

Rwanda

## Guidelines governing the Development of Real Estate Investment Trusts

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# Rwanda

## Guidelines governing the Development of Real Estate Investment Trusts

### Guidelines 21 of 2016

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#### **The Capital Market Authority,**

Pursuant to Law n° 11/2011 of 18/05/2011 establishing the Capital Market Authority (CMA) and determining its mission, powers, organization and functioning, especially in Articles 3 and 4;

Pursuant to Law n° 01/2011 of 10/02/2011 regulating the capital market in Rwanda, especially in Article 74;

Pursuant to Law n° 40/2011 of 20/09/2011 regulating collective investment schemes in Rwanda, especially in Article 64;

Pursuant to Regulation n° 14 on real estate investment trusts, especially in Article 43 as complimented to date;

#### **ISSUES THE FOLLOWING GUIDELINES:**

### **Article One – Purpose of these Guidelines**

These Guidelines govern the development of Real Estate Investment Trusts referred to as “D-REIT” in these Guidelines.

### **Article 2 – Definitions of terms**

Under these Guidelines, the following terms are defined as follows:

- 1° **borrowing:** any financing arrangement in the nature of a debt, whether secured or unsecured;
- 2° **connected person:** includes:
  - a. D-REIT manager;
  - b. valuer appointed to undertake a valuation of the scheme;
  - c. the trustee;
  - d. a substantial holder of D-REIT securities in the scheme;
  - e. a director, a senior executive or an officer of any person under points a, b or c;
  - f. an associate of any person under points d and e;
  - g. a controlling entity, a holding company, a subsidiary or an associated company of any person under points a to d;
- 3° **D-REIT:** a Development of Real Estate Investment Trust which complies with the requirements of these Guidelines;
- 4° **free float:** D-REIT securities issued, offered or held by persons who are not connected with or associated with the promoter or the D-REIT manager in case D-REIT is formed as a company;

- 5° **initial offer:** the first offer or issue of D-REIT securities made to persons other than to the promoter or to parties connected to the promoter or the D-REIT manager;
- 6° **investee company or investee trust:** a company or trust in which an investor makes a direct investment;
- 7° **investor:** a holder of D-REIT securities who is a beneficiary under a trust deed or shareholder under memorandum of company;
- 8° **offering information memorandum:** any notice, circular, material or advertisement, publication or other invitation issuing or offering for subscription, sale or purchase of any D-REIT security to a professional investor and includes a conversion offering information memorandum or supplemental offering information memorandum;
- 9° **professional investors:** institutional investors and other high net worth individuals and who are well informed about the inherent risk and returns of the real estate sector.
- 10° **restricted offer:** an issue or an offer made to professional investors;
- 11° **special resolution:** a resolution passed by a majority of not less than three-fourths ( $\frac{3}{4}$ ) of such holders of D-REIT securities being entitled to do so, vote in person or where proxies are permitted by proxy, at a general meeting of holders of D-REIT securities of which at least twenty-one (21) days written notice specifying the intention to propose the special resolution has been given.

Any term that is not defined in these Guidelines but which is defined in the Regulation n° 14 on Real Estate Investment Trust applies accordingly.

### Article 3 – Objectives of D-REIT

D-REIT has the following objectives:

- 1° acquisition of eligible real estate, investment in eligible investments and the undertaking of real estate development and construction projects including:
- a. housing projects;
  - b. purchasing of houses to let;
  - c. tenant purchase schemes and arrangements;
  - d. development of letting and selling of houses;
  - e. development of purchase and letting of houses;
  - f. development of sale of houses; or
  - g. any combination of items from a to f or any other form of regulations of housing, building or accommodation;
  - h. development of commercial houses and other real estate construction projects;
- 2° marketing and sale of real estate;
- 3° maintenance and management of the real estate assets of the trust with the objective of earning income from real estate;
- 4° the undertaking of any other unplanned activities or which are related to the assets of the trust; and
- 5° such other activities as may be specified under these Guidelines.

### Article 4 – Investments

Investments in a D-REIT must be relevant, appropriate and consistent with the investment objectives of the D-REIT as set out in the offering information memorandum and the scheme documents.

### **Article 5 – Eligible investments for a D-REIT**

The D-REIT manager may, in consultation with the trustees, without detrimental to any limitations specified in the scheme documents, invest:

- 1° directly in eligible real estate in accordance with applicable laws and regulations;
- 2° in eligible real estates through investment in an investee company incorporated in Rwanda which directly owns the eligible real estate;
- 3° in eligible real estate assets through investee trusts;
- 4° in cash, deposits, bonds or securities and money market instruments;
- 5° in a wholly beneficially owned and controlled company which conducts real estate related activities; or
- 6° in income generating assets including shares in property companies incorporated in Rwanda whose principal business is based real estate or D-REIT securities in other Rwandan real estate investment trust schemes.

The D-REIT manager and trustee must only invest in accordance with these Guidelines.

### **Article 6 – Responsibilities of a D-REIT manager in investment framework**

The manager of a D-REIT must:

- 1° provide and specify, in the offering information memorandum, that real estate asset that is already vested in or proposed to be acquired and vested in the trust and for which all registration requirements were met within one hundred and eighty (180) days after closure of the initial offer;
- 2° specify in the offering information memorandum, the initial activities or the construction projects which the D-REIT proposes to undertake; and
- 3° include a timetable, budget and a project plan for the initial development or construction the D-REIT proposes to undertake.

If, the D-REIT manager fails to comply with the requirements of these Guidelines during conclusion of the initial period of the offer or issuance of shares referred to in point 1° of Paragraph One of this Article; and the registration requirements are not complete and the proposed real estate asset is not vested in the trust; the funds raised by the initial offer and issuance of D-REIT securities must only be invested in bank deposits or other liquid investments for the period not exceeding one hundred and eighty (180) days.

### **Article 7 – Investment to be made within one (1) year after authorization of D-REIT**

A D-REIT must, within one (1) year from the date of its authorization, invest at least thirty percent (30%) of its total asset value in:

- 1° development and construction projects; or
- 2° income generating real estate which the D-REIT developed or constructed.

### **Article 8 – Requirements for disposing the real estate asset**

In case a D-REIT disposes the real estate, D-REIT must, within one (1) year of the disposal:

- 1° acquire a substitute real estate asset; or
- 2° have made further distribution to D-REIT securities holders so as to reduce its assets.

### **Article 9 – Investment in development and construction projects**

The D-REIT manager and trustee must, for the purposes of complying with the requirements of investing in development and construction projects for either sale, retention or leasing as income producing property, ensure that the real estate acquired or to be acquired as an asset of the D-REIT:

- 1° may be developed in the manner and for the intended use;
- 2° is free from encumbrances at the time of acquisition except for any charges that may accrue from the trustee as authorized by the trust deed and these Guidelines; and;
- 3° has reasonable prospects for sale, profit making or lease as income generating real estate in case its development or construction is complete.

### **Article 10 – Real estate acquired through leasehold**

The trustee and D-REIT manager must, where the real estate was acquired through leasehold, ensure that:

- 1° at the time of entering into the lease, the lease has a remaining term of at least twenty five (25) years;
- 2° the real estate has been valued as leasehold; and
- 3° the lease was lodged for registration.

### **Article 11 – Spreading of issuers of securities and instruments**

The D-REIT manager and trustee must ensure that investments in cash, deposits, bonds, securities and money market instruments are spread across a number of issuers, securities and instruments such that not more than five percent (5%) of the total asset value is exposed to one issuer or institution or to members of the same group.

### **Article 12 – Non applicability of restrictive laws**

The restrictive laws are not applicable to deposits, bonds or securities issued by or guaranteed by the Government of Rwanda or to deposits with a banking institution licensed to operate in Rwanda.

### **Article 13 – Effects of failure to spread investments in time limits**

If a trustee and D-REIT manager fail to spread investments, and if the limit exceeds but rectified within a period of thirty (30) days from the day on which the limit expired, it does not constitute a breach.

### **Article 14 – Investment in a wholly owned and controlled company carrying out real estate related activities**

Subject to the terms of the scheme documents, the D-REIT manager may, with the consent of the D-REIT securities holders, request for investment of up to a maximum of ten percent (10%) of the total asset value in a wholly owned and controlled company carrying out real estate related activities including:

- 1° immovable property management;
- 2° D-REIT management;
- 3° real estate refurbishment or design; or
- 4° the provision of services to tenants or to the D-REIT but which does not include the provision of mortgages or finance except only to the extent that the D-REIT is authorized by these guidelines to provide mortgages or finance.



For purposes of determining the level of the investment which may be made through the investment portfolio, the percentage must be calculated on the basis of the amount of the proposed investment divided by the value of the total asset value at the date on which the investment is made.

### **Article 15 – Offer of a D-REIT**

An offer or an issue of a D-REIT must:

- 1° be made only as a restricted offer to professional investors;
- 2° be offered in minimum subscription or offer parcels of fifty million Rwandan Francs (Frw 50,000,000); and
- 3° subject to these Guidelines, issue securities must only be transferred to a party to whom the D-REIT securities could have been issued or offered.

### **Article 16 – Minimum investors required for a D-REIT**

A D-REIT must have at least seven (7) investors.

### **Article 17 – Minimum value of the share capital of D-REIT**

The minimum value of the share capital or unit capital of D-REIT must be one billion Rwandan Francs (Frw 1,000,000,000).

At least twenty-five percent (25%) of the total D-REIT securities by value must be free float.

However, this does not apply where additional D-REIT securities are issued to:

- 1° the promoter of the trust;
- 2° D-REIT manager; or
- 3° associated parties or parties which are connected with one of them, in investing excess investment in development or construction, in circumstances where such D-REIT securities during the time that they are held by D-REIT manager or a connected person or any associated party are not entitled to voting rights on the basis of such additional D-REIT securities but may participate in any distribution on the basis of such D-REIT securities.

At least twenty-five percent (25%) of the D-REIT securities at the time of issue must be held by investors who are not associated or connected to D-REIT manager.

### **Article 18 – Effects of breach of the minimum requirements for the free float**

The trustee must not register any issue or transfer of a D-REIT security if he or she has reasonable grounds to believe that the issue or transfer may result in a breach of provisions of this Article in relation to the minimum requirements for the free float.

The trustee may, while registering or declining to register an issue or a transfer of securities at capital market as provided for under the preceding paragraph, rely on a certification issued by the subscriber or transferee that he or she is not a connected or associated with the promoter of D-REIT manager.

### **Article 19 – Procedure for launching D-REIT scheme**

The procedure for launching D-REIT scheme must respect the following:

- 1° compliance with laws and regulations;
- 2° be made with rating from a credit rating agency as when the project(s) is (are) developed and can be credit rated by a licensed Agency; or

3° be made with an appraisal by an appraising agency.

### **Article 20 – Listing of D-REIT securities**

If D-REIT securities are authorized to be listed on the capital market, they must only be listed on a market segment of a securities exchange approved by the Authority which limits:

- 1° the trading to a restricted minimum parcel size of fifty million Rwandan Francs (Frw 50,000,000); and
- 2° investors who may trade on such market segment of the securities exchange to investors to whom an offer of the D-REIT securities was made.

### **Article 21 – Consequences of failure to invest in real estate within one hundred and eighty (180) days**

In case investment in real estate is not effected in the period specified under these Guidelines, the D-REIT manager calls a meeting of the D-REIT securities holders within twenty eight (28) days from the expiry of the period for investment for the purpose of:

- 1° examining the report of the D-REIT manager in order to consider the reasons of the delay in completion;
- 2° analyzing the implications of the delay on the holders of investment in the D-REIT;
- 3° determining, by special resolution whether:
  - a. the period for registration should be extended and the period of extension; or
  - b. all monies paid into the trust together with any interest or earnings should be refunded within fourteen (14) days from the date of the meeting; and
  - c. there is any other action that may be taken by the D-REIT manager.

Failure by the D-REIT manager to complete the proposed investment in real estate constitutes a fault. However, failure to call the required meeting or to refund monies within the specified period does not constitute a fault on the part of the D-REIT manager and the trustee.

### **Article 22 – Acquisition and disposal of a real estate and price**

A D-REIT must not:

- 1° acquire real estate at a price which exceeds the price in the valuation report by more than ten percent (10%) unless the acquisition is approved by D-REIT securities holders; or
- 2° dispose real estate at a price lower than ninety percent (90%) of the value assessed in the valuation report unless the disposal is approved by D-REIT securities holders.

Except where the disposal of an asset aims at terminating or dissolving a D-REIT, the manager must not enter into a contract for the disposal of an asset where such disposal exceeds fifty percent (50%) of the total asset value, unless it is approved by an ordinary resolution of D-REIT securities holders.

D-REIT manager must not recommend or enter into a contract or agreement which may only be terminated on the payment of penalties in connection with a transaction of points 1° or 2° of Paragraph One of this Article, unless the D-REIT manager is authorized to do so by D-REIT securities holders in accordance with paragraph one of this Article.

Any contract made in accordance with provisions of Paragraph 2 of this Article must be based on a valuation report.

### **Article 23 – Partial ownership of real estate**

Interests in real estate acquired as assets of a D-REIT must:

- 1° not consist of partial ownership of real estate assets;
- 2° in the case of a real estate which is on freehold land, be wholly owned and controlled, from the time of acquisition, by the trustee who exercises all rights, interests and benefits normally enjoyed by an owner without interference.

In case the real estate is land that is on leasehold, the D-REIT manager must have sole rights, interests or benefits normally enjoyed by a lessee subject only to the terms of the lease and the rights of the lessor from the date of the commencement of the lease, and when the D-REIT manager signs on behalf of the scheme.

Provisions of Paragraph one and 2 of this Article do not apply to assets acquired through the purchase of shares in a property company or D-REIT securities permitted under these Guidelines and which are not investee companies or investee trusts.

### **Article 24 – Cases of non applicability of the limitation on partial ownership**

The limitation on partial ownership of a real estate does not apply to a D-REIT in the case of real estate which the D-REIT:

- 1° has developed and constructed and sold part of the interest in the completed project to another person; or
- 2° has partial ownership:
  - a. as a consequence of the D-REIT entering into a term or installment sale or other transaction of a similar nature; or
  - b. where in connection with an acquisition or sale, sub-division of the real estate is in progress.

### **Article 25 – Minimum investments by a D-REIT in its property shares or securities**

Any D-REIT investment in company shares or D-REIT securities but which are not in investee companies or investee trusts must not, in total, exceed ten percent (10%) of the total asset value where the percentage is calculated on the basis of the value of the investment or the total net asset value from the time of acquisition of the shares or D-REIT securities.

### **Article 26 – Construction and development activities by a D-REIT**

The D-REIT manager may, subject to any limitations in the trust documents, acquire:

- 1° a vacant land for development;
- 2° real estate under construction;
- 3° land which may be for redevelopment; or
- 4° enter into contracts for or carry out development and construction.

### **Article 27 – Maximum level of borrowing by a D-REIT**

A trustee of a D-REIT may, subject to limitations or basic restrictions imposed under the trust documents, borrow or enter into investment arrangements:

- 1° on its own initiative where such borrowing is required to preserve the value of the assets of the trust and is in the best interests of the D-REIT securities holders; or

- 2° if requested to do so by the D-REIT manager in order to give effect to the objectives of the trust to acquire real estate assets, to undertake development and construction, to undertake capital expenditure or to refinance any existing borrowing.

### **Article 28 – Providing security over the assets of a D-REIT**

The trustee may provide security over the assets of the real estate investment trust scheme to secure the borrowings as provided for under Article 27 of these Guidelines.

Any borrowing requested by the D-REIT manager on behalf of a D-REIT or by any investee company or investee trust must not exceed, in aggregate, at the time the liability was incurred, sixty percent (60%) of the total asset value, provided that the limit in borrowings is not detrimental to operations or refinancing of any debt where the amount rolled over or refinanced is not more than the amount originally borrowed.

Notwithstanding the provisions of the Paragraph 2 of this Article, the trustee may, with the approval of D-REIT securities holders by way of an ordinary resolution, borrow or enter into an investment financing arrangement not exceeding seventy five percent (75%) of the total asset value, for a temporary term not exceeding six months.

Failure of the trustee to comply with the provisions of these Guidelines relating to the maximum borrowing limits constitutes a fault.

### **Article 29 – Effects of D-REIT defaults**

Subject to provisions of Article 28 of these Guidelines, and where the trustee exceeds the borrowing limits specified in these Guidelines:

- 1° a D-REIT may cease to be classified as a real estate investment trust scheme due taxation purposes;
- 2° subject to the trust documents, the D-REIT securities holders may institute a cause of action in a court of law against the D-REIT manager; and
- 3° the Capital Market Authority may cancel the authorization issued to the D-REIT.

### **Article 30 – Distribution requirements of a D-REIT**

The trust must carry out the distributions of income upon recommendations of the D-REIT manager in accordance with the trust documents.

In carrying out distributions referred to in Paragraph One of this Article, the trustee must take into consideration the following points:

- 1° income for the period;
- 2° total returns for the period;
- 3° liabilities and financial obligations;
- 4° cash flow available for distribution;
- 5° need to preserve and maintain the condition of the assets of the fund and procedures to provide for asset replacement;
- 6° procedures for stability and sustainability of distribution of income;
- 7° investment objective of the D-REIT;
- 8° distribution policy of the D-REIT; and;
- 9° requirements of the trust documents.

### **Article 31 – Lower distribution by way of ordinary resolution**

Where the trustee is of the opinion that the level of distribution is not in the interests of D-REIT securities holders, he or she calls a meeting of D-REIT securities holders to approve, by way of ordinary resolution, a lower distribution.

### **Article 32 – Excess distribution of the current income**

A D-REIT manager may propose and the trustee may carry out distribution of income in excess of the realised income in a term where he or she certifies, on reasonable grounds that:

- 1° immediately after carrying out of such distribution, the D-REIT must be able to pay funds from the assets, the liabilities incurred on behalf of the trust as and when they fall due and the projected liabilities for at least the following year; and
- 2° the payment must not adversely affect the capacity to maintain and preserve the assets of the D-REIT.

If the D-REIT manager proposes payment of distributions in excess of the current income, he or she must:

- 1° disclose to the trustee the basis of the calculation of the distribution proposed under the preceding paragraph ; and
- 2° report such proposal as part of the continuing disclosure requirements.

### **Article 33 – Distribution of realized capital gains by a D-REIT**

Subject to the trust documents, the D-REIT manager may distribute any realized capital gains.

Any capital gains may be retained and instead be invested in purchasing, constructing, developing new assets or buying new houses with intention to rent them to generate income accruing from the real estate.

However, any capital gains realised with a maturity of two (2) years from the date of realization which are not yet invested must be distributed to D-REIT securities holders within two (2) months from the second year of such realization.

### **Article 34 – Request for audit to determine matters to be considered**

The trustee may, where the distribution is proposed other than on an annual basis based on audited financial accounts, require an audit for the purpose of determining matters to be considered.

### **Article 35 – Minimum retained investment by the promoter and lock-in period**

A promoter who sells or transfers any real estate or proposes to transfer or sell any real estate to the manager of the D-REIT within a period of one (1) year of the establishment of the D-REIT must, subject to any requirements in the scheme documents requiring a higher level of investment, maintain an investment, of at least ten percent (10%) of the net asset value for two (2) years from the close of initial offer or if the issue is to be listed from the date of first listing of the D-REIT securities.

The D-REIT securities held by the D-REIT manager must not be sold or transferred during the lock in period except where the transfer is as a result of the death or insolvency of the promoter.

A D-REIT manager may, after the second anniversary of the close of the initial offer or issue, reduce its holding to zero percent (0%).

The D-REIT manager must not register any transfer, if the transfer is as a result of holding D-REIT securities which are below the minimum level the promoter is required to retain during the lock in period.

### **Article 36 – Establishment of an *ad hoc* oversight committee**

An *ad hoc* oversight committee must be established for the purpose of oversight and approval of disbursements of funds on the D-REIT projects.

The *ad hoc* oversight committee must be composed of relevant professionals.

The Capital Market Authority must appoint members of the committee and determine its powers and responsibilities of the *ad hoc* oversight committee.

### **Article 37 – Commencement**

These Guidelines come into force on the date of their publication in the Official *Gazette* of the Republic of Rwanda.