then 55 percent units of proposed REIT fund to pre-IPO investors and any single investor is not allowed to grasp more than 10% units of REIT fund. Government owned

[116]REIT Regulations 2008, R.32.
[117]REIT Regulations 2008, R.33.
[118]REIT Regulations 2008, R.34.
[119]REIT Regulations 2008, Schedule III.

institution can hold 55 % units against the real estate being sold or transferred to REIT scheme. Face value of units of REIT scheme shall be rupees -10[120].

9.2 Treatment of Expenses and Advertisement Policy

All initial expenses incurred by RMC for REIT scheme shall be reimbursed, out of REIT fund after first audit of RMC and REIT scheme. Time period and schedule for reimbursement shall consist of five annual equal installments or life period of REIT scheme, whichever is shorter. Irrespective of above mentioned expenses .All relevant charges and fee are to be payable from REIT fund which are mentioned in schedule V[121].

Advertisement for public issuance and all other relevant matters of REIT scheme requires Commission approval, before its publication. Risk warnings are required to be publish in all advertisements[122].

9.3 Annual Monitoring Fee

Commission is also entitled for annual monitoring fee of REIT scheme. Annual fee of development REIT scheme shall be 0.20 % of initial REIT fund and 0.10% for rental REIT scheme and shall be paid from initial REIT fund. If REIT scheme is development component of hybrid REIT scheme then fee shall be 0.20 percent of developmental component forming part of the initial REIT fund and in case of rental portfolio of hybrid REIT scheme fee shall 0.1 percent of rental component forming part of the initial REIT fund. Monitory fee an expense and payable as arrears within three month of close of accounting year of REIT scheme[123].

[120]REIT Regulations 2008, R.34.
[121]REIT Regulations 2008, R.35.
[122]REIT Regulations 2008, R.36.
[123]REIT Regulations 2008, R.38.

CHAPTER No.3

REIT JURISDICTIONS

1. Comparative Analysis of REIT Regimes

REIT is playing an important role in the world's capital market. In all jurisdictions REITs are generally corporate entities. They tend to have a broad shareholders base and are usually listed on public stock exchange. Some REITs are also trusts[124].

Globally REITs are called REIT regimes, but they are slightly different in all jurisdictions. REIT is a vehicle which invests in real estate and enjoys tax exemptions, but, generally distinctiveness of REIT regimes depends on the choice of the country concerned[125].

REITs have worldwide acceptability and it is emerging factor of world economy. Most of the developed and developing countries of the world have introduced the REITs structure. Australia, USA, Malaysia, India, United Kingdom and Pakistan etc.have successfully launched REITs. Some countries have very old history of REITs such as Australia and United States. Tax treatment and distribution of dividend policy of REITs is almost same in all jurisdictions of the world and there is no corporate tax over the income of REIT scheme, if it distributes at least 90% profit of REIT among the unit holders.

The aim of governments in introducing REITs includes a desire to improve liquidity and stability in national real estate markets and to provide access to long-term savings. In addition, REITs can help to finance infrastructure and public sector projects through private fiancé. Investors demand has been another major factor. As a result, many jurisdictions have already introduced their own version of the REIT and

[124] "International REITs,an Overview of Worldwide Markets and Structures by Slaughter and May".<http://www.slaughterandmay.com/media/38981/international_:reit"s_an_overview_of_worldwide_markets_and_structures.pdf> (Accessed April 21, 2011).

[125] "A Comparison of Selected Features of Real Estate Investment Trust Regimes in the United States, the United Kingdom and Germany, Article by Nicola Fritsch"

capital markets around the world are now competing to create the most attractive market[126].Detailed discussion on different Jurisdictions of REITs is not a essence of the thesis but an overview of different important jurisdictions of REITs would enable us to evaluate REIT regulation 2008 introduced by SECP for Pakistan regime.

1.1 Australia

The Australian REIT market was initiated and listed on Australian Stock Exchange in 1971 and up till 28 February 2011, there were 57 listed REITs on the ASX with a market capitalization of over AU$80 billion[127].

1.1.1 Legal Form

Australia has no explicit REIT rules. Australian REITs have basically trust structure and these could be listed or unlisted. In 1998, the Managed Investment Scheme rules were initiated into the Corporations Law. The MIS rules govern investments in Australia, including REITs[128].Whereas in Pakistan REITs are managed through specific provisions of REIT regulation 2008; Trust Act and company law. REITs in Pakistan have trust structure[129].

1.1.2 Capital Requirements

There is no limit of prescribed capital for REIT, if it is listed, but it has to fulfill the ASX requirements, however, for manager there is capital requirement[130].

Where as in Pakistan manager of REIT Scheme (which is RMC) must have at least 50 million rupees capital which has to be increased, up to 500 million rupees or such limit as mentioned by Commission at the time when it apply for approval of offering document and thereafter limit of capital has to be maintained to at least 200 million

[126]International REITs, an Overview of Worldwide Markets and Structures by Slaughter and May.<http://www.slaughterandmay.com/media/38981/international_REITs_an_overview_of_worldwide_markets_and_structures.pdf> (Accessed April 21, 2011).

[127]<www.pwc.com/assetmanagement,Compare and contrast: Worldwide Real Estate Investment Trust (REIT) Regimes, *Brian Lawrence* PwC (Australia), *Manuel Makas* PwC (Australia)> (Accessed March 11,2011).

[128]Ibid.

[129]<www.secp.gov.pk>,Real Estate Investment Trust Regulation 2008.

[130]<www.pwc.com/assetmanagement,Compare and contrast: Worldwide Real Estate Investment Trust (REIT) Regimes, *Brian Lawrence* PwC (Australia), *Manuel Makas* PwC (Australia)> (Accessed March 11,2011).

rupees. Size of REIT fund should be at least 2 billion, in case of rental and developmental REIT scheme and 3 billion for hybrid REIT scheme and same should be incorporated in trust deed[131].

1.1.3 Listing Requirements

Listing is not a requirement for Australian REITs; it could be listed or unlisted[132]. Whereas REITs is Pakistan are neccssarily to be listed on stock exchange[133].

1.1.4 Restrictions on Investors

No restriction policy for investment in Australia[134].

Whereas In Pakistan REIT regime RMC shall offer at least 25 percent of REIT scheme units and an individual can not by more than 5 percent of units of REIT fund. Further more public offer is not allowed unless and until three underwriters approved by RMC have not entered into underwriting arrangements. Any single underwriter can hold maximum 20 percent of REIT scheme Units. RMC is not allowed to issue more then 55% units of proposed REIT fund to pre-IPO investors and a single investor is not allowed to hold more than 10% units of REIT fund but government owned institution can hold 55 percent units[135].

1.1.5 Asset/Income/Activity Tests

Investment of Public unit trusts must be done for the purpose of deriving rental income. Investment by Public unit trusts in trading business such as developing land for sale, will not receive flow through treatment.[136].

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131 <www.secp.gov.pk> (Accessed March 18, 2010).

132 <www.pwc.com/assetmanagement,Compare and contrast: Worldwide Real Estate Investment Trust (REIT) Regimes, *Brian Lawrence* PwC (Australia), *Manuel Makas* PwC (Australia)> (Accessed March 11,2011).

133 <www.secp.gov.pk>,(Accessed March 18, 2010)

134 <www.pwc.com/assetmanagement,Compare and contrast: Worldwide Real Estate Investment Trust (REIT) Regimes, *Brian Lawrence* PwC (Australia), *Manuel Makas* PwC (Australia)> (Accessed March 11, 2011).

135 <www.secp.gov.pk>(Accessed March 18, 2010).

136 <www.pwc.com/assetmanagement,Compare and contrast: Worldwide Real Estate Investment Trust (REIT) Regimes, *Brian Lawrence* PwC (Australia), *Manuel Makas* PwC (Australia)>, (Accessed March 11,2011).

In Pakistan It is mandatory for RMC to describe and include the investment policy of REIT scheme, in business plan and constitutive documents. RMC is not at liberty to invest in the projects of its own choice but it is bound to select the investment areas form the list as provide by SECP[137]

1.1.6 Restrictions on Foreign Assets

There are no restrictions in Australia on investment in foreign assets[138].whereas in Pakistan REIT investment could be made in real estates located in Islamabad, Rawalpindi, Karachi, Lahore, Peshawar and Quetta[139].

1.1.7 Distribution Requirements

Undistributed income or gains are taxed at 46.5%. Full distribution of income and gains by REITs generally occurs[140]. REITs in Pakistan enjoys special tax exemption, it holds pass through entity status and id not taxed if it distributes ninety percent of income among unit holders. Otherwise REIT could be under the obligation of corporate tax[141].

1.1.8 Tax Treatment

Unit holders are liable to pay tax on the full amount of their share of the taxable income (including capital gains) of a REIT in the year in which they are presently entitled to the income of the REIT[142].In Pakistan Unit holders shall be subject to taxation at their income received from REIT.

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[137]<www.secp.gov.pk>(Accessed March 18, 2010).

[138]<www.pwc.com/assetmanagement,Compare and contrast: Worldwide Real Estate Investment Trust (REIT) Regimes, *Brian Lawrence* FwC (Australia), *Manuel Makas* PwC (Australia)> (Accessed March 11, 2011).

[139]<www.secp.gov.pk>(Accessed March 18, 2010).

[140]<www.pwc.com/assetmanagement,Compare and contrast: Worldwide Real Estate Investment Trust (REIT) Regimes, *Brian Lawrence* PwC (Australia), *Manuel Makas* PwC (Australia)> (Accessed March 11,2011).

[141]<www.secp.gov.pk>(Accessed March 18, 2010).

[142]<www.pwc.com/assetmanagement,Compare and contrast: Worldwide Real Estate Investment Trust (REIT) Regimes, *Brian Lawrence* PwC (Australia), *Manuel Makas* PwC (Australia)> (Accessed March 11,2011).

1.2 Malaysia

The Malaysian REIT industry started off with Property Trust Funds (PTF) listed on the Kuala Lumpur Stock Exchange (KLSE) in 1989. Malaysia has also initiated its first Islamic REIT in 2005[143]. REITs in Malaysia are governed by the Securities Commission of Malaysia (SC)[144].

1.2.1 Legal Form

Malaysian REITs have trust based structure and are working under the trust law.[145]. Whereas in Pakistan REITs are managed through specific provisions of REIT regulation 2008; Trust Act and company law. REITs in Pakistan have trust structure [146].

1.2.2 Capital Requirements

Initial size of Malaysian REITs should be at least RM100 million, however SC, has right to review the of the REITs size[147].

Where as in Pakistan manager of REIT (RMC) must have at least 50 million rupees capital which has to be increased, up to 500 million rupees or such limit as mentioned by Commission at the time when it apply for approval of offering document and thereafter limit of capital has to be maintained to at least 200 million rupees. Size of REIT fund should be at least 2 billion, in case of rental and developmental REIT scheme and 3 billion for hybrid REIT scheme and same should be incorporated in trust deed[148].

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[143]<www.pwc.com/assetmanagement,Compare and contrast: Worldwide Real Estate Investment Trust (REIT) Regimes, *Jennifer Chang* PwC (Malaysia)> (Accessed March 11,2011).

[144]Ibid.

[145]Ibid.

[146]<www.secp.gov.pk>(Accessed March 18, 2010).

[147]<www.pwc.com/assetmanagement,Compare and contrast: Worldwide Real Estate Investment Trust (REIT) Regimes, *Jennifer Chang* PwC (Malaysia)> (Accessed March 11, 2011).

[148]<www.seep.gov.pk>(Accessed March 18, 2010).

1.2.3 Listing Requirements

REITs registered with the SC are allowed to be listed on Bursa Malaysia[149]. Whereas REITs in Pakistan are necessarily to be listed on stock exchange[150].

1.2.4 Restrictions on Investors

There is no minimum requirement on the number or composition of units that must be subscribed to and there are no restrictions on non-resident unit holders of REITs[151]. Whereas In Pakistan REIT regime RMC shall offer at least 25 percent of REIT scheme units and an individual can not by more than 5 percent of units of REIT fund. Further more public offer is not allowed unless and until three underwriters approved by RMC have not entered into underwriting arrangements. Any single underwriter can hold maximum 20 percent of REIT scheme units. RMC is not allowed to issue more then 55% units of proposed REIT fund to pre-IPO investors and a single investor is not allowed to hold more than 10% units of REIT fund but government owned institution can hold 55 percent units[152].

1.2.5 Asset/Income/Activity Tests

A REIT may only invest in real estate, single-purpose companies, real estate-related assets, on-real estate-related assets[153].At least 50% of the REITs total asset value must be invested in real estate and investment in non-real estate-related assets must not exceed 25% of the REITs total assets value. All real estate acquired by REITs must be insured[154].

In Pakistan It is mandatory for RMC to describe and include the investment policy of REIT scheme, in business plan and constitutive documents. RMC is not at liberty to

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149 <www.pwc.com/assetmanagement,Compare and contrast: Worldwide Real Estate Investment Trust (REIT) Regimes, *Jennifer Chang* PwC (Malaysia)> (Accessed March 11, 2011).

150 <www.secp.gov.pk>(Accessed March 18, 2010).

151 <www.pwc.com/assetmanagement,Compare and contrast: Worldwide Real Estate Investment Trust (REIT) Regimes, *Jennifer Chang* PwC (Malaysia)> (Accessed March 11, 2011).

152 <www.secp.gov.pk>(Accessed March 18, 2010).

153 <ww.pwc.com/assetmanagement,Compare and contrast: Worldwide Real Estate Investment Trust (REIT) Regimes, *Jennifer Chang* PwC (Malaysia)> (Accessed March 11, 2011).

154 Ibid.

invest in the projects of its own choice but it is bound to select the investment areas form the list as provide by SECP[155].

1.2.6 Restrictions on Foreign Assets

There are no restrictions on the acquisition of foreign assets[156].whereas in Pakistan REIT investment could be made in real estates located in Islamabad, Rawalpindi, Karachi, Lahore, Peshawar and Quetta[157].

1.2.7 Distribution Requirements

Distribution of income should only be made from realized gains or realized income and there is no minimum requirement on how much REITs have to distribute to unit holders[158].

REITs in Pakistan enjoys special tax exemption, it holds pass through entity status and id not taxed if it distributes 90 percent of income among unit holders. Otherwise REIT could be under the obligation of corporate tax [159].

1.2.8 Tax Treatment

If a REIT distributes 90% of its taxable income, tax transparency rules will apply, and the REIT would not be subject to corporate income tax. If this 90% condition is not met, the REIT would be subject to tax at the prevailing corporate income tax rate of 25%. In Pakistan unit holders shall be subject to taxation at their income received from REIT[160].

[155]<www.secp.gov.pk>(Accessed March 18, 2010).
[156]<www.pwc.com/assetmanagement,Compare and contrast: Worldwide Real Estate Investment Trust (REIT) Regimes, *Jennifer Chang* PwC (Malaysia)> (Accessed March 11, 2011).
[157]<www.secp.gov.pk>(Accessed March 18, 2010).
[158]<www.pwc.com/assetmanagement,Compare and contrast: Worldwide Real Estate Investment Trust (REIT) Regimes, *Jennifer Chang* PwC (Malaysia)> (Accessed March 11, 2011).
[159]<www.secp.gov.pk>(Accessed March 18, 2010).
[160]<www.secp.gov.pk>(Accessed March 18, 2010).

1.3 United Kingdom

The UK REIT was initiated through Finance Act 2006 and came into force on 1 January 2007. The legislation has been rewritten into the Corporation Tax Act 2010 as part of the tax law rewrite project. The ability to pay rental income distributions as stock dividends was introduced as part of the Finance (No 3) Act 2010[161].

1.3.1 Legal Form

A UK REIT can be a group of companies and the parent company cannot be an open ended investment company. In order to become a UK REIT, the parent company must file a notice specifying when the REIT rules will apply from and this must be accepted by the tax authorities[162]. The REIT must pay an entry charge of 2% of its gross assets to enter the regime[163]. Whereas in Pakistan REITs are managed through specific provisions of REIT regulation 2008, Trust Act and company law. REITs in Pakistan have trust structure [164].

1.3.2 Capital Requirements

There are no capital requirements, but there is a limitation on the type of shares that the parent company of a UK REIT can issue, being ordinary shares and non-voting preference shares, including convertible non-voting preference shares[165]. Where as in Pakistan manager of REIT (RMC) must have at least 50 million rupees capital which has to be increased, up to 500 million rupees or such limit as mentioned by Commission at the time when it apply for approval of offering document and thereafter limit of capital has to be maintained to at least 200 million rupees. Size of REIT fund should be at least 2 billion, in case of rental and developmental REIT scheme and 3 billion for hybrid REIT scheme and same should be incorporated in trust deed[166].

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[161]<www.pwc.com/assetmanagement,Compare and contrast: Worldwide Real Estate Investment Trust (REIT) Regimes, *Rosalind Rowe* PwC (UK)> (Accessed March 11, 2011).

[162]Ibid.

[163]Ibid.

[164]<www.secp.gov.pk>(Accessed March 18, 2010).

[165]<www.pwc.com/assetmanagement,Compare and contrast: Worldwide Real Estate Investment Trust (REIT) Regimes, *Rosalind Rowe* PwC (UK)> (Accessed March 11, 2011).

[166]<www.secp.gov.pk>(Accessed March 18, 2010).

1.3.3 Listing Requirements

A UK REIT must be listed on a stock exchange that appears on the list of worldwide stock exchanges recognized by the UK tax authorities, but not the AIM, which is an exchange for smaller companies in the UK[167].Whereas REITs in Pakistan are necessarily to be listed on stock exchange[168].

1.3.4 Restrictions on Investors

A UK REIT cannot be closed ended and At least 35% of the shares must be freely available to the public and the remaining shareholders must not be entitled to 85% or more of the votes[169].Whereas In Pakistan REIT regime RMC shall offer at least 25 percent of REIT scheme units and an individual can not by more than 5 percent of units of REIT fund. Further more public offer is not allowed unless and until three underwriters approved by RMC have not entered into underwriting arrangements. Any single underwriter can hold maximum 20 percent of REIT scheme units. RMC is not allowed to issue more then 55% units of proposed REIT fund to pre-IPO investors and a single investor is not allowed to hold more than 10% units of REIT fund but government owned institution can hold 55 percent units[170].

1.3.5 Asset/Income/Activity Tests

At least 75% of the UK REITs gross assets must be used in the rental business and at least 75% of the UK REITs profits must be earned in its qualifying rental business. It is possible for any members of a UK REIT to have other activities but such activities must not involve more than 25% of the UK REITs gross assets, nor generate profits of more than 25%. There must be at least three properties with no one property accounting for more than 40% of the value of the REIT assets[171].In Pakistan it is mandatory for RMC to describe and include the investment policy of REIT scheme, in business plan and constitutive documents. RMC is not at liberty to invest in the

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[167]<www.pwc.com/assetmanagement,Compare and contrast: Worldwide Real Estate Investment Trust (REIT) Regimes, *Rosalind Rowe* PwC (UK)> (Accessed March 11, 2011).

[168]<www.secp.gov.pk>(Accessed March 18, 2010).

[169]<www.pwc.com/assetmanagement,Compare and contrast: Worldwide Real Estate Investment Trust (REIT) Regimes, *Rosalind Rowe* PwC (UK)> (AccessedMarch 11,2011).

[170]www.secp.gov.pk>(Accessed March 18, 2010).

[171]<www.pwc.com/assetmanagement,Compare and contrast: Worldwide Real Estate Investment Trust (REIT) Regimes, *Rosalind Rowe* PwC (UK)> (Accessed March 11, 2011).

projects of its own choice but it is bound to select the investment areas form the list as provide by SECP[172].

1.3.6 Restrictions on Foreign Assets

There are no additional restrictions on foreign assets for UK REITs[173]. whereas in Pakistan REIT investment could be made in real estates located in Islamabad, Rawalpindi, Karachi, Lahore, Peshawar and Quetta[174].

1.3.7 Distribution Requirements

The UK REIT is required to distribute at least 90 percent of its rental profits to share holders and there is no requirement to distribute gains[175]. REITs in Pakistan enjoys special tax exemption, it holds pass through entity status and id not taxed if it distributes at least 90% of its income among unit holders. Otherwise REIT could be under the obligation of corporate tax[176].

1.3.8 Tax Treatment

The UK REIT must be a UK tax resident and it is not subject to tax in respect of either rental income earned or capital gains realized in respect of its rental business assets. It is subject to corporation tax on all other income under the usual taxation rules. There is no special exemption for UK REITs from value added tax, uniform business rates, employment taxes or transaction taxes (stamp duty land tax)[177]. Income of investors derived from UK REIT is subject to a tax at their level. In Pakistan unit holders shall be subject to taxation at their income received from REIT.

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[172] <www.secp.gov.pk>(Accessed March 18, 2010).

[173] <www.pwc.com/assetmanagement,Compare and contrast: Worldwide Real Estate Investment Trust (REIT) Regimes, *Rosalind Rowe* PwC (UK)> (Accessed March 11, 2011).

[174] <www.secp.gov.pk>(Accessed March 18, 2010).

[175] <www.pwc.com/assetmanagement,Compare and contrast: Worldwide Real Estate Investment Trust (REIT) Regimes, *Rosalind Rowe* PwC (UK)> (Accessed March 11, 2011).

[176] <www.secp.gov.pk>(Accessed March 18, 2010).

[177] <www.pwc.com/assetmanagement, Compare and contrast: Worldwide Real Estate Investment Trust (REIT) Regimes, *Rosalind Rowe* PwC (UK)> (Accessed March 11, 2011).

CHAPTER NO. 4

EXISTING LAND LAWS AND LAND ADMINISTRATION SYSTEM FLAWS IN PAKISTAN

1. Real Estate Laws of Pakistan

There are the more then dozen land related laws in Pakistan but here I shall thrash out only few of them, having deep concern with REITs regulations introduced by SECP.

1.1 The Transfer of Property Act, 1882

This act deals with the transfer, sale, mortgages charges, leases exchanges, and actionable claims in respect of property. TOP has a direct impact on the buying and selling of property it discusses in detail about the persons entitled to transfer the property, operation of transfer, oral transfer, and what types of properties can be transferred[178].

1.2 Land Revenue Act, 1967

This Act lays out the complete structure and hierarchy of the land and revenue department in Pakistan and discusses the powers different land and revenue department offices and their due jurisdictions. Land Revenue Act also instructs on the collection of land revenue and surveys, marking of boundaries, partitions, and arbitrations[179].

1.3 Stamp Act 1899

Stamp Act 1899 directs the buyers and sellers to pay a certain amount to government in lieu of the stamp papers used to make the legal agreements of buying and selling of real estate in Pakistan. The stamp rates might change due to the impact of inflation

[178] <http://pakistanrealestate.pk/dir/an-overview-of-laws-regulating-buying-and-selling-of-properties-in pakistan/> (Accessed 15 October, 2011).

[179] <http://blog.zameen.com/overview-of-laws-regulating-the-buying-and-selling-properties-in-pakistan/ > (Accessed October 15, 2011).

and governmental policies, but the overall Stamp Act 1899 instructs buyers and sellers of Pakistan real estate to legally validate their buying and selling of properties through the use of Stamp. There is a direct link between the Registration Act and the Stamp Act[180].

1.4 Registration Act 1908

Registration Act 1908 is a law which was originally made to check the registration of the real estate. Registration Act 1908 contains details about the establishment of registration, and describes where the properties can be registered[181]. Under this act, various documents are executed and registered in the office of sub-registrar like sale deeds, mortgage deeds, lease deeds, power of attorneys, partnership deeds, and other deeds[182].

The Registration Act, 1908, provides for the registration of documents but not for the registration of titles. The registration of documents is compulsory where some provision in the Transfer of Property Act (for example, Section 54 in the case of an outright sale of an immovable property) or some provision in the Registration Act (for example, Section 17 dealing with various transactions concerning immovable property) provides for compulsory registration[183].

2. Land Administration System in Pakistan

The Land Administration System (LAS) in the Pakistan is very old and it was introduced by the British. The LAS in Pakistan is organized on the traditional system of land registers and maps that are organized and maintained at the provincial, district and tehsil level. The Board of Revenue at the provincial level is responsible for all

[180]<http://blog.zameen.com/overview-of-laws-regulating-the-buying-and-selling-properties-in-pakistan/ >(Accessed October 15, 2011).
[181]Ibid.
[182]<http://www.geospatialworld.net/index.php?option=com_content&view=article&id=17501%3Aanalysing-land-administration-system-in-pakistan-through-stakeholders-perception&catid=140%3Aland-information-system-overview&Itemid=41> (Accessed 15 October,2011)
[183]"Guaranteeing Title to Land, By A. K. Khalid", <http://archives.dawn.eom/2002/07/22/ebr3.htm>(Accessed June 17, 2010).

matters concerning the administration of land, collection of land revenue, preparation of land records and other land matters[184].

The Director Land Records (DLR) is sole authority which controls land revenue staff at district level. In each district, the staff under the DLR includes the chief settlement officer, settlement officer, tehsildar, naib tehsildar, kanungo and patwari[185].Presently Pakistan has insufficient and complex system of land administration, and an overloaded judicial system which is unable to decide the land cases within reasonable time.[186].The land laws in Pakistan have been constrained by number of factors such constraints are complex product of the old and orthodox, land revenue system. There is need for major changes in existing land related laws, and wide-ranging action by the government to introduced necessary legislation and institutional reforms. The land administration system is controlled through the following hierarchy in Pakistan.

Country
Province
Division
District
Tehsil
Kanungo Halqa
Patwar Circle
Mauzah/Village

2.1 Provincial Board of Revenue

Provincial Board of Revenue is a regulator of land administration in each province of Pakistan. Patwaris are responsible to keep original land records and they have 17 registers.[187].Following table elaborates the register maintained by a Patwari.

[184]<http://www.fig.net/pub/fig2010/papers/fs03f%5Cfs03f_ali_nasir_3901.pdf>(Accessed August 07, 2010).
[185]Ibid.
[186]Ibid.
[187]Ibid.

Sr.No.	Record Set Name	Purpose
1	Shajra Paarcha	Village Map
2	Shajra Nasab	Genealogical History of Land Owners
3	Khasra Numbers	Land Parcel Inder Numbers
4	Radeef Waar Malikaan	Alphabetical Index of Land Holders
5	Register Haqdaaraan Zameen	Land Tenure Description of Owners
6	Haqooq-e-Chahaat Wa-Nul Chahaat	List of Rights Holders of Water Wells
7	Wajib ul Arz	Statements of Community Customs
8	Field book	Survey Note Book
9	Register Girdawari	Harvest Inspection Register
10	Register Tagrarut Kaasht	History of changes in Crop Cultivation
11	Register of Dakhil Kharij	Land Parcel Mutation Statement
12	Dhal Baacha	Demand of Government Dues
13	Roznamacha Waqeaati	Daily Event Registering Register
14	Roznamcha Hidayaati	List of Instructions for Officials
15	Roznamcha Partaal	Cross Verification Register
16	Laal Kitaab	Book of Statistics
17	Roznamcha Kaarguzari	Work Book

Source: Cadastral System in Pakistan, Present Situation and Future Challenges, Presentation by Nadia Panchaud 16/12/2010

2.2 Land Registration Process

Property purchase in Pakistan has never been a smooth and risk free process. Unfortunately, the land records system is decades old and there are several pitfalls and loopholes in the system exposing innocent buyers to possible fraud and deception. Registering a land transaction in Pakistan involves six procedures, requires an average of 50 days, and costs 5.3% of the total property value[188].

2.3 Present LAS Situation in Pakistan

Present land record system in Pakistan is not too different from the system introduced by King Akbar. There are approximately 190 million land records, purportedly containing the details of approximately 50 million landowners in Pakistan. These all records are in manual form. In urban areas, if a property is situated in a housing society such as Defense Housing Authority Karachi or Model Town Lahore, then the land records pertaining to that property will be in the custody of that society. However, in other cases, maintenance of land records falls under the general purview of the Board of Revenue (BOR). The original land records of a particular area are in the custody of the Patwari, A Patwari is required to keep the original land records with him at all times and has the authority to make changes relating to ownership, use and taxation in the original record[189].

A central record of property rights and transactions does not exist presently in Pakistan. The key missing element here is the lack of a general property system that could allow continuous updates and modifications and land changes in functions and users. The second key missing element is a reliable link between land and proper titles. It is a positive step taken by the government to begin efforts to computerize the land records in pilot projects in Punjab and Sindh. Studies of similar programs in

[188]<http://usaidlandtenure.net/usaidltprproducts/country-profiles/pakistan-1 (World Bank 2008; USAID 2008)> (Accessed December 11, 2010).
[189]<http://www.apdip.net/projects/e-government/capblg/casestudies/Pakistan-Qazi.pdf>(Accessed June 10, 2009).

Peru, Thailand and Vietnam show big increases in investment and productivity on titled land compared with land without title[190].

2.4 Computerization of Land Records in Pakistan

An important dimension of human security is related to asset security backed by the legal, social and institutional support. In Pakistan, one of the most important assets in both rural and urban settings is land. The prevalent system of land record management is an archaic paper based system whose complexity and the control of state functionaries over its access has given rise to rampant rent seeking and deprivation of the weaker sections of the society.[191].

A few efforts have been made in Pakistan to computerize the land record with a view to make it simplified, keep it updated and to inculcate an element of transparency in land market to foster a conducive environment for safer and more efficient investment in land. The first project of computerization of land records named as Participatory Information System (PIS) was initiated in the Baluchistan province and aimed at demonstrating a technologically superior option for land record management with the hope that it will be adopted by the relevant stakeholders. The PIS worked through specially hired staff from the market with a casual interaction with the revenue officials who are managing the paper-based land records at the moment. The second project (Land Record Management Information System Project- LRMISP) in Punjab province adopted a gradual transformation approach wherein the old paper-based system would be replaced with a computerized system with online access to the system outputs. The LRMISP has also initiated a Business Process Re-engineering exercise to redesign the institutional infrastructure to minimize the internal resistance as well as to capacitate the staff and procedures to operate the computerized system to its full potential[192].

[190]<http://siteresources.worldbank.org/INTPSIA/Resources/490023-1120845825946/Land.pdf> (Accessed March 07, 2010).

[191]<http://www.apdip.net/projects/e-government/capblg/casestudies/Pakistan-Qazi.pdf>(Accessed March 07, 2010).

[192]Ibid.

A project management unit has been set up under the administrative control of the Board of Revenue, government of the Punjab[193].Through LRMIS system the manual paper-based land records are transformed into computerized data base. The right holders will be able to acquire land records related services easily from the service centers. Any transaction in revenue record will immediately be incorporated in register Haqdaran-e-Zameen which will be updated at once.[194]The right holders will have to go to the service center to get fard and the staff will search their record by their name, father/husband name, khewat number and will desire for CNIC. The service center staff will take the thumb impression through a bio-metric device and a photo. The right holder will get copy of their record within 10 to 15 minutes after paying the specified fee. [195]Anyone who intends to mutate any land can apply for mutation verbally of in form of written application in the service center. The staff will register their request and provide them the challan for payment of specified fee and will fix a date for next visit. The right holders will be given a date for next visit to service center within next 15 days after the registration of their request for mutation, in order to get their mutation decided. [196]On that scheduled date the buyer, seller along with the witnesses will visit the service center wherein the revenue officer will decide the mutation. In case of approval of mutation both buyers and sellers will be provided with a copy of the mutation and updated fard-e-malkiat, free of cost, with the photographs of the buyers printed thereon[197].

The Land Records Management and Information Systems Project was designed by the Project Management Unit using the experiences of the pilot projects in Kasur, Lahore, Rahim Yar Khan and Gujrat and also utilizing the experience of various Indian states[198].All the efforts by the provincial governments show that there is realization of the problem and the intent to improve the existing land revenue system but pace of improvement is very slow and at the same time no effort have been made to create awareness among the people.

[193]<www.punjab-zameen.gov.pk>(Accessed December 07, 2011).
[194]<www.punjab-zameen.gov.pk>(Accessed December 07, 2011).
[195]Ibid.
[196]Ibid.
[197]Ibid.
[198]Ibid.

3. Key Flaws in Land Laws and Issues Hindering the Growth of Organized Real Estate Sector

Pakistan's land laws are obsolete and damaging the economic development and make the transactions of land difficult and doubtful[199].The lacunas in the legislation and inefficiency of enforcement are the root causes of failure and destruction. Although there are many flaws in land related laws of Pakistan, but in this chapter I shall discusses only few of them, which have relevance with the REIT Regulation:

1. The transactions of land are complicated and risky in Pakistan because there is no central land record system, which could ensure definite evidence of title of land.

2. Pakistani law recognizes oral gifts as valid transfers of property but there is no record of such gifts in land revenue records .therefore title of land remains disputed till decision by courts.

3. Patwari being key person of LAS can tamper land records in the absence of checks on him and he has intimate knowledge of classification of land records, which leads to his UN challenged authority over the LAS system.

4. Unauthorized transfer of land is one of the consequences of manually operated bad land laws. Transfer of a property to a buyer, by a person not legally entitled to do that, causes not only monetary loss to the purchaser but it also starts a round of litigation between parties. Transfer of land by a co-sharer without the consent and knowledge of other co-sharers is typical example of unauthorized transfer in Pakistan.

5. Registration cost of property in Pakistan is very high and rate of registration is different in different jurisdiction and this very fact discourages people from registering properties. In result of this actual transfer of property took place but no registered document exist in this regard to endorse that very transaction.

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[199]<http://bnrlaw.net/Publications_Download/The%20Law%20of%20Land.pdf (The law of land — *Feisal Naqvi) daily times, dec 29 2006*> (Accessed April 17, 2009).

6. Some time transfer document of a property are got registered twice by the first transferor just to get illegal money and to deprive second transferee from his hard earn money. In Pakistan Courts have decided cases in this regard.

7. Mostly People avoid registration of property to avoid payment of high rate of different taxes and even if they got register their property documents then there is always understatement of the value of property just to avoid tax.

8. Neighbors of adjacent land has right of pre-emption over the land or property of person selling his land to third party. If owner has sold his land, then adjacent neighbors have a prior right, to purchase that land at the price being offered by third party. If the matter is not settled between the parties then desirous party may bring a suit of preemption against the seller and prospective buyer. These suits discourage the buyer which ultimately causes damage to the economy and makes the transfer of land difficult.

9. Nature of land could be changed or altered by the Patwari because he is sole authority who possesses complete original record of any patwar circle.

10. All the Land disputes are to be settled through courts .Our legal system is inefficient and over burdened and, all the cases take long time to reach to the conclusion.

11. In Pakistan normally people submits the paper of their properties to the Courts as surety in criminal cases for release of accused on bail and until surety is released through proper procedure, they can not sell or transfer property to any one. But land revenue authorities does not mention in land record that certain land was attached as surety with the court, hence that could be transferred without the permission of court, which cause problem to subsequent land holder .

12. In developed countries, land holders can get up to 90 % of the value of their land or property as a loan but In Pakistan banks does not grant loans more then fifty percent of value of land because there is no reliable valuation standard of the property.

13. There is no central record of land holdings in Pakistan, presently all information is available in manual form with local revenue authorities. Central land administration system could enable the buyers and sellers of land to know the present situation of land[200].

14. There is also another drawback of present land administration system that there is no conclusive proof of title of land or property rather there is duplication of titles in land records[201]. It may be useful to refer, in this regard, to the decision of the Lahore High Court holding those entries in revenue record are not sacrosanct. They are certainly an important piece of evidence but like all other evidence they can be countered[202]. Similarly, the Supreme Court of India, as late as August 1989, has firmly established, in Corporation of they City of Bangalore vs M Papaiah and another, (judgment Today, 1989(3) Sc 294 Page 296) that the revenue records are not the documents of title .... Thus, whatever be the entry in the records-of-rights, it would permissible to challenge it in the appropriate court or tribunal[203].

15. As result of outdated land laws and un documented land transactions, thousands of cases and land disputed are pending before Courts and more then a million land disputes are pending before different forums[204].

16. Arbitration proceedings are not encouraged in Pakistan and there is no mechanism in this regard to resolve land disputes through mediation and to avoid overloaded judicial system.[205].

17. There are multiple high rates of taxes applicable to land transactions, which compels people to avoid registration or to get register land or properties at less then original price to evade taxation.[206].

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[200]<http://www.commerce.gov.pk/Downloads/Regulatory_Issues.pdf> (Accessed March 23, 2011).

[201]<http://info.worldbank.org/etools/docs/library/34919/landpoliciesexecsummary.pdf>(Accessed June 12, 2011).

[202]PLD 196 Lah. 764

[203]"Guaranteeing Title to Land, By A. K. Khalid",<http://archives.dawn.com/2002/07/22/ebr3.htm> (Accessed June 17, 2010).

[204]<http://www.commerce.gov.pk/Downloads/Regulatory_Issues.pdf> (Accessed March 23, 2011).

[205]Ibid.

[206]Ibid.

18. Considerable numbers of transactions of sale, purchase, or transfer through any other mode are not documented properly and relevant record is not up to date. Non maintenance of proper Land records leads towards multiple ownership of the same land.

19. There is no mechanism at state level to determine the price of land or properties. Currently there is no method of evaluation in the real estate sector[207].It is our social phenomena to cheat laws for personal gains and satisfaction. Any transaction in real estate could be under valued just to avoid applicable state taxes on actual price of real estate or over valued to defraud with any financial institution or to legitimize the black money.

20. Present land records are in paper format and there is a lack of updated geographical information data. There is no latitude/ longitude information on the cadastral maps which creates a gap between the map and the register to present the reality on the ground[208].

21. Sale of land could be don through duel systems in Pakistan it would be a registered sale deed before registrar or fard malkiyat (ownership document) issued by Patwari of revenue department. Both the authorities are competent to record the sale transaction but have no co-ordination.

22. The agricultural land in many areas is still recorded in the name of a person who passed away long ago and whose legal successors are the owners but whose names are not entered in the land records[209].

23. Sale of a property or land after issuance of an attachment order by court is common practice in Pakistan because there is no effective communication mode for

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[207]<www.secp.gov.pk/SCD/pub_scd/pdf/REITs.ppt> (Accessed April 17, 2010).
[208]<www.fig.net/pub/fig2010/papers/fs03f%5Cfs03f_ali_nasir_3901.pdf>(Accessed July 11, 2010).
[209]Ibid.

general public that certain property is attached and could not be sold without court order[210].

24. There are certain land laws which are in conflict with each other Section 53-A of the TOP Act, 1882 recognizes oral or un registered sale deed whereas Section 17 of the Registration Act, 1908, negates the worth of oral or un registered sale deeds this situation results into fraudulent claims being made on the basis of Section 53-A[211].

25. Concept of BENAMI transaction is also an other issue hindering the organized growth of real estate because it leads to the claim that the ostensible owner of a property is in fact not the real or beneficial owner. Such a claim inevitably results in involved litigation with the so-called 'real' owner seeking to avoid the transactions entered into with the ostensible owner[212].

Pakistan's laws relating to property are not only outdated but actually harmful. These laws hurt economic development because they make the transfer of land difficult and doubtful[213].The lacunas in the legislation and inefficiency of enforcement are the root causes of failure and destruction. Each and every aspect of perfect Title could be disputed through present land laws in Pakistan. These laws are bad laws for the prosperity and purpose of any new enactment or legislation for the better economic and investment regime in the country.

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[210] <http://www.sbp.org.pk/departments/ihfd/HAGRecommendations.pdf> (Accessed September 10, 2010).

[211] Ibid.

[212] Ibid.

[213] <http://bnrlaw.net/Publications_Download/The%20Law%20of%20Land.pdf (The law of land — Feisal Naqvi) daily times, dec 29 2006> (Accessed April 17, 2009).

4. Impact of Land Laws and Prospect of REITs in Pakistan

Prospect of REIT in Pakistan and present land laws are co related to each other because RMC is required to obtain land or any building or premises for the REIT project and acquiring of land or building is to be dealt through present land related and rent laws of Pakistan. In the previous section of thesis flaws of Pakistani land related laws were discussed and here in this section I shall converse the prospects of REIT in Pakistan and impact of land related laws. Land transactions are not transparent for valuation and title[214].

REITs are beneficial for the real estate sector of Pakistan but there is need to develop modern and enhanced land/Rent laws of Pakistan. REITs basic and the vital component is acquiring of Land or any building for on going REIT scheme business. If we succeed to develop central computerized land agency then this could ensure safe and sound land transaction for REITs in Pakistan. There is a dynamic scenario of REITs in Pakistan because major real estate sector is unused.

Land record system with all updates regarding title, transfer and possession of land and structures then REITs prospect would be higher of what we have anticipated today. On the other hand REIT is the only investment vehicle around the world which has generated returns more then any other investment in equity markets, REITs would provide optimum diversification benefits to the Pakistan economy. Promotion of REIT shall create great room for other co-related industries and in result there shall be revival of the economic growth in Pakistan. Future of REITs in Pakistan is very high because of following reasons.

1. REITs are highly regulated there shall be improved price discovery for both rental and sale transactions under REIT scheme as compare to general real estate market[215].

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[214]<http://www.sbp.org.pk/departments/ihfd/HAGRecommendations.pdf> (Accessed September 10, 2010).

[215]<www.secp.gov.pk/scd/pub_scd/pdf/reits.ppt> (Accessed April 17, 2010).

2. In general real estate market there is no standard for valuation of real estate but REITs are following international modern valuation standards of real estate which would enhance the investor's confidence.

3. REITs shall promote high quality construction as investors will get long-term revenues rather than the current practice of 'build and sale[216].

4. REITs shall Increase the units of residential and commercial properties, which shall promote the cause of National Housing Policy of Pakistan[217].

5. REITs shall promote development of long-term rental market. In Real estate, money is mainly made by transacting in 'open' plots – no real benefit to the economy or to society[218].

6. REITs shall broaden and diversify the mutual fund industry[219].

7. Alternate asset class which will increase the supply of securities with the combined benefits of an equity security and real estate[220].

8. REITs shall provide retail investors with the opportunity to share the upside from a robust real estate sector[221].

9. REITs shall provide liquidity to real estate which is otherwise considered illiquid[222].

10. Provide the potential for more efficiently managed shared use rental properties[223].

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[216] <www.secp.gov.pk/scd/pub_scd/pdf/reits.ppt> (Accessed April 17, 2010).
[217] Ibid.
[218] Ibid.
[219] Ibid.
[220] Ibid.
[221] <www.js.com/uploads/JSNewsletter200708.pdf> (Accessed July 13, 2011).
[222] Ibid.
[223] Ibid.

11. Make available much needed specialized financial intermediation to the real estate market[224].

12. Serve as a catalyst for further FDI in Pakistan[225].

13. Lend impetus and depth to the capital market; unlocking value of large properties[226].

Real estate investment trust is a mutual fund that invests in properties and derives income from such investment for its unit holders. 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[227].

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[228].

REITs are not only an investment tool but it also enables the concerned governments including Pakistan to fulfill the international obligations. Successful REITs could increase the housing units in the country because it is an international obligation under the charter if United Nations. Shelter is the basic human need and Pakistani government is trying to fulfill this requirement of homeless people. Many housing policies have been implemented in last decades, and latest one was announced in 2001. Housing policy 2001 contained recommendations for improved existing

[224]Ibid.
[225]<www.js.com/uploads/JSNewsletter200708.pdf> (Accessed July 13, 2011).
[226]Ibid.
[227]<http://atozspot.50webs.com/realestate.html > (Accessed May 17, 2009).

[228]Jim Berry and Jim Berry, "An Assessment of Property Investment Vehicles with Particular Reference to German Funds," *Journal of Property Investment and Finance*,1999, 430-442.

mechanisms including new regulations and credit facility for housing sector. Real estate investment trust is the outcome of those recommendations.

REITs not only provide an opportunity for the investors but it is also helpful to create housing and commercial units. Housing is a basic and fundamental human need, yet millions are caught in the struggle to have a roof over their heads in Pakistan[229]. The gravity of the problem while appreciating the fact that housing is not only a social need but a productive sector of economy[230]. All governments have the responsibility to take appropriate actions in order to promote protection and ensure the provision of adequate housing for its citizens. Present housing backlog in Pakistan is around 6.00 million units[231].

REITs could 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. 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[232].

In short two things are very necessary for REITs in Pakistan first is conclusive title of property and second is accurate valuation of the property acquired for REIT project. To achieve the purpose we have to introduce central computerized system to regulate LAS mattes and international standards for the valuation and management of land in Pakistan.

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[229]<www.nhagov.pk/docs/Housingpolicy.pdf> (Accessed May 19, 2010).
[230]Ibid.
[231]<http://www.islamabad-realestate.com/property/nha-t2917.html> (Accessed May 12, 2009).
[232]<www. Bloomberg.com/ india and Pakistan >(Accessed September 08, 2008).

5. Land Administration in UK

The Land Registry comprises the registration of title department, dealing with the land registry's main business, and the much smaller land charges and agricultural credits departments[233].In 2003 the Land Registration Act 2002 and Land Registration Rules 2003 came into force and they have replaced the law for land registration. There are mainly three registers related to lands in England.

1. The Property Register

This describes the land and the estate, for which it is held, refers to a map or plan showing the land, and contains notes of interests held for the benefit of the land, such as easements or restrictive covenants of which the registered land is the dominant tenement[234].

2. The Proprietorship Register

This states the nature of the title whether it is absolute, good leasehold, qualified or possessory, states the name, address and description of the registered proprietor, and sets out any cautions, inhibitions and restrictions affecting his right to deal with the land[235].

3. The Charges Register

Whereas the property register describes the positive side of estate ownership, its negative aspects are revealed in the charges register[236]. The charges register of a registered estate must contain, where appropriate[237] details of leases, charges, any other interests which adversely affect the registered estate, dealings with these estates,

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233 <http://www1.landregistry.gov.uk/ar07/services/landcharges/> (Accessed August 12, 2011).
234 <http://www1.landregistry.gov.uks/> (Accessed August 12, 2011).
235 Ibid.
236 Ibid.
237 Ibid.

identification of the proprietor of any registered charge, restrictions and notices in relation to a registered charge.

5.1 The Principles of Conclusiveness of Registration

In England, the registration is conclusive of title. When a title is first registered, the registration confers a new statutory title[238] on the registered proprietor. The act of registration confers the statutory title on the proprietor, and he holds this title subject to any subsisting entries on the register, and subject to any overriding interests, but he holds free from all other interests, even if he has full notice of them[239].

6. Strategies and Opportunities for Improved Real Estate Sector in Pakistan

The real estate sector in Pakistan has great strength and there are opportunities for local and international investors to discover hidden potential of sector. The Commission has developed REIT regulation in Pakistan. Around the world REITs have not only significantly contributed towards the development of real estate markets but brought a great enhance in the investment market. In Pakistan REITs regulation is expected to bring a new horizon to replace and modernize the existing land laws. Pakistan being a developing state has great potential for growth in the real estate sector, but there is need to adopt different strategies to take the real advantage of the REITs regulation 2008. Opportunities for REIT success could be.

1. In above cited facts it is expected that REITs can resolve the problem of shortfall of housing because the project of REITs scheme are of large scale and can fulfill the annual requirements of housing in Pakistan

2. There is need to settle land disputes outside the courts through negotiation/arbitration because judicial proceedings took a lot time to reach to the end and parties to the litigation waste huge amount in this activity. In this way investors will be secured as far as their investment is concern and this act shall enhance the investment in real estate sector.

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[238]<http://www1.landregistry.gov.uks/> (Accessed August 12, 2011).
[239]Megarry, R and Wade W, *The Law of Real Property, 6th ed.* (n.l: Sweet & Maxwell, 2000), 98.

3. There is need to lower the registration fee and stamp duty to encourage the buyers and sellers to register the documents of their property ,so that transfer of property, title of property and status of property could be identified without long and cumbersome procedure. If all relevant documents of property are registered and up to date then investors will show their confidence in real estate sector.

4. There is need to amend the existing laws to the following aspects[240].

- Amend legislation to allow for computerization and acceptance of digital records.
- Amend legislation to increase security of title to land.
- Change legislation to ensure the identification of properties in documents lodged in district and sub-district registries can be matched to records for those properties in the record of rights.
- Legislate to direct the BOR to notify municipal government units of changes to ownership recorded by the BOR.
- Review exemptions to compulsory registration of documents in the district and sub-district registries[241].

5. There is need for development of a modern land titling and information systems to ensure:

- Effective ownership & efficient verification,
- Viable system to ensure access to property encumbrance information,
- Transparent land valuation[242].

6. There is Need for substantial reduction in transaction costs

- Stamp duties, transfer and registration fees, and CVT
- Commercialization fees[243].

[240]<http://www.adb.org/Documents/Reports/Consultant/39492-PAK/39493-PAK-TACR-Vol8.pdf> (Accessed December 19, 2009).

[241]Ibid.

[242]<www.js.com/uploads/JSNewsletter200708.pdf> (Accessed July 13, 2011).

[243]Ibid.

7. There is need to follow the recommendation of National Housing Policy (2001) which stipulates:

- 1% Aggregate stamp duties and registration fees
- Harmonization between federal, provincial, and municipal levels[244].

7. Case Study

Property disputes in Pakistan could be resolved through process of courts by initiating civil and criminal proceedings. 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 code of Criminal procedure 1898, criminal prosecution for the offences relating to property, trespass and violence contained in the Pakistan Penal Code 1860 and proceedings before Revenue Courts and authorities under Land Revenue Act 1967 etc are the examples of different laws relating to land or property[245].

In Pakistan almost sixty percent of the pending cases before different courts pertains land disputes. This huge quantity of land related cases shows gravity of the harmful impact of land laws in Pakistan. Here I shall discuss some important issues and land disputes which are decided by the High Courts and Supreme Court of Pakistan.

7.1 Case Law No.1

Case Law Citation: 2010 S C M R 18
Core Issue: Incomplete Land Records

Brief Facts of the Case:

Father of plaintiffs was died in 1930 and in the mutation of inheritance of the year 1931 only name of three sons was incorporated and names of daughters and widow was not included. Subsequently a sale of 1/3rd of disputed property was made by one of the brothers of plaintiffs of in favour of Sheikh Muhammad Shafi defendant vide registered sale-deed dated 25-10-1949.In the year 1961, a suit for possession

[244]<www.js.com/uploads/JSNewsletter200708.pdf> (Accessed July 13, 2011).
[245]PLD 2007 Lahore, 231.

was instituted by the plaintiffs regarding disputed property . In the suit they had impleaded their brothers and Sheikh Muhammad Shafi, the vendee, as defendants. The suit was contested only by vendee, who pleaded that he was bona fide purchaser for value and he purchased land from ostensible owner whose name was entered in revenue record. Defendants also sought the protection of section 41 of Transfer of Property Act, 1882 and that the suit was also barred by time.

Court Proceedings:

In the year 1961, a suit for possession was instituted before the Senior Civil Judge Rahim Yar Khan by the Plaintiffs/Respondents and was decreed through judgment dated 16-5-1963 in the favour of Plaintiffs/Respondents.

The appeal filed by the vendee/defendant/Appellant, was accepted on 19-11-1978 and the case was remanded to the trial Court for decision after framing additional issues.

The suit was again decreed by the learned Senior Civil Judge, Rahim Yar Khan vide judgment dated 10-1-1985 in the favour of Plaintiffs/Respondents.

Appeal filed by the Defendants/Appellants was accepted by the learned District Judge. The Judgment of learned District Judge, was assailed by the Plaintiffs/Respondents before the Lahore High Court, and Honorable High Court accepted the appeal and set aside the judgment of learned District Judge by means of judgment dated 24-9-2001.

Supreme Court dismissed the Appeal filed by Defendants/Appellants and declined to interfere in the judgment passed by High Court.

Judgment:

It was held by the court that plaintiffs brother had transferred the property more than his share and the transfer to the extent of more than his share is not sustainable in law. Appellants/Defendants are only entitled to the extent of share of plaintiffs brother and for the remaining share they can claim compensation from the legal heirs of plaintiffs brother or could be compensated from his any other property of the vendor. The case took almost 40 years for final adjudication. The root cause of this case was inefficiency and corruption of revenue office that they did not recorded the names of all legal heirs of deceased for the purpose of inheritance.

7.2 Case Law No.2

Case Law Citation: 2010 SCMR 984

Core Issue: Wrong Entries in Land Records

Brief Facts of the Case:

Suit for possession etc.was filed by Plaintiff and claimed to be owner of suit land and alleged that defendant was occupancy tenant and subsequent entry of his name in columns of lagan wrong and illegal. Defendants claim was that they are owners of the suit property through inheritance of one Muhammad Nawaz. Suit land in Revenue Record of 1953-54 Khasra No. 92 was entered as path but there was a change in 1958-59 in the column of cultivation by inserting the name of Muhammad Nawaz Khan, the predecessor of petitioner, as tenant and once again during the year 1967-68 the name of Muhammad Nawaz Khan got changed from tenant to Ghair Dakhelkar.Hence they are owners of the suit property.

Court Proceedings:

The learned trial court decreed the suit in favour of Plaintiffs vide judgment and decree dated 3-10-2007.

The Defendants/petitioner being aggrieved of judgment filed appeal in the court of Additional District Judge, who dismissed the same vide judgment and decree dated 17-6-2009.

Petitioner/defendant being aggrieved of judgment and decree filed Civil Revision before the Peshawar High Court, which was also dismissed vide impugned judgment dated 7-12-2009.

Petitioner/Defendant filed Civil Petition before the Supreme court ,Against the judgment dated 7-12-2009 passed by the Peshawar High Court ,but same was dismissed vide order dated 23-02-2010 and Leave was refused.

Judgment:

Suit for possession etc. was filed by the Plaintiff and claimed to be owner of suit land while alleged that defendant was occupancy tenant and subsequent entry of his name in columns of lagan in land revenue record is wrong. Defendant denied the claim of plaintiff's. As matter of fact Revenue Record for year 1953-54 showed suit Khasra to be path, but subsequent change in year 1958-59 in column of cultivation by inserting defendant's name as tenant, and then in year 1967-68, his name was got changed from tenant to Ghair Dakheldar Revenue Record also reveals that admittedly defendants are existed in column of cultivation and further they are mentioned as Bila Lagan, but this entry in favour of defendants can not enhance their status as owners. Moreover, entries of column of Lagan, otherwise not corroborated by any evidence cannot take precedence over column of cultivation or for matter the column of ownership; hence Defendant had failed to establish himself to be owner of suit land. Suit was decreed in circumstances.

7.3 Case Law No.3

Case Law Citation: 2010 S C M R 1076

Core issue: Claim of Adverse Possession And Ownership

Brief Facts of the Case:

Plaintiffs/Respondent filed a suit against the Defendants/Petitioner for possession of suit property .It was averred that the property was allotted to one Mana son of Bojha on 28-6-1992 and since been issued in favour of the respondents/plaintiffs who are legal heirs of the said Mana; and then petitioners/defendants took forcible possession of suit property four years back which necessitated filing of the suit.

Petitioner/Defendant admitted that he has purchased suit property from someone who claimed adverse possession. That the petitioner/ defendants are bona fide purchasers from one Habibullah.Subsequently Petitioner admitted before Supreme Court that the allotment was made in favour of the respondents/plaintiffs by the Settlement Department Petitioner/defendant prayed that the Revenue Authorities be directed to carry out the demarcation of suit property.

Court Proceedings:

Suit decreed by Trial Court in favour of Plaintiff/respondent.

It was however reversed in appeal by the Additional District Judge vide the judgment dated 11-4-1989

High Court in second appeal reversed such findings of First Appellate Court for not being based on evidence on record.

Leave is sought against the judgment dated 2-10-2001 vide which a learned Judge of the Lahore High Court allowed the Regular Second Appeal of the respondent/ plaintiffs and restored the judgment and decree of the learned trial Court dated 12-11-1987.

Judgment:

Suit land was rightly allotted to the predecessor interest of plaintiff but they were forcefully dispossessed by the defendants and claim of defendants to be bona fide purchaser from the person having adverse possession is not sustainable. Hence finally case was decided in the favour of plaintiff. This case is sufficient to show that due to tempered records adverse claim over property and possession could be asserted and owner could be dragged in courts for an indefinite period.

7.4 Case Law No.4

Case Law Citation: 2010 Y L R 2455

Core Issue: Duplication of Entries in Land Records

Brief Facts of the Case:

Claim of the plaintiff was that suit property belongs to his father who died on 10-4-1991 and left three sons and a widow behind as legal heirs. The property in question was mutated in their names in record but defendants without his and other legal heirs' knowledge got entered the property in question in their names in record of rights, and claimed their ownership in respect of land in question on basis of mutation entries and also demanded for possession.

He prayed for declaration to the extent of his title as owner of land in question and also to the extent of mutation entries in question being made fraudulently in favour of respondent No.1. Further prayed for cancellation of mutation entries in question, and also prayed for injunction to the extent of restraining respondent No.1 /defendant No. 1 to dispossess him (petitioner) from property in question or make interference in the same, further restrain him to sell, gift or mortgage the land in question.

Claim of defendants was that they had purchased suit property in life time of father of the plaintiff through his attorney, the brother of plaintiff and said attorney had sold the property to the defendants through sale deeds which were registered. Power of attorney of plaintiff/petitioner father was executed in favour of plaintiff brother on 1-9-1985, which also bears signatures of petitioner as witness. Sale deeds were executed in their favour on 5-9-1989 by said attorney, while registered on 12-9-1989. They prayed for dismissal of suits.

Court Proceedings:

On completion of trial suits were dismissed by separate orders made on 31-1-2005 by Civil Judge.

Appeals were filed against the dismissal order of both the suits by the petitioner and both appeals were also dismissed by upholding the judgment of trial Court thorough judgments made on 29-6-2005 by District Judge.

High Court dismissed the Petitions vide judgment dated 25-05-2010.

Judgment:

During the evidence Defendants brought on record the conveyance deeds effected in their favour and also got recorded statement of attorney of deceased owner who was brother of the plaintiff with regard to sale transaction, on the other hand Plaintiff not only failed to prove his claim in respect of suit property but also failed to point out any illegality in the impugned judgments of the Trial Court as well as Appellate Court. Both the lower courts discussed the material present on record and gave findings on merits, hence No grounds were available to high Court on account of which interference was required to be made in concurrent order of the Trial Court and Appellate Court.

The petitioner/plaintiff neither disputed the alleged sale transaction, nor the power given to the witness for effecting of sale. The Conveyance Deeds were also brought on record by D. W.1, which is also not disputed by the petitioner in both the cases during course of cross-examination of the witness. The petitioner during course of evidence only tried to establish that the possession of land in question was not handed over to both of respondent No.1. He failed to deny the title of both the respondent No.1.In the above circumstances it was held by the court that Plaintiff having failed to make out any case in his favour, hence, his revision petition was dismissed.

7.5 Case Law No.5

Case Law Citation: 2008 Y L R 653

Core Issue: Omission of Exchange Entries In Land Records.

Brief Facts of the Case:

Predecessor-in-interest of the petitioners and respondent No.16, predecessor-in-interest of respondents Nos.1 to 14, mutually exchanged the said parcels of land vide Mutations Nos.1134 and 586 attested on 14-12-1963. Mutation exchange 586 was noted in the Jamabandi for the year 1963-64 of village. However, Mutation of Exchange No.1134 was implemented in subsequent Jamabandi, while Mutation No.586 was not further implemented in the Jamabandi after 1963-64, with the result that predecessor-in-interest of respondents Nos.1 to 14 continued to remain owner of the exchange land in Mauza Ghullain. The case of the petitioners-plaintiffs has been that in pursuance of the aforesaid mutations of exchange, the respective possession of the exchanged areas was transferred. However, on 4-10-1976 one of the respondents sold an area measuring 6 Kanals and 14 Marlas in favour of Muhammad Sadiq, respondent No.15, from village, Ghullain, on which Mutation No. 19 was entered on 5-11-1975.

On 22-7-1981 the petitioners filed the suit claiming to be the owners of the land in dispute on the basis of Mutation of Exchange No.586. The aforesaid registered sale transaction and Mutation No.19 entered on the basis thereof were also assailed. The legal heirs of Muhammad Ismail and Muhammad Sadiq filed a joint written statement. The exchange was denied with the averment that Mutation No.1134 was the result of collusion and, therefore, was illegal and did not have any effect on the rights of Muhammad Ismail aforesaid. They also objected that the suit was barred by time.

Court Proceedings:

The learned trial Court accordingly, decreed suit on 14-12-1982.

Judgment was assailed by one of the respondents and the appeal was allowed and the suit filed by the petitioners was dismissed vide judgment and decree, dated 26-10-1985.

Impugned judgment and decree of the learned appellate Court are set aside and the suit of the petitioners is decreed by High court.

Judgment:

Both the Exchange mutations were accepted by the court as legal and defendant/respondents tried to deprive the plaintiffs/petitioners from the land acquired by their predecessor interest from the predecessor interest of defendants/respondents. Plaintiffs were in actual physical 'possession of the land in dispute but there was omission by the revenue authorities to note the mutual exchange properly in the record. Accordingly, the impugned judgment and decree of the learned appellate Court are set aside and the suit of the petitioners is decreed in terms that the impugned sale, dated 4-10-1976 made by Muhammad Ismail in favour of Muhammad Sadiq, respondent No.15 was held to be illegal. Petition filed be plaintiffs. Petitioners were thus accepted.

CHAPTER NO. 5

CONCLUSION AND RECOMMENDATIONS

Pakistan is a developing country having scarcity of financial resources to establish modern flawless mechanism to regulate the legal framework and development of the basic civic structure for its people. A modern and an up to date legal system is necessary to regulate all aspects of human society, whether it is criminal, civil, family, corporate or revenue. Adequate legal system is a social need for the development of an organized nation.

Sophisticated societies around the world have introduced laws and regulations and developed customs to facilitate the conduct of the society. Laws are always subject to changes, whenever there is need to bring them in conformity with new trends and requirements. Modern concepts in law are usually introduced by developed countries in accordance with requirements of their culture and need, but the dilemma is that developing countries like Pakistan are always keen to adopt or adapt the said laws without viewing of the local demands and acceptability by existing legal framework.

Laws have social and economic consequences. Laws which have undesirable social and economic consequences are bad laws. Pakistan's laws relating to property are not just dysfunctional and outdated but actually harmful. These laws are unable to protect the property rights of people guaranteed by constitution of Pakistan, practical aspect of these laws is that they hurt economic and social development of society, and property rights of people always remain at risk. . These laws hurt both rich people and poor people by retarding economic development, but poor people are affected more by such laws[246].On the other hand hard earned properties of people remained at risk without adequate protection and remedy of title and valuation, due to insufficient legal frame work.

[246]<http://bnrlaw.net/Publications_Download/The%20Law%20of%20Land.pdf (The law of land — *Feisal Naqvi) daily times, dec 29 2006*> (Accessed April 17, 2009).

The lacunas in the legislation and inability of enforcement are the causes of failure of LAS in Pakistan. Pakistan has poorly functioning, inadequate, and duplicative systems of land administration and an overburdened and ineffective formal court system. On the other hand parallel customary systems of transferring land and resolving land disputes prove more accessible and efficient, creating a pluralistic legal environment[247].

The Securities and Exchange Commission of Pakistan has introduced a framework for the establishment of Real Estate Investment Trusts. Pakistan is the only developing country which has initiated REITs[248]. The Real Estate Investment Trust Regulation is the positive step to enhance the investors and financial institutions' confidence in real estate sector; however, there is need to improve the existing land revenue laws in order to make them in conformity with the REIT regulation's objectives so that the desirable results could be achieved.

Land administration system of Pakistan is an old and outdated system which is unable to cope with the upcoming demands and difficulties in land related transaction. There is need for reliable LAS to deal with new requirements.[249]Land administration is a provincial subject, but the mechanism and procedure to administer the lands is same in all provinces. If LAS is same among the provinces then it means that there problems are also of same nature. Problems caused by LAS of Pakistan are countless and this cluster of problems is developed just because of outdated and cumbersome land laws and procedure.

Time has come for a complete overhaul of land/rent laws in Pakistan but there is need for some immediate amendments in land laws for instance Section 53-A of TOP be amended to avoid claim on the basis of oral or un registered deeds.[250] Qanun-e-Shahadat Order, 1984, is appropriately amended to provide for the evidence for an oral gift in the form of a written memorandum attested by a judicial officer of the rank of at least a Civil Judge First Class. Moreover, a clear statement be made in the

[247] <http://www.fig.net/pub/fig2010/papers/fs03f%5Cfs03f_ali_nasir_3901.pdf> (Accessed August 07, 2010).
[248] Government of Pakistan Finance Division, Year Book for Financial Year 2005-2006, 56, 98.
[249] <http://archives.dawn.com/2002/07/22/ebr3.htm> (Accessed June 17, 2010).
[250] Ibid.

Transfer of Property Act, 1882 that no claim of benami ownership is to be recognized henceforth[251].

In the present age of information technology we have need to develop a centralizes computerized agency to regulate all the land and rent related transactions to avoid the chance of fraud and misrepresentation caused by orthodox laws and implementation of proper procedure. There is urgent need to develop such a flaw less system to weed out malpractices in case of sale of attached properties, it is recommended that an electronic public registry be created forthwith. All persons obtaining attachment orders or decrees must, by law, be placed under an obligation to make a filing of the fact of the attachment or the decree with the electronic public registry. Failure to do so should make the attachment or the decree ineffective against any right acquired by a subsequent purchaser of property. The most appropriate way is to establish a single agency to deal with all matters of land /rent, so that sale, purchase, mortgage and lease of property could be safely done. United Kingdom could be the best model in land administration for all the developing nations including Pakistan to overcome the flaws of existing land laws for the better and conclusive title. United Kingdom have developed a centralized system to organize the LAS,

REITs have great opportunities in Pakistan because socially people feel secure if they invest in immovable properties but they are afraid of bad consequences of outdated relevant laws. So to get rid of the fear of investor and to make REITs successful, we have to reform all relevant laws in accordance with the modern techniques and demands.

In most developing countries the judicial system is overloaded and struggling to cope with the number of cases presented to the courts. In many countries disputes over land rights are a major proportion of court cases. Often there are separate judicial reform projects to address issues of transparency, access for all, wide scale legal education, and efficiently operating legal systems. Land projects should therefore seek to reduce the need to use the court system by determining rights and resolving disputes through

[251] <http://www.sbp.org.pk/departments/ihfd/HAGRecommendations.pdf>(Accessed September10,2010).

administrative rather than judicial processes[252]. Land disputes could be resolved through alternate dispute resolution within short possible time. Development of modern land administration system is not difficult in Pakistan so there is need for single agency to deal the matters of LAS in Pakistan. It is time to adopt certain strategies to overhaul the land/rent laws. in nutshell there is need for a 'new' single land administration agency to deal all the land/Rent matters or to coordinate between existing governments agencies dealing with land/rent matters.

REIT regulation is a conscious approach adopted by SECP to regulate the un-documented and un organized huge real estate market and to attract the investment for its development. At the time of launching the regulation, it was supposed that financial institutions will be secured for their finance because of authentic documentation regarding title of land, transparency and international valuation standards, but the fact is that from February 2008 till today only two RMC have got registered which clearly shows investors' lack of confidence in real estate sector in spite of REIT regulation. The only reason behind this deadlock is outdated land laws because for the purpose of acquiring of land or property for REIT project, RMC has to depend on the record and information provided by existing outdated, manually managed LAS. Investment in real estate sector is not possible until and unless we bring modern and centralized land/property laws to archive the desired results of REITs regulation. In Pakistan federal as well as all provincial governments have no centralized record system of land title, possession, transfer and other related matter. As far as REIT Regulation is concerned SECP have emerged as a powerful regulator. Role of Commission being a regulator is very important in security market and REIT Regulation 2008 is a classic example of well controlled legislation by a strong regulator.

REITs could only benefit Pakistan, if government introduces new and effective legislation to safeguard the easy and risk-free transfers of land and this could be done through a centralized computerized agency with all appropriate systems.

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[252] <http://siteresources.worldbank.org/RPDLPROGRAM/Resources/4595961161903702549/S8 Burns .pdf> (Accessed May 12, 2011).

REITs regulation 2008 is an effective piece of legislation for the introduction of a comprehensive legal framework to regulate the real estate sector activities in the country. REIT regulation clearly states the rights, obligations and limitations of every player of the regulation. RMC, trustee, valuer, Commission are entitled for the remuneration for their services, as per REIT regulation and this fact enhances the transparency and efficiency. Quality assurance manager or property manager are also key players of the REIT project but there is no specific mention of amount or ratio in the regulation as for other players. In my opinion non fixation of remuneration or fee for Quality assurance manager or property manager could cause damage to quality and transparency of REIT project.

Success of REITs depends upon two factors, first is the asset acquired for REIT project, and second is valuation of that asset. In Pakistan land administration system is quite orthodox and there are common complaints about the perfect title, duplication of title and under valuation of the land. In these circumstances if the Land acquired for the purpose of REIT project is not actually vested in the name of vendor or after the transaction, any other claimant subsequently appears on surface and raise an objection while contenting that sale of land is an unauthorized act, then there shall be no other way, except to decide the dispute of land through process of law. Proper Valuation of land or immoveable property is an other factor which has two dimensions in Pakistan; firstly the land could be under valued to avoid different taxes or over valued to defraud any financial institution to obtain any fiscal benefit.

As far as perfect title of land is concerned RMC has no other choice except to depend on the present land records, which are not accurate in respect of ownership and possession. In present circumstances property/land acquired for the purpose of REIT project will remain at risk and this factor could spoil the growth of REIT in Pakistan.

The other most important factor in REIT is valuation of acquired land. As matter of fact in Pakistan land and properties are either under valued to evade heavy taxation or over valued to defraud. A considerable number of cases are pending before different courts including accountability courts throughout Pakistan in which property was overvalued for the purpose to obtain loan and lease facilities from financial institutions. Valuation criteria mentioned in the regulation is the same as financial institution, so there same probability of fraud in REIT as in financial institution. Although SECP have an option of cross valuation, but it is not a option which could be used in each and every case as routine matter. RMC is required to engage a valuer to evaluate the real estate acquired for the purpose of REIT project but unfortunately there is no standard of accurate valuation of property in Pakistan and considerable numbers of cases are pending before accountability courts in Pakistan in which valuer have not correctly evaluated the price of property in banking sector loan transactions. It is very important to note that valuer for banking sector and REITs are same being approver valuer.

In Pakistan the values of real estate are grossly reduced up to 900 percent of the actual value[253]. Prices of real estate are reduced because there is no method of price discovery and high cost of real estate transaction. Registration fee, stump duty, transfer Fee, and commercialization charges are few heads of taxes on real estate. Due to high rates of taxes no body likes to make a transaction on the fair value. Accurate valuation is possible if we develop a system as China. In China computer assisted mass appraisal system is working to establish benchmark values of land, land needed for housing, office, retail, and factory[254]. Accurate and proper valuation of the land acquired by RMC for REIT Project 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 most developing countries the judicial system is overloaded and struggling to cope with the number of cases presented to the courts. In many countries disputes over land rights are a major proportion of court cases. Often there are separate judicial reform projects to address issues of transparency, access for all, wide scale legal education, and efficiently operating legal systems. Land projects should therefore seek to reduce the need to use the court system by determining rights and resolving disputes through administrative rather than judicial processes[255]. Land disputes could be resolved through alternate dispute resolution within short possible time.

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[253] <www.secp.gov.pk/scd/pub_scd/pdf/REITs.ppt> (Accessed June 17, 2010).

[254] Sing Cheong Liu and Mark Wang, *What We do and Can Do For A Living World Expanding the Role of Real Estate Profession* (n.l:Journal of Property Investment and Finance,2007), 468-481.

[255] <http://siteresources.worldbank.org/ RPDLPROGRAM/Resources/459596116190 3702549/S8_Burns. Pdf> (Accessed May 12, 2011).

In Pakistan development of modern land administration system through a single agency is not difficult because many jurisdictions have successfully experienced this practice. So there is need for single agency to deal the matters of LAS in Pakistan. BOR at provincial level could be single regulator for land administration, after certain amendments in procedure of land administration. In Chapter four of the thesis under the heading of computerization of land records in Pakistan two projects have been discussed The first project is Participatory Information System was initiated in the Baluchistan province and aimed at demonstrating a technologically superior option for land record management with the hope that it will be adopted by the relevant stakeholders. The second project Land Record Management Information System Project in Punjab province adopted a gradual transformation approach wherein the old paper-based system would be replaced with a computerized system with online access to the system outputs.[256] A Project Management Unit has been set up under the administrative control of the Board of Revenue.[257]

Through LRMIS system the manual paper-based land records are transformed into computerized data base. The right holders will be able to acquire land records related services easily from the service centers. Any transaction in revenue record will immediately be incorporated in Register Haqdaran-e-Zameen which will be updated at once.[258]

After having the detailed discussion on the subject of REIT and land laws in Pakistan we recommend the following measures to be taken by the government and SECP to solve the issue raised in core theory of the thesis;

Firstly, there is need to review the existing land/property laws with the object to ensure land/property title, possession and demarcation. It is recommended to introduce modern, centralized and comprehensive legislation regarding the land/property transactions and there should be minimum number of land registers as in UK, so that one click or easy understandable access to land record could be ensured.

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[256] <http://www.apdip.net/projects/e-government/capblg/casestudies/Pakistan-Qazi.pdf>(Accessed January 12, 2010).

[257] <www.punjab-zameen.gov.pk>(Accessed January 01, 2011).

[258] Ibid.

Further there is need to amend the certain existing land laws, for instance section 53-A of TOP is a hurdle in fair-play and it is recommended to amend it in an appropriate way to ensure safe land transaction. All oral transfers of land should be prohibited and in case of violation, party at default shall be liable to heavy fines.

Secondly, there must be a computerized central agency to regulate the issues related to land/property and to organize real estate sector, so that any sort of duplication of title documents or misrepresentation regarding title and possession of property could be avoided. The scope of proposed central agency could be either to regulate the work of existing agencies dealing in land sector or to override all existing systems dealing with land issues. Currently Board of Revenue is responsible to regulate land revenue affairs at Provincial level but at the same time some parallel land administration systems i.e. DHA, Bahria Town etc.are working separately and respective BOR has no land record of lands hold by above said land developers. It is therefore recommended that through legislation at federal and provincial level these land developers should be brought under the supervisory control of BOR to extent of land record regarding the ownership and possession of land and through legislation they should be asked to follow the guidelines and LA system of BOR.

Respective BOR could be the proposed central agency to look after the land issues but before entrusting responsibilities to BORs there is need to computerize the land records. Currently provincial governments are working on this issue and in Punjab, Baluchistan and Sindh and some projects in different districts have been completed. Participatory Information System in the Baluchistan province and Land Record Management Information System Project in Punjab province are examples of a change from old paper-based system towards computerized system in which one click information could be available.[259]The proposed LAS is according to the international standards and easy to operate and understand.

[259]<http://www.apdip.net/projects/e-government/capblg/casestudies/Pakistan-Qazi.pdf>(Accessed June10, 2009).

It is further recommended that the government must work on summary legal mechanism for early disposal of property /land issues. On the other hand government should take measures to promote alternate dispute resolution procedure because out side court settlement is widely accepted by our society. Similarly, there must be time limit for trial courts and appellate courts to decide the cases.

Thirdly, the stamp duty, property tax, registration fee and other taxes must be reduced to the possible minimum rate; to encourage the people for registration of property/land with accurate market value .Reduction in taxes shall enhance the tax net and revenue. Valuation of property or land for the purpose of taxation shall be conducted on the basis of a proposed Schedule prepared by BOR and said schedule shall be divided into two main categories of urban and rural area. Further urban areas could be divided in different classes, such as commercial, residential, industrial etc.and rural areas could be divided into agricultural(Irrigated or Arid) and non agricultural land. All property and land taxes must be calculated and implemented by the respective BOR.This proposed schedule could ensure correct valuation of land or property, which shall enhance revenue and tax circle in Pakistan.

Fourthly, rate of annual fee of quality assurance manager or property must be a determined figure and it should be mentioned in the REIT regulation to ensure transparency and quality of work. Further independence of quality assurance manager or property manager could be ensured if their dependency on other players for annual fee is eliminated.

Fifthly, there should be a clear centralized computerized mechanism of valuation of land or property at provincial level to assess the actual value of land/property and arrangements of mutual understanding of buyer and seller regarding determination of price of land should not be allowed. Sole right to determine the value of land or property shall be vested with respective BOR for urban and rural area. This measure could eliminate the chance of under or over pricing of land/property by the parties to evade taxes and other legal actions i.e. suit for Pre emption. Accurate valuation of land/property shall eliminate the chance of fraud with the financial institutions on the basis of fake and exaggerated pricing.

REIT regulation is a conscious effort of Commission to bring this huge undocumented and unorganized real estate sector under a comprehensive legislation to attract investors towards investment in the sector which have great intact economic potential and encouraging social consequences, but there is need to focus on the recommendations of this paper because REIT regulation could not work in isolation and success or otherwise of this regulation shall be attributed to the land administration system of Pakistan. Finally if I sum up the issue then there is need to introduce major changes in land laws for the better risk free performance and growth of real estate sector. There is need of a single land administration agency for updated and accurate land/property computerized records.

Therefore, In the end, I would like to suggest that, although introduction of REIT regulation is a positive step by SECP to enhance the strength of real estate sector and to facilitate the real estate investors but its effectiveness and output, as desired by REIT Regulation 2008 could not be achieved until government bring modern LA system in Pakistan as United Kingdom have introduced and which could ensure perfect title and accurate valuation of land or property.

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