

*Real Estate is one of the keystones of UAE's economy attracting investment opportunities for global investors and businesses... real estate investment funds and REITS are becoming increasingly popular ways for managing and protecting investments and for generating liquidity for owners, builders and developers.*

# Real Estate Investment Funds in the UAE

- A brief on the current regulatory environment

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## REAL ESTATE INVESTMENT FUND IN THE UAE

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### A. Background

The following analysis is based on the principles, rules and regulations governing onshore and offshore real estate funds (“**RE Funds**”) and real estate investment trusts (“**REITs**”) in the UAE. The Administrative Decision No. (6/R.T) of 2019 concerning Real Estate Investment Fund Controls (the “**UAE Fund Regulations**”) recently issued by the Securities and Commodities Authority (“**SCA**”) governing funds have updated and repealed the earlier legal framework for RE Funds and REITs established onshore in the UAE and operation and distribution of offshore RE Funds/REITs onshore in the UAE, while the Dubai Financial Services Authority (“**DFSA**”) and the Financial Services Regulatory Authority (“**FSRA**”) govern RE Funds/REITs set up in DIFC and ADGM respectively. DIFC/ADGM funds are treated as offshore funds by SCA.

### B. References

Our discussion is based on the following laws:

- (a) Emirates Securities and Commodities Authority Board of Directors’ Chairman Decision No. (9/R.M) of 2016 Concerning the Regulations as to Investment Funds (“**SCA Regulations**”);
- (b) UAE Fund Regulations;
- (c) Collective Investment Law, DIFC Law No. 2 of 2010;
- (d) Investment Trust Law, DIFC Law No.5 of 2006;
- (e) The DFSA Rulebook Collective Investment Rules;
- (f) The DFSA Rulebook Fund Protocol Rules;
- (g) The DFSA Rulebook Fees Module;
- (h) Financial Services and Markets Regulations, 2015 (the “**ADGM Regulations**”);
- (i) Financial Services Regulatory Authority, Fund Rules (the “**ADGM Fund Rules**”);
- (j) Financial Services and Markets Regulations General Rule Book; and
- (k) Financial Services and Markets Regulations Fees Rule Book (the “**ADGM Fees Rules**”).

Unless otherwise specified, references to RE Funds includes REITs. While the concept of trusts, being a common law concept in equity is not recognized under the UAE law, DIFC and ADGM accept them. Practically however, trusts are prevalent in the UAE – for example, security trusts granted in the context of a financial indebtedness and REITs. DIFC and ADGM both apply common law principles as opposed to the mainland which follows civil law.

### C. Investment fund

An investment fund has been defined under the SCA Regulations as a “*financial pool engaged in the activity of accumulating Investors’ assets for the purpose of investment against the issue of Fund Units of equal value.*” It may be set up in the UAE as a legal entity incorporated in:

- (a) the mainland of the UAE as an onshore company regulated by the SCA or;
- (b) DIFC or ADGM as a company/trust regulated by the DFSA or FSRA, as the case may be.

Appendix 2 gives a brief overview of the various types of funds permitted to be registered in the UAE.

#### **D. RE Fund as a mainland company regulated by the SCA**

In order to qualify as an investment fund established onshore in the UAE, the RE Fund must comply with the UAE Fund Regulations consisting of the following core conditions:

- (a) invest at least 75% of its total assets in real estate, whether in the form of construction, development or re-outfitting, in preparation for sale, management, lease or disposal of such assets;
- (b) receive at least 90% of its total revenue from real estate, interest, dividends and capital earnings relating to such real estate;
- (c) distribute at least 80% of its net profits to unitholders each year;
- (d) where the RE Fund owns real estate service companies, the investments in such service companies cannot exceed 20% of the RE Fund’s total assets; and
- (e) borrowings of the RE Fund must not exceed 50% of its total asset value; and
- (f) the RE Fund’s management company must assume full responsibility for the RE Fund’s management, projects, investment decisions and assets.

#### **E. RE Fund set up in the ADGM**

1. The ADGM Regulations set out by the FSRA refer to a fund as a Collective Investment Fund<sup>1</sup> where:
  - (a) the investors do not have day to day control over the management of the property of the RE Fund. They may have the right to be consulted or give directions;
  - (b) the contributions of the investors and the profits or income out of which payments are to be made to them are pooled and the property is managed as a whole by or on behalf of the Fund Manager;

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<sup>1</sup> Rule 106, “**Collective Investment Fund**” means any arrangements with respect to property of any description, including money, the purpose or effect of which is to enable persons taking part in the arrangements (whether by becoming owners of the property or any part of it or otherwise) to participate in or receive profits or income arising from the acquisition, holding, management or disposal of the property or sums paid out of such profits or income.

- (c) funds may be registered as domestic public funds, exempt funds and qualified investor funds (“**QIFs**”);
  - (d) a person may enter into an agreement/trust deed to create a trust for collective investment purposes such as a RE Fund or a REIT, provided:
    - (i) that person is authorised by FSRA or any other regulator to manage a collective investment fund in a recognised jurisdiction; and
    - (ii) (if the fund is set up as an investment trust), the trustee is person is authorised by FSRA to act as the trustee of an investment trust. The trustee of the fund should be independent of the fund manager.
2. A fund is a RE Fund only if it meets the criteria set out under below as a “property fund”<sup>2</sup>:
- (a) it is constituted as an investment company or as an investment Trust;
  - (b) it primarily invests in income-generating real property;
  - (c) distributes at least 80% of its audited annual net income to its unitholders;
  - (d) the fund manager, and, if appointed, the trustee, must notify the FSRA of any breach of the ADGM Rules and the measures taken or proposed to remedy the breach;
  - (e) the persons providing oversight functions in respect of a public RE Fund must determine that any:
    - (i) revaluation surplus credited to income, or
    - (ii) gains on disposal of real property,
 is distributed to its investors;
  - (f) the fund manager of a RE Fund which is an Exempt Fund or a QIF is required to make the determination set out in (e) above; and
  - (g) a RE Fund which is a Public Fund must be either listed on an exchange or be open-ended.
3. Where a RE Fund (other than a QIF) holds any real property through a special purpose vehicle (“**SPV**”), the fund manager must ensure that each SPV distributes its net income as permitted by the law of that SPV’s jurisdiction of incorporation.
4. A RE Fund can only invest in a property under development by itself or through a joint venture only if it intends to hold the developed property upon completion. However, the total purchase price and development cost of such property under development must not exceed 30% of the net asset value of the Fund Property of the RE Fund.

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<sup>2</sup> Rule 13.5 of Fund Rules ‘FUNDS VER04.100918’ of the ADGM Rules.

5. FSRA does not consider property development activities to include refurbishment, retrofitting and renovation.
6. A RE Fund other than a QIF cannot borrow an amount more than 65% of its total gross asset value.

**F. RE Fund set up in DIFC**

1. The Fund Rules set out by DFSA provide that all RE Funds (defined in the Fund Rules as “Property Funds” being funds investing predominantly in real estate or real estate-related assets) must be closed-ended funds.
2. In addition to being a closed-ended fund, a RE Fund which is a Public Fund must:
  - (a) invest only in real property or property related assets, but may retain up to 40% of its investments in cash or certain specified securities;
  - (b) be constituted as an investment company or an investment trust;
  - (c) be listed, within six months of its establishment, either as an authorised market institution or an exchange in a recognised jurisdiction;
  - (d) have the fund property valued annually;
  - (e) value the fund property on the basis of an independent valuation of the relevant property, before acquiring or disposing of any asset; and
  - (f) limit its borrowings to 80% of its total net asset value.
3. REITs are a sub-set of Property Funds, which are designed for income generation.
4. A REIT must, in addition to being closed-ended:
  - (a) be constituted as an investment company or an investment trust;
  - (b) be a public fund that is listed and traded on an authorised market institution;
  - (c) distribute 80% of its audited annual net income to Unitholders;
  - (d) not borrow beyond 70% of its total net asset value;
  - (e) invest only up to 30% of its total assets in ‘property under development’.
5. In addition to the above specialist classes of funds, the DFSA Fund regime also has specific provisions dealing with feeder funds and fund of funds.

**G. Comparison between the ADGM, DIFC and Mainland regimes**

1. The table below sets out the key distinguishing features of a RE Fund/REIT set up in Dubai and Abu Dhabi (as mainland entities), DIFC and the ADGM.
2. We note that the DIFC fees for fund managers relate to those holding a Prudential Category 3C license. Additional licenses taking them into a higher category will have additional fee obligations. The information under Fees is indicative and not exhaustive.

Topic	DIFC	ADGM	Mainland (Dubai and Abu Dhabi)
<b>Ownership</b>	100% foreign shareholding		51% UAE national + 49% foreign shareholding
<b>Regulator</b>	Dubai Financial Services Authority	Financial Services Regulatory Authority	Emirates Securities and Commodities Authority
<b>Borrowing</b>	RE Fund as Public Fund: 80% of net asset value REIT: 70% of net asset value	RE Fund (other than QIF): 65% of gross asset value	50% of total asset value.
<b>Governing Law</b>	DIFC	ADGM	Federal Law
<b>Capital Requirements for the fund manager</b>	Appendix 1	a) \$150,000 if the Authorised Person manages a Public Fund or any other type of fund that is available to retail customers; or b) \$50,000 otherwise.	Paid Up Capital not less than AED5mn.
<b>Passporting Rules</b>	Available for both offshore and onshore <sup>3</sup>		
<b>Establishment</b>	Offshore – free zone		Onshore <sup>4</sup>
<b>Fees<sup>5</sup> (USD)(AED) approximately</b>	(i) Incorporation Fees – \$1200; (ii) Annual renewal fees – Nil; (iii) Application Fee for registering the fund –\$1000; (iv) Fund manager license application fee	(i) Incorporation Fees \$600; (ii) Issuance of commercial license: \$1000; (iii) Application to register a fund: \$3000; (iv) Application to manage a Collective Investment Fund (if not	License Fee: AED50,000; Renewal Fee: AED25,000 or as maybe prescribed by the SCA.

<sup>3</sup> For example, a UAE Licensed Firm which is regulated by the DFSA would be able to promote the units in a DIFC domiciled fund to “Qualified Investors” in the Abu Dhabi Global Market (ADGM) and/or onshore in the UAE, depending on the jurisdictions it requested in its notification to the DFSA. This will save the UAE Licensed Firm significant time and costs because it will not have to seek additional licenses or appoint agents in the other jurisdictions, as was previously the case.

<sup>4</sup> (i) a company operating in the area of securities and licensed by the SCA, (ii) a company licensed under the Commercial Companies Law with its main object being the establishment and management of investment funds, (iii) a local bank or a branch of a foreign bank licensed by the Central Bank of UAE, (iv) a branch of a foreign company in UAE licensed in the jurisdiction of its head office to establish and manage investment funds and regulated by a similar regulator as the SCA.

<sup>5</sup> A QIF or Exempt fund manager who is also licenced to manage assets will have a Base Capital Requirement of \$500,000. The fund manager will not be eligible for the lower BCR of \$140,000 or \$70,000.

	<ul style="list-style-type: none"> <li>- \$10,000 (and US\$10,000 for each annual renewal);</li> <li>(v) Fund manager licensing application fee (if only for managing QIF) - \$5000 (and \$5000 for each annual renewal);</li> <li>(vi) Fund manager of an Umbrella Fund - licensing application fee for the Umbrella Fund - \$8000 (and \$8000 for each annual renewal);</li> <li>(vii) fund manager of an Umbrella Fund - licensing application fee for each Sub-Fund - \$1000 (and \$1000 for each annual renewal)</li> <li>(viii) External fund manager – application fee: Nil;</li> <li>(ix) Application Fee for a Public Fund - \$1000;</li> <li>(x) Annual renewal fee per fund (Public, Exempt and Qualified) - \$4000 each;</li> <li>(xi) Notification Fee for registering a passported fund: \$9500;</li> </ul>	<ul style="list-style-type: none"> <li>a QIF or an Investment Company managed by its Corporate Director): \$10,000;</li> <li>(v) Application for Managing a Collective Investment Fund if only for managing QIFs: \$5000;</li> <li>(vi) Application for Managing a Collective Investment Fund company managed by its Corporate Director: \$5000;</li> <li>(vii) Application fee for registering a sub-fund for an umbrella fund: \$1000;</li> <li>(viii) Application to manage a foreign fund: \$1000;</li> <li>(ix) Notification Fee for registering a passported fund: \$9500;</li> <li>(x) Annual passporting fee for each domestic fund (set up in ADGM): \$2000;</li> </ul>	
<b>Data Protection</b>	Depending upon whether the entity will be processing personal data	\$300	NA

	(financial or non - financial) or not - \$1500		
<b>Office Spaces</b>	Every entity registered in the DIFC or the ADGM is required to lease a physical office in the DIFC/ADGM area.	Adequate premises to	conduct the activity.

## APPENDIX 1

The table below summarises the usual prescribed capital requirements under DFSA regulations:

Licensed fund manager	Base Capital Requirement (BCR)	Expenditure Capital (EBCM)	Base Minimum	Capital Requirement
Fund manager that manages any Public Fund (whether or not it also manages other types of funds)	\$140,000	13/52		Higher of BCR or EBCM
QIF only	\$70,000	13/52		Higher of BCR or EBCM
Exempt Fund only	\$70,000	13/52		Higher of BCR or EBCM
QIF and Exempt Fund only	\$70,000	13/52		Higher of BCR or EBCM
Fund manager who is also licenced to manage assets of other portfolios	\$500,000	13/52		Higher of BCR or EBCM

Type of Fund	Public Funds	Exempt Funds	Qualified Investor Funds
Level of regulation	Detailed regulation in line with IOSCO <sup>6</sup> standards	Somewhat less stringent than for Public Funds	Less stringent than for Exempt Funds
Investors and Offer	<ul style="list-style-type: none"> <li>▪ Unitholders include retail clients; or</li> <li>▪ Has, or intends to have, more than 100 unitholders; or</li> </ul>	<ul style="list-style-type: none"> <li>▪ Only Professional Clients;</li> <li>▪ 100 or fewer unitholders; and</li> <li>▪ Units are offered to persons only by way</li> </ul>	<ul style="list-style-type: none"> <li>▪ Only Professional Clients<sup>7</sup>;</li> <li>▪ 50 or fewer unitholders; and</li> <li>▪ Units are offered to persons only by way</li> </ul>

<sup>6</sup> International Organisation of Securities Commissions, is the international body that brings together the world's securities regulators and is recognized as the global standard setter for the securities sector. IOSCO develops, implements and promotes adherence to internationally recognized standards for securities regulation. It works intensively with the G20 and the Financial Stability Board (FSB) on the global regulatory reform agenda

<sup>7</sup> DFSA Rulebook COB 2.3 – There are 3 types of Professional Clients: '**deemed**' Professional Clients: persons with significant assets under their control and have the resources to obtain, the necessary expertise to manage such assets. '**service-based**' Professional Clients: body corporates with sufficient expertise, relatively low risk to whom financial services such as credit for business purposes, advisory and arranging activities related to corporate structuring and crowdfunding are provided; and '**assessed**' Professional Clients who are individuals or undertakings that meet the specified net assets and expertise requirements.

	<ul style="list-style-type: none"> <li>▪ Some or all of its units are offered to investors by way of public offer.</li> </ul>	of a private placement	of a private placement.
Minimum subscription	N/A	\$50,000	\$500,000
Application process time	N/A	5 business days	2 business day

## APPENDIX 2

### TYPES OF INVESTMENT FUNDS IN THE UAE (Mainland)

1. **Public Investment Fund (Open Ended or Close Ended):** An Investment fund established in the UAE and targets all investors.
2. **Private Investment Fund (Open Ended or Close Ended):** An Investment fund established in the UAE and targets the qualified investors and for its own account.
3. **Open-Ended Fund:** A fund with a variable capital that increases with the new units issued and decreases with the existing units redeemed;
4. **Close Ended Fund:** A fund with a fixed capital whose units can only be redeemed upon its elapse unless its Prospectus<sup>8</sup> states otherwise.
5. **Foreign Fund:** An Investment fund established outside the UAE, in a free zone, or in a financial free zone within the UAE.
6. **Feeder Fund:** A public investment fund or a part of a group of funds affiliated to an Umbrella Fund excluded from investing in tradable securities and from some other investments as determined by SCA. It invests at least 85% of its assets in the units of a public master fund or a public foreign fund.
7. **Umbrella Fund:** A public Investment Fund which invests in sub-funds affiliated to it. It has an IPO Prospectus. Each sub-fund has a detailed Prospectus referring to the IPO Prospectus.
8. **Fund of Funds:** A public Investment Fund whose investment policy is to invest in other Investment Funds, provided that the ratio of its investment may not exceed 20% of its assets in each Investment Fund where it places investments.
9. **Cash Investment Funds:** A public investment fund whose investment policy requires investments to be placed in instruments with maturity dates extending (397) days or two years, as the case may be, including treasury notes, commercial papers, deposit certificates and medium-term bonds.
10. **Qualified Investor Fund:** A Qualified Investor means:
  - 10.1 an investor that can run its own investments by itself and is:
    - (a) the federal government, local governments, governmental institutions and agencies, or the companies fully owned by any of them;
    - (b) international agencies and organizations;
    - (c) a person licensed to practice a commercial activity, provided that investment is one of its purposes; or

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<sup>8</sup> The SCA Board of Directors' Chairman Decision No. (9/R.M) of 2016 Concerning the Regulations as to Investment Funds. "The document that includes the information required to enable the investor to learn about the offered Investment fund and make a decision about investing therein."

- (d) a natural person with solvency with an annual income not less than AED 1 million or net value of property (excluding main residence) is AED 5 million and has enough knowledge and experience, whether individually or by using a financial consultant, to evaluate the Prospectus, the benefits and risks associated with or arising from the investment.

10.2 an investor represented by an investment manager licensed by the Authority.

- 11. **Specialized Investment Funds**, including (i) Real Estate Investment Fund, (ii) Exchange Traded Fund, (iii) Monetary Investment Fund, and (iv) Private Property Fund are subject to the technical rules issued by the SCA.
- 12. **Private Investment Fund**: The founder of the Fund shall be a Management Company or founders that meet the conditions of competence and integrity issued by the SCA. The minimum subscription limit per investor is AED180,000.
- 13. **Private Equity Fund**: A private investment fund consisting of (i). Founder - General Partner, who holds shares in the fund, manages the fund and incurs the losses arising from his management and investments. The General Partner may outsource a licensed Investment Manager to manage the Fund's assets. (ii) Qualified investor - Limited Partner, who holds shares in the fund but has no role in the management of the fund and has no liabilities or obligations in relation to the fund except as agreed in relation to future capital calls by the fund in proportion to the shares held.
- 14. **Venture Capital Fund**: A private investment fund that invests in high risk investments such as new projects, modern technologies, distressed projects, or companies with new or creative ideas in technology or in the business area of the company.

#### **TYPES OF INVESTMENT FUNDS IN THE UAE (ADGM/DIFC)**

- 1. **Domestic Funds**: A Fund is a Domestic Fund if it is established or domiciled in the DIFC/ADGM. A Domestic Fund shall be one of the following types of Fund:
  - 1.1 Public Fund;
  - 1.2 an Exempt Fund;
  - 1.3 Qualified Investor Fund
- 2. **Public Fund**: A Domestic Fund shall be constituted as a Public Fund if:
  - 2.1 some or all of its Units are or will be offered to investors by way of a public offer; or
  - 2.2 its Unitholders include Retail Clients.
- 3. **Exempt Fund**: A Domestic Fund is an Exempt Fund, if:
  - 3.1 its Units are offered to persons only by way of a private placement;
  - 3.2 all its Unitholders are persons who meet the criteria to be classified as Professional Clients; and
  - 3.3 the initial subscription to be paid by a person to become a Unitholder is at least US\$50,000.

4. **Qualified Investor Fund:** A Domestic Fund is a Qualified Investor Fund, if:
  - 4.1 its Units are offered to persons only by way of a private placement;
  - 4.2 all its Unitholders are persons who meet the criteria to be classified as Professional Clients; and
  - 4.3 the initial subscription to be paid by a person to become a Unitholder is at least US\$500,000.
  
5. **Specialist Funds:** A Domestic Fund such as a
  - 5.1 Feeder fund is a fund that is dedicated to investing all, or substantially all, of its assets in the units or debentures of a single other Fund (Master Fund).
  - 5.2 Master fund is a fund if it, in whole or in part, issues its Units or Debentures to one or more other Funds which are dedicated to investing in that Master Fund.
  - 5.3 A fund is an Umbrella Fund if:
    - (a) The contributions of the Unitholders in the Fund and the profits or income out of which payments are to be made to them are pooled separately in a number of Sub-Funds constituting separate parts of the Fund Property.
    - (b) A fund manager of an Umbrella Fund must ensure that none of its Sub-Funds invests in another of its Sub-Funds.
  
6. **A Foreign Fund:** A fund that does not meet the Domestic Fund criteria is a Foreign Fund. A Foreign Fund is subject to regulation by, or registration with, a Financial Services Regulator in a Recognised Jurisdiction or a jurisdiction otherwise acceptable to DFSA/FSRA.