Real Estate Investment Funds in the UAE: The Key Aspects of Administrative Decision No. (6/R.T) of 2019 Concerning Real Estate Investment Fund Controls

Malek Al Rifai - Partner - Real Estate / Sustainability focused Corporate Governance / Sustainable Finance / Sustainable Business / Sustainable Sourcing / Climate Change & Energy Transition
- Dubai International Financial Centre

Ali Awad - Partner - Banking and Finance
a.awad@tamimi.com - Dubai International Financial Centre

Demand for real estate investment funds (more commonly known as 'REITs') is on the rise as family offices and real estate companies seek to capitalise on the continued surge of investors looking to access UAE real estate as an alternative asset class. In this article, we discuss the Administrative Decision No. (6/R.T.) of 2019 Concerning Real Estate Investment Fund Controls ('UAE REIT Regulations') which was recently issued by the UAE Securities and Commodities Authority ('SCA'). The UAE REIT Regulations have updated and repealed the earlier legal framework for REITs established onshore in the UAE (excluding the Dubai International Finance Centre ('DIFC') and the Abu Dhabi Global Market ('ADGM')) ('UAE REITs').

Core Requirements and Obligations

In order to qualify as a UAE REIT, an investment fund established onshore in the UAE must, in addition to the SCA Board of Directors' Chairman Decision No. (9/R.M) of 2016 Concerning the Regulations as to Mutual Funds, comply with the provisions of the UAE REIT Regulations. Notably, the following core conditions are required to be met:

- where the UAE REIT is a private UAE REIT, at least 75 percent of its total assets must be invested in real estate, whether in the form of construction, development or re-fitting, providing it is in preparation for sale, management, lease or disposal;
- a public UAE REIT is required to:
  - invest at least 75 percent of its total assets in income generating real estate assets;
  - receive at least 90 percent of its total revenue from real estate, interest, dividends and capital earnings relating to such income generating real estate; and
  - distribute at least 80 percent of its net profits to unitholders each year.
- where the UAE REIT owns one or more real estate service companies, the UAE REIT Regulations now

stipulate that investments in such service company(ies) cannot exceed 20 percent of the UAE REIT's total assets;
- borrowing must be restricted to amounts of not more than 50 percent of the UAE REIT's total asset value.

The UAE REIT Regulations also impose a number of additional conditions with respect to the valuation of assets and obligations upon the UAE REIT's management company and real estate appraisers. As with the previous UAE REIT regime, importance continues to be placed on the roles undertaken by real estate appraisers, legal counsel and other professional advisors whose expertise must be sought by the UAE REIT as a matter of compliance. Examples include the requirement for the appointed real estate appraiser to evaluate all real estate assets prior to their acquisition or disposal by the UAE REIT, with reliance on the evaluation reports restricted to three months from their date of issue. Legal advisors must also be retained to, amongst others, carry out legal due diligence on the real estate assets and advise on the UAE REIT's legal dealings. In terms of liability, however, the UAE REIT Regulations leave no doubt as to the accountability of the management company and its board of directors who must assume full responsibility for the UAE REIT's management, projects, investment decisions and assets.

Whilst the UAE REIT Regulations have sought to clarify the pre-existing UAE REIT regime, there are still areas of ambiguity, including the types of real estate that fall within the definition of 'real estate assets' and uncertainty with respect to governance and valuation practices. We understand that these are currently being discussed and considered by the SCA and further amendments to the existing UAE REIT Regulations are expected to be released in due course.

Benefits of UAE REITs

Despite certain perceived deficiencies in the UAE REIT Regulations, the UAE REIT regime offers many benefits, making it one of the jurisdictions of choice for those wishing to establish a REIT. Advantages of the UAE REIT regime include the ease with which capital can be raised or liquidity achieved without the need to sell either a stake in the property holding company(ies) or the property(ies) themselves. A UAE REIT is also permitted to accept contributions by cash or in-kind, provided that where non-cash consideration is accepted, independent appraisers are appointed to assess its value.

UAE REITs also have access to a wide market, being able to offer their units to investors residing in the UAE (excluding the DIFC and ADGM) without the need to appoint a local distributor, utilise the new Fund Passporting Rules or rely on cross border marketing practices (which we note are coming under increasing scrutiny by the SCA).

In addition, UAE REITs, being domestic funds, have the ability to list more easily on the Dubai Financial Market ('DFM') or Abu Dhabi Securities Exchange than REITs that are not established onshore in the UAE. Listing on these global exchanges is an attractive proposition to investors due to the liquidity they offer. Further, the DFM is actively encouraging the listing of REITs with measures including the publication of the REIT Listing Regulations, paving the way for the launch, in the coming months, of the DFM's REIT platform, and the execution of a memorandum of understanding ('MoU') with the Dubai Land Department. Whilst the contents of the MoU are currently confidential, the DFM has announced that it will encourage greater numbers of REIT listings due to the 'many incentives' which it provides, leading to speculation that the MoU will, for REITs listed on the DFM, relax existing restrictions on land ownership and payment of fees on the transfer of beneficial land ownership.

Conclusion

The use of UAE REITs is currently limited, however, as the real estate market in the UAE matures, their popularity is set to increase. The rules and regulations with respect to UAE REITs continue to be an area of development and great consideration for the authorities and, as the UAE continues to strive to become the leading jurisdiction for those seeking to exploit the many benefits of REITs, we anticipate further progression in the UAE REIT regime in the near future.

The key characteristics of the REIT regimes in both the DIFC and ADGM will feature in upcoming articles in Law Update over the coming months.

Al Tamimi & Company's Real Estate and Banking teams regularly advise on all aspects of the life-cycle of a real estate fund, from formation to real estate acquisition, regulatory matters, tax and corporate advice through to exit strategies. For further information please contact Malek Al Rifai (m.alrifai@tamimi.com), Ali Awad (a.awad@tamimi.com) or Kathryn Smith (k.smith@tamimi.com).