

chapter V-1.1, r. 45.1

REGULATION RESPECTING REAL ESTATE PROSPECTUS AND REGISTRATION EXEMPTIONS

Securities Act

(chapter V-1.1, s. 331.1, pars. (1), (2), (3), (4.1), (5), (8), (11), (14), (19), (20) and (34))

CHAPTER I SCOPE AND INTERPRETATION

1. This Regulation applies to the distribution of the following forms of investment:

(1) an investment contract that consists of a real right in an immovable and a rental management agreement;

(2) a security of an issuer that owns an immovable, which security gives the holder a right of exclusive use of the immovable or a portion thereof.

M.O. 2023-01, s. 1.

2. The real estate offering document delivered to a purchaser hereunder is authorized by the Autorité des marchés financiers (“Authority”) for use in lieu of a prospectus.

M.O. 2023-01, s. 2.

CHAPTER II DISTRIBUTION OF AN INVESTMENT CONTRACT

DIVISION I PROSPECTUS EXEMPTION

3. A distribution of an investment contract referred to in paragraph 1 of section 1 is exempt from the requirement to prepare a prospectus if

(1) the issuer delivers a real estate offering document to the purchaser that is prepared in accordance with Form F1 before accepting a commitment from the purchaser; and

(2) where the investment contract pertains to a real estate project that is in operation or has been in operation during the 12 months preceding the distribution, the real estate offering document presents the following statements of net revenue, as applicable:

(a) for a real estate project that has not completed a financial year, an audited statement of net revenue of the venture for the accounting period beginning on the date the venture began and ending on a date that is no more than 30 days before the date of the real estate offering document;

(b) for a real estate project that has completed one or more financial years:

(i) an audited annual statement of net revenue of the venture for each of the past two financial years, or such statement corresponding to the completed financial year, where the period is shorter;

(ii) an interim statement of net revenue of the venture for the period ending six months from the first day of the financial year and no more than 15 days before the date of the real estate offering document.

For the purposes of this Regulation, the statement of net revenue presents the net revenue of the venture and the allocation of revenues among the purchasers for each investment contract, the promoter and the persons in charge of the venture. It also indicates the balance of the amounts to be reimbursed to all purchasers and for each investment contract.

M.O. 2023-01, s. 3.

4. The issuer must deliver a copy of any material contract to a purchaser that requests it.

M.O. 2023-01, s. 4.

DIVISION II EXEMPTION FROM THE REGISTRATION REQUIREMENT

5. An individual is exempt from the requirement to register as a broker for the distribution of an investment contract referred to in paragraph 1 of section 1, provided that the individual holds a broker's licence issued in accordance with the Real Estate Brokerage Act (chapter C-73.2).

M.O. 2023-01, s. 5.

DIVISION III FORWARD-LOOKING INFORMATION, FUTURE ORIENTED FINANCIAL INFORMATION AND FINANCIAL OUTLOOK

6. An issuer may disclose forward-looking information only if there is a valid basis for that information.

M.O. 2023-01, s. 6.

7. Any material forward-looking information presented in the real estate offering document must include:

- (1) a statement identifying the forward-looking information as such;
- (2) a caution to users of the forward-looking information that actual results may vary from the forward-looking information, and identification of the material risk factors that could cause actual results to differ materially from that information;
- (3) the material factors or assumptions used to develop the forward-looking information; and
- (4) a description of the issuer's policy, if any, for updating forward-looking information.

M.O. 2023-01, s. 7.

8. Any future oriented financial information or financial outlook presented in the real estate offering document must meet the following conditions:

- (1) be based on assumptions that are reasonable in the circumstances;
- (2) be limited to a period for which such information can be reasonably estimated; and
- (3) use the accounting policies the issuer expects to use to prepare its historical statement of net revenue for the period covered by such information.

M.O. 2023-01, s. 8.

9. Other than the information referred to in section 7, any future oriented financial information and financial outlook presented in the real estate offering document must include:

- (1) the date management approved the future oriented financial information or financial outlook, unless the document in which the future oriented financial information or financial outlook is disclosed is dated; and
- (2) an explanation of the purpose of the future oriented financial information or financial outlook and a caution to readers that the information may not be appropriate for other purposes.

M.O. 2023-01, s. 9.

10. During the period of distribution, no other forward-looking information, future oriented financial information or financial outlook than that disclosed in the real estate offering document may be disclosed.

M.O. 2023-01, s. 10.

DIVISION IV DOCUMENTS TO BE FILED

11. The issuer of an investment contract referred to in paragraph 1 of section 1 must file the offering document referred to in paragraph 1 of section 3 and any update thereto electronically with the Authority not later than 10 days after the distribution. It must also file one or more reports of exempt distribution in accordance with Form 45-106F1 of Regulation 45-106 respecting Prospectus Exemptions (chapter V-1.1, r. 21) no later than 10 days after any distribution.

M.O. 2023-01, s. 11.

DIVISION V CERTIFICATES

12. The real estate offering document or any change thereto must contain the following certificate:

“Dated [insert the date the certificate page of the real estate offering document is signed], this real estate offering document does not contain a misrepresentation.”

If the issuer is a corporation, this certificate must be signed:

(a) by the issuer’s chief executive officer and chief financial officer or, if the issuer does not have a chief executive officer or chief financial officer, each individual acting in that capacity, and

(b) on behalf of the directors of the issuer, by

(i) any two directors who are authorized to sign, other than the persons referred to in subparagraph a, or

(ii) all the directors of the issuer who are authorized to sign, and

(c) by each promoter of the issuer.

M.O. 2023-01, s. 12.

13. If the issuer is not a corporation, a certificate under section 12 must be signed by the persons that, in relation to the issuer, are in a similar position or perform a similar function to any of the persons referred to in subparagraph a, b or c of the second paragraph of section 12.

M.O. 2023-01, s. 13.

14. The certificate under section 12 must be true:

(a) at the date the certificate is signed, and

(b) at the date the real estate offering document is delivered to the purchaser.

M.O. 2023-01, s. 14.

15. If a certificate under section 12 ceases to be true after it is delivered to the purchaser, the issuer cannot accept an agreement to purchase the investment contract from the purchaser unless:

(a) the purchaser receives an update of the real estate offering document,

(b) the update of the real estate offering document contains a newly dated certificate signed in compliance with sections 12 and 13, and

(c) the purchaser re-signs the agreement to purchase the investment contract and dates it with the date of the new signature.

M.O. 2023-01, s. 15.

DIVISION VI PERIODIC DISCLOSURES

16. The issuer, the promoter, the person in charge of the venture or the person designated for such purpose by the Authority under section 66 of the Securities Act (chapter V-1.1) must deliver to the security holders:

(1) the audited annual statement of net revenue of the venture no later than 120 days following the end of its financial year; and

(2) the interim statement of net revenue of the venture for the period beginning on the first day of the financial year and ending six months before the end of that year no later than 60 days following the end of the interim period of the venture.

M.O. 2023-01, s. 16.

17. The Authority may, on the conditions as it may determine, terminate the special disclosure scheme through an exemption where it considers the decision not to be detrimental to the protection of investors.

M.O. 2023-01, s. 17.

DIVISION VII RESALE

18. A prospectus is not required where an investment contract referred to in paragraph 1 of section 1 is distributed by a security holder to a purchaser and the security holder has notified the person in charge of the venture prior to the resale.

M.O. 2023-01, s. 18.

19. Upon notification from the security holder before the beginning of the venture, the person in charge of the venture must, within 30 days following such notification, deliver to the purchaser the updated real estate offering document, the audited statement of net revenue of the venture available for the past two financial years or, where the period is shorter, such statement corresponding to the completed year, and the statement of net revenue available for the past interim period, where applicable, ending six months after the past financial year.

However, if a financial year has not been completed, the information referred to in subparagraph (a) of the first paragraph of section 3 must be delivered.

If notification from the security holder takes place after the venture has begun, the person in charge of the venture must deliver to the purchaser the real estate offering document, the resale document prepared in accordance with Form F1, the audited statement of net revenue of the venture available for the past two financial years or such statement corresponding to the completed year where the period is shorter, and the statement of net revenue available for the past interim period, where applicable, ending six months after the past financial year.

However, if a financial year has not been completed, the information referred to in subparagraph 2(a) of the first paragraph of section 3 must be provided.

M.O. 2023-01, s. 19.

DIVISION VIII LANGUAGE

20. The real estate offering document must be drafted in French only or in French and English.

M.O. 2023-01, s. 20.

CHAPTER III DISTRIBUTION OF A SECURITY GIVING A RIGHT OF EXCLUSIVE USE IN AN IMMOVABLE

DIVISION I PROSPECTUS AND REGISTRATION EXEMPTION

21. A person is exempt from the requirement to prepare a prospectus and to register as a broker in respect of the distribution of a security referred to in paragraph 2 of section 1 where the purchaser must sign a rental agreement giving the purchaser a right of exclusive use of an immovable or a portion thereof.

M.O. 2023-01, s. 21.

22. The distribution of a security of an issuer that owns an immovable, which security gives the holder a right of exclusive use of the immovable or a portion thereof, must not

be made with an expectation of income or dividends or distributions, other than rental income or a capital gain resulting from an increase in the value of the immovable.

M.O. 2023-01, s. 22.

CHAPTER IV TRANSITION AND OTHER EXEMPTIONS

23. At the date of the coming into force of this Regulation, any person who relies on a discretionary exemption with respect to the distribution of any form of investment referred to in section 1 is exempt from the requirements under this Regulation where the conditions of such exemption are met. However, such person may choose to comply with the requirements under this Regulation.

M.O. 2023-01, s. 23.

24. Despite the provisions that are otherwise applicable under Regulation 45-106 respecting Prospectus Exemptions (chapter V-1.1, r. 21), any person who purchased an investment contract or security referred to in section 1 under any of the exemptions listed in Appendix D of Regulation 45-102 respecting Resale of Securities (chapter V-1.1, r. 20) is exempt from the requirement to prepare a prospectus in connection with the resale of such person's investment contract or security and from the applicable restricted period where such person complies with the requirements under sections 18 and 19 of this Regulation, or with section 21 thereof, as the case may be.

M.O. 2023-01, s. 24.

CHAPTER V COMING INTO FORCE

25. *(Omitted).*

M.O. 2023-01, s. 25.

FORM F1 REAL ESTATE OFFERING DOCUMENT AND RESALE DOCUMENT

A. General instructions

1. Draft the offering document so that it is easy to read and understand. Be concise and use clear, plain language. Avoid technical terms. If technical terms are necessary, provide definitions.
2. Address the items required by this form in the order set out in the form. However, it is not necessary to provide disclosure about an item that does not apply.
3. The issuer may include additional information in the real estate offering document other than that specifically required by this form. It must provide the purchaser with sufficient information to make an informed investment decision.
4. It is an offence to make a misrepresentation in the real estate offering document. This applies both to information that is required by the form and to additional information that is provided. Include particulars of any material facts that have not been disclosed under any of the item numbers and for which failure to disclose would constitute a misrepresentation in the real estate offering document.

B. Definitions

1. In this form,

“manager” means the person in charge of the venture in connection with a rental management agreement or a person acting in a similar capacity.

“principal holder” means each person that holds more than 10% of any class of voting securities of the issuer. If a principal holder is not an individual, in addition to the other disclosure requirements, provide the information required for any person that beneficially owns, or directly or indirectly has control or direction over, more than 50% of the voting rights of the principal holder.

“qualified appraiser” means an individual who

- (a) regularly performs property appraisals for compensation,
- (b) is a member of a professional association and holds the designation, certification or licence to act as an appraiser for the class of immovable appraised,
- (c) is in good standing with the professional association referred to in paragraph (b), and
- (d) is independent of the issuer, promoter, manager and rental pool and there is no circumstance that, in the opinion of a reasonable person aware of all the relevant facts, could interfere with the qualified appraiser’s judgment regarding the preparation of

an appraisal for the immovable, the purchaser's interest in the immovable or the real estate project.

"related party" means any of the following:

- (a) a director, officer, promoter, manager or control person of the issuer;
- (b) in regard to a person referred to in (a), a child, parent, grandparent or sibling, or other relative living in the same residence;
- (c) in regard to a person referred to in (a) or (b), his or her spouse;
- (d) an insider of the issuer or manager;
- (e) a person controlled by a person referred to in (a), (b), (c) or (d);
- (f) in the case of a person referred to in (a) or (d) that is not an individual, any person that, alone or acting in concert with other persons, exercises control over the person.

[If the issuer is not a reporting issuer, the reference to "insider" includes persons or companies who would be insiders of the issuer if that issuer were a reporting issuer.]

"rental management agreement" means an agreement, other than a rental pool agreement, under which a person manages the generation of revenue from the immovable on behalf of the purchasers.

[if the real estate project includes several immovables, "immovable" refers to the immovables included in the real estate project.]

"rental pool" means an arrangement under which revenues derived from, or expenses relating to, at least two immovables are pooled and shared among the owners of the immovables in accordance with their proportionate interests in the pool.

"rental pool agreement" means an agreement creating a rental pool.

Part I – Real estate offering document

Cover page

Required information on cover page

Date: [insert date from the certificate page]

The Issuer

Name:

Head office:

Address:

Phone #:

E-mail address:

Website address:

Reporting issuer? [Yes/no. If yes, state jurisdiction.]

The Offering

Investment contract offered: [describe the investment contract offered]

Price per security:

Number of real estate units:

Minimum/maximum offering [If there is no minimum, state in bold type: “**There is no minimum.**” and also state in bold type “**You may be the only purchaser.**”]

Conditions for beginning the real estate project: [Describe the conditions for beginning the real estate project and the deadline for meeting them.] [If there are no conditions, state in bold type: “**There are no conditions for beginning the real estate project.**”]

Payment terms: [See item 5.1]

Proposed closing date(s):

Income tax consequences: State “There may be important tax consequences to this investment contract. You should consult your own professional advisers to obtain advice

on the income tax consequences pertaining to your investment in the investment contract offered.”

Intermediaries: [State the names of the intermediaries and state: “See item 7”.]

If compensation is paid to the intermediaries, state:

“A person has or will receive compensation for the sale of investment contracts under this offering. See item 7.1.”.

Insufficient Funds

If item 1.3 applies, state in bold type:

“Funds available under the offering may not be sufficient to accomplish the proposed objectives. See item 1.3.”.

Future Cash Calls

If item 1.4 applies, state in bold type:

“The purchaser could be required to contribute additional funds in the future. See item 1.4.”.

Risk Factors

State in bold type:

“The Autorité des marchés financiers has not assessed the merits of the investment contract or reviewed this real estate offering document. Any representation to the contrary is an offence. This is a risky investment. You may not receive any return on the investment contract distributed under this real estate offering document. All real estate investments are subject to significant risk arising from changing market conditions. You could lose your entire investment. See item 11.”

Payments to Related Party

If the issuer is disclosing payment to a related party under item 1.2, state the following, with the bracketed information completed as applicable:

“[All of][Some of] your investment will be paid to a related party of the issuer. See item 1.2.”

Certain Related Party Transactions

If the issuer is making disclosure under item 3.10, state the following with the bracketed information completed as applicable:

“This real estate offering document contains disclosure with respect to one or more transactions between [name of issuer] and a related party, where [name of issuer] [paid more to a related party than the related party paid for a business, asset or real property] [and] [was paid less by a related party for a business, asset or immovable than [name of issuer] paid for it]. See item 3.10.”.

Resale Restrictions

State in bold type:

“There is a resale notification condition [and specify any other resale condition]. See item 12.”

Purchaser’s Rights

State in bold type:

“You have two business days to cancel your agreement to subscribe for the investment contract. If there is a misrepresentation in this real estate offering document, you have a right to damages or to cancel the investment contract. See item 13.”

[All of the above information must appear on a single cover page.]

Item 1

Use of Available Funds

1.1. Funds

Using the following table, disclose the funds available as a result of the offering. If the issuer plans to combine additional sources of funding with the available funds from the offering to achieve its principal capital-raising purpose, provide details about each additional source of funding. If there is no minimum offering, state “\$0” as the minimum.

Disclose any working capital deficiency of the issuer as at a date not more than 30 days before the date of the real estate offering document. If the working capital deficiency will not be eliminated by the use of available funds, state how the issuer intends to eliminate or manage the deficiency.

		Assuming min. offering	Assuming max. offering
A.	Amount to be raised by this offering	\$	\$
B.	Selling commissions and fees	\$	\$

C.	Estimated offering costs (including legal, accounting and audit)	\$	\$
D.	Available funds: $D = A - (B+C)$	\$	\$
E.	Additional sources of funding required	\$	\$
F.	Working capital deficiency	\$	\$
G.	Total: $G = (D+E) - F$	\$	\$

[Provide details about the additional sources of funding, including the amount, source and any conditions that must be satisfied to obtain the funding. Disclose the date on which the amount stated as working capital was determined.]

1.2. Use of Available Funds

Using the following table, provide a detailed breakdown of how the issuer will use the available funds. If any of the available funds will be paid to a related party, disclose in a note to the table the name of the related party, the relationship to the issuer, and the amount. If the issuer has a working capital deficiency, disclose the portion, if any, of the available funds to be applied against the working capital deficiency. If more than 10% of the available funds will be used by the issuer to pay debt and the issuer incurred the debt within the two preceding financial years, describe why the debt was incurred.

Description of intended use of available funds listed in order of priority	Assuming minimum offering	Assuming maximum offering
	\$	\$
	\$	\$
Total: Equal to G in the Funds table above	\$	\$

1.3. Insufficient Funds

If applicable, disclose that the funds available as a result of the offering either may not or will not be sufficient to accomplish all of the issuer’s proposed objectives and there is no assurance that alternative financing will be available. Also disclose the potential effect and consequences of the insufficient funds on the purchaser’s investment.

1.4. Future Cash Calls

If the purchaser is required to contribute additional funds in the future, disclose the following:

- (a) the amount the purchaser is required to contribute;
- (b) when the purchaser will be required to contribute;
- (c) the effect on the purchaser's investment and, if applicable, the purchaser's interest in the immovable if:
 - (i) the purchaser fails to contribute;
 - (ii) the purchaser contributes, but other purchasers fail to contribute.

Item 2

Business of the Issuer

2.1. Structure

State the business structure of the issuer, promoter, manager and rental pool (e.g., whether they are a partnership, corporation or trust), the statute under which they are incorporated or continued, and the date and location of their incorporation or continuance. State any material change to their constituting document or business structure.

2.2. The Business

Briefly describe the nature of the issuer's current and proposed business.

Describe the general development of the issuer's business over at least its two most recently completed financial years. Describe the issuer's experience in the real estate sector. Include any major events that have occurred or conditions that have influenced (favourably or unfavourably) the development or financial condition of the issuer.

State whether the issuer was incorporated specifically to develop the real estate project.

Item 3

Real Estate Project

3.1. The Real Estate Project

Describe the real estate project related to the investment contract offered. Indicate the projected construction start and completion dates.

3.2. Costs and Objectives

Indicate the costs and objectives of the real estate project for the 24 months following the date of the real estate offering document, including the following:

- (a) the estimated costs to complete the real estate project;
- (b) any significant assumptions that underlie the cost estimates;
- (c) when significant costs will be incurred;
- (d) the objectives of the real estate project that are expected to be met within the 24 months following the date of the real estate offering document, including the following:
 - (i) the expected timeline for meeting each objective;
 - (ii) how the issuer will meet each objective;
 - (iii) if the objectives are to be completed in phases, details about each phase;
 - (iv) the estimated cost of meeting each objective;
 - (v) how the issuer will fund the cost of meeting each objective.

Indicate the costs and objectives of the real estate project that are expected to be met after the 24-month period following the date of the real estate offering document, including the following:

- (a) the expected timeline for meeting each objective;
- (b) how the issuer will meet each objective;
- (c) if the objectives are to be completed in phases, details about each phase;
- (d) the estimated cost of meeting each objective;
- (e) how the issuer will fund the cost of meeting each objective.

Indicate what reasonably might happen if any of the stated objectives are not met, including the effect of not meeting the objective on the following:

- (a) the real estate project;
- (b) the purchaser's investment;
- (c) the purchaser's real rights in the immovable;

(d) the purchaser's interest in the venture.

3.3. Description of the Immovable

Describe the following with respect to the immovable subject to the real estate project:

(a) the immovable's location using an address or any other description;

(b) the issuer's real rights in the immovable;

(c) any encumbrances on the immovable;

(d) the current use;

(e) the proposed use and why the issuer considers the immovable to be suitable to the real estate project;

(f) the stages of the real estate development, if the immovable will be constructed in stages, describing the aspects of the stages, including the number of stages and the total number of potential real estate units in each stage;

(g) Disclose that a copy of the actual or proposed plans for the immovable showing the layout of the immovable and dimensions and areas of the lots, real estate units, common portions for exclusive use and other common portions, is made available for review to prospective purchasers and that a prospective purchaser can request a copy. Also disclose the address and hours during which the plans are available for review;

(h) if utilities and other services are not currently being provided, describe how they will be provided and who will provide them;

(i) any restriction on sale or disposition;

(j) any environmental liabilities, hazards or contamination;

(k) any tax arrears.

Describe any current legal proceedings, or legal proceedings that the issuer knows to be contemplated, relating to the immovable, that would be considered material to a reasonable investor, including, for each proceeding, the name of the court, the date instituted, the parties to the proceeding, the nature of the claim, any amount claimed, whether the proceeding is being contested and, the present status of the proceeding.

3.4. Appraisal of the Immovable and Real Estate Project

If the issuer includes the value of the immovable, the purchaser's interest in the immovable or the real estate project in the real estate offering document, except for the values presented in the issuer's financial statements, the issuer must, at the same time or before the issuer delivers a real estate offering document to the purchaser, deliver to

the purchaser an appraisal of the immovable, of the purchaser's interest in the immovable or of the real estate project that satisfies the following:

(a) it includes a certificate signed by a qualified appraiser stating that the appraisal is prepared in accordance with the standards and the code of ethics established or endorsed by the professional association of which the qualified appraiser is a member;

(b) it provides the fair market value of the immovable, appraised by the qualified appraiser, of the purchaser's interest in the immovable or of real estate project, without considering any proposed improvements;

(c) it provides the appraised fair market value referred to in paragraph (b) as at a date that is within six months preceding the date that the appraisal is delivered to the purchaser.

The issuer must not disclose in any communication related to the distribution a representation of, or opinion as to, the value of the immovable, the purchaser's interest in the immovable or the real estate project, other than the appraised fair market value disclosed in the appraisal referred to above, unless the issuer has a reasonable basis for that value.

An issuer that discloses in any communication related to the distribution a representation of, or opinion as to, the value of the immovable, the purchaser's interest in the immovable or the real estate project, other than the appraised fair market value disclosed in the appraisal referred to above, must also disclose the following in that communication:

(a) the appraised fair market value of the immovable, of the purchaser's interest in the immovable or of the real estate project that is the subject of the appraisal;

(b) the effective date of the appraisal;

(c) that the appraisal is required to be delivered to the purchaser at the same time or before the offering document is delivered to the purchaser.

3.5. The History of the Immovable

For the immovable that is the subject of the real estate project, using the following table and starting with the most recent transaction, provide the specified information for the past two years:

Date of transfer	Legal name of seller	Legal name of buyer	Amount and form of consideration
			\$
			\$

3.6. Approvals

For the immovable that is the subject of the real estate project, disclose the following:

- (a) any approval required from a regulatory body or any level of government that would be material to a reasonable investor;
- (b) the anticipated cost and timing of the approval;
- (c) any reports required as part of the approval process, including the anticipated cost and timing of producing or procuring those reports;
- (d) what will happen if the approval is not obtained, including the effect on the following:
 - (i) the project;
 - (ii) the purchaser’s investment;
 - (iii) if applicable, the purchaser’s interest in the immovable.

3.7. Information on the Investment Contract

With respect to the purchaser’s interest in the immovable, disclose the following:

- (a) the purchaser’s real right;
- (b) how the interest will be evidenced in a public registry;
- (c) any existing or anticipated encumbrances on the interest;
- (d) any furnishings and equipment that are included, indicating the related warranties;
- (e) the facilities and common property of the real estate project, indicating the restrictions or privileges related to their use;

(f) the fees associated to the purchaser's interest in the immovable, including annual fees and their allocation. Attach a copy of the budget, including a schedule showing how the budget will be allocated among the purchasers;

(g) any commitments made by the issuer that will be met after the closing of the distribution, indicating whether the issuer has posted any security to meet the commitment;

(h) the applicable zoning and permissible uses, stating whether certain real estate units may be used for commercial purposes or other purposes not ancillary to residential purposes. Provide information about where to obtain further information and details about zoning requirements and permissible uses;

(i) the parking arrangements, if applicable, including the number and location of parking spaces and the method of allocating the right to use the spaces;

(j) the construction warranties related to the real estate project.

3.8. Rental Management Agreement or Rental Pool Agreement

Attach a copy of any rental management agreement or rental pool agreement.

For each agreement, disclose the following:

(a) the key terms of the agreement, including those provisions dealing with when the agreement must be signed by the purchasers, the duration of the agreement, opting out of the agreement, termination of the agreement, the sharing of revenues and losses, the payment of expenses, and any management fees payable;

(b) the manager's and rental pool's experience managing rental management agreements and rental pool agreements. Include their successes and failures in managing such agreements over the past five years;

(c) the following statement:

"The success or failure of the arrangement resulting from the rental management agreement [and rental pool agreement] will depend in part on the abilities of the manager [and rental pool].";

(d) if the purchaser will be responsible for paying any loss arising pursuant to the rental management agreement or rental pool agreement, the following statement:

"If the rental management agreement [or rental pool agreement] generates a loss, the purchaser must contribute further funds in addition to the purchaser's initial investment.".

3.9. Material Agreements

If the information cannot be found elsewhere in the real estate offering document, disclose the key terms of all material agreements that are or will be related to the real estate project, including those to which the purchaser will be a party.

The key terms include the following:

- (a) if the agreement is with a related party, the name of the related party and the relationship to the director, officer or control person of the issuer, promoter or manager;
- (b) a description of any asset, property or interest acquired, disposed of, leased or under option or emphyteutic right;
- (c) a description of any service provided;
- (d) purchase price and payment terms, including payment by instalments, cash, securities or work commitments;
- (e) the principal amount of any debenture or loan, the repayment terms, security, due date and interest rate;
- (f) the date of the agreement;
- (g) the amount of any finder's fee or commission paid or payable to a related party in connection with the agreement;
- (h) any material outstanding obligations under the agreement.

Attach the material agreements to the real estate offering document or disclose the address and hours during which the agreements are available for review.

3.10. Related Party Transactions

State and describe the approximate amount of any material interest, direct or indirect, of a related party in any transaction within 36 months before the date of the real estate offering document, or in any proposed transaction, which has materially affected or will materially affect the issuer, the immovable or the real estate project.

Include:

- (a) a description of the transaction;
- (b) the name of each related party;
- (c) the nature of the relationship;

(d) for any transaction involving the purchase of assets by or sale of assets to the issuer or the real estate project, state the cost of the assets to the purchaser, and the cost of the assets to the seller if acquired by the seller within 36 months before the date of the real estate offering document;

(e) for any transaction involving the purchase or sale of an immovable of the real estate project, explain any material difference between the amount of consideration paid by the issuer and the amount of consideration paid by a related party to acquire or sell the immovable.

Item 4

Compensation and Security Holdings by Directors, Officers, Promoters, Managers and Principal Holders

4.1. Name, Principal Residence, Compensation and Securities Held

Using the following table, provide the specified information for the following:

(a) each director, officer, promoter and principal holder of the issuer;

(b) each manager;

(c) any other related party that received compensation in the most recently completed financial year or is expected by the issuer to receive compensation in the current financial year.

If a person identified in paragraph (a), (b) or (c) is not an individual, state in a note to the table the full legal name of any person that has beneficial ownership of, or direct or indirect control over, or a combination of beneficial ownership and direct or indirect control over, more than 50% of the voting rights of the person.

Full legal name and place of residence or, if not an individual, jurisdiction of organization	Positions held (e.g., director, officer, manager, promoter or principal holder) and the date of obtaining that position In the case of the other related parties, specify the relationship to the issuer	Compensation paid by issuer or related party in the most recently completed financial year and the compensation anticipated to be paid in the current financial year	Number, type and percentage of securities of the issuer held after completion of min. offering	Number, type and percentage of securities of the issuer held after completion of max. offering

[If the issuer has not completed its first financial year, provide information for the period from inception to the date of the real estate offering document. Compensation includes any form of remuneration including cash, shares and options.]

4.2. Management Experience

Using the following table, disclose the principal occupations of the directors, officers and promoters of the issuer over the past five years. For each individual, describe any relevant experience in a business similar to the issuer’s and in a project similar to the real estate project.

Full legal name and place of residence or, if not an individual, jurisdiction of organization	Principal occupation and related experience

4.3. Penalties, Sanctions, Bankruptcy, Insolvency and Criminal or Quasi-Criminal Matters

If any of the following has occurred with respect to the issuer, director, officer, promoter or control person of the issuer or manager, or an issuer of which any of those

persons was a director, officer or control person at the time, describe it, including the reason for it and whether it is currently in effect:

(a) a penalty or other sanction relating to a contravention of securities legislation that has been imposed by a court or regulatory body during the 10 years preceding the date of the real estate offering, or an order restricting trading in securities, not including an order that was in effect for less than 30 consecutive days;

(b) a declaration of bankruptcy, a voluntary assignment in bankruptcy, a proposal under bankruptcy or insolvency legislation or a proceeding, arrangement or compromise with creditors or appointment of a receiver, receiver manager or trustee to hold assets that has occurred during the 10 years before the date of the real estate offering document.

(c) the following offences, if the persons have pleaded guilty to or been found guilty of:

(i) a summary conviction or indictable offence under the *Criminal Code* (R.S. 1985, c. C-46);

(ii) a quasi-criminal offence in any jurisdiction of Canada or a foreign jurisdiction;

(iii) a misdemeanour or felony under the criminal legislation of the United States of America, or any state or territory therein;

(iv) an offence under the criminal legislation of any other foreign jurisdiction.

4.4. Loans

Disclose the principal amount of any debenture or loan, the repayment terms, any security, due date and interest rate due to or from the directors, officers or principal holders of the issuer, the promoter, the manager or the rental pool up to a date not more than 30 days before the date of the real estate offering document.

4.5. Conflicts of Interest

Describe any existing or potential conflicts of interest for the issuer, directors, officers or principal holders of the issuer, promoter, manager or rental pool, as well as any person called on to provide professional services in connection with the real estate project.

Item 5 Subscription Procedure

5.1. Subscription

Describe how a purchaser can subscribe for the investment contract and the method of payment.

If the funds are to be raised through the offering in stages, disclose the period over which the funds will be raised and the factors that determine when they will be raised.

5.2. Held in Trust

State that the funds will be held in trust, the name of the trustee and the period that they will be held (refer at least to the mandatory two-day period).

5.3. Closing

Disclose any conditions to closing, including any receipt of additional funds from other sources.

If there is a minimum offering, disclose when consideration will be returned to purchasers if the minimum is not met, and whether the issuer will pay the purchasers interest on consideration. State the name and address of any person who will hold the subscription funds until the minimum amount is raised.

If there are any arrangements under which any part of the funds raised will only become available to the issuer if certain conditions are fulfilled, describe those conditions. Where the conditions are not met, state when the funds will be returned to purchasers and whether the issuer will pay the purchasers interest on the funds.

Item 6 Guarantees or Other Financial Commitments

6.1. Agreement

Attach a copy of any guarantee or other financial commitment made to the purchaser by the issuer, promoter, manager or rental pool in connection with the investment contract.

6.2. Summary

Summarize the key terms of any guarantee or other financial commitment, including the duration, cost of the guarantee or premium, whether the guarantee or commitment is based on gross or net revenues, and whether the guarantee or commitment is inclusive or exclusive of certain costs, such as maintenance fees, ownership costs and income and other taxes.

6.3. Information about the Guarantor

Describe the business experience and financial resources of the person providing the personal covenant, guarantee or other financial commitment. The description must enable a reasonable purchaser applying reasonable effort to understand the person's ability to meet the obligations under the personal covenant, guarantee or other financial commitment. Disclose whether the purchasers will be entitled to ongoing disclosure of the financial position of the person providing any personal covenant, guarantee or other financial commitment during the period of the personal covenant, guarantee or other financial commitment, and the nature, verification, timing and frequency of any disclosure that will be provided to purchasers.

Item 7

Compensation Paid to Intermediaries

7.1. Name the intermediaries involved in the distribution and provide a description of their activities and compensation in connection with the real estate project.

If any person has received or will receive any commission, corporate finance fee or finder's fee or any other compensation in connection with the offering, provide the following information:

(a) a description of each type of compensation and the estimated amount to be paid for each type;

(b) if a commission is being paid, the percentage that the commission will represent of the gross proceeds of the offering (assuming both the minimum and maximum offering);

(c) if any portion of the compensation will be paid in securities, details of the securities (including number, type and, if options or warrants, the exercise price and expiry date).

Item 8

Income Tax Consequences

8.1. State:

"You should consult your own professional advisers to obtain advice on the income tax consequences of investing in the investment contract."

Item 9

Litigation

9.1. Describe any litigation instituted against the issuer, promoter, manager or rental pool that could have a material impact on the investment contract.

Item 10 Risk Factors

10.1. State in bold type:

“Investments in investment contracts are speculative and involve a high degree of risk. Purchasers should be aware that this investment has not only the usual risks associated with ownership of an immovable, but also additional risks that are specific to investment contracts.”

10.2. Description of Risk Factors

(1) Describe in order of importance, starting with the most important, the risk factors material to the issuer that a reasonable investor would consider important in deciding whether to subscribe for the investment contract.

(2) Risk factors will generally fall into the following categories:

(a) Investment Risk – risks that are specific to the investment contract. Examples include:

- economic conditions;
- fluctuations in the real estate and rental markets;
- fluctuations in mortgage rates;
- the guarantor’s financial viability.

(b) Issuer Risk – risks that are specific to the issuer. Examples include:

- insufficient sales/funds to begin the real estate project;
- no history or a limited history;
- lack of management expertise;
- management’s regulatory and business expertise pertaining to the activities of the real estate project;
- dependence on the manager or rental pool, including their skill and proficiency, and the inability to change the manager or rental pool, as applicable;
- whether there are liabilities secured against the immovable and their maturity schedule;

— whether any security has been posted to perform any commitment made by the issuer that will be met after the closing of the distribution;

— material litigation outstanding.

(c) Industry Risk – risks specific to real estate projects. Examples include:

— industry regulation;

— tourism;

— operational risks involving the rental management agreement;

— competition.

(d) risks associated with encumbrances, conditions, or covenants on the immovable that could affect the following:

(i) the purchaser’s interest in the immovable, if applicable;

(ii) the completion of the real estate project.

(e) risks pertaining to real estate projects, including the following:

(i) a right or lack of right of the purchaser with respect to the management and control of the immovable;

(ii) a right or lack of right of the purchaser to change the developer of the immovable.

(f) risks pertaining to potential liability for the following:

(i) environmental damage;

(ii) unpaid obligations to builders, contractors and tradespersons.

10.3. State in bold type:

“The success of the rental management will depend in part on the competence and abilities of the manager or rental pool. If gross revenue is less than operating costs, the purchaser may be required to make additional contributions over and above the initial investment.”

10.4. Where the investment contract is attached to a guarantee or other financial commitment, state in bold type:

“The ability of [guarantor] to honour its [guarantee or other financial commitment] will depend on its financial strength. There is no assurance that [guarantor’s name] will have the financial ability to be able to satisfy its obligations

under the [guarantee or other financial commitment] and therefore you may not receive any return from the investment contract distributed under this real estate offering document.”

Item 11 Reporting Obligations

11.1. State that the audited annual statement of net revenue of the venture and the interim statement of net revenue of the venture for the period beginning on the first day of the financial year and ending six months before the end of that year will be delivered to the purchasers on an ongoing basis. State the name of the person who will be responsible for the delivery of those documents and the procedure to follow if the designated person resigns or fails to comply with the obligations.

Item 12 Resale Restrictions

12.1. State the following:

“Where an investment contract is resold before the beginning of the venture, the purchaser must notify the person in charge of the venture prior to the resale. Upon notification from the holder, the person in charge of the venture must, within 30 days of the notification, deliver the updated real estate offering document to the purchaser in accordance with the Regulation respecting real estate prospectus and registration exemptions.”

“After the beginning of the venture, the purchaser must notify the person in charge of the venture prior to the resale. Upon notification from the purchaser, the person in charge of the venture must, within 30 days of the notification, deliver the real estate offering document, the statement of net revenue of the venture and the resale document to the purchaser in accordance with the Regulation respecting real estate prospectus and registration exemptions.”

Item 13 Purchasers’ Rights

13.1. State the following:

“If you subscribed for the investment contract offered, you will have certain rights, some of which are described below. For information about your rights, you should consult a lawyer.

(1) **Two-Day Cancellation Right** – You can cancel your subscription for the investment contract. To do so, you must send a notice to us by midnight on the second business day after you sign the investment contract.

(2) **Statutory Rights of Action in the Event of a Misrepresentation** – If there is a misrepresentation in this offering document, you have a statutory right of action:

(a) against [name of issuer] to apply to have the investment contract cancelled, or

(b) for damages against [name of issuer and the title of any other person against whom a right may be exercised]

These statutory rights of action may be exercised whether or not you relied on the misrepresentation. However, the defendant may defeat the application through various means—in particular, by proving that you knew of the misrepresentation when you subscribed for the investment contract.

If you intend to rely on the rights of action described in (a) or (b) above, you must do so within statutory time limitations. Refer to the applicable legislation and consult a lawyer.”

Item 14 Forward-looking Information

14.1. An issuer disclosing forward-looking information must do so in accordance with Division III of Chapter II of the Regulation respecting real estate prospectus and registration exemptions (the “Regulation”).

Item 15 Financial Statements

15.1. Include the audited statements of net revenue of the venture immediately before the certificate page of the real estate offering document if the venture began in accordance with Divisions I and VI of Chapter II of the Regulation.

Item 16 Signatures

16.1. The certificate in section 12 of the Regulation must appear on the last page of the real estate offering document and be signed by the issuer and promoter in accordance with Division IV of Chapter II of the Regulation.

Part II – Resale Document

The update document is a document that must be prepared by the person in charge of the venture upon receiving a notification of resale. It updates the information in items 3.8, 4.1 and 4.3 to 4.5 of the real estate offering document relating to the manager and the rental pool.

State the following:

“Where an investment contract is resold before the beginning of the venture, the purchaser must notify the person in charge of the venture prior to the resale. Upon notification from the holder, the person in charge of the venture must, within 30 days of

the notification, deliver the real estate offering document, the statement of net revenue of the venture and the resale document to the purchaser in accordance with the Regulation respecting real estate prospectus and registration exemptions.”

M.O. 2023-01, Form F1.

Décision 2023-PDG-0005, 2023-02-01
Bulletin de l’Autorité: 2023-03-08, Vol. 20, n° 9
M.O. 2023-01, 2023 G.O. 2, 302