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OBLIGATIONS OF REIT: A COMPARATIVE STUDY

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ABSTRACT

We not individually obtain a property over a long period of time, but by investing in real estate investment traded funds, those who do not own real estate can have the right of ownership over part of a property, because the housing problem is increasingly developing in Iraq. With the increase in the population, and the bad economic conditions that do not allow people to own real estate until after a long trouble, so the real estate investment funds that made room for people, even if they do not have a large capital, aims to encourage small savers who have little money to invest in the field Real estate and therefore they can obtain a real estate unit or part of the real estate unit, because of the importance of the fund in the field of securities because of its advantages such as achieving stable returns and low risks, which provides people who do not have sufficient experience and ability to manage their money In the local, international and global markets, and that the resort to real estate investment funds by investors to protect against the risks that the markets are exposed to up and down and their impact on individuals, so securities are bought and invested in the real estate field, which has achieved great opportunities for small investors who are unable to own their own housing units In this case, they can own even part of the fund's units

THE IMPORTANCE OF THE TOPIC

The real estate investment traded funds are of special importance because they contribute to the movement of the financial markets, which is witnessed by most of the legislation, including the American and Saudi legislation, in which real estate values are converted into securities. It achieves the desire and goals of its investors and shows the positive aspects of investing in the real estate sector

The problem of the topic

1. The legislative vacuum in Iraqi law, which lacks any regulation, whether public or private, related to real estate investment traded funds

Asap choose a topic

1. The Iraqi law does not regulate real estate investment traded funds and their importance from an economic and investment point of view
2. These funds can contribute to alleviating the housing crisis that Iraq is currently suffering from
3. Presenting a legal letter showing the concept and importance of these funds to meet the Iraqi libraries' need for new studies and the quality of the countries of the world

Subject difficulties

1. The scarcity of Arab and foreign sources of Saudi and American legislation, except rarely
2. Lack of sources in Iraqi legislation because it is not regulated in any of the laws related to the stock market or related laws

Subject approach

In this research, I relied on the comparative approach between legal systems, including the American law Revenue Act tax No. 86- Regulated by the for the year 1960 , as for foreign 779 systems and the Saudi law for Arab systems, which was regulated by the Real Estate Investment Funds Regulations issued by the Board of the Capital Market Authority No. 1-193-2006 on 15/7/2006 , and also relied on the analytical approach with the aim of consolidating relations It distinguishes its legal nature, the adequacy of its organization and its suitability with other applicable legislation, and in the end it was relied on the deductive approach to reach reliable results in building the .foundation in Iraqi legislation

THEME PLAN

The first topic \ commitments own with boxes investment real estate circulating

requirement the first \ Commitments and rights boss Boxes investment real estate circulating

requirement The second \ commitments and rights Trustworthy Preservation in Boxes investment real estate

requirement Third \ Commitments and rights watchers the accounts

requirement the fourth \ Commitments and rights Investors in Boxes investment real estate traded

THE FIRST TOPIC: COMMITMENTS OWN WITH BOXES INVESTMET REAL ESTATE CIRCULATIING

based Role boss investment box real estate on me pillar basic she resurrection manage funds box with a goal Investigation profit that mean Investors with Trustworthy Preservation and watchers the accounts and investors , where get up boss box manage funds Investors the others able on me Management their money by themselves side to me side with Rest Parties Boxes investment real estate circulated , which I required Legislation ban be self expertise and efficiency and the same ability Artistic in Management chests investment , the manager he is From Puts plan investment get up implement it on me Face Accuracy , knows when Sell and when He buys Wayne , it is through it Can that Makes box self revenues and profits balanced , where based in his performance to me decisions thoughtful and goals and on .⁽¹⁾ specific not decisions random Light that We will swear this search to me Four demands, eat in The first requirement Commitments and rights boss Boxes investment real estate traded, either in The

See: Mahmoud Mustafa Hassan, The Legal ⁽¹⁾ System of the Securities Management Contract, PhD thesis, Cairo University, p. 373

second requirement eat Commitments and rights Trustworthy Preservation in Boxes investment real estate, either requirement Third that Shows in it Commitments and rights watchers accounts, and in requirement the fourth from him Shows Commitments and rights Investors in . Boxes investment real estate traded

**FIRST REQUIREMENT:
COMMITMENTS AND RIGHTS
BOSS BOXES INVESTMENT REAL
ESTATE**

that Director that he the person Administrator About Management Boxes investment real estate circulating what achieve Goals box and investors in it, so Lost It was completed Determine Commitments boss box towards box and outskirts fund, where pointed out legislator American in Determine Commitments Director that it Located on me shoulders a company Administration her reference ,⁽²⁾ Law general that Create Concept credit especially while Regard Analyze rights and duties Investors apart look About requirements Law comp investment For the year 1940, the my boss box they commit while Regard by property credit, meaning by property assets box owned Investors, duties following (duties loyalty

_____ The law of the commons means (the House of ⁽²⁾ Congress), which is the legislative authority that undertakes the task of enacting laws in the United .States of America

not fragmented, duty give interest personal duty Submit Account, duty to implement , political box Carefully the man Al -
·⁽³⁾ Harees

and expands Role a company Administration by legislation American in which no confined on me Administration artistic distance Establishing fund, but get up company beginning founding it From During resurrection organized box investment being entity legally separated About The manager concludes between box and between Director a necklace Management under judgments and terms Contract agree a company Administration on me The performance all Services Admin operational, and desire Law on me Stimulate Management company urging her on me Do Maximum energy for investment their money own to me side Remainder Investors with boxes that .⁽⁴⁾ manage it

Committed Director make Care the man the keen perform his tasks addition to me his commitment by rules the behavior professional And that Because a job boss investment a job mental incarnate in take

_____ ⁽³⁾ see; Charles E.Rounds, Jr, And Andreas Dchio , publicly –Traded Open End Mutual Funds Ln Common Law and civil law Jurisdictions A Comparison of legal Structure, super, page 503-504

⁽⁴⁾ John Mcrley , The Separation of Founds and Managers : A Theory of investment Fund Structure and Regulation , supra,pages1238,1239

decisions Related by investing and use this Standard From Yes Negation corner The error that issue right in condition . responsibility

As for From hand rights boss box that organize it Contract signed between boss box and board Management box border Relationship and the authorities Admin between them, where Identifies Contract signed the frame legal that Works boss in it boss investment and sets in it rights , and this is Rights

first \ \ right boss investment in get on me remuneration

Deserves boss Boxes investment real estate circulating in get on me remuneration Opposite his services , where must From Determine Opposite that Gets on him Director About manage it for the fund Without a plus or decrease according to Contract signed between Director And the Management box

has clear legislator Saudi ban Associated boss box relationship contractual with where subject this is ,⁽⁵⁾ Owner's units Relationship to will The (contracting) parties, as that opposite that Gets on him Director It was completed the agreement

See: Article (Fifth) of the Regulations of the)⁽⁵⁾ Saudi Stock Exchange Regulating Real Estate Investment Funds No. 1_219_2006 issued by Royal Decree No. 30/AD dated 6/2/1424 AH and amended by Resolution No. 2_22-2021 dated AH 1442/12/7

on him in a necklace Administration signed evidence and between Owner's units real estate, where require Regulation that on me boss box that get up boss box by disclosing About Conditions box and its provisions About Which commissions or fee get paid or get charged destinations other, and so get up body market Finance assuming Limit higher for any Opposite whether she was commissions or fee impose it boss box what see suitable and what he meets What presents it Director From Services for the sake of Boxes .⁽⁶⁾ investment real estate circulating

and importance role that get up with it Boxes investment real estate circulating in life Economic and financial and social and his contribution in the form of Live and change Live in flourish market real estate and boost his position economic, was From Better that placed texts prevent requirement Exemption or mitigation the responsibility About boss investment in Boxes investment real estate, as no Permissible the agreement on me mitigation care homework make it in Management box to become Care the person normal, and if It was completed the agreement on me Which condition From this kind it's is being void invalid never It

See: Article (19) of the Financial Market)⁽⁶⁾ Regulations Regulating the Operation of Real Estate Investment Funds No. 1_219_2006 issued by Royal Decree No. 30/m dated 6/2/1424 AH and amended by Resolution No. 2_22-2021 dated AH 1442/12/7

is considered It was did not not Because
Such as this the condition related by order
general and whether flower that the
condition in a necklace Administration or
(7) in an agreement independent

The second requirement

Commitments and rights Trustworthy Preservation

Prepare Trustworthy Preservation
Administrator About save papers Finance
and deal with her and manage it Favor box
investment real estate circulated, which
differ Legislation while between them
Around From get up role Trustworthy
Save, go some it's a bank (person moral)
and some the other on me it's a person
selected and efficient means by that
(person natural) in when to merge some on
me it's a may be is being person natural or
person moral in that one, only that
everybody Participate in self commitments
and in self rights , and this is commitments
_: And rights

1. prepare Trustworthy Preservation
responsible About save funds box under a
necklace to protect her and maintain on her
.
2. Prepare Trustworthy Preservation
responsible About Which breach exposed

for him box result non resurrection his
. duties towards boss box and investors

3. Stand out responsible Trustworthy
Preservation in condition Loss papers
Finance that keeps out, and bears
responsible loss Before Investors result
non his commitment and respect him for
responsibility imposed on him
transgression Except that this is the
responsibility not divorced he can get rid
of Of which if Proved that Harm
verification result infringement From
Before box or Investors or if It was
. because of Energy Cairo or reason alien
4. be responsible About to implement
Business client mechanism efficiently and
. efficacy high
5. Do Trustworthy Preservation by
preparing Reports to help boss box in his
performance for his tasks
6. Do Trustworthy Preservation save
records cooperation with comp Services
. Administration specialized
7. Trustworthy Preservation all
operations paying off and delivery behalf
About box
8. Worth Trustworthy Preservation
commission Opposite Services that offered
by under a necklace closed evidence and
. between boss fund

See: Matar bin Hamad bin Nasser al- Buraiki , (7)
Real Estate Investment Funds between theory and
practice, Arab Renaissance House, Cairo, Egypt, p.
.54

requirement Third

Commitments and rights watchers the accounts

as such It was completed explain it previously that watchers the accounts they People competent specialize in Audit the accounts Finance And who Complete appoint them From Before Administration responsible About Management box or From Before Organizations the public that Different according to Legislation and destinations responsible in it , and from During that so Responsibilities and rights _: watchers the accounts she

.1 Right for watchers the accounts examining on me notebooks and records and documents companies constituent for (8) the fund

.2 based watchers the accounts in Preparation Reports and menus annual and periodicity According for standards agreed . on her

.3 Statement Center financial Real and present it for investors and . management responsible About fund

.4 Worth watchers the accounts wages Opposite the work that get up with it

(8) see; jack E. Roberts, public Ownership, of Real Estate Trust laws Provide New impetus, supra pag594

.5 No Permissible Prevent Submit arcades Finance or obstruct him a job my . accountant papers Finance

.6 Commitment watchers the accounts not disclosure secrets box

.7 Commitment watchers the accounts not Exploit the information that get on her . during the work in fund

requirement the fourth

Commitments and rights Investors

that Law gave rights and perks for investors addition to me duty Commitments them , and as It was completed we mentioned previously that Investors they people Al-Maliki for money and change able on me manage it they go to me investment in Boxes Investment , and privileges that enjoy out Boxes investment real estate turn to her satisfying to me their ambition and their goals in investment and saving and get on me profits . And as that Investors they Shareholders in build up box and perpetuate it which Complete on me Light that duty Collection From commitments addition to me enjoy them by rights _: Including

.1 Right for investors underwriting in papers Finance outgoing From Boxes investment whether open and closed . Without bind them

.2 Has Developed some Legislation Such as Saudi restrictive on me own Real estate in Boxes investment real estate for other Saudi Which It is forbidden In which underwriting From Before the foreigner mean with it Which person not pregnant .nationality Saudi Arabia

.3 Entitled for investors meeting , lost Locate legislator American for investors that get together annually to show their opinion and approval or rejection on me the changes that to speak in box as From .⁽⁹⁾ Shareholders in Fund

.4 Right for investors approval on me change boss box investment

.5 Right for investors upload Lawsuit on me boss investment Amen Preservation if they caused damaged when opposing them for tightness the organization for the . fund

.6 Right for investors approval or rejection on me transactions that get up out chests that exposed with their interests that . they throw to her

.7 yeltz Investors presenting data correct and complete about them

.8 Commit Investors distance exposing Business Remainder the parties

⁽¹⁰⁾ to me loss because of an act issue them .

CONCLUSION

In conclusion, we reached several conclusions and recommendations

First \ results

1. Among the general obligations related to real estate investment traded funds, the obligation to disclose and transparency, the obligation to assess the financial position, and the obligation to manage the real .estate investment traded funds
2. Among the special obligations related to the parties to the real estate investment traded funds, which are represented by the manager, the custodian, the auditors and .the investors
3. Real estate investment traded funds expire due to multiple reasons, which are divided .into general reasons and private reasons
4. One of the general reasons for the expiry of real estate investment traded funds is the expiry of the period specified in the articles of incorporation that is compatible .with the investment objective

SUGGESTIONS

1. We call on the Iraqi legislator to introduce a special law regulating real estate

⁽⁹⁾ Jack E. Roberts, practical A spects of Real Estate investment trust, supra page-324

See: Hamad Farouk Weshahi, The Legal ⁽¹⁰⁾ Regulation of Real Estate Investment Funds, 2007, .Dar Al Nahda Al Arabiya, p. 27

- investment funds, similar to the American .and Saudi law
- We call for stipulating that investors may not be licensed to own land and real estate owned by the state unless these lands and real estate are private funds in accordance .with Article (71) of the Iraqi Civil Code
 - We call on the Iraqi legislator, when drafting a law on real estate investment traded funds, to take the form of a (joint stock) company, because it is one of the .money companies
 - We call for activating the role of supervision by the stock market on investment funds, including real estate investment funds, when they are .organized

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Conflict of Interest: None

MARGINS

- Mahmud Mustafa good, order legal to hold Management papers finance, dissertation Ph.D, University Cairo, p. 373
- see; Charles E.Rounds, Jr, And Andreas Dchio, publicly Traded Open End Mutual Funds Ln Common Law and civil Law Jurisdictions A Comparison of legal Structure, super, page 503-504
- John Mcrley, The Separation of Founds and Managers A Theory of investment Fund Structure and Regulation, supra, pages1238,1239
- Article (5) of slate market Finance Saudi Arabia the organization to work Boxes investment real estate No. 1_219_2006 issued by decree my king No. 30 \ m On 2/6/1424 AH and rate by decision No. dated 7/12/1442 AH 2021_22_2

- Article (ninth ten) from slate market Finance the organization to work Boxes a to invest real estate No. 1_219_2006 issued by decree my king No. 30 \ m On 2/6/1424 AH and rate by decision No. dated 7/12/1442 AH 2021_22_2
- rain The son of He praised The son of supporter Brikki , boxes investment real estate between the theory And the application, Dar Renaissance Arabic, Cairo , Egypt
- Jack E. Roberts, practical A spects of Real Estate investment trust, supra page324.

LIST OF SOURCES AND REFERENCES

Books

- rain The son of He praised The son of supporter Brikki, boxes investment real estate between the theory And the application, Dar Renaissance Arabic, Cairo , Egypt
- Ahmad Farooq scarf, organization legal for boxes investment Real estate , 2007, house Renaissance . Arabic

Messages and theses

- Mahmud Mustafa good, order legal to hold Management papers finance, dissertation Ph.D., University Cairo

Foreign Sources

- Charles E.Rounds, Jr, And Andreas Dchio ,publicly Traded Open End Mutual Funds Ln Common Law and Civil Law Jurisdictions A Comparison of Legal Structure ,super ,pages 503-504
- John Mcrley , The Separation of Founds and Managers A Theory of investment Fund Structure and Regulation ,supra, pages1238, 1239
- Jack E. Roberts ,public Ownership ,of Real Estate Trust laws Provide New Light , supra pag594

Laws and Regulations

- slate market Finance Saudi Arabia the organization to work Boxes investment real estate No. issued by decree my king No. 30 \ m 2006_219_1 On 2/6/1424 AH and rate by decision No. dated 7/12/1442 AH 2021_22_2