



## Introduction

In the advent of the affordable housing scheme in Kenya players in the industry are determined to support the government in achieving this agenda. A major concern for the project is financing.

The Kenya Institute for Public Policy Research and Analysis (KIPPRA) Discussion Paper No. 259 of 2021, clarifies that by exploiting the latent potential in housing finance models the affordability and adequacy of the housing landscape in Kenya can be transformed.

One such financing model that can be adopted is the Real Estate Investment Trusts (REITs).

In 2023, the REITS Association of Kenya held a conference to foster discussions, and explore and unlock the REIT potential in the region. The conference attracted policymakers, investors and real estate professionals. The Association have also held masterclasses on crafting, designing and developing REITs.

## Real Estate Investment Trusts (REITs)

REITs in Kenya are a regulated investment vehicle allowing collective real estate investment. Investors pool funds in a trust to earn profits or income from real estate. REITs source funds to acquire and generate income from real estate assets.

In Kenya, the establishment and operations of REITs are governed by the **Capital Markets (Real Estate Investment Trusts) (Collective Investment Schemes) Regulations, 2013** (*the Regulations*). **Regulation 8** classifies REITs into two categories, that is, Development Real Estate Investment Trusts (D-REITs) and Income Real Estate Investment Trusts (I-REITs). In D-REITs, the Trust acquires land, develops it and sells it at a profit whereas in I-REITs, the Trust acquires already developed property or even develop the property for purposes of generating rental income. Further, **Part XXVI of the Regulation** establishes an Islamic REIT as a unique type of I-REIT that invests primarily in income-producing, Shari'ah - compliant real estate models.

For a D-REIT to be licensed in Kenya, it ought to have a minimum of seven investors and the minimum value of the initial assets must be Kenya Shillings One Hundred Million (Kshs. 100,000,000/=). Conversely for I-REITs, the minimum value of the initial assets is Kenya shillings Three Hundred Million (Kshs. 300,000,000/=)

## The Players in the REITs Industry

The stakeholders in the REITs industry range from the Promoter(s) as the initial propagators and issuers of the REITs, the REIT Trustee who holds the property on behalf of the beneficiaries (individual and corporate investors), and who also acts as a representative of the investors within the scheme, and a REIT manager being a registered company licensed by Capital Markets Authority entrusted with the responsibility of providing real estate and fund management services on behalf of the investors in the scheme.

The Trustee is also tasked with ensuring that the scheme's assets are invested in alignment with the Trust Deed and the Offering Memorandum. This involves overseeing that distributions from the REIT's assets adhere to the guidelines outlined in the Offering Memorandum, as approved by the Capital Markets Authority (CMA).

Consequently, investment properties are registered in the name of a corporate trustee, serving as the custodian of the REIT assets, while their management is entrusted to a corporate REIT manager.

## What to look for before investing in a REIT

As an investor, due diligence is paramount before investing in a REIT. After establishing the type of REIT an investor is attracted to based on their investment goals and risk tolerance, one ought to additionally look out for the following:

1. Legal Due diligence- significance should be placed on the REITs legal formation, and whether each and every aspect of the REIT is perfectly within the regulatory licenses and approvals.
2. Yield – like any other type of investment, an investor's eye is normally fixed on the expectations are based on the rates of return. A reasonably high yield backed by proper management and regulatory environment is encouraged.
3. Previous performance – for existing REITs, it is important for the investor to analyse the history of their performance before investing.
4. Occupancy rates – particularly for I-REITs that depend on revenue generated, the rate of occupancy in the projects invested in at the moment is key.
5. Debt levels – the regulations places a restriction on the debt accumulation levels by REITs. An examination of the REITs debt burden is crucial to inform an investor.
6. Quality of management – A REIT is only as good and successful as its management
7. Trends in the economy; and
8. Liquidity of the REIT

## Benefits of REITs

Apart from assuaging the housing problem in Kenya, the benefits associated with REITs in Kenya cannot be overstated. REITs create an avenue of pooling together funds from different investors which in turn has a massive impact on the type of project envisioned and the outcome thereof. Also, REITs generate income and capital gains from the real estate assets and these are distributed to the investors as dividends. Further, REITs benefit from income tax exemption, value-added tax exemption and stamp duty exemption. The only tax applicable currently is the Capital Gains Tax on the gains made from the investments.

REITs also offer portfolio diversification in favour of the investors for the investments made. Further, REITs offer comfort due to their professional management, transparency and regulation by the CMA.

REITs have opened the real estate investment market greatly and are equally a tax efficient structure. One of the main factors affecting the performance of the REITs market is minimal investor knowledge. If appropriately promoted, REITs have the potential to support the achievement of the affordable housing project.

In conclusion, the Bankruptcy Petition was found unmerited and was dismissed with costs. If Mr. Jillo had been lucky to be adjudged bankrupt unprocedurally, irregularly and out of material non-disclosure, creditors such as the Bank would still have a remedy under Section 272 by moving the Court accordingly for annulment and restoration of the debtor to his original status as though the orders had never been made.

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