

# Abu Dhabi Global Market – Real Estate Investment Trusts

The Abu Dhabi Global Market (ADGM) has been generating increasing market attention since its recent inception and the launch of its legal, regulatory and judicial framework. Real estate investment trusts (REITs) have been an area of particular attention, with the market examining the opportunity to structure REITs through ADGM.

This note addresses some of the headline issues for consideration in respect of an ADGM based REIT.

## Regulatory overview

The ADGM permits REITs as part of its overall regulatory arrangements for investment funds. The relevant rules are largely to be found within the 107 pages of [ADGM rules](#) devoted to funds (the Fund Rules).

The Fund Rules are promulgated by the Financial Services Regulatory Authority (FSRA) and it is the FSRA with whom a fund promoter will have to correspond in order to obtain permission to set up and market an ADGM REIT. In addition, the ADGM has entered into a memorandum of understanding with the Department of Municipal Affairs dealing with information sharing and cooperating in a range of areas including real estate registration and land ownership.

## A high threshold for REITs to meet: public fund status

For an ADGM-located fund to be able to call itself, or to be marketed as, a REIT, it must comply with the FSRA's rules for public funds (Fund Rule 4.1.5). The requirements for a REIT to be a public fund consist of (Fund Rule 13.5):

- being primarily invested in income-generating real property
- distributing to unitholders at least 80% of its audited annual net income

- ensuring that any Special Purpose Vehicle (SPV) through which real property is held (the use of SPVs by REITs and other forms of property investment funds is commonplace globally) distributes to the REIT all of its net income as allowed for by the laws and rules of the country where the SPV is domiciled
- the fund manager of a REIT must ensure that any investment made in a property under development only happens where the REIT intends to hold the developed property upon completion: in other words, "flipping" the property before or at completion could be met with disapproval by the FSRA
- no more than 30% of the REIT's net asset value can be deployed on property development schemes: the FSRA does not regard refurbishment, retrofitting and renovation as falling under the category of developing property
- no more than 65% of the total gross asset value held in aggregate by the REIT and its SPVs can be borrowed by the REIT's fund manager.

## Borrowing by a REIT

Borrowing by a REIT can be for financing investment or for operating purposes but it must not go over the 65% ceiling for debt (Fund Rule 13.4.7).

## Use of derivatives by a REIT

The Fund Rules do not expressly permit or prohibit a REIT from entering into derivatives contracts. Other types of fund can enter into derivatives. The guidance of the FSRA on its rules should be obtained. As there are few property derivatives contracts, the relevance of derivatives will probably be limited to the management of currency or interest rate exposures. The FSRA also needs to clarify whether derivatives contracts can be entered into at the SPV level, in addition to the level of the REIT.

## Prospectus requirements for an ADGM REIT

A REIT must comply with the public fund rules. The prospectus rules for public funds are the most onerous in the ADGM's rules.

If the REIT term can be discarded, then the rigours of the public fund prospectus requirements can be disregarded. A non-REIT property investment fund may be set up with less onerous prospectus requirements. The investment restrictions set out in the first section of this briefing would still apply to such a non-REIT fund. Those restrictions apply to all kinds of property funds, not only REITs.

The public fund prospectus requirements consist of:

- filing the prospectus with the FSRA
- all material information must be included
- a prospectus is valid for no more than 12 months from its first day of issue (material changes to information must be the subject of updates/supplemental prospectuses)
- the test of materiality is that of what a retail client would be expected to need to make an informed decision as to whether to invest
- mandatory content (APP 7 to the Fund Rules):
  - name of REIT
  - effective start date
  - termination date, if any
  - legal structure
  - terms of subscription
  - base currency
  - liability for debts of the REIT
  - winding-up circumstances
  - investment objectives and policy
  - investment restrictions

- countries where real estate may be acquired
- types of real estate
- insurance of real estate
- charges associated with the buying and selling of fund units
- distribution and accounting period
- classes of units (if more than one) and related rights
- voting rights, if any
- mandatory redemption, cancellation or conversion circumstances
- particulars of the REIT manager
- summary of REIT manager's contract with the REIT
- oversight arrangement for a public fund
- details of service providers and advisers
- conflicts of interest policy
- name of auditor
- place where register of unitholders is kept
- payments that may be properly made out of REIT property
- dealing days for units to be bought or sold
- valuation of the REIT's Property
- sale and redemption charges
- financial reports of the REIT
- any waivers or exemptions granted by the FSRA.

## Mandatory statement under ADGM's Fund Rules for all fund prospectuses

The FSRA prescribes a legend for use on the front page of all prospectuses. It is a health warning, common to many investment fund regimes.

## Listing or not of a REIT?

It is not compulsory for an ADGM-designated public property fund to be listed. In this respect, the ADGM regime offers a distinct advantage for REIT managers over the DIFC regime, where a DIFC REIT must be listed on a DIFC or overseas exchange within six months of the REIT first being offered to the public. An ADGM REIT manager has the option of listing the REIT but is not obliged to do so. The six-month requirement in the DIFC would not, in most cases, be sufficient time for most REIT managers to list the REIT and seek to have it admitted to trading on an

appropriate exchange following a public offer of the REIT units.

### Status of foreign funds in the ADGM

Foreign funds can be marketed within the ADGM territory. However, foreign funds are not eligible to be public funds and, given this constraint, cannot be marketed as REITs (Fund Rule 4.1.5).

### Status of Fund Manager

The fund manager of an ADGM REIT may, but does not have to be, set up in the ADGM. A non-ADGM fund manager will have to determine whether it is conducting activity in the ADGM that requires it to obtain authorisation from the FSRA. An ADGM fund manager will, by definition, have to obtain FSRA authorisation.

### UAE real estate law considerations

If the REIT is investing in UAE real estate then the foreign ownership restrictions will be an important structuring consideration. Historically, these restrictions have meant

real estate funds have been limited in terms of the assets they could invest in, although there have been attempts to structure around these restrictions. The foreign ownership restrictions are widely viewed as a key reason for the lack of REITs in the UAE market.

Public joint stock companies benefit from flexibility in Dubai and, to a limited extent, Abu Dhabi, in relation to these restrictions. It remains to be seen whether a listed REIT could in the future receive the same flexibility.

The types of vehicles to be used as SPVs for investment to sit below the REIT itself will also require careful consideration. They will need to be capable of taking title, while also being flexible enough to permit investor changes at the REIT level, without adverse consequences for the SPV (i.e. deemed transfers and related registration fees).

In all likelihood any REIT structure is likely to require significant engagement with various local and federal authorities (including the relevant land departments where real estate is located) in advance.

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- **Global REITs practice:** our REITs group has a breadth of experience in acting for all types of participants (including REITs, investment banks, financial institutions and shareholders) in different jurisdictions which allows it to pre-empt issues and deliver commercial solutions
- **Comprehensive funds practice in the region:** from structuring the fund and management arrangements and advising on the commercial terms through to negotiating with investors, completion of the closing process and beyond. We also advise on fund issues arising in relation to ongoing fund operations and on fund remuneration and incentive arrangements
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