



BOARD OF INVESTMENT

The Real Estate Scheme Guideline for Developers

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PREFACE

This publication contains guidance for promoters who want to engage in a project under the Real Estate Scheme. These guidelines are based upon the Investment Promotion Act and Investment Promotion (Real Estate Development Scheme) Regulations 2007 as amended. They are designed to provide information and assist decision-making. They are not intended to replace the provisions of the laws and should not be construed as one. Neither should they be interpreted as prescribing an exclusive course of management.

Whilst care has been taken to ensure that the information provided herein is accurate and correct at the time of publication, users of this publication are advised to seek guidance from the Board of investment in case of uncertainty or ambiguity encountered in reading. The Board of Investment shall, in no circumstances whatsoever, be held liable to any person arising from use of information contained herein.

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A. BACKGROUND

General Objective

This set of guidelines aims to:

- 1) Define procedures required to be followed by promoters in line with requirements under the Investment Promotion (REDS) Regulations 2007;
- 2) Provide a comprehensive and user-friendly guide and reference document to assist investors to submit projects under the scheme;
- 3) Avoid any misunderstanding in the interpretation, application or implementation of agreed procedures, rulings and regulations and ensure that all RES projects are always in pursuance of and are consistent with the REDS Regulations.

More specifically, this set of guidelines shall:

- 4) Facilitate the submission and processing of applications for new project through a clear, streamlined and more transparent project development, evaluation, approval and implementation process; and
- 5) Ensure the application of the provisions of the Investment Promotion Act and the Investment Promotion (REDS) Regulations 2007.

Definition of terms

For purposes of these guidelines, the terms and phrases used herein shall be understood to mean as follows:

- 2.1 Bank guarantee - An indemnity letter in which a bank in Mauritius commits itself to pay a certain sum if the RES Company fails to perform as per the terms and conditions.
- 2.2 Board of Investment – Statutory body established under the Investment Promotion Act which issues the RES Certificate.
- 2.3 EIA – EIA is a study that predicts the environmental consequences of a proposed

development. It evaluates the expected effects on the natural environment, human health and on property.

- 2.4 Letter of Approval – Document issued by the Board of Investment on approval of a project and lays down the terms and conditions that should be satisfied for the issuance of the RES Certificate. Letter of Approval entitles the RES Company to benefit from exemption of Morcellement Act, registration duty and land transfer tax. The RES Company can sign a “contrat préliminaire en état future d’achèvement”.
- 2.5 Notary – means an ‘Officier Ministeriel’ as per Notary Act. The Notary is under the obligation to ensure that the interests of both IRS Company and purchasers are safeguarded, to advise them of their rights and obligations, to explain the effects of the liabilities which they propose to undertake, to make clear the risks to which they are exposing themselves and to indicate to them the means which the law places at their disposal to ensure the carrying into effect of their wishes as per the ‘Droit Professionnel Notarial’.
- 2.6 RES Company - A Company incorporated under the Companies Act 2001 that holds a letter of approval for the development of a project approved by the Board of Investment under the Real Estate Scheme for small landowners. A RES company can carry out one or more RES project.
- 2.7 Purchaser – Any person investing in the acquisition of a residential property under the RES.

Legal Basis

The legal basis for these guidelines is the:

- 1) Investment Promotion Act 2000, as amended
- 2) Investment Promotion (Real Estate Development Scheme) Regulations 2007
- 3) Investment Promotion (Real Estate Development Scheme) (Amendment) Regulations 2009

B. THE REAL ESTATE SCHEME

About the scheme

The Real Estate Scheme (RES) for small Mauritian landowners allows the development of any mix of residences for sale mainly to non-citizens on freehold land of an extent of at least 1 arpent but not exceeding 10 hectares (23.69 arpents).

The Real Estate Scheme provides:

1. for the development of luxurious residential units of international standing on freehold land of a minimum of 1 arpent but not more than 10 hectares (23.69 arpents).
2. commercial facilities and leisure amenities attached to the residential units developed under the scheme.
3. day-to-day management services to the residents such as security, maintenance, gardening, solid waste disposal and household services.

Eligibility for development under RES

1. Only small landowners who own land of an extent of at least 1 arpent but not exceeding 10 hectares in aggregate shall be allowed to implement a project under the RES.
2. The small landowner shall not have any direct or indirect interest in land where the total extent of land exceeds 10 hectares in the aggregate in Mauritius in any company, society, trusts or any other body corporate or incorporate or by taking the total extent of land owned by his/her spouse and/or dependants of less than 24 years.
3. Any small landowner having met the criteria of paragraph (1) can group his land with other qualifying small landowners for a project provided that the lands are contiguous and the total real estate development area for the RES project does not exceed 10 hectares.
4. The small landowner or group of landowners shall provide a written declaration duly made by a notary public in Mauritius giving the total extent of land owned by him together with any direct or indirect interest in land he may have.

5. The RES project shall be implemented by a company incorporated in Mauritius where **the small landowner or group of small landowners shall be shareholder(s) in the RES company equivalent to at least the value of the land brought in the RES company.**
6. The small landowner or group of landowners shall retain shares in the RES company until at least 1 year after completion of the project. A project shall be considered as being completed on delivery of all residential units to the buyers.
7. A non citizen is **not** allowed to acquire land to develop a RES project but can partner with a Mauritian land owner for a RES project.

Extent of real estate development area and number of residential units

1. A project under the RES must be developed on land of a minimum of 1 arpent but not exceeding 10 hectares.
2. A project under RES should have at least six (6) residential units.

Eligibility for acquisition of residential property

The following persons may acquire a residential property from a RES Company:

- (a) a non-citizen of Mauritius
- (b) a citizen of Mauritius
- (c) a company registered as a foreign company under the Companies Act 2001
- (d) a company incorporated under the Companies Act 2001
- (e) a société, where its deed of formation is deposited with the Registrar of Companies
- (f) a trust, where the trusteeship services are provided by a qualified trustee licenced by the Financial Services Commission

Note: A qualified global business as defined under the Financial Services Act 2007 holding a Global Business Licence may acquire property under the RES scheme.

Cost of residential property

1. There is no restriction on the minimum amount of price for the acquisition of a residential property under RES.

C. THE RES CERTIFICATE

RES Certificate

- A RES certificate issued under section 18 of the Investment Promotion Act is conclusive evidence that all the requirements of the Act and the Investment Promotion (Real Estate Development Scheme) Regulations 2007 as to an investment project submitted to the Board of Investment have been complied with. From the date of issue of the certificate, the company is responsible for the development, implementation and management of the RES project in accordance with the approval granted by the Board of Investment.
- The Company issued with an RES Certificate has to implement the project as approved by the Board of Investment and cannot change the use of the real estate development area, as approved, without the prior approval of the Board of Investment.

Stages followed prior issue of RES Certificate

Stage 1: Submission of application by a company for RES Certificate

Stage 2: Issue of Letter of Approval by BOI

Stage 3: Obtention of permits and licences by relevant authorities for the project

Stage 4: Provide bank guarantee in favour of the Board of Investment and written undertaking that the landowner/ landowners shall retain shareholding in the RES company

Stage 5: Issue of RES Certificate

Stage 1: Submission of application for RES Certificate

1. An application for an RES Certificate must be made online to the Managing Director of the Board of Investment using the Property Acquisition and Management System - <https://pams.investmauritius.com/Login/>.
2. The duly completed application form must be submitted with the following mandatory documents:
 - a. **Certificate of Incorporation together with the register of shareholders**– Conclusive evidence issued by the Registrar General that a company is incorporated under the Companies Act 2001 and is a body corporate with the name by which it is registered.
 - b. **A Board Resolution nominating ‘the director’ who will act on behalf of the RES Company (i.e, the person who is authorised to sign the application form and other documents)**
 - c. **Detailed business plan** containing:-
 - i. Background of promoters and investors
 - ii. Project components and description
 - iii. Proposed date of start of construction
 - iv. Marketing plans
 - v. Detailed financial structure of project/projected cash flow
 - d. **Site location plan by sworn surveyor and context plan as per Outline Scheme** – Plan showing the exact location of the immovable property. The context plan should show also the surrounding properties, site configurations, streets and other features near the site. *[It is recommended that the promoter consults the local authority to see whether the site is located within or on edge of settlement boundary and as to whether the site is affected by zoning in the Outline Scheme i.e mineral resource, road by pass, airport restriction zone, wetland, stone crushing plant, others]*
 - e. **Detailed master plan** for the whole project – A document that describes, with a map, the overall development concept which is in line with the Planning Policy Guidance (PPG) July 2011.
 - f. **House Architecture and drawings** - Drawings showing the artistic impressions of the residential components

- g. **Title Deed** of the land where the RES project shall be implemented
- h. **Valuation report** of the subject property where the project shall be implemented – the valuation report has to be prepared by a chartered land valuer.
- i. **A written declaration** made by a notary public on behalf of each applicant (landowner) giving the total extent of land owned by the landowner together with any direct or indirect interest in land he/she may have in Mauritius in a body corporate or incorporate as well as the total land area owned by his/her spouse or dependants of less than 24 years.
- j. **Documents showing proof of funds** - A document (audited financial statements, letter of arrangement from bank or bank confirmation) that demonstrates that the investor has the ability and funds available for the development of the project. The purpose of the document is to ensure that the funds required for the transaction are obtainable and legitimate proof that the investors have the funds. A bank confirmation or letter of arrangement may suffice. The account holder must request a letter from the bank or brokerage house to the effect that the sum in question (equity capital) is available in the account for the client's investment. The proof of funds should represent at least 20% of the total cost of the project.

Note 1: The Board of Investment reserves the right to request for any additional information or documents for determination of the application.

Note 2: An application shall be considered as ready for processing by the Board of Investment at the date by which all the information, particulars and documents have been duly submitted and considered as complete by BOI.

Stage 2: Issue of registration certificate and Letter of Approval

1. A registration certificate and a letter of approval are issued to the company making the application for the RES certificate where the project meets the criteria of the scheme, in particular those set in Regulations 13 - 18 of the Investment Promotion (REDS) Regulations 2007.
2. The Letter of Approval entitles the RES Company to benefit from exemption from the Morcellement Act, registration duty and land transfer tax. It enables the RES Company to sign a “contrat préliminaire en état future d’achèvement” with the purchasers of residential units.

3. The letter of approval is valid for a period of 12 months from the date of the letter. The letter of approval stipulates all the conditions that should be met for the issue of the RES Certificate to the company, in particular:
- a. Obtention of the land conversion permit from the Ministry of Agro-Industry, if applicable;
 - b. Obtention of the EIA Licence or PER, as the case may be, from the Ministry of Environment and Sustainable Development;
 - c. Obtention of the Building and Land Use Permit from the District or Municipal council
 - d. Provision of a bank guarantee of 25,000 rupees per residential property to the Board of Investment.
 - e. A written declaration that the landowner(s) shall retain shareholding in the RES company at least 1 year after completion of the project.

Note: An EIA Licence is requested for the development of residential units of more than 50 units where as a PER is requested for the development of residential units of more than 20 units.

Stage 3: Issue of RES Certificate

A RES Certificate is issued after:

- a. Submission to the Board of Investment of the title deed duly registered and transcribed that witnesses the transfer of land to the company holding the letter of approval for implementation of the RES project;
- b. Submission of the register of shareholders of the company;
- c. Obtention of the Building and Land Use Permit from the District or Municipal council;
- d. A bank guarantee of 25,000 rupees per residential property is furnished in favour of the Board of Investment;
- e. Letter from Bank informing BOI that the bank would be prepared to provide the banking facilities, in the form of GFA facility and an overdraft facility, as required by the promoter for the development of the project subject to terms and conditions; and
- f. The written undertaking is given to BOI that the landowner(s) will retain shares in the RES company equivalent to at least the value of the land brought in the RES company until at least one year after completion of the project.

A RES Certificate is issued subject to the following terms and conditions:

1. The RES Company shall at all time be responsible for the execution, promotion, development and the proper implementation of the scheme in accordance with the approval

granted by the Board of Investment.

2. (a) The RES Company shall only conduct such business or activity, being business or activity permissible under the laws of Mauritius. Where such business requires any licence, authorization, permission, or consent (however described), the business must not be undertaken until such has been obtained.
(b) The RES Company shall keep at its registered address a copy of such business licence/authorization, permission or consent (however described) obtained from any other Authority in relation to the conduct of its activities.
3. The RES Company shall forthwith notify the Board of Investment of any material change from the RES scheme as approved by the Board.
4. The RES Company shall –
 - (a) implement the scheme as approved by the Board;
 - (b) not change the use of the real estate development area without the approval of the Board.
5. The RES Company shall provide the Managing Director at least once every quarter with a report on the work progress and the general implementation of the project.
6. The RES Company shall not sell any residential property under the Scheme unless the person acquiring the residential property has obtained the authorization under the Investment Promotion (Real Estate Development Scheme) Regulations 2007.
7. The Board of Investment shall be informed of any change in shareholding structure and the general financial condition of the RES Company during the entire phase of the implementation of the scheme. Where the RES Company has delegated, subcontracted or assigned any part of the works required in pursuance to the scheme, the Board of Investment shall be notified forthwith of such appointments.
8. The income tax payable by the RES Company as well as the exemption from income tax on dividends paid to shareholders shall be in accordance with the provisions of the Income Tax Act, as amended.
9. The RES Company is warned that pursuant to section 27(1) of the Investment Promotion Act any person who contravenes the Investment Promotion Act and the Investment Promotion (REDS) Regulations 2007 shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 3 years.
10. The Board of Investment reserves the right to revoke the RES Certificate where the RES Company, unless prevented by circumstances beyond its control, fails to start the construction of the RES project within a period of eighteen (18) months from the date of issue of the Certificate or has acted in such a way to tarnish the good repute of Mauritius as an attractive base for Investment.

D. SALE OF RESIDENTIAL PROPERTY

Eligibility for acquisition of residential property

The following persons may acquire a residential property from an RES Company:

- (a) a non-citizen of Mauritius
- (b) a citizen of Mauritius
- (c) a company registered as a foreign company under the Companies Act 2001
- (d) a company incorporated under the Companies Act 2001
- (e) a société, where its deed of formation is deposited with the Registrar of Companies
- (f) a trust, where the trusteeship services are provided by a qualified trustee (management company or such other person resident in Mauritius) licenced by the Financial Services Commission.

Note: A company holding a Category 1 Global Business Licence as defined under the Financial Services Act 2007 may acquire a residential property under the RES scheme.

Basis of sale of residential property

1. An immovable property for residence under the RES may be sold either on the basis of a plan, during the construction phase or when the construction is completed.
2. Where the acquisition of an immovable property is made on the basis of a plan or during the construction phase, the contract shall be governed by the provisions of a “vente à terme” or “vente en l’état futur d’achèvement”, as the case may be, in accordance with the provisions of the Code Civil Mauricien.
3. A sale for future delivery is the contract by which the seller undertakes to deliver the building on its completion, and the buyer undertakes to take delivery of it and to pay the price of it at the date of delivery. The transfer of ownership is achieved by operation of law by the acknowledgement of the completion of the building through an authentic instrument; it is effective retroactively on the day of the sale.

4. A sale in a future state of completion is the contract by which a seller transfers at once to the buyer his rights in the ground as well as the ownership of the existing structures. The residential units to be constructed become the property of the buyer as they proceed and the buyer is bound to pay the price of them as the work proceeds. The seller is responsible for its construction until completion.
5. In accordance with the provisions of Article 1601-30 of the Code Civil, the price of a residential unit when sold under “vente en l’état futur d’achèvement” is payable in instalments as the work progresses, as follows:
 - Upon signing of the deed: 25%
 - Upon completion of the foundation works: 10%
 - Upon completion of roofed-in phase: 35%
 - Upon completion: 25%
 - Upon availability of premises: 5%
6. The amounts are called up gradually and as the works progress in accordance with the modalities stipulated in the deed of sale.

Documents to be submitted prior sale property

The RES Company must submit to BOI after the issue of the RES Certificate and prior sale of any immovable property under the RES, final specimen copies of the following documents:

- a) **“Contrat de réservation préliminaire a une vente en état future d’achevement”** – A contract witnessing the reservation made by the applicant with the RES Company for a specified plot in the RES project. The contract is governed by the provisions of article 1601-38 of the Code Civil Mauricien.
- b) **“Contrat de vente en état future d’achèvement d’une maison individuelle”** – The contract of sale between the RES Company and the buyer. This contract is governed by the provisions of the Code Civil Mauricien;
- c) **Guarantee of due completion by way of surety conformably to article 1601-34(b) of the Code Civil Mauricien** – A formal agreement that the RES company has entered into with a banking institution in Mauritius to ensure the financing and implementation of the villa. The banking institution should be listed on the Banking Almanach recognized by the Bank of Mauritius;
- d) **“Reglement de co-propriete” et “Cahier de Charge”** – These are defined in the sales contract under vente en état future d’achèvement.

Note 1: No application for acquisition of a residential property by non-citizens, or citizens or other authorized entities shall be considered for processing by the BOI if the above documents have not been duly submitted to the BOI.

Note2: A contrat preliminaire can be drawn after obtention of a letter of approval from BOI. At time of signature of the contract, the purchaser has to deposit at most 25% of the value of the property in an escrow account deposited with either a bank or a notary public.

Note 3: A VEFA contract can be drawn only after obtention of a RES certificate.

Obligations of the RES Company

The RES Company must implement the approved project as per the RES Certificate issued by BOI and the provisions of the Civil Code Mauricien whereby

- (i) Under the terms of a VEFA contract, all complaints with regard to defects that are clearly visible must be made to the developer within a period of one month from the date the property is handed to the buyer. “Toute contestation relative à la conformité des biens livrés avec les engagements pris par le vendeur devra être notifiée à celui-ci dans le délai d'un mois à compter de la prise de possession des lieux par l'acquéreur ».
- (ii) The vendor is under an obligation to remedy any defects in the property that arise within the first year following handover of the property.
- (iii) In addition to this one year contractual guarantee, the developer is also required to give a ten year statutory building guarantee on the property.

The first year of the ten year guarantee runs co-terminously with the one year guarantee under the VEFA. In case the developer is not also the builder, the ten year building guarantee is between the developer and the builder, to the benefit of the purchaser. The responsibility is referred to as la ‘responsabilité decennale’ and operates on a reducing basis, with minor work guaranteed for a year and more major building work guaranteed for the full period.

Code Civil - Responsabilité Civile Biennale et Décennale

Article 1648 alinea 2

Dans le cas prévu par l'article 1642-1, l'action doit être introduite, à peine de forclusion, dans l'année qui suit la date à laquelle le vendeur peut être déchargé des vices ou des défauts de conformité apparents.

Article 1646-1

Le vendeur d'un immeuble à construire est tenu pendant dix ans, à compter de la réception des travaux, des vices caches dont les architectes, entrepreneurs et autres personnes liées au maître de l'ouvrage par un contrat de louage d'ouvrage sont eux-mêmes tenus en application des articles 1792 et 2281 du présent code.

Le vendeur est tenu de garantir les menus ouvrages pendant deux ans à compter de la réception des travaux. Il n'y aura pas lieu à résolution de la vente ou à diminution du prix si le vendeur s'oblige à réparer le vice.

Article 1792

Si l'édifice construit à prix péricite en tout ou en partie par le vice de la construction, même par le vice du sol, les architectes, entrepreneurs et autres personnes liées au maître de l'ouvrage par un contrat de louage d'ouvrage en sont responsables pendant dix ans.

E. DUTY AND TAXES

Duty and taxes on sale of a residential property by a RES Company	
Duty	Rates
Land Transfer tax (payable by the RES Company on the value of the property)	5% of the value of the property*

*A developer of a RES project can pay the land transfer tax on the transfer of a residential property under Vente en l'Etat Futur d'Achèvement (VEFA) in 4 equal 6-monthly instalments provided that they submit, at the time of registration of the deed of transfer, a bank guarantee equivalent to the remaining balance of the land transfer tax leviable. .

Written declaration by landowner

Date:

The Managing Director

Board of Investment
10th Floor, One Cathedral Square Building
16 Jules Koenig Street
Port Louis

Dear Sir,

Declaration of landowner implementing a project under the Real Estate Scheme under regulation 17 of the Investment Promotion (Real Estate Development Scheme) Regulations 2007

I
(PRINT NAME IN FULL)

of
(ADDRESS)

do hereby declare as follows:

1. I am a shareholder of a private limited company duly incorporated in Mauritius on theunder the appellation of, hereinafter referred to as the RES company, having its registered office at.....; the latter holder of a letter of approval issued by the Board of Investment onby virtue regulation 16 (2) of the Investment Promotion (Real Estate Development Scheme) Regulations 2007.
2. I confirm that I hold shares in the RES company equivalent to at least the value of the land brought in the RES company, as evidenced by the attached register of shareholders.
3. I undertake that, if the RES company is issued with a RES certificate pursuant to section 18 of the Investment Promotion Act and regulation 17 of the Investment Promotion (Real Estate Development Scheme) Regulations 2007, I will retain shares in the RES company equivalent to at least the value of the land brought in the RES company until at least one year after completion of the project.
4. I declare that to the best of my knowledge, the information I have provided is true and correct.

Signature of Declarant:

Date: