

**DIRECTIVE 2014/4/EAC
OF THE COUNCIL OF MINISTERS
Of**

(Date of Approval by Council of Ministers)

**DIRECTIVE OF THE EAC ON REAL
ESTATE INVESTMENT TRUSTS (REITS)**

PREAMBLE

The Council of Ministers of the East African Community

Having regard to the Treaty for the establishment of the East African Community and in particular Articles **85 (d), 14 and 16**;

WHEREAS Article 31 of the Protocol on the Establishment of the East African Community Common Market provides that for proper functioning of the Common Market, the Partner States undertake to co-ordinate and harmonise their financial sector policies and regulatory frameworks to ensure the efficiency and stability of their financial systems as well as the smooth operations of the payment system;

WHEREAS Article 47 of the Protocol on the Establishment of the East African Community Common Market provides that the Partner States shall undertake to approximate their national laws and to harmonise their policies and systems for purposes of implementing this Protocol and that the Council shall issue directives for the purposes of implementing this Article.

HAS ISSUED THIS DIRECTIVE

ARTICLE 1 INTERPRETATIONS

“connected person” in relation to a real estate investment trust scheme includes-

- (a) the REIT manager;
- (b) a valuer appointed to undertake a valuation of the scheme;
- (c) the trustee;
- (d) a substantial holder of REIT securities in the scheme;
- (e) a director, a senior executive or an officer of any person referred to in (a), (b) or (c) above;
- (f) an associate of any person referred to in (d) and (e) above; or
- (g) a controlling entity, a holding company, a subsidiary or an associated company of any person referred to in (a) to (d) above;

“Exempted real estate investment trust” means:

- (a) a collective investment scheme authorized by a Competent Authority other than as a real estate investment trust scheme;
- (b) a scheme that is prescribed by a Competent Authority not to be a real estate investment trust scheme; or
- (c) a trust, scheme, syndicate or arrangement which-
 - (i) does not involve an issue or offer to the public or a section of the public which complies with the conditions for a private offer as prescribed by the Authority and in respect of which the issuer has not elected to seek authorization under these Regulations as a real estate investment trust scheme;
 - (ii) is limited to members of a family group;
 - (iii) is a charitable trust; or
 - (iv) is established as a consequence of a disposition under a will or other testamentary instrument; and

for the avoidance of doubt does not include:

- (a) a statutory fund maintained under any law for the regulation of insurance in a Partner State;
- (b) any pension or retirement fund established under or regulated by the laws of a Partner State;
- (c) an arrangement regulated in a Partner State by the law of partnership; or
- (d) a scheme which is operated as a co-operative and regulated under the laws of a Partner State;

“investor” means a holder of REIT securities which is beneficiary under the trust deed;

“real estate” means land the purpose of use thereof, and in addition includes-

- (a) all things which are a natural part of the land;
- (b) attachments above and below the land;
- (c) things which are fixtures or are developed, installed or constructed on the land including buildings and site improvements;
- (d) improvements and permanent building or attachments such as plumbing, heating and cooling systems, electrical wiring and built-in items such as elevators, and items of a similar nature which might be used in connection with the land ; and
- (e) all rights and interests attaching to the land;

“real estate investment trust” means a trust established for investment in real estate but does not include an exempted real estate investment trust;

“real estate investment trust scheme” or “REIT scheme” means an arrangement made or established for the purposes of collective investment by persons in real estate for the purpose of earning profits or income from real estate as beneficiaries of a trust which is divided into units where-

- (a) persons contribute money or money’s worth as consideration to acquire rights or interests to gain the benefits from pooling of funds and the investment in real estate;
- (b) the persons investing do not have the day-to-day control over the management of the assets of the real estate investment trust;
- (c) the assets are managed by an entity; or
- (d) otherwise prescribed by the Competent Authority to be a real estate investment trust scheme; and includes a real estate investment trust but does not include an exempted real estate investment trust;

“REIT” means a real estate investment trust;

“REIT Securities” means units in a trust which is a real estate investment trust or a real estate investment trust scheme;

“REIT Manager” or “Real Estate Investment Company” or “Management Company” means a company incorporated in a Partner State and licensed by the Competent Authority in the Partner State to provide real estate management services in respect of a REIT;

“Securities” means any instrument defined as such under any law of a Partner State and includes REIT securities and any units of a real estate investment trust;

“Scheme” means a real estate investment trust scheme;

“scheme documents” include-

- (a) the trust deed and any amending, supplemental or replacement trust deed;
- (b) any document appointing a REIT manager or setting out the terms of appointment, the role or obligations of a REIT manager;
- (c) any document appointing a property manager, project manager certifier or structural engineer or setting out the terms of appointment, the role or obligations of such persons; and
- (d) any document described in (a), (b) or (c) above which relates to an investee trust; and
- (e) the Memorandum and Articles of Association of any investee company and any shareholders’ agreement including any amending, supplemental or replacement Memorandum and Articles of Association of shareholder’s agreement.

“trust deed” in relation to a real estate investment trust scheme, means the trust deed or other document which establishes or sets out the terms of the trust and includes-

- (a) any instrument that varies the terms of the trust or affects the powers or functions of the trustee or any manager appointed in respect of the trust; and
- (b) any instrument that varies the rights of beneficiaries under the trust including the REIT securities holders;

“trustee” means a person appointed under the trust deed as a trustee of the real estate investment trust and any investee trust and includes any successor;

“trustee license” means where that person by way of business is entrusted with the Custody of the property of a REIT.

“unit” means a REIT security being any undivided share, right, interest or entitlement in the assets of the real estate investment trust which is classified as a security under any of the laws of the Partner States;

“valuation report” in respect of a real estate investment trust scheme, means a report made by a valuer; and

“valuer” for the purposes REIT securities, means a person appointed as a valuer to prepare or who is required to prepare a valuation report.

ARTICLE 2 PRINCIPLES

In exercising its implementing powers in accordance with this Directive, Partner States shall respect the following principles:

1. Principles for Real Estate Investment Trusts (REITs) Standards for the eligibility, governance, organization and operational conduct of those who wish to market or operate a REIT;
2. Rules governing the legal form and structure of REITs and the segregation and protection of clients’ assets;
3. Disclosure requirements which are necessary to evaluate the suitability of a REIT for a particular investor and the value of the investor’s interest in the scheme;
4. Proper and disclosed basis for asset valuation and the pricing and the redemption of units in a REIT;
5. To respect differences in national financial markets where these do not unduly impinge on the coherence of the common market; and
6. To ensure coherence with Partner States’ pieces of legislation in this area, as imbalances in information and a lack of transparency may jeopardize the operation of the markets and above all harm consumers and small investors.

ARTICLE 3 OBJECTIVES

To harmonize the standards for the eligibility, governance, organization and operational conduct of those who wish to market or operate a REIT in the securities markets of EAC Partner States with a view to;

- (a) protecting investors,
- (b) ensuring fair, efficient and transparent markets,
- (c) reducing systemic risks,
- (d) allowing for cross border operation and marketing of REITs using a single set of disclosure standards/requirements, and
- (e) allow for multiple/simultaneous listings.

ARTICLE 4

SCOPE

This Directive shall apply to REITs that are established, operated, promoted or marketed in more than one EAC Partner State.

ARTICLE 5

APPLICATION FOR RECOGNITION

1. A REIT which is licensed, authorised, approved or registered in any EAC Partner State shall be eligible for recognition in another Partner State.
2. An application for recognition of a REIT licensed, authorized, approved or registered in another Partner State shall be made to the competent authority and shall contain the information specified in the Schedule.
3. The application shall be accompanied by the following –
 - (a) the scheme’s formation documents;
 - (b) the scheme particulars;
 - (c) management services agreement with the REIT manager;
 - (d) agreements with any property manager or project manager certifier;
 - (e) certified copies of valuation reports of properties vested in or acquired by the REIT;
 - (f) a legal opinion on title of real estate and other assets acquired by the trust;
 - (g) the REIT manager’s latest audited report;
 - (h) the trustee’s latest audited report;
 - (i) An application fee of US\$3000.00; and
 - (j) The Competent Authority may require the applicant to furnish additional

information, verification and copies of any additional documentation.

ARTICLE 6

APPROVAL OF APPLICATION

1. The Competent Authority in the host country may, on an application made in accordance with this Directive make an order declaring the scheme to be a recognized REIT.
2. The relevant Competent Authority in the host country shall inform the applicant of its decision on the application that is duly made not later than one (1) month after the date on which the application was received.
3. The relevant Competent Authority –
 - (a) shall not reject an application without first giving the applicant an opportunity of being heard; and
 - (b) shall, if it rejects the application, notify the applicant in writing of the refusal and the reasons for the refusal.

ARTICLE 7

APPROVAL OF LISTING

In considering an application for listing of a recognized REIT, the relevant Competent Authority shall –

- (a) consider whether the REIT meets the listing requirements in the jurisdiction of original listing; and
- (b) apply the Council Directive on Regional Listing so far as it is applicable to REITs.

ARTICLE 8

CORPORATE GOVERNANCE

The EAC REITS shall adopt the Corporate Governance practices provided in the EAC Directive on Corporate Governance for Market Intermediaries, to the extent applicable to REITs.

ARTICLE 8 SANCTIONS

Partner States should lay down a system of sanctions for breaches of the national provisions adopted pursuant to this Directive and shall take all the measures necessary to ensure that these sanctions are applied. The sanctions thus provided for shall be effective, proportional and dissuasive.

ARTICLE 9 RIGHT OF APPEAL

Decisions taken pursuant to laws, regulations and administrative provisions issued in accordance with this Directive shall be subject to the right of appeal to the relevant court.

ARTICLE 9 AMENDMENTS

1. This Directive may be amended by the Council of Ministers.
2. Any proposals for amendment shall be submitted in writing by the Partner States to the Secretary General of the East African Community.

ARTICLE 10 IMPLEMENTATION

1. Partner States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive not later than one year from the date of the Council of Ministers' issuance of the Directive.
2. The Partner States shall inform the Council of Ministers of the implementation of sub-article 1.
3. When Partner States adopt those measures they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication and shall be laid down by Partner States.

ARTICLE 11 ENTRY INTO FORCE

This Directive shall enter into force upon issuance by the Council of Ministers.

ARTICLE 12 ADDRESSEES

This Directive is addressed to the Partner States.

Done in Arusha, Tanzania

SCHEDULE

1. General Details of the REIT Scheme

- i. Name of the REIT.
- ii. Details of properties under the REIT.
- iii. Structure of the REIT.
- iv. Applicable Act or law and the date and country of establishment/incorporation.
- v. Quotation on any securities exchange and authorization granted by other regulatory bodies.
- vi. Letters of no objection from the Competent Authority.
- vii. Launch: date and place.
- viii. Valuation of assets: annually/bi-annually/other.
- ix. Scheme Investment Policy.
- x. Most recent annual audited financial report.

2. For each REIT scheme

- i. Fee structure –
 - (a) Level of all charges payable by participant; and
 - (b) Level/basis of calculation of all charges payable to the REIT scheme.
- ii. Investment objective and borrowing powers; and
- iii. Currency of denomination.
- iv. Minimum initial subscription and the minimum subsequent holding.

3. Details of the parties to the REIT scheme

- (i) The REIT manager/Management Company/Real Estate Investment Company –
 - (a) Name
 - (b) Registered/business address in the country of origin and the Partner State where recognition is sought.
 - (c) Name of the ultimate holding company.
 - (d) Person(s) for contact with the relevant Competent Authority.
- (ii) In the case of an investment company, the resumes of the directors of the REIT scheme and person(s) for contact.
- (iii) The trustee
 - (a) Name

- (b) Registered/business address in the country of origin and the Partner State where recognition is sought
 - (c) Name of the ultimate holding company
 - (d) Person(s) for contact with the relevant Competent Authority
- (iv) For the Trustee and REIT Manager–
- (a) which, if any, of these ENTITIES are connected persons.
 - (b) name anyone who holds appointments, as director or officer, with more than one of these companies.
- (v) The auditor
- (a) Name.
 - (b) Registered/business address in the country of origin.
 - (c) Copy of licence/practising certificate
- (vi) Legal Advisors (if any)
- (a) Name.
 - (b) Person(s) for contact with the competent authority.
 - (c) Copy of practising certificate
- (vii) Banker(s)
- (a) Name.
 - (b) Registered/business address the Partner State where recognition is sought.