



**SECURITIES AND  
FUTURES COMMISSION**  
證券及期貨事務監察委員會

## **Consultation Paper on Proposed Amendments to the Code on Real Estate Investment Trusts**

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**June 2020**

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## Foreword

The Securities and Futures Commission (SFC) invites market participants and interested parties to submit written comments on the proposals discussed in this consultation paper or to comment on related matters that might have a significant impact upon the proposals by no later than 10 August 2020. Any person wishing to comment on the proposals on behalf of an organisation should provide details of the organisation whose views they represent.

**Please note that the names of the commentators and the contents of their submissions may be published on the SFC's website and in other documents to be published by the SFC. In this connection, please read the Personal Information Collection Statement attached to this consultation paper.**

**You may not wish the SFC to publish your name, submission or both. If this is the case, please state that you wish your name, submission or both to be withheld from publication when you make your submission.**

Written comments may be sent as follows:

By mail to: The Securities and Futures Commission  
35/F Cheung Kong Center  
2 Queen's Road Central  
Hong Kong

Re: Consultation Paper on Proposed Amendments to the Code  
on Real Estate Investment Trusts

By fax to: (852) 2877-0318

By online submission at: <http://www.sfc.hk/edistributionWeb/gateway/EN/consultation/>

By e-mail to: reitsconsultation2020@sfc.hk

All submissions received before the end of the consultation period will be taken into account before the proposals are finalised and a consultation conclusions paper will be published in due course.

Securities and Futures Commission  
Hong Kong

9 June 2020

## Personal Information Collection Statement

1. This Personal Information Collection Statement (PICS) is made in accordance with the guidelines issued by the Privacy Commissioner for Personal Data. The PICS sets out the purposes for which your Personal Data<sup>1</sup> will be used following collection, what you are agreeing to with respect to the SFC's use of your Personal Data and your rights under the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO).

### Purpose of collection

2. The Personal Data provided in your submission to the SFC in response to this consultation paper may be used by the SFC for one or more of the following purposes:
  - (a) to administer the relevant provisions<sup>2</sup> and codes and guidelines published pursuant to the powers vested in the SFC;
  - (b) in performing the SFC's statutory functions under the relevant provisions;
  - (c) for research and statistical purposes; or
  - (d) for other purposes permitted by law.

### Transfer of personal data

3. Personal Data may be disclosed by the SFC to members of the public in Hong Kong and elsewhere as part of this public consultation. The names of persons who submit comments on this consultation paper, together with the whole or any part of their submissions, may be disclosed to members of the public. This will be done by publishing this information on the SFC website and in documents to be published by the SFC during the consultation period or at its conclusion.

### Access to data

4. You have the right to request access to and correction of your Personal Data in accordance with the provisions of the PDPO. Your right of access includes the right to obtain a copy of your Personal Data provided in your submission on this consultation paper. The SFC has the right to charge a reasonable fee for processing any data access request.

### Retention

5. Personal Data provided to the SFC in response to this consultation paper will be retained for such period as may be necessary for the proper discharge of the SFC's functions.

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<sup>1</sup> Personal Data means personal data as defined in the Personal Data (Privacy) Ordinance (Cap. 486).

<sup>2</sup> The term "relevant provisions" is defined in section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571) and refers to the provisions of that Ordinance together with certain provisions in the Companies (Winding Up and Miscellaneous Provisions) Ordinance (Cap. 32), the Companies Ordinance (Cap. 622) and the Anti-Money Laundering and Counter-Terrorist Financing (Financial Institutions) Ordinance (Cap. 615).

## Enquiries

6. Any enquiries regarding the Personal Data provided in your submission on this consultation paper, or requests for access to Personal Data or correction of Personal Data, should be addressed in writing to:

The Data Privacy Officer  
The Securities and Futures Commission  
35/F Cheung Kong Center  
2 Queen's Road Central  
Hong Kong

7. A copy of the Privacy Policy Statement adopted by the SFC is available upon request.

## Proposed amendments to the Code on Real Estate Investment Trusts

### Executive summary

#### Background

1. Since the introduction of the Code on Real Estate Investment Trusts (REIT Code) in 2003, we have kept the Hong Kong regulatory regime for REITs under regular review. The REIT Code has been updated from time to time to keep abreast of international regulatory developments and local market conditions.
2. In 2014, the REIT Code was amended to give REITs flexibility to invest in property development projects and financial instruments up to 25% of the REIT's gross asset value (GAV), subject to various conditions. Many Hong Kong REITs have now amended their trust deeds with the required unitholders' approval to take advantage of these changes. A number of REITs have utilised the flexibility to acquire some financial instruments. One REIT has also completed a property development project. As at 31 December 2019, the total market capitalisation of REITs in Hong Kong was \$289 billion, an increase of more than 40% from the \$205 billion as at 31 December 2014.
3. Following the listing of the latest REIT in Hong Kong in December 2019, we received feedback from market participants suggesting that certain areas of the REIT Code could be updated to enhance Hong Kong's regime for REITs in line with regulatory developments in other jurisdictions.
4. In light of the above and the latest regulatory developments overseas, we have reviewed the REIT Code and now propose a number of enhancements. In formulating them, we have been mindful of the need to strike a balance between facilitating market development and competitiveness on the one hand, and ensuring the protection of investors' interests and market integrity on the other. By updating the regime, it is hoped that Hong Kong can be better positioned to capture more new REIT listings. Together with allowing more flexibility for REITs to make acquisitions, this would help expand Hong Kong's REITs market, which would enhance liquidity as well as the breadth and depth of the market. We believe the proposed enhancements would not result in a material change to the recurrent rental income generating nature and risk profile of REITs.
5. We consulted market practitioners, REIT managers and Hong Kong Exchanges and Clearing Limited on the proposed areas for enhancement. We also consulted the Committee on REITs on the proposals, which received general support. The proposed amendments take into account comments received in the process.

## **Proposed amendments to the REIT Code**

6. We are proposing amendments to the REIT Code in the following key areas:
- (a) Minority holdings – to allow a REIT to invest in minority-owned properties subject to various conditions;
  - (b) Property development – to allow a REIT to invest in property development projects in excess of the existing sub-limit of 10% of GAV subject to unitholders' approval and other conditions;
  - (c) Borrowing limit – to increase the limit on aggregate borrowings from 45% to 50%; and
  - (d) Connected party transactions and notifiable transactions – to broadly align with the requirements under the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (Listing Rules).
7. In addition, we are also proposing other miscellaneous amendments largely to better align requirements and codify existing practices.
8. The proposals mentioned in paragraphs 6(a), (b) and (c) aim to provide Hong Kong REITs with more flexibility in sourcing of properties for listings and acquisitions as well as in conducting asset enhancements of existing properties to facilitate growth. The proposal mentioned in paragraph 6(d) reflects our long established policy to regulate REITs in the same manner as listed companies in view of their similarities in terms of economic nature and investors' interests.
9. Under the proposed amendments, the investment restrictions applicable to REITs would be as follows:
- (a) At least 75% of GAV must be invested in recurrent rental income generating real estate, including Qualified Minority-owned Properties<sup>3</sup> which can satisfy the conditions imposed to ensure they are income-generating and the REIT has control and veto rights over some key matters involving the properties (Core Rental Income Generating Investments); and
  - (b) Not more than 25% of GAV may be invested in (i) property development projects (including uncompleted units); (ii) Non-qualified Minority-owned Properties<sup>4</sup>; (iii) Relevant Investments<sup>5</sup>; and (iv) other ancillary investments<sup>6</sup> (Non-core Investments).

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<sup>3</sup> As defined in paragraph 20 below and the proposed new 7.7C of the REIT Code.

<sup>4</sup> As defined in paragraph 23 below.

<sup>5</sup> Certain liquid securities and financial instruments pursuant to 7.2B of the REIT Code.

<sup>6</sup> Subject to a cap of 10% of GAV pursuant to the new 7.2C of the REIT Code.

10. By allowing only Qualified Minority-owned Properties to be counted towards a REIT's Core Rental Income Generating Investments and limiting Non-core investments to no more than 25% of GAV (Maximum Cap), it is expected that the proposed additional flexibility would not result in any material change to the REIT's recurrent rental income generating nature and overall risk profile.
11. The proposed amendments to the REIT Code are set out in the Appendix to this paper.

**Inviting comments**

12. We invite comments on the proposed amendments to the REIT Code discussed in this consultation paper by no later than 10 August 2020. A consultation conclusions paper will be published as soon as practicable after the end of the consultation period.



## Proposed amendments to the REIT Code

### Minority holdings

#### Background

13. As an investment product that invests primarily in real estate, a Hong Kong REIT must invest at least 75% of its GAV in real estate which generates recurrent rental income at all times<sup>7</sup>.
14. A REIT is also required to have majority (more than 50%) ownership and control in each property at all times<sup>8</sup>. To provide a certain degree of flexibility, a REIT is currently allowed to own less than a “majority ownership and control” in a property provided that investments in such properties should in aggregate not exceed 10% of the REIT’s GAV<sup>9</sup>.
15. We received feedback from market participants and REIT managers that more flexibility could be allowed for REITs to hold minority stakes in properties in line with regulations in some other comparable overseas jurisdictions<sup>10</sup>. The increased flexibility could facilitate REIT managers in sourcing properties for listings and acquisitions, thereby increasing the growth potential of Hong Kong REITs.
16. For example, a REIT would have the flexibility to purchase part of a property which requires less investment outlay. A REIT would also be able to acquire suitable properties in overseas jurisdictions that prohibit foreign investors from holding majority stakes in domestic properties. This is important as it could give REITs broader choices in their pursuit of yield-accretive properties which may be scarce in the local market given the relatively high yield offered by many Hong Kong REITs. Some market participants also pointed out that added flexibility could facilitate the transfer of properties from a property developer to a REIT structure by minimising overall restructuring costs and in particular, the tax exposure from transferring an entire property.
17. However, it was also pointed out that were more flexibility to be allowed for investments in minority-owned properties, caution should be taken to preserve the recurrent rental income generating nature of REITs and to ensure the REITs should retain control over key matters involving the minority-owned properties.

#### Proposals

18. Taking into account the comments received, we consider that more flexibility can be given to a REIT manager to exercise its professional judgment to invest in properties in which the REIT does not have majority ownership and control (Minority-owned Properties) where it is in the best interests of unitholders, provided that various conditions can be satisfied.

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<sup>7</sup> 7.1 of the REIT Code.

<sup>8</sup> 7.7 and 7.7A of the REIT Code.

<sup>9</sup> Frequently Asked Questions relating to the Real Estate Investment Trusts 19.

<sup>10</sup> There are generally no explicit restrictions on investment in minority holdings for REITs in the United States, United Kingdom, Australia, and Japan. Singapore allows REITs to invest in real estate as joint owner subject to certain conditions including veto rights over key operational issues.

19. Therefore, we propose that the majority ownership and control requirement be removed and REIT managers may decide to invest in Minority-owned Properties, subject to proposed conditions under the REIT Code, if this is in the best interests of unitholders.

#### *Qualified Minority-owned Properties*

20. Where a Minority-owned Property can satisfy the overarching principles and specific conditions set out in the new 7.7C of the REIT Code (a Qualified Minority-Owned Property), it may be included as a Core Rental Income Generating Investment.
21. The principles and conditions include veto rights over some key matters involving the properties, the requirement that at least 75% of the GAV of the underlying assets must be invested in real estate which generates recurrent rental income at all times, and that the joint ownership agreement must include a specified minimum percentage of not less than a majority of the annual distributable income which must be distributed. These principles and conditions seek to ensure that the Qualified Minority-owned Properties are income generating and that the REIT can maintain proportionate control.
22. Accordingly, investments in Qualified Minority-owned Properties within these proposed parameters should not result in any material change to the fundamental recurrent income generating nature and risk profile of the REIT.
23. REIT managers may also invest in a Minority-owned Property which is not a Qualified Minority-owned Property (a Non-qualified Minority-owned Property) provided that:
- (a) for diversification purposes, the value of a REIT's holding of any Non-qualified Minority-owned Property must not exceed 10% of its GAV at any time (Single Investment Cap); and
  - (b) the value of all Non-qualified Minority-owned Properties will be subject to the current Maximum Cap on Non-core Investments of 25% of GAV under the proposed new 7.2C of the REIT Code<sup>11</sup>.
24. REIT managers are reminded of the potential limitations and risks associated with Minority-owned Properties. Any decision to invest in such properties must be made after careful and diligent investigation and solely in the best interests of unitholders. REIT managers should seek the SFC's approval in respect of any proposal to invest in any Qualified Minority-owned Property.

#### *Disclosure and other requirements*

25. All acquisitions of Minority-owned Properties must be announced and there should be prominent disclosures and warnings of the risks and potential impact on the REIT relating to the ownership structure in the property. The investments must be in line with the REIT's

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<sup>11</sup> The Maximum Cap is the cap on the combined value of (a) all Relevant Investments under 7.2B; (b) all Non-qualified Minority-owned Properties; (c) other ancillary investments of the scheme; and (d) all of the Property Development Costs pursuant to 7.2A and 7.2AA together with the aggregate contract value of the uncompleted units of real estate acquired pursuant to Note (2) to 7.1, at any time.

investment policy and in the best interests of unitholders. The REIT must also have the freedom to dispose of such investments subject to any customary pre-emptive rights and the holding period under 7.8 of the REIT Code.

26. To provide better transparency, it is proposed that the REIT's annual and interim reports should include the extent to which the Maximum Cap has been applied as well as certain minimum information in respect of each Minority-owned Property, including:
- (i) details of each property, including name, location and usage;
  - (ii) the REIT's proportionate interest in each property;
  - (iii) dividends received from the investment; and
  - (iv) in the case of Qualified Minority-owned Properties, certain key financial information.
27. Principal Valuers<sup>12</sup> should note there may be potential valuation discounts associated with minority holdings. They may appoint a competent business valuer or other qualified valuer to assist in preparing valuations of Minority-owned Properties, taking into account any impact or implications which the ownership structure or any divestment or other restrictions may have on the value.
28. To maintain the recurrent rental income generating nature of a REIT, we also propose to add a note to 7.12 of the REIT Code to ensure that all distributions received and receivable from investments in Minority-owned Properties shall form part of the net income to be distributed to unitholders.
29. The proposed amendments will also clarify that wholly or majority-owned units or floors in a building or complex would not be regarded as Minority-owned Properties.

*Alignment of diversification threshold for Relevant Investments*

30. To better align with the proposed Single Investment Cap applicable to investments in a Non-qualified Minority-owned Property, it is proposed that the current diversification limit applicable to Relevant Investments issued by any single group of companies under 7.2B of the REIT Code also be increased from 5% to 10% of GAV.
31. Details of the proposed amendments to the REIT Code are set out in the Appendix to this paper.

**Questions:**

1. Do you agree with the proposal to allow flexibility for REITs to invest in Minority-owned Properties? Please explain your view.

<sup>12</sup> As defined in 2.17 and 6.1 of the REIT Code.

2. Do you consider that the proposed overarching principles and specific conditions for Qualified Minority-owned Properties are appropriate? Do you have any comments on the principles and conditions proposed? Please explain your view.
3. Do you have any comment on the proposed requirements for Non-qualified Minority-owned Properties? Please explain your view.
4. Do you have any comment on the proposed disclosure and other requirements for investments in Minority-owned Properties?
5. Do you agree with our proposal to align the diversification limit on the REIT's holdings of Relevant Investments issued by any single group of companies with the Single Investment Cap on Non-qualified Minority-owned Properties of 10% of GAV? Please explain your view.

## **Property development**

### **Background**

32. Since the last REIT Code amendments in 2014, Hong Kong REITs are allowed to invest in property development projects up to 10% of their GAV (10% GAV Cap). The amendments received general support from the market at the time as it was believed that the flexibility introduced could facilitate the growth of the Hong Kong REITs market. For example, a REIT may be able to acquire suitable properties in the development stage instead of having to incur extra costs to remodel assets after acquisition. Further, the added flexibility can facilitate the redevelopment or substantial enhancement of a REIT's properties when they deteriorate.
33. At the time, the SFC was mindful of the risks associated with property development investments. Accordingly, a range of accompanying requirements and measures were introduced in the REIT Code seeking to ensure property development investments would not result in a material change in a REIT's overall risk profile. For example, before making such investments, REIT managers should ensure that they have the requisite competence and expertise, as well as effective internal controls and risk management systems. Unitholders' approval must also be obtained before the REIT's trust deed may be amended to allow for property development investments. In addition, REIT managers must ensure any decision to invest in property development projects is made solely in the best interests of unitholders.
34. Some market participants pointed out that due to high land and construction costs, REITs with smaller GAVs may not benefit from this flexibility. Further, given that many Hong Kong REITs have a relatively high yield, REIT managers face difficulty sourcing yield-accretive properties. The option of being able to participate early in the development stage could lower acquisition costs and enhance yields. This could broaden the range of acquisition targets for REIT managers to grow their REITs, which in turn could enhance the breadth and depth of the Hong Kong REITs market.

## Proposals

35. Taking into account the comments received, the SFC considers that the existing limit on Hong Kong REITs' investments in property development projects may be adjusted to facilitate the long-term growth of the Hong Kong REITs market.
36. It is proposed that the existing 10% GAV Cap may be exceeded if specific unitholders' approval can be obtained. In addition, the increase must be permissible under the REIT's trust deed and the trustee's prior consent must be obtained.
37. To ensure at least 75% of a REIT's GAV remains invested in recurrent income-generating real estate, the aggregate investments in all property development projects (including uncompleted units), together with the combined value of all Relevant Investments, Non-qualified Minority-owned Properties and other ancillary investments of the REIT would be subject to the Maximum Cap of 25% of GAV at any time. This would serve to maintain the REIT's profile as primarily a recurrent rental income generating vehicle.
38. The additional unitholders' approval required to exceed the 10% GAV Cap, the Maximum Cap on total Non-core investments together with all existing governance and disclosure requirements applicable to investments in property development projects are considered appropriate safeguards for investor protection purposes.
39. Details of the proposed amendments to the REIT Code are set out in the Appendix to this paper.

**Question:**

6. Do you have any comment on the proposal to adjust the 10% GAV Cap and the safeguards imposed? Please explain your view.

## Borrowing limit

### Background

40. At present, the aggregate borrowings of a REIT shall not at any time exceed 45% of its GAV<sup>13</sup>. Despite the regulatory limit of 45%, Hong Kong REITs have generally maintained their gearing below 40% in order to maintain a prudent buffer to prepare for any adverse market conditions.
41. Some market participants have suggested that a slight relaxation of this borrowing limit could help facilitate further growth of Hong Kong REITs.

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<sup>13</sup> 7.9 of the REIT Code.

42. As Hong Kong REITs are required to distribute an amount not less than 90% of their audited annual net income after tax, REIT managers would generally have to raise additional funds to finance acquisitions. Common financing options include bank loans and issuing new units, debt or convertible instruments. Since many REITs' units are currently trading at a substantial discount to NAV, equity financing may have a dilution effect on unitholders. A slight relaxation of the borrowing limit would provide flexibility for REITs to make acquisitions to grow their portfolios and enhance their performance.
43. It was also pointed out that a higher borrowing limit would give REITs more flexibility to optimise their capital structures as debt tends to take less time to raise and can be a cheaper source of capital compared to equity. This flexibility is particularly important when a REIT is looking to acquire overseas assets from third parties, which appears to be the trend in recent years driven partly by the search for assets with higher yield spreads. Some of these acquisitions tend to involve a competitive bidding process and are highly time-sensitive.

### Proposals

44. While the need to provide more financing flexibility is noted, the SFC is also mindful of the nature of a REIT as a relatively low risk, income generating investment vehicle. On balance, it is proposed that the borrowing limit could be increased slightly from 45% to 50% of the GAV of a REIT. The proposed increase is also in line with the position in some comparable overseas jurisdictions<sup>14</sup>.
45. The proposed amendments<sup>15</sup> would clarify that where the borrowing limit is exceeded, solely as a result of a decline in property values or other reasons beyond the control of the REIT manager, the scheme would not be required to dispose of assets to pay off part of the borrowings where such disposal would be prejudicial to the interests of unitholders. However, no further borrowing will be permitted.
46. In calculating the borrowing limit, aggregate borrowings should include all funds borrowed by the REIT and its subsidiaries. Due to the wide array of financing structures and instruments available, REIT managers should consult the SFC if they are in any doubt as to the application of the requirements and we will have the power to require a REIT to aggregate particular liabilities for the purpose of calculating its aggregate borrowings under 7.9 of the REIT Code where appropriate.
47. Details of the proposed amendments to the REIT Code are set out in the Appendix to this paper.

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<sup>14</sup> For example, the leverage limit for Singapore REITs was raised from 45% to 50% on 16 April 2020 (subject to a minimum interest coverage ratio of 2.5 times with effect from 1 January 2022). The leverage limit for Malaysia REITs is 50%.

<sup>15</sup> Proposed amendments to Note (1) to 7.9 of the REIT Code.

**Question:**

7. Do you have any comments on the proposed increase of the borrowing limit from 45% to 50%? Do you think a higher borrowing limit above 50% should be allowed? Please explain your view. If you think a higher borrowing limit should be allowed, what should be the appropriate limit and what other conditions or safeguards (if any) should be imposed?

## **Connected party transactions and notifiable transactions**

### **Background**

48. It has been our long established policy to regulate REITs in the same manner as listed companies in view of their similarities in terms of economic nature and investors' interests. Accordingly, where appropriate, waivers have been granted to certain connected party transactions involving REITs on the same bases as those applicable to listed companies under the Listing Rules. Frequently asked questions have also been issued to clarify how some of the requirements apply to REITs.
49. However, there are a few differences in the definition of "connected persons" under the REIT Code and under the Listing Rules. There are also other technical differences due to the legal structure of a REIT is in trust form, the key operators such as the REIT manager and trustee are different from those of listed companies and the REIT's product nature.
50. For more certainty, market participants have suggested that the REIT Code requirements for connected party transactions and notifiable transactions be aligned with the Listing Rules as much as practicable.
51. In view of these comments, we have reviewed the current requirements applicable to REITs' connected party transactions and notifiable transactions.

### **Proposals**

#### *Connected party transactions*

52. Taking into account the comments received, we propose to amend the REIT Code to the effect that except to the extent specifically provided under the REIT Code or other guidance published by the SFC from time to time, all connected party transactions will be regulated with reference to requirements applicable to listed companies under the Listing Rules, including:
  - (a) whether a transaction is a connected party transaction;
  - (b) whether certain connected party transactions are continuing connected party transactions;

- (c) whether an exemption is available for the type of connected party transaction and the conditions for any such exemption;
  - (d) the unitholders' approval, disclosure, reporting and other requirements for a connected party transaction;
  - (e) the content requirements applicable to the announcements, circulars and annual reports to be issued in relation to connected party transactions; and
  - (f) where a transaction is a continuing connected party transaction, the annual review and other additional requirements applicable.
53. Amendments are also proposed to be made to the definition of "connected person" under the REIT Code to align with the Listing Rules.
54. We have set out in the REIT Code some modifications to the Listing Rules which would apply in the context of a REIT. REIT managers should consult the SFC at an early stage if they are in any doubt as to the application of these requirements.
55. As part of our review of the "connected person" definition in the REIT Code, we further propose to remove the Principal Valuer of a REIT and its affiliates as "connected persons" given that there are already robust requirements in the REIT Code for the independence of the Principal Valuer. This is in line with the position in most other comparable overseas jurisdictions<sup>16</sup>. We have also added an explanatory note to the independence requirements under the REIT Code to remind Principal Valuers to ensure compliance with all applicable ethical requirements under the valuation standards and full disclosure shall be made on all financial benefits received or receivable.
56. The SFC is mindful that there are currently connected party transactions pursuant to the constitutive documents of the REIT or underpinning the current structure of the REIT which may have subsisted since listing. Specific waivers were granted for these transactions at the time. REIT managers should note that for all existing connected party transactions entered into by REITs for which waivers have been granted, those waivers shall continue to apply until expiry according to their terms or they are otherwise modified or revoked. REIT managers should consult the SFC at an early stage if the relevant transaction is renewed, its terms are varied or where any existing waiver is close to expiry.

#### *Notifiable transactions*

57. We also propose to amend the REIT Code to the effect that except to the extent specifically provided under the REIT Code or other guidance published by the SFC from time to time, all notifiable transactions will be regulated with reference to requirements applicable to listed companies under the Listing Rules, including:
- (a) definition of "transaction";

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<sup>16</sup> For example, in Singapore and Malaysia, the property valuer of a REIT is not regarded as a "connected person" of the REIT.



- (b) classification of transactions;
- (c) notification, publication, shareholders' approval and other requirements;
- (d) whether any exemption is available; and
- (e) content requirements applicable to announcements and circulars to be issued in relation to notifiable transactions.

58. In line with our policy to align the disclosure requirements for REITs and listed companies, when considering whether an announcement has to be issued under the general disclosure obligation under 10.3 of the REIT Code, REIT managers should also have regard to the Guidelines on Disclosure of Inside Information issued by the SFC<sup>17</sup> and requirements applicable to listed companies under Chapter 13 of the Listing Rules. It is therefore generally expected that transactions and financing arrangements such as the pledging of units by controlling unitholder or breaches of loan agreement by the scheme should be disclosed. A note has been added in the proposed amendments to 10.3 of the REIT Code to this effect.
59. We would also like to take this opportunity to confirm our view that all proposed acquisitions or disposals of real estate should be announced. This transparency is important to investors in view of the nature of REITs. Accordingly, we propose to amend 10.4 of the REIT Code to make this clear subject to a de minimis exemption for transactions below 1% of GAV.

#### *General*

60. In line with the trustee's important oversight role and existing practice, we propose to make it clear in the REIT Code that in general, all announcements and circulars issued by a REIT should include the trustee's view on the subject matter. This is particularly important in the case of connected party transactions in respect of which the trustee has the duty to take all reasonable care to ensure that these transactions are carried out in accordance with Chapter 8 of the REIT Code<sup>18</sup>.
61. Announcements and circulars which do not relate to connected party transactions under Chapter 8 of the REIT Code or notifiable transactions under the proposed new 10.10A to 10.10D of the REIT Code shall continue to comply with the requirements under Chapter 10 of the REIT Code.
62. Details of the proposed amendments to the REIT Code are set out in the Appendix to this paper.

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<sup>17</sup> [Guidelines on Disclosure of Inside Information](#) issued by the SFC in June 2012.

<sup>18</sup> 4.2(h) of the REIT Code.

**Questions:**

8. Do you have any comments on the proposed amendments to the definition of “connected persons”? Please explain your view.
9. Do you agree with the proposal to align the connected party transactions and notifiable transactions requirements for REITs with the Listing Rules? Please set out your reasons.
10. Do you have any comments on the other proposed amendments to Chapter 8 and Chapter 10 of the REIT Code?

**Miscellaneous amendments**

63. We propose to make other miscellaneous amendments to the REIT Code, largely to better align requirements and codify existing practices, including:
- (a) to remove the limitation on the use of two layers of special purpose vehicles<sup>19</sup>;
  - (b) to include the public float requirement, which is currently an authorisation condition;
  - (c) to clarify when a REIT may engage another qualified valuer to value a particular property where its Principal Valuer is conflicted out<sup>20</sup>;
  - (d) to enable REIT managers to display documents required to be displayed for inspection<sup>21</sup> by posting these documents on their websites;
  - (e) to update the requirements regarding the trustee’s eligibility and independence<sup>22</sup> to align with other SFC product codes; and
  - (f) to clarify that the holding period under 7.8 of the REIT Code is only applicable to real estate held by the REIT.
64. Details of the proposed amendments to the REIT Code are set out in the Appendix to this paper.

**Question:**

11. Do you have any comments on the proposed miscellaneous amendments? Please explain your view.

<sup>19</sup> 7.5(d) of the REIT Code.

<sup>20</sup> Frequently Asked Questions relating to Real Estate Investment Trusts 26A.

<sup>21</sup> 5.2(f) and Note (1) to 6.8(g) of the REIT Code, B24 of Appendix B to the REIT Code.

<sup>22</sup> 4.3 to 4.5 and 4.9 of the REIT Code.

## **Other matters**

65. During our recent discussions with the industry, a question was raised as to whether Hong Kong REITs can adopt a stapled structure. In principle, a stapled structure may be adopted so long as similar governance and investor protection measures are in place. We note from other overseas jurisdictions that stapled structures take different forms. We welcome potential applicants to consult us on their product proposals.
66. Some market participants made suggested ways to develop the Hong Kong REITs market which are outside the SFC's remit. Our observations on some of these areas were set out in our last consultation paper<sup>23</sup>.

## **Implementation timeline**

67. The proposals set out in this paper will be subject to a two-month public consultation. Taking into account the respondents' comments, a consultation conclusions paper will be issued together with the proposed amendments to the REIT Code revised as appropriate, which will take immediate effect upon gazettal.
68. As the proposed amendments are mainly in line with existing practices or aim to provide more flexibility to REIT managers, a transition period before implementation is not considered necessary. However, REIT managers need to ascertain whether any amendments would have to be made to the constitutive documents of their REITs before undertaking any investment pursuant to these proposals if and when they are implemented. Changes to the constitutive documents require the approval of unitholders by way of special resolution.

**Question:**

12. Do you have any comments on the proposed implementation timeline?

## **Seeking comments**

69. The SFC welcomes comments from the public and the industry on the proposals made in this consultation paper and the indicative draft of the proposed amendments to the REIT Code as set out in the Appendix to this paper<sup>24</sup>. Please submit comments to the SFC in writing no later than 10 August 2020.

<sup>23</sup> The [Consultation Paper on Amendments to the Code on Real Estate Investment Trusts](#) issued by the SFC in January 2014.

<sup>24</sup> Additional amendments are proposed to 5.14, 5.17 and 9.7 of the Chinese version of the REIT Code to reflect the revised Chinese translation of the term "associate". No amendment is required in the English version.

## Proposed amendments to the REIT Code

### Chapter 2: Interpretation

- 2.1 “associate” bears the meaning as defined in Chapter 14A of the Listing Rules (modified as appropriate pursuant to 2.26)the SFO for “associate” of a person.
- 2.2 ~~“associated company” a company shall be deemed to be an associated company of another company if one of them owns or controls 20% or more of the voting rights of the other or if both are associated companies of another company. [deleted]~~
- 2.2A “chief executive” shall bear the meaning as defined in 8.1 of this Code.
- 2.3 “Code” means Code on Real Estate Investment Trusts issued by the Securities and Futures Commission.
- 2.4 “collective investment scheme” bears the meaning as stated in Schedule 1 of the SFO.
- 2.5 “Commission” or “SFC” refers to the Securities and Futures Commission as stated in section 3 of the SFO.
- 2.6 “Committee” means the Committee on REITs.
- 2.7 “connected persons” shall bear the meaning as defined in Chapter 88-4 of this Code.
- 2.8 “constitutive documents” means the principal documents governing the formation of the scheme, and includes the trust deed and all material agreements.
- 2.9 ~~“controlling unitholder entity” shall have the same meaning as “controlling shareholder” as defined under the Listing Rules (modified as appropriate pursuant to 2.26) bears the meaning as defined in the SFO for “controlling entity”, other than (a)(ii) in its definition.~~
- 2.10 “dividend reinvestment plan” means an automatic reinvestment of holders’ dividends in more units of a scheme.
- 2.11 “Exchange” means The Stock Exchange of Hong Kong Limited.
- 2.12 “holder” in relation to a unit in a scheme means the person who is entered in the register as the holder of that unit.
- 2.13 “Institute” means The Hong Kong Institute of Surveyors.
- 2.13A “joint venture entity” means an entity or any partnership or other arrangement in which or through which a scheme invests in any jointly owned property as contemplated under 7.7A of this Code and it may be majority-owned or minority-owned by the scheme.
- 2.13B “Listing Rules” shall mean the Rules Governing the Listing of Securities on The Stock Exchange of Hong Kong Limited (as amended from time to time).
- 2.14 “management company” means the entity appointed for a scheme pursuant to Chapter 5 of this Code and includes its delegates where applicable.

- 2.14A “Maximum Cap” shall bear the meaning as defined in 7.2C of this Code.
- 2.14B “Minority-owned Properties” shall bear the meaning as defined in 7.7B of this Code.
- 2.14C “Non-qualified Minority-owned Properties” shall bear the meaning as defined in 7.7D of this Code.
- 2.14D “notifiable transaction” shall bear the meaning as defined in the Listing Rules (modified as appropriate pursuant to 2.26).
- 2.15 “offering document” means the document, or documents issued together, containing information on a scheme to invite the public to buy units in the scheme.
- 2.16 “ordinary resolution” by holders of a scheme means a resolution passed by a simple majority of the votes of those present and entitled to vote in person or by proxy at a duly convened meeting and the votes shall be taken by way of a poll.
- 2.16A A “Property Development and Related Activities” refers to the acquisition of uncompleted units in a building by the scheme and property developments (including both new development projects and re-development of existing properties) undertaken in accordance with Chapter 7 in this Code.
- 2.16B “Property Development Cap” shall bear the meaning as defined in 7.2A of this Code.
- 2.17 “property valuer” or “Principal Valuer” refers to the property valuer appointed to a scheme pursuant to Chapter 6 of this Code.
- 2.17A “Qualified Minority-owned Properties” shall bear the meaning as defined in 7.7C of this Code.
- 2.18 “real estate” or “property” refers to land or buildings, whether the interest is a freehold or leasehold interest, and includes carparks and assets incidental to the ownership of real estate (e.g. fittings, fixtures, etc).
- 2.18A “Relevant Investments” shall bear the meaning as defined in 7.2B of this Code.
- 2.19 “REIT” shall be a scheme authorised by the Commission under this Code.
- 2.20 “scheme” means a REIT authorised under this Code.
- 2.20AA “scheme’s group” means the scheme and its subsidiaries, or any of them.
- 2.20A “SFO” means the Securities and Futures Ordinance (Cap. 571).
- 2.21 ~~“significant holder” bears the meaning as defined under 8.1 of this Code.~~[deleted]
- 2.22 “special purpose vehicles” or “SPVs” means the special purpose vehicles that are owned and controlled by a scheme in accordance with this Code.
- 2.23 “special resolution” by holders of a scheme may only be passed by 75% or more of the votes of those present and entitled to vote in person or by proxy at a duly convened meeting and the votes shall be taken by way of a poll.
- 2.23A “subsidiary” shall bear the meaning as defined in the Listing Rules (modified as appropriate pursuant to 2.26).

2.24 “substantial financial institution” means an authorized licensed banking institution as defined in section 2(1) of the Banking Ordinance (Chapter 155 of the Laws of Hong Kong) or a financial institution which is subject to prudential regulation and supervision on an ongoing basis, with a minimum net asset value paid-up capital of HK\$2 billion 150,000,000 or its equivalent in foreign currency.

2.24AA “substantial holder” bears the meaning as defined under 8.1 of this Code.

2.24A “Takeovers Code” means ~~the~~ The Codes on Takeovers and Mergers and Share Buy-backs Repurchases issued by the Commission (as amended from time to time).

2.25 “trustee” means the entity appointed pursuant to Chapter 4 of this Code.

2.26 Where references are made to the requirements under the Listing Rules, unless the context otherwise requires, the following modifications shall apply in the context of a scheme:

- (a) references to the “listed issuer” shall be construed as references to the scheme;
- (b) references to the “directors” of the listed issuer shall be construed as references to the directors of the management company;
- (c) references to the “board of directors” shall be construed as references to the board of directors of the management company;
- (d) references to “controlling shareholders” shall be construed as references to “controlling unitholders”;
- (e) references to “general mandate” shall be construed as references to the 20% general mandate contemplated under 12.2 of this Code;
- (f) references to “listed public companies” shall be construed to include REITs;
- (g) references to “listed issuer’s group” shall be construed as references to the scheme’s group;
- (h) references to “shares” in relation to a listed issuer, shall be construed as references to units of a scheme;
- (i) references to “shareholders” shall be construed as references holders of the units of a scheme;
- (j) references to “substantial shareholder” shall be construed as references to “substantial holder” as defined in 8.1 of this Code;
- (k) “close associates” shall bear the same meaning as defined in the Listing Rules (modified as appropriate pursuant to this 2.26);
- (l) save in relation to matters pertaining to the listing or trading of the units of a scheme on the Exchange, the Commission shall replace the Exchange in exercising the various discretion and powers in administering the requirements, including but not limited to those in relation to granting waivers, relaxing the application of any requirement, making determination (such as classification of transactions, application of certain requirements, whether transactions shall be aggregated,

whether to deem certain persons as connected persons, whether to accept a written holders' approval and whether a group of holders shall be regarded as a "closely allied group of holders"), requiring any holder and his close associates to abstain from voting and imposing additional requirements;

- (m) in view of (l) above, the Commission shall replace the Exchange as the party with whom the management company of the scheme shall contact and consult to, for example, provide notifications, seek guidance, obtain prior consent or approval, provide relevant information and document to demonstrate compliance and make relevant applications; and
- (n) if there is any inconsistency between the requirements in this Code or any guidelines issued by the Commission from time to time on one hand and the requirements in the Listing Rules on the other hand, the former shall prevail.

Note: The management company should consult the Commission at an early stage if it is in any doubt as to the application of the relevant requirements.

## Chapter 3: Basic Requirements for the Authorisation of a REIT

### Requisite Conditions for REIT Authorisation

3.7 There shall be an open market in the units of a REIT. This will normally mean that at least 25% of the total issued and outstanding units of the scheme must at all times be held by the public.

Notes: (1) The management company shall promptly inform the Commission when it becomes aware that such percentage has fallen below 25% and use its best efforts to restore it to such minimum level as soon as practicable. Where a scheme is the subject of a general offer under the Takeovers Code (including a privatisation offer), the Commission may consider allowing such percentage to fall below 25% temporarily for a reasonable period after the close of the general offer. The scheme must restore the minimum percentage of unit in public hands immediately after the expiration of such temporary period.

(2) In considering who will be regarded as a member of "the public", reference should be made to the requirements applicable to listed companies under the Listing Rules (modified as appropriate pursuant to 2.26) to the extent appropriate and practicable except as otherwise provided in this Code or the guidelines issued by the Commission from time to time.

## Chapter 4: Trustee

### General Obligations of Trustee

4.2 The trustee shall:

- (o) be responsible for the appointment of the ~~board of directors~~ of all special purpose vehicles and joint venture entities to be appointed held by the scheme.

## Criteria for Acceptability of a Trustee

4.3 A trustee shall be:

- (a) a bank licensed under Section 16 of the Banking Ordinance (Chapter 155 of Laws of Hong Kong); or
- (b) a trust company registered under Part VIII of the Trustee Ordinance (Chapter 29 of the Laws of Hong Kong) which is a subsidiary of such a bank or a banking institution falling under 4.3(c) below; or

*Note: In determining the acceptability of a subsidiary of a banking institution falling under 4.3(c), the Commission will take into account factors including the level of oversight and supervision from such banking institution.*

- (c) a banking institution ~~or trust company~~ incorporated outside Hong Kong which is subject to prudential regulation and supervision on an ongoing basis, or an entity which is authorized to act as trustee/custodian of a scheme and prudentially regulated and supervised by an overseas supervisory authority acceptable to the Commission.

4.4 A trustee shall be independently audited and shall have minimum ~~issued and~~ paid-up share capital and non-distributable capital reserves of HK\$10 million or its equivalent in foreign currency.

4.5 Notwithstanding 4.4 above, the trustee's paid-up share capital and non-distributable capital reserves may be less than HK\$10 million if the trustee is a wholly-owned subsidiary of a substantial financial institution (the "holding company") acceptable to the Commission; and

- (a) the holding company issues a standing commitment to subscribe sufficient additional capital in the trustee up to the required amount, if so required by the Commission; or
- (b) the holding company undertakes that it will not let its wholly-owned subsidiary default and will not, without prior approval of the Commission, voluntarily dispose of, or permit the disposal or issue of any share capital of the trustee such that the trustee ceases to be a wholly-owned subsidiary of the holding company.

4.6 The trustee shall:

- (a) possess key personnel with the knowledge, organizational resources and experience relevant to the holding of real estate under a scheme that operates in a manner similar to that of a scheme authorised under this Code; or
- (b) belong to a corporate group that:
  - (i) is of good repute;
  - (ii) has acted as trustees for REITs or schemes of similar nature in overseas jurisdictions; and
  - (iii) is able to provide the trustee with adequate support in all material aspects to enable the trustee to discharge its functions in relation to the scheme.



### Retirement of Trustee

- 4.7 The trustee shall not retire except upon the appointment of a new trustee whose appointment has been subject to the prior approval of the Commission. The retirement of the trustee shall take effect at the same time as the new trustee takes up office.

### Independence of Trustee

- 4.8 The trustee and the management company shall be independent of each other.
- 4.9 Notwithstanding 4.8 above, if the trustee and the management company are both corporations having the same ultimate holding company, whether incorporated in Hong Kong or outside Hong Kong, the trustee and the management company are deemed to be independent of each other if:
- (a) ~~they are both subsidiaries of a substantial financial institution;~~~~[deleted]~~
  - (b) neither the trustee nor the management company is a subsidiary of the other;
  - (c) no person is a director of both the trustee and the management company;
  - (d) both the trustee and the management company sign an undertaking that they will act independently of each other in their dealings with the scheme; and

*Note: Among other things, there should be systems and controls in place to ensure that persons fulfilling the custodial function / safekeeping of the scheme's assets are functionally independent from persons fulfilling the scheme's management functions, for example, with an independent board, separate governance structure / lines of reporting to the management of the trustee and separate operational teams within the same corporate group.*

- (e) the ultimate holding company of the trustee and the management company submits a declaration and an undertaking to the Commission that the trustee and the management company are, and that the ultimate holding company shall ensure that they continue to be, independent of each other, except as regards their relationship with each other as member companies in the same group.

## Chapter 5: Management Company, Auditor, Listing Agent and Financial Adviser

### General Obligations of a Management Company

- 5.2 A management company shall:
- (f) ensure that all documents in relation to the scheme, (including those in relation to its listing but excluding such documents containing commercially sensitive information) are made available for inspection by the public in Hong Kong, free of charge at all times on the scheme's website or during normal office hours at the place of business of the management company and that of the approved person during normal office hours; and ensure that copies of such documents are available upon request by any person upon the payment of a reasonable fee;

- 5.13 The management company shall disclose to holders of the scheme of the name of any substantial ~~significant~~ holder with which it has a relationship, and the nature of such relationship.

## Chapter 6: Property Valuer

### Appointment of a Principal Valuer

- 6.1 Every scheme for which authorisation is requested shall appoint an independent property valuer (the “Principal Valuer”), in accordance with 6.4.

*Note: The agreement for such appointment shall clearly list the obligations and length of tenure of the Principal Valuer as set out in this Chapter.*

### General Obligations of a Principal Valuer

- 6.2 The Principal Valuer shall value all the real estate held under the scheme, on the basis of a full valuation with physical inspection in respect of the site of the real estate and an inspection of the building(s) and facilities erected thereon once a year, and in any event for the purposes of issuance of new units. The Principal Valuer shall also produce a valuation report on real estate to be acquired or sold by the scheme or where new units are offered by the scheme or in any other circumstances prescribed by the Code. The contents of the valuation report shall comply with 6.8.

*Note: The Principal Valuer may appoint a competent business valuer or other qualified valuer to assist in preparing the valuation of a Minority-owned Property taking into account any impact or implications the specific ownership structure or any relevant divestment or other restrictions may have on the value of the property.*

- 6.3 The valuation methodology shall follow the HKIS Valuation Standards ~~“Valuation Standards on Properties”~~ published from time to time by the Hong Kong Institute of Surveyors or the International Valuation Standards issued from time to time by the International Valuation Standards Council. Once adopted, the same valuation standards shall be applied consistently to all valuations of properties of the same REIT.

### Criteria for Acceptability of the Principal Valuer

- 6.4 The Principal Valuer shall be a company that:
- (a) provides property valuation services on a regular basis;
  - (b) carries on the business of valuing real estate in Hong Kong;
  - (c) has key personnel who are fellows or members of the Hong Kong Institute of Surveyors or the Royal Institution of Chartered Surveyors (Hong Kong Branch) and who are qualified to perform property valuations;
  - (d) has sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities; in particular, it shall have a minimum issued and paid-up capital and capital reserves of HK\$1 million or its equivalent in foreign currency, and its assets shall exceed its liabilities by HK\$1 million or more as shown in the company’s last audited balance sheet;

- (e) has robust internal controls and checks and balances to ensure the integrity of valuation reports and that these reports are properly and professionally prepared in accordance with international best practice; and
- (f) has adequate professional insurance to cover its usual risks.

6.5 The Principal Valuer shall be independent of the scheme, the trustee, the management company and each of the ~~substantial-significant~~ holders of the scheme. The Principal Valuer is not considered independent if:

- (a) it is the subsidiary or holding company of:
  - (i) the management company of the scheme;
  - (ii) the trustee of the scheme;
  - (iii) any of the ~~substantial-significant~~ holders of the scheme; or
  - (iv) ~~the holding company, subsidiary or associated company~~ an associate of the scheme's management company, the scheme's trustee, or any of the ~~substantial-significant~~ holders of the scheme; or
- (b) any of its partners, directors or officers is an officer, servant, director or an associate of:
  - (i) the management company of the scheme;
  - (ii) the trustee of the scheme;
  - (iii) any of the ~~substantial-significant~~ holders of the scheme; or
  - (iv) ~~the holding company, subsidiary or associated company~~ an associate of the scheme's management company, trustee or any of its ~~substantial-significant~~ holders; or
- (c) any of its directors or officers holds or controls 10% or more of the beneficial interest in, or the right to vote in the governing bodies of, any of the entities in (b)(i), (b)(ii), (b)(iii) or (b)(iv); or
- (d) in the case where the scheme intends to acquire or dispose of a property (the "subject property"), the valuer or its associate:
  - (i) is engaged whether as principal or agent by the scheme's counterparty that intends or has agreed to sell to or purchase from the scheme the subject property, in relation to the introduction or referral of the scheme to the subject property or vice versa;
  - (ii) is engaged whether as principal or agent by the scheme in relation to the acquisition of the subject property;
  - (iii) acts as a broker for the property transaction for a fee; or
  - (iv) had, at any time during the one year immediately before the date of the agreement for such intended purchase or disposal, been retained to provide valuation of the subject property to the scheme's counterparty (or its ~~associates~~ companies).

Notes: (1) In the circumstances described in 6.5(d), the management company may appoint another qualified valuer to conduct valuation of the subject property provided that such valuer satisfies the acceptability criteria under 6.4 to 6.7 and the valuation report complies with the relevant requirements under 6.8 to 6.9. The management company should consult the Commission at the earliest opportunity should the appointment of another qualified valuer be necessary for any reasons.

(2) In determining its independence or whether there is any actual or potential conflict of interests, the Principal Valuer should ensure compliance with all applicable ethical requirements under the valuation standards published from time to time by the Hong Kong Institute of Surveyors or the International Valuation Standards Council. It is also expected to put in place proper safeguards and measures to manage or minimise any actual or potential conflict of interests that may arise. In particular, there shall be full disclosure to the scheme of all financial benefits received or receivable by the Principal Valuer or its associates for the relevant engagement.

- 6.6 The Principal Valuer shall ensure that its opinion and valuation is independent of and unaffected by its business or commercial relationship with other persons.

#### *Qualifications of Directors*

- 6.7 The directors of the Principal Valuer shall be persons of good repute who possess the necessary experience for the performance of their duties.

### **Valuation Report**

- 6.8 The Principal Valuer shall produce a valuation report which shall include as a minimum:

- (a) all material details in relation to the basis of valuation and the assumptions used;
- (b) describe and explain the valuation methodologies adopted;
- (ba) overall structure and condition of the relevant market including an analysis of the supply/demand situation, the market trend and investment activities;
- (c) the following particulars in respect of each property, such as:
  - (i) an address sufficient to identify the property, which shall generally include postal address, lot number and such further designation as is registered with the appropriate government authorities;
  - (ii) the nature of the interest the scheme holds in the property (e.g. if it is a freehold or leasehold, and the remainder of the term if it is a leasehold);
  - (iii) the existing use (e.g. shops, offices, factories, residential, etc.);
  - (iv) a brief description of the property, such as the age of the building, the site area, gross floor area, net lettable floor area, and the current zoning use;
  - (v) the options or rights of pre-emption and other incumbrances concerning or affecting the property;
  - (vi) the occupancy rate;
  - (vii) lease cycle duration;
  - (viii) lease expiry profile;
  - (ix) a summary of the terms of any sub-leases or tenancies, including repair obligation, granted to the tenants of the property;
  - (x) the capital value in existing state at the date the valuation was performed;
  - (xi) the existing monthly rental before profits tax if the property is wholly or partly let together with the amount and a description of any outgoings or disbursements from the rent, and, if materially different, the estimated current monthly market rental obtainable, on the basis that the property was available to let on the effective date as at which the property was valued;
  - (xii) the estimated current net yield;
  - (xiii) a summary of any rent review provisions, where material;
  - (xiv) the amount of vacant space, where material;

- (xv) material information regarding the title of the subject property as contained in the relevant legal opinion, and a discussion as to whether any and how the legal opinions have been taken into consideration in the valuation of the relevant property; and
  - (xvi) any other matters which may affect the property or its value;
- (d) particulars (as set out in (c)) of any real estate for which the scheme has an option to purchase;
  - (e) a letter stating the independent status of the valuer and that the valuation report is prepared on a fair and unbiased basis;
  - (f) a discussion of the valuation methodology and assumptions used, and justification of the assumptions; and
  - (g) an explanation of the rationale for choosing the particular valuation method if more than one method is adopted.

*Notes: (1) Where a valuation report is allowed by the Commission to be published in summary form, the full valuation report shall be made available for inspection at an address in Hong Kong or on the scheme's website. A statement has to be made in the published report to this effect.*

*(2) Where a legal opinion is required, such opinion together with copies of any document referred to therein shall be made available to the Principal Valuer and the relevant overseas valuer, if any, engaged in the valuation of the relevant property prior to the completion of the valuation report.*

6.9 Whenever a valuation report is prepared for the scheme, the date of the valuation report shall be:

- (a) the date the scheme is valued, if such report is prepared for the purpose of calculating the net asset value of the scheme; or
- (b) a date which is not more than three months before the date on which:
  - (i) an offering document is issued; or
  - (ii) a circular is issued, if the circular relates to a transaction that requires holders' approval; or
  - (iii) a sale and purchase agreement (or other agreement to transfer legal title) is signed, if the transaction does not require holders' approval.

*Note: Where the date of the valuation report precedes the end of the last period reported on by the auditor, it will be necessary for the offering document or circular to include a statement reconciling the valuation figure with the figure included in the balance sheet as at the end of the period in the event the two figures are different.*

### **Retirement of the Principal Valuer**

6.10 The Principal Valuer shall retire after it has conducted valuations of the real estate of the scheme for three consecutive years. Furthermore, the same valuer may only be re-appointed after another three years.

6.11 The Principal Valuer shall be subject to removal by notice in writing from the trustee in any of the following events:

- (a) the Principal Valuer goes into liquidation, becomes bankrupt or has a receiver appointed over its assets; or
- (b) for good and sufficient reason, the trustee states in writing that a change in the Principal Valuer is desirable in the interests of the holders; or
- (c) an ordinary resolution is passed by the holders to dismiss the Principal Valuer.

*Notes: The following persons shall abstain from voting:*

- (i) *the Principal Valuer;*
- (ii) *directors, ~~senior executives or officers~~ and chief executive of the Principal Valuer;*
- (iii) *associates of the persons in (ii); and*
- (iv) *~~controlling entity, holding company, subsidiary or associated company~~ associates of the Principal Valuer.*

- 6.12 In addition, the Principal Valuer shall retire in all other cases provided for in the constitutive documents.
- 6.13 Upon the retirement or dismissal of the Principal Valuer, the trustee shall appoint a new Principal Valuer that meets the qualification requirements of this Chapter.

## Chapter 7: Investment Limitations and Dividend Policy

### Core Requirements

- 7.1 The scheme shall primarily invest in real estate.

*Notes: (1) The real estate shall generally be income-generating. At least 75% of the gross asset value of the scheme shall be invested in real estate that generates recurrent rental income at all times.*

*(2) The scheme may acquire uncompleted units in a building which is unoccupied and non-income producing or in the course of substantial development, redevelopment or refurbishment, but subject to 7.2AA and 7.2C (a) the aggregate contract value of such real estate together with (b) the Property Development Costs described in 7.2A below shall not exceed 2540% of the gross asset value of the scheme at the maximum at any time. The aggregate contract value referred to under (a) above shall comprise all costs associated with the acquisition pursuant to the contracts entered into for such purpose.*

*(3) The offering document shall clearly disclose if the scheme intends to acquire further properties during the first 12 months from listing.*

- 7.2 The scheme is prohibited from investing in vacant land unless the management company has demonstrated that such investment is part-and-parcel of the property development which may be undertaken pursuant to 7.2A below and within the investment objective or policy of the scheme.
- 7.2A A scheme shall not engage or participate in Property Development and Related Activities unless the aggregate investments in all property developments undertaken by the scheme (“Property Development Costs”), together with the aggregate contract value of

the uncompleted units of real estate acquired pursuant to Note (2) to 7.1 above, shall not exceed 10% of the gross asset value (~~“10% GAV Cap”~~) of the scheme at any time. This cap may be increased provided that the conditions in 7.2AA below are satisfied (“Property Development Cap”). For this purpose, investment in Property Development and Related Activities do not include refurbishment, retrofitting and renovations.

*Notes: (1) Property Development Costs refers to the total project costs borne and to be borne by the scheme, inclusive of the costs for the acquisition of land (if any), and the development or construction costs and financing costs. The upfront calculation of Property Development Costs and where necessary any subsequent increase should be based on a fair estimate made by the management company in good faith and supported by the opinion of an independent expert acceptable to the Commission.*

- (2) The management company is expected to include a prudent buffer in line with best industry standards and practice to cater for cost overruns that may arise during the course of development.*
- (3) Any decision made by the management company to invest in Property Development and Related Activities must be made solely in the best interests of unitholders.*
- (4) The investments in Property Development and Related Activities should not result in a material change in the overall risk profile of the scheme.*
- (5) To invest in Property Development and Related Activities, the management company must have the requisite resources, competence, expertise, effective internal controls and risk management system for conducting such investments or activities.*
- (6) Generally, the management company is expected to consult the trustee and issue an announcement to inform unitholders upon the scheme entering into a contract to invest in Property Development and Related Activities and to provide periodic updates in the interim and annual reports of the scheme. The management company shall ensure that all material information concerning these property development investments and related activities is set out in such announcements and periodic updates. The periodic updates shall also include the extent, in percentage terms, to which the Property Development Cap~~10% GAV Cap~~ has been applied. Such disclosure in the annual reports shall be reviewed by the audit committee of the management company.*

7.2AA Subject to 7.2C below, the Property Development Cap may be increased from 10% of the gross asset value of the scheme to up to 25% of the gross asset value of the scheme at any time provided that:

- (a) holders’ have given their consent to such increase by way of resolution at a general meeting;
- (b) the increase is permitted and effected pursuant to the constitutive documents of the scheme; and
- (c) trustee’s consent has been obtained.

7.2B The scheme may, subject to 7.2C below and the provisions in its constitutive documents, invest in the following financial instruments (“Relevant Investments”):

- a. securities listed on the Exchange or other internationally recognized stock exchanges;
- b. unlisted debt securities;
- c. government and other public securities; and
- d. local or overseas property funds;

provided that:

- (i) the value of a scheme’s holding of the Relevant Investments issued by any single group of companies would not exceed 105% of the gross asset value of the scheme;
- (ii) the Relevant Investments should be sufficiently liquid, could be readily acquired/ disposed of under normal market conditions and in the absence of trading restrictions, and has transparent pricing; and
- (iii) at least 75% of the gross asset value of a scheme shall be invested in real estate that generates recurrent rental income at all times.

Notes: (1) ~~The combined value of the Relevant Investments, together with other non-real estate assets of the scheme, when aggregated with (a) all of the Property Development Costs pursuant to 7.2A and (b) the aggregate contract value of the uncompleted units of real estate acquired pursuant to Note (2) to 7.1, should not exceed 25% of the gross asset value (“Maximum Cap”) of the scheme at any time. The management company is expected to manage the Relevant Investments and monitor them on an on-going basis to ensure that the Maximum Cap should be observed. Hedging instruments for genuine hedging purpose as well as real estate related assets (e.g. plant and equipment) included as part of the real estate of the scheme in its valuation and financial statements may be disregarded as “other non-real estate assets” above.~~ [Deleted]

(2) To provide transparency on the Relevant Investments which may be made by a scheme, the management company shall publish the full investment portfolio of the Relevant Investments of the scheme with key information relevant to such Relevant Investments (e.g. credit ratings of the instruments invested, if applicable) on its website on an ongoing basis which shall be updated monthly within five business days of each calendar month end. The annual and interim reports of the schemes shall also include such information together with the extent, in percentage terms, to which the Maximum Cap has been applied. Such disclosure in the annual reports shall be reviewed by the audit committee of the management company.

(3) Investments in the Relevant Investments should not result in any material change in the overall risk profile of the scheme. Accordingly, it is generally expected that management companies should not invest in any high risk, speculative, or complex financial instruments, structured products or enter into any securities lending, repurchase transactions or other similar over-the-counter transactions. In assessing the risks involved, the management



*company should take into account all relevant factors including but not limited to the creditworthiness of the issuer of the Relevant Investments. The management company should also monitor these investments on an ongoing basis to ensure compliance with all applicable requirements.*

- (4) *The Relevant Investments of the scheme must be independently and fairly valued on a regular basis in accordance with the scheme's constitutive documents, in consultation with the trustee. In particular, valuation of the Relevant Investments should be made in accordance with applicable accounting standards adopted for preparing the scheme's financial statements as well as best industry standards and practice.*

7.2C The combined value of:

- (a) all Relevant Investments under 7.2B;
- (b) all Minority-owned Properties other than Qualified Minority-owned Properties under 7.7C;
- (c) other ancillary investments of the scheme; and
- (d) all of the Property Development Costs pursuant to 7.2A and 7.2AA together with the aggregate contract value of the uncompleted units of real estate acquired pursuant to Note (2) to 7.1,

shall not exceed 25% of the gross asset value ("Maximum Cap") of the scheme at any time. The management company shall manage these investments on an on-going basis to ensure that the Maximum Cap should be observed.

Notes: (1) Financial instruments for genuine hedging purpose, bank deposits, as well as real estate related assets (e.g. plant and equipment) included as part of the real estate of the scheme in its valuation and financial statements may be disregarded as "other ancillary investments" above.

(2) The aggregate value of a scheme's holding in all other ancillary investments shall not exceed 10% of the gross asset value of the scheme at any time.

7.3 A scheme shall not lend, assume, guarantee, endorse or otherwise become directly or contingently liable for or in connection with any obligation or indebtedness of any person nor shall it use any assets of the scheme to secure the indebtedness of any person nor shall it use any assets of the scheme to secure any obligations, liabilities or indebtedness without the prior written consent of the trustee.

7.4 A scheme shall not acquire any asset which involves the assumption of any liability that is unlimited.

### **Use of Special Purpose Vehicles**

7.5 The scheme may hold real estate through special purpose vehicles only if:

- (a) the special purpose vehicles are legally and beneficially owned by the scheme;
- (aa) the scheme has majority ownership and control of the special purpose vehicles;

*Note: The Commission expects the special purpose vehicles to be wholly owned by the scheme, except in special and limited circumstances, such as the need to comply with regulatory requirements in an overseas jurisdiction where such requirements are relevant to the scheme and/or its portfolio.*

- (b) the special purpose vehicles are incorporated in jurisdictions which have established laws and corporate governance standards which are commensurate with those observed by companies incorporated in Hong Kong;
- (c) ~~there is either:~~
  - ~~(i) one layer of special purpose vehicles which are established for the sole purpose of directly holding real estate for the scheme and/or arranging financing for the scheme; or~~
  - ~~(ii) two layers of special purpose vehicles, comprising a top layer special purpose vehicle which is formed solely for the purpose of holding interests in one or more special purpose vehicles described in (i);~~
- (d) ~~[deleted]~~ the scheme has no more than two layers of special purpose vehicles;

~~*Note: Additional layer(s) of special purpose vehicles may be allowed by the Commission under limited circumstances, such as where the management company could demonstrate to the Commission's satisfaction that the arrangement is necessary for the purpose of meeting the legal or regulatory requirements of an overseas jurisdiction or in special situations with valid justifications.*~~

- (e) neither the memorandum or articles of association or equivalent constitutional documents of the special purpose vehicles nor the organization, transactions or activities of such vehicles shall under any circumstance contravene any requirements of this Code;
- (f) ~~the board of~~ directors of each of the special purpose vehicle and joint venture entity to be appointed by the scheme shall be appointed by the trustee of the scheme; and
- (g) both the scheme and the special purpose vehicles shall appoint the same auditor and adopt the same accounting principles and policies.

*Note: Where the scheme invests in hotels, recreation parks or serviced apartments, such investments shall be held by special purpose vehicles or joint venture entities.*

7.6 If the scheme acquires real estate through the acquisition of a special purpose vehicle, the following shall be complied with for the purpose of the purchase:

- (a) a report made by accountants (who shall be named in the offering document or circular) shall be prepared on:
  - (i) the profit and loss of the special purpose vehicle in respect of each of the three financial years (or such other shorter period as appropriate) immediately preceding the transaction; and
  - (ii) the assets and liabilities of the special purpose vehicle as at the last date (which cannot be more than 6 months old from the date of the report) to which the accounts of the special purpose vehicle were made up;

*Note: The accountant shall be qualified under the Professional Accountants Ordinance for appointment as auditor of a company and shall not be an officer or servant, or a partner of or in the employment of an officer or servant, of the special purpose vehicle or of the vehicle's subsidiary or holding company or of a subsidiary of the vehicle's holding company; and the expression "officer" shall include a proposed director but not an auditor.*

- (b) the report required under (a) shall:
  - (i) indicate how the profits and losses of the special purpose vehicle would, in respect of the shares to be acquired, have concerned the scheme, if the scheme had at all material times held the shares to be acquired; and
  - (ii) where the special purpose vehicle has subsidiaries, deal with the profits or losses and the assets and liabilities of the special purpose vehicle and its subsidiaries, either as a whole, or separately; and
- (c) a valuation report in respect of the special purpose vehicle's interest in real estate shall be prepared, and such report shall comply with the requirements set out in Chapter 6.

7.7 The scheme shall hold good marketable legal and beneficial title in all its real estate, whether directly, ~~or via a special purpose vehicles controlled by the scheme~~ or via a joint venture entity. ~~However, the scheme may hold such title whether as joint tenants or tenants-in-common with one or more third parties provided that the scheme shall hold majority interest and control and the scheme has freedom to dispose of its interest (subject to complying with applicable requirement of this Code).~~

### Joint Ownership Arrangement

7.7A ~~The management company~~ scheme may invest in jointly owned properties via a joint venture entity. ~~shall ensure that the scheme has majority (more than 50%) ownership and control in each property at all times.~~ In making any such investment, the management company shall comply with the following conditions:

- (a) the management company shall be able to demonstrate that such joint ownership arrangement (including the decision of owning less than a 100% interest in the property) is in the best interests of the holders;
- (b) a legal opinion stating that the scheme will have a good and marketable legal and beneficial interest in the property;
- (c) the legal opinion on the arrangement shall include:
  - (i) ~~a description of the significant terms of the joint ownership arrangement;~~~~[deleted]~~
  - (ii) ~~a description of the equity and profit sharing arrangements of the parties to the agreement;~~~~[deleted]~~
  - (iii) a legal opinion that the relevant contract and joint ownership arrangements are legal, valid, binding and enforceable under applicable law; and
  - (iv) a statement that all necessary licences and consents required in the location where the subject property is located have been obtained by the scheme or the joint venture entity. ~~its SPV; and~~

- (v) ~~any restriction on divestment by the scheme of its interest, in whole or in part, in the property (including matters such as valuation, right of first refusal, lock-up periods, etc)-[deleted]~~

Notes: (1) *The management company shall ensure that proper due diligence is conducted in identifying restrictions and constraints that may limit a scheme's direct ownership of a 100% interest in a property.*

(2) *The liability of or assumed by a scheme shall not exceed the percentage of its interest in the joint ownership arrangement and there shall be no assumption of unlimited liability by the scheme.*

(3) *The management company shall disclose to investors (whether in the offering document, circular or announcements to investors/holders, as the case may be):*

- (a) *the ownership structure of the property interest and the material terms of the joint ownership arrangement thereof, including the equity and profit sharing arrangements, any restrictions on divestments as described in 7.7A(c)(v) by the scheme of its interest (in whole or in part) in the property (including matters such as right of first refusal, lock-up periods etc.) and the impact or implication of such restrictions on the divestment value of the interest in the property;*
- (b) *the identity, background and ownership of the remaining ~~legal and beneficial~~ owners in the property, transactional history of these owners with the scheme in relation to the property and their relationship with any connected persons to the scheme of the joint ownership arrangement;*
- (c) *financial, remuneration, fee-sharing or other material arrangements that have been or will be entered into between the scheme and the other owners of that property or their associates;*
- (d) *the management company's analysis of the advantages and disadvantages of investing in that overseas property via this type of ownership structure;*
- (e) *a summary of the contents of the legal opinion in relation to the property;*
- (f) *management company's analysis of the financial impact of such acquisition arrangement;*
- (g) *the source of funding of the property investment;*
- (h) *where appropriate:*
  - (i) *the nature of restrictions on foreign ownership and the duration of them, and the impact of such restrictions on the operations and financial position of the scheme as a whole;*
  - (ii) *the relevant legal opinion on the application of the overseas rules and regulations that are prohibitive on a scheme to obtain full ownership in the property; and*
  - (iii) *the valuer's opinion and evaluation of the impact of such prohibitions on the value of the property; and*
- (i) *any other information which may be material for holders to appraise the property investment relevant to an investor/holder.*

7.7B The scheme may invest in jointly owned properties in which the scheme will not have majority (more than 50%) ownership and control (“Minority-owned Properties”).

Notes: (1) For the avoidance of doubt, wholly or majority-owned units or floors in a building or complex would not be regarded as Minority-owned Properties.

(2) While it is generally expected that there is alignment between ownership and control, a substance over form approach would be adopted in considering whether the scheme has majority ownership and control in a property.

7.7C Where a Minority-owned Property can satisfy the following overarching principles and specific conditions (a “Qualified Minority-Owned Property”), it may be excluded from the calculation of the Maximum Cap under 7.2C subject to the Commission’s approval.

Overarching principles

- (a) Investment in such property is in line with the scheme’s investment strategy and objectives and in the best interests of the holders of the scheme.
- (b) There must be prominent disclosures and risk warnings in the relevant documents on the risks and potential impact on the scheme relating to the ownership structure in the property. For instance, proper disclosure has to be made about the characteristics or potential risks regarding the lack of majority ownership and control.
- (c) The scheme should have freedom to dispose of such investment subject to any customary pre-emptive rights and the holding period under 7.8 below.
- (d) At least 75% of the gross asset value of the underlying assets shall be invested in real estate that generates recurrent rental income at all times.
- (e) There must be proper safeguards or measures in place to increase the autonomy and influence of the management company over matters relating to the management of such property to the extent allowed under applicable laws or regulations.

Note: For example, over key operating matters such as asset enhancement and capital expenditure plans.

Specific conditions

- (f) The scheme shall have right to receive and obtain the financial and operational information of the jointly owned property.
- (g) Where applicable, the scheme shall have no less than proportionate board representation.
- (h) The joint ownership agreement, memorandum and articles of association and/or constitutive documents should include:
  - (i) a specified minimum percentage of annual distributable income will be distributed and the scheme should be entitled to receive at least its pro rata share of such distributions;

Note: It is generally expected that the specified minimum percentage shall not be less than majority of the annual distributable income.

- (ii) veto rights over key matters, including:
    - (a) amendment of the joint ownership agreement, memorandum and articles of association or other constitutive documents;
    - (b) winding up or dissolution;
    - (c) cessation or change of the business;
    - (d) entering into any material transactions that are not in the ordinary and usual course of business or mergers;
    - (e) changes to dividend distribution policy;
    - (f) changes to equity capital structure;
    - (g) incurring of borrowings;
    - (h) creation of security over the assets;
    - (i) issue of securities or financial derivative instruments; and
    - (j) major acquisition, transfer or disposal of the assets; and
  - (iii) a dispute resolution mechanism between the scheme and the other joint owner(s).
- (i) There are good governance and adequate measures in place to avoid conflicts of interests as well as to ensure all transactions entered shall be at arm's length and on normal commercial terms. Where practicable, veto rights should be obtained.

Notes: (1) The above overarching principles and specific conditions also apply to "tenants-in-common structures" and such other arrangements as may be acceptable to the Commission where proper and effective contractual arrangements have to be put in place.

(2) To provide transparency on the scheme's investments in Minority-owned Properties, the management company shall include at least the following information in respect of each Qualified Minority-owned Property in the annual and interim reports of the scheme:

- (i) details of the Minority-owned Property, including its name, location and usage;
- (ii) the proportion of ownership interest or participating share held by the scheme and if different, the proportion of voting rights held (if applicable);
- (iii) dividends received from the investment; and
- (iv) financial information including, but not necessary limited to, current and non-current assets, cash and cash equivalents, current and non-current liabilities, current financial liabilities, non-current financial liabilities, revenue, profit or loss from continuing operations, depreciation and amortisation, interest income, interest expense, income tax expense or income, post-tax profits or loss from discontinued operations, other comprehensive income and total comprehensive income.

7.7D The value of a scheme's holding of any Minority-owned Property which is not a Qualified Minority-owned Property (a "Non-qualified Minority-Owned Property") must not exceed 10% of the gross asset value of the scheme at all times.

Notes: (1) The value of such holding is further subject to the Maximum Cap under 7.2C above.

(2) It is generally expected that investments in such non-Qualified Minority-owned Properties would also comply with the overarching principles set out in subparagraphs (a) to (c) of 7.7C above.

(3) The management company shall include at least the information in (i) to (iii) of Note (2) to 7.7C above in respect of each non-Qualified Minority-owned Property in the annual and interim reports of the scheme.

## Holding Period

- 7.8 The scheme shall hold each property within the scheme for a period of at least two years, unless the scheme has clearly communicated to its holders the rationale for disposal prior to this minimum holding period and its holders have given their consent to such sale by way of a special resolution at a general meeting.

Notes: (1) In the case where a property is held through a special purpose vehicle or joint venture entity, this provision applies as well to the disposal of any interest in such special purpose vehicle or joint venture entity.

(2) In the case of investments in properties under the scheme's property developments undertaken pursuant to 7.2A, this provision applies as well to the holding and disposal of such properties for a period of at least two years from the completion of the properties. For the avoidance of doubt, 7.8 does not apply to the scheme's holding of Relevant Investments and other ancillary investments.

## Limitations on Borrowing

- 7.9 A scheme may borrow (either directly or through its SPVs) for financing investment or operating purposes but aggregate borrowings shall not at any time exceed 5045% of the total gross asset value of the scheme. The scheme may pledge its assets to secure such borrowings. The scheme shall disclose in its offering document its borrowing policy, including its maximum borrowing limit, and the basis for calculating such limit.

Notes: (1) In the event that the limit is exceeded, holders and the Commission shall be informed of the magnitude of the breach, the cause of the breach, and the proposed method of rectification. Generally, where the borrowings limit is exceeded, solely as a result of a decline in property values or other reasons beyond the control of the management company, the scheme would ~~While the scheme may~~ not be required to dispose of assets to pay off part of the borrowings where such disposal is prejudicial to the interest of the holders. However, no further borrowing is permitted. The management company shall use its best endeavours to reduce the excess borrowings as soon as practicable. Furthermore, holders and the Commission shall be informed on a regular basis as to the progress of the rectification.

(2) All borrowings shall be conducted at arm's length and the terms shall be commensurate with those of transactions of similar size and nature.

(3) The borrowings of ~~the scheme's group~~ all special purpose vehicles held by ~~the scheme~~ shall be aggregated for the purpose of calculating borrowing limits.

(4) The Commission has the power to require a scheme to aggregate particular liabilities for the purposes of calculating its aggregate borrowing limit. The management company should consult the Commission if it is in any doubt as to the application of the requirements.

7.10 The scheme shall disclose at least the following data on its borrowings and liabilities in its semi-annual report, annual report and such circulars pertaining to either a breach in borrowing limits or a real estate transaction:

- (a) total borrowings as a percentage of gross assets; and
- (b) gross liabilities as a percentage of gross assets.

*Note: Such data shall reflect the aggregate borrowings and liabilities of the scheme's group all the special purpose vehicles held by the scheme.*

### **Name of Scheme**

7.11 If the name of the scheme indicates a particular type of real estate, the scheme shall invest at least 70% of its non-cash assets in such type of real estate.

### **Dividend Policy**

7.12 The scheme shall distribute to unitholders as dividends each year an amount not less than 90% of its audited annual net income after tax.

*Notes: (1) The trustee shall determine if any (i) revaluation surplus credited to income, or (ii) gains on disposal of real estate, shall form part of net income for distribution to holders.*

*(2) Where the scheme holds real estate via special purpose vehicles, each special purpose vehicle shall distribute to the scheme all of its income as permitted by the laws and regulations of the relevant jurisdictions.*

*(3) All distributions received and receivable from Minority-owned Properties shall form part of net income for distribution to holders.*

## **Chapter 8: Transactions with Connected Persons**

### **Connected Persons**

8.1 Connected persons to the scheme include:

- (a) the management company of the scheme;
- (b) ~~the Principal Valuer of the scheme;~~[deleted]
- (c) the trustee of the scheme;
- (d) a substantial~~significant~~ holder;

*Notes: (1) A holder is a substantial~~significant~~ holder if it is entitled to exercise.*



or control the exercise of, holds 10% or more of the voting power at any general meeting of outstanding units of the scheme or any of its subsidiaries.

(2) ~~[Deleted] The following holdings will be deemed holdings of a holder:~~  
~~(i) — holdings of the associate of the holder who is an individual; or~~  
~~(ii) — holdings of the director, senior executive, officer, controlling entity, holding company, subsidiary or associated company of the holder if the holder is an entity.~~

(e) ~~a director, senior or chief executive or an officer of (i) the management company of the scheme; (ii) the trustee of the scheme; or (iii) any subsidiaries of the scheme~~ of any of the entities in 8.1 (a), (b), (c) or (d) above;

Notes: (1) “Chief executive” is a person who either alone or together with one or more other persons is or will be responsible under the immediate authority of the board of directors for the conduct of the business of the relevant entity.

(2) “Director” of the management company or any of subsidiaries of the scheme also includes a person who was a director of the management company or any subsidiaries of the scheme in the last 12 months.

- (f) ~~an associate of the persons or entities in 8.1(a), 8.1(c), 8.1(d) or 8.1(e); and~~
- (g) ~~a controlling entity, holding company, subsidiary or associated company of any of the entities in 8.1 (a) to (d). a “connected subsidiary” as defined in Chapter 14A of the Listing Rules (modified as appropriate pursuant to 2.26); and~~
- (h) a person deemed to be connected by the Commission.

Notes: (1) The Commission has the power to deem any person to be a connected person.

(2) In general, a “deemed connected person” under Chapter 14A of the Listing Rules (modified as appropriate pursuant to 2.26) would be deemed as a connected person under this paragraph.

8.1A In determining whether a person is a connected person of the scheme, reference should generally be made to requirements applicable to listed companies under the Listing Rules (modified as appropriate pursuant to 2.26) to the extent appropriate and practicable except as otherwise provided in this Code or the guidelines issued by the Commission from time to time.

Note: In general, persons who will not normally be treated as connected persons under the Listing Rules will not be treated as connected persons of the scheme.

- 8.2 The following shall be disclosed in the scheme’s offering document, semi-annual reports, annual reports and circulars in relation to connected party transactions:
- (a) beneficial interests, and any changes thereof, of the connected persons in the scheme; and
- (b) any potential conflicts of interests involving the connected persons and the measures implemented to address such conflicts.

- 8.3 Where any of the connected persons as described in 8.1 has an interest in a business (“related business”) which competes or is likely to compete, either directly or indirectly, with the scheme’s activities, the offering document shall prominently disclose the following:
- (a) a description of the related business of the connected person and its management, to enable investors to assess the nature, scope and size of such business, with an explanation as to how such business may compete with the scheme;
  - (b) where applicable, a statement from the relevant connected person that it is capable of performing, and shall perform, its duty in relation to the scheme independently of its related business and in the best interests of the scheme and its holders; and
  - (c) a statement as to whether the scheme may acquire any of the related business or assets of the connected person in the future, together with the time frame during which such acquisition will take place or no such acquisition is intended. If there is any change in such information after the scheme is authorised, the management company shall announce it by way of a press announcement as soon as the management company or the trustee becomes aware of such change.

*Note: Where the management company manages any schemes other than the scheme, the management company shall prominently disclose in the offering document and in the next published semi-annual or annual report, the same matters as set out in (a), (b) and (c) as if each of the other schemes were a related business of the management company.*

- 8.4 Where any of the connected persons as described in 8.1 has for the purpose of the establishment of the scheme, agreed to sell real estate to the scheme, the offering document shall prominently disclose the following:
- (a) a valuation report of the real estate that the connected person has agreed to sell; and
  - (b) the price to be paid by the scheme for the subject real estate and other terms of the transaction.

## **Connected Party Transactions**

### ~~Categories of Transactions~~

- 8.5 For the purpose of this Code, a connected party transaction is any transaction between the scheme’s group and a connected person any of the persons described in 8.1 or any transaction falling within 8.6, and includes also those transactions that would constitute connected transactions for listed companies contemplated under 8.7A of this Code.
- 8.6 If the management company manages more than one scheme and a transaction involves two or more of the schemes managed by the management company, transactions between these schemes shall be deemed connected party transactions for each of the schemes involved in the transactions.

8.7 All transactions carried out by or on behalf of the scheme shall be:

- (a) carried out at arm's length and on normal commercial terms;

*Note: The management company shall ensure that all transactions are carried out in an open and transparent manner. Where circumstances permit, transactions shall be carried out by way of open tender or competitive bidding by auction. In particular, connected party transactions in the nature of services provided relating to the real estate of the scheme in the ordinary and usual course of estate management, such as renovation and maintenance work, shall be contracted on normal commercial terms subject to the prior approval of the trustee.*

- (b) valued, in relation to a property transaction, by an independent valuer that meets the requirements of Chapter 6;
- (c) consistent with the investment objectives and strategy of the scheme;
- (d) on terms that are fair and reasonable and in the best interests of holders; and
- (e) properly disclosed to holders.

8.7A Save as otherwise provided in this Code or the guidelines issued by the Commission from time to time, all connected party transactions will be regulated with reference to requirements applicable to listed companies under Chapter 14A of the Listing Rules (modified as appropriate pursuant to 2.26) to the extent appropriate and practicable, including but not limited to:

- (a) whether a transaction is a connected party transaction;
- (b) whether certain connected party transactions are continuing connected party transactions;
- (c) whether an exemption is available for the type of connected party transaction and the conditions for any such exemption;
- (d) the holders' approval, disclosure, reporting and other requirements for a connected party transaction;
- (e) the content requirements applicable to the announcements, circulars and annual reports to be issued in relation to connected party transactions; and
- (f) where a transaction is a continuing connected party transaction, the annual review and other additional requirements applicable.

A scheme entering into any connected party transaction shall comply with all applicable requirements. The management company should consult the Commission at an early stage if it is in any doubt as to the application of the requirements.

8.7B The Commission has the power to specify that an exemption will not apply to a particular transaction.

8.7C The Commission may waive any requirements under this Chapter on a case-by-case basis, subject to any conditions that it may impose.

8.7D Announcements and circulars relating to connected party transactions of the scheme

must set out the trustee's view on the transaction, including the following:

- (i) whether the trustee has any objection to the entering into of the transaction;
- (ii) whether the transaction is consistent with the scheme's investment policy and in compliance with this Code and the scheme's constitutive documents;
- (iii) whether the transaction is on normal commercial terms, fair and reasonable and in the interests of the holders as a whole; and
- (iv) where holders' approval of the transaction is not being sought, the trustee's confirmation that such approval is not required under this Code or the scheme's constitutive documents.

*Note: Under 4.2(h) of this Code, the trustee shall take all reasonable care to ensure that connected party transactions are carried out in accordance with this Chapter 8. Subject to its duties under this Code and fiduciary duties under general law, the trustee may, in forming its opinion, rely on a reasonable opinion or confirmation from the management company or other competent experts provided in good faith.*

8.7E Services provided by the management company and the trustee of the scheme as contemplated under the constitutive documents shall not be treated as connected party transactions but particulars of such services (except where any services transaction has a value of not more than HK\$1 million), such as terms and remuneration, shall be disclosed in the next published interim or annual report.

8.7F Where holders' approval is required, a connected party transaction may be approved by an ordinary resolution passed in a general meeting in accordance with 9.9(g). Any holder who has a material interest in the transaction tabled for approval and that interest is different from that of all other holders, shall abstain from voting at the general meeting.

8.8 If cash forming part of the scheme's assets is deposited with the trustee, the management company, ~~the Principal Valuer of the scheme~~ or with any other connected persons (being an institution licensed to accept deposits), interest shall be paid on the deposit at a rate not lower than the prevailing commercial rate for a deposit of that size and term. The same principle applies to the scheme's borrowings from the trustee, the management company, ~~the Principal Valuer of the scheme~~ or any other connected persons (being an institution licensed to lend money).

8.9 ~~[Deleted] Holders' prior approval is not required for connected party transactions where:~~

- ~~(a) the total consideration or value of the transaction is less than 5% of the latest net asset value of the scheme, as disclosed in the latest published audited accounts of the scheme, and adjusted for any subsequent transactions since the publication of such accounts; and~~

*~~Note: Where more than one transaction is conducted with the same connected person and the value of this single transaction does not exceed the 5% limit, the limit applies to the cumulative value of all the transactions between such person and the scheme during the twelve months preceding the intended transaction.~~*

- (b) ~~the scheme has not entered into any other transactions with the same connected person (including its associate, controlling entity, holding company, subsidiary or associated company) during the twelve months preceding the current transaction.~~

~~In such case, the management company shall issue an announcement to holders in accordance with 8.14 and Chapter 10.~~

- 8.10 ~~[Deleted] Connected party transactions in the nature of services provided relating to the real estate of the scheme in the ordinary and usual course of estate management, such as renovation and maintenance work, shall be contracted on normal commercial terms and subject to the prior approval of the trustee.~~

~~Notes: (1) Where the service to be contracted with the connected party is of a stand alone or one-off nature, and the contracted value exceeds 15% of the aggregate value that the scheme committed to spend or has spent on services relating to the real estate of the scheme during the preceding twelve months, prior approval by holders by way of an ordinary resolution passed in a general meeting is required, unless the service to be contracted is procured under a transparent bidding process. The requirements in 8.14 and Chapter 10 with respect to announcement, circular and notice shall be complied with to inform holders of such particulars as the nature and value of the service, the name of the connected person, the date of the general meeting, and the result of the holders' voting.~~

~~(2) Services provided by the management company, the trustee and the Principal Valuer to the scheme as contemplated under the constitutive documents shall not be deemed connected party transactions but particulars of such services (except where any services transaction has a value of not more than HK\$1 million), such as terms and remuneration, shall be disclosed in the next published semi-annual report or annual report.~~

- 8.11 ~~[Deleted] Holders' prior approval is required for connected party transactions that do not fall within any of the categories in 8.9 or 8.10. Such approval shall be by way of an ordinary resolution passed in a general meeting. An announcement shall be made and a circular and notice shall be issued to holders in accordance with Chapter 10. The general meeting shall be conducted in accordance with 9.9.~~

~~Note: An ordinary resolution is required for the approval of a connected party transaction in accordance with 9.9(g). Any holder who has a material interest in the transaction tabled for approval and that interest is different from that of all other holders, shall abstain from voting at the general meeting.~~

- 8.12 Neither the management company, its delegates, the Principal Valuer of the scheme nor any other connected persons to the scheme may retain cash or other rebates from a property agent in consideration of referring transactions in scheme property to the property agent. All such amounts received shall be paid to the trustee for the benefit of the scheme.

- 8.13 Except for the management company in discharging their functions under Chapter 5, the scheme shall not engage connected persons as property agents for rendering services to the scheme, including advisory or agency services in property transactions.

*Disclosure and Reporting Requirements for Connected Party Transactions*

- 8.14 ~~[Deleted]~~Announcements shall be made for all connected party transactions. Following the announcements of these connected party transactions, details of the transactions shall be disclosed by way of a circular where a vote by holders is required. Where holders' approval is required, a notice shall be issued to holders providing details of the result of the holders' voting at the general meeting. Subsequently a brief summary of the transactions shall be included in the scheme's next published semi-annual or annual report.

*Note: No announcement shall be required for any connected party transaction falling within 8.9 or 8.10 if the value of such transaction does not exceed HK\$1 million.*

- 8.15 ~~[Deleted]~~Where connected party transactions falling within 8.9 or 8.10 are carried out by the scheme, a summary disclosure of the total value of such transactions, their nature and the identities of the connected parties shall be made in the annual report of the scheme. Where there is no such transaction conducted during the financial year covered by the annual report, an appropriate negative statement to that effect shall be made in the annual report.

- 8.16 ~~[Deleted]~~For connected party transactions that do not require holders' approval but are considered by the management company to be material, holders shall be initially informed by way of announcement of the brief details of the transactions, and subsequently through disclosure of the particulars of the transactions in the scheme's next published semi-annual report or annual report.

## Chapter 10: Reporting and Documentation

- 10.1 The management shall keep holders informed of any material information pertaining to the scheme in a timely and transparent manner. The reporting requirements set out in this Code shall not prejudice or affect the application of any listing rules of an exchange on which the scheme is listed, in relation to dissemination of information to investors mandated by such rules.
- 10.2 All announcements, circulars and notices shall be submitted to the Commission for prior approval. Upon such approval, they shall be disseminated to holders as soon as reasonably practicable.

*Notes: (1) ~~Announcements shall be published in at least one leading Hong Kong English language and one Chinese language daily newspaper on the Exchange's website in accordance with the Listing Rules. Other electronic means of publication may also be considered by the Commission.~~*

*(2) The Commission may from time to time issue guidance on the types of announcements that will not be required to be submitted for pre-vetting before their publication.*

### Announcements

- 10.3 The management company shall inform holders as soon as reasonably practicable of any information or transaction concerning the scheme which:
- (a) is necessary to enable holders to appraise the position of the scheme; or

- (b) is necessary to avoid a false market in the units of the scheme; or
- (c) might be reasonably expected to materially affect market activity in the scheme or affect the price of the units of the scheme, or
- (d) requires holders' approval.

Note: In considering whether an announcement has to be made under this 10.3, reference should generally be made to requirements applicable to listed companies under the Listing Rules (modified as appropriate pursuant to 2.26) and the Guidelines on Disclosure of Inside Information issued by the Commission to the extent appropriate and practicable except as otherwise provided in this Code or the guidelines issued by the Commission from time to time. Accordingly, it is generally expected that the transactions and financing arrangements contemplated under Chapter 13 of the Listing Rules such as pledging of units by controlling unitholder or breach of loan agreement by the scheme etc. should be announced.

10.4 The following are examples of information that would require disclosure under 10.3. These examples do not constitute a complete list:

- (a) a material change in the scheme's financial forecast;
- (b) a valuation of the real estate of the scheme, conducted upon request by the trustee under 4.2(d);
- (c) issuance of semi-annual or annual report;
- (d) ~~any connected party transactions, subject to the HK\$1 million threshold in 8.14; [deleted]~~
- (e) ~~a transaction (other than a connected party transaction) the value of which exceeds 15% of the gross asset value of the scheme; [deleted]~~
- (f) ~~a transaction (other than a connected party transaction) for services relating to the real estate of the scheme the value of which exceeds 15% of the aggregate value that the scheme committed to spend or has spent on services relating to real estate of the scheme during the twelve months preceding the relevant transaction; [deleted]~~
- (g) a proposed disposal of real estate within a period of less than two years since acquisition;
- (ga) any proposed acquisition or disposal of real estate (including any Minority-owned Property) (unless the size of which is less than 1% of the gross asset value of the scheme);
- (h) a proposed change in the management company of the scheme;
- (i) a proposed change in the general character or nature of the scheme, such as the investment objective and/or policy of the scheme;
- (j) a recommendation or declaration or cancellation of a dividend or distribution;

- (k) issuance of new units (other than units issued pursuant to a dividend reinvestment plan);
- (l) a copy of a document containing market sensitive information or any financial documents that the scheme lodges with an overseas stock exchange (where applicable) or other regulator which is available to the public;
- (m) giving or receiving a notice of intention to undertake a merger or takeover;
- (n) a merger or takeover acquisition;
- (o) a breach of the borrowing limit;
- (p) material litigation;
- (q) a significant dispute or disputes with contractors or with any parties;
- (r) a valuation of the scheme's real estate that has a material impact on the scheme's financial position or performance;
- (s) a major change in accounting policy adopted by the scheme;
- (t) a proposal to change the scheme's auditor;
- (u) a proposal to change the scheme's trustee;
- (v) a proposal to alter the level or structure of fees and charges only if such alteration requires holders' approval;
- (w) a decision or recommendation to request de-authorisation or delisting of the scheme;
- (x) a proposal to terminate the scheme;
- (y) a proposal to vary the intention stated regarding acquisition of properties within the first 12 months of listing (see Note (3) to 7.1); or
- (z) a scheme enters into a contract to invest in Property Development and Related Activities pursuant to 7.2A.

10.5 The content of an announcement should contain sufficient quantitative information to enable investors to fully understand the nature and ascertain the implications of the announcement. Information disclosed in the announcement shall be factual, clear, succinct and unbiased.

Notes: (1) Reference should generally be made to requirements applicable to listed companies under the Listing Rules (modified as appropriate pursuant to 2.26) to the extent appropriate and practicable except as otherwise provided in this Code or the guidelines issued by the Commission from time to time.

(2) In view of the oversight role of the trustee, it is generally expected that an announcement should set out the trustee's view on the relevant transaction or subject matter, including (where applicable) (i) whether it has any objection to the relevant transaction or matter; (ii) whether the



transaction is consistent with the scheme's investment policy and in compliance with this Code and the scheme's constitutive documents; and (iii) where holders' approval is not being sought, the trustee's confirmation that such approval is not required under this Code or the scheme's constitutive documents.

10.5A Announcements shall be issued in respect of connected party transactions and notifiable transactions. Such announcements shall comply with the contents requirements in accordance with Chapter 8 and 10.10B where applicable.

## Circulars

10.6 A circular shall be issued in respect of

- (a) transactions that require, or in the reasonable opinion of the trustee or the management company require, holders' approval; and
- (b) material information in relation to the scheme.

10.7 The following are examples of circumstances in or in relation to which a circular shall be issued. These examples do not constitute a complete list:

- (a) transactions that require, or that in the reasonable opinion of the trustee or the management company require, holders' approval at a general meeting, including a proposal to:
  - (i) issue new units (other than units issued pursuant to a dividend reinvestment plan) that requires holders' approval under Chapter 12;
  - (ii) enter into a merger or takeover acquisition;
  - (iii) enter into a disposal of real estate within a period of less than two years since acquisition;
  - (iv) change the management company of the scheme;
  - (v) change the general character or nature of the scheme, such as the investment objective and/or policy of the scheme;
  - (vi) alter the level or structure of fees and charges only if such alteration requires holders' approval; and
  - (vii) ~~enter into a connected party transaction which requires holders' approval under Chapter 8; and~~ ~~[deleted]~~
  - (viii) request de-authorisation or delisting of the scheme.
- (b) material information in relation to the scheme includes, but is not limited to:
  - (i) ~~a transaction (other than a connected party transaction) the value of which exceeds 15% of the gross asset value of the scheme;~~ ~~[deleted]~~
  - (ii) ~~a transaction (other than a connected party transaction) for services performed in relation to the real estate of the scheme the value of which exceeds 15% of the aggregate value that the scheme committed to spend or has spent on services relating to real estate of the scheme during the twelve months preceding the relevant transaction;~~ ~~[deleted]~~
  - (iii) a material change in the scheme's financial forecast; and
  - (iv) ~~an issue of new units (other than units issued pursuant to a dividend reinvestment plan) that does not require holders' approval; and~~ ~~[deleted]~~
  - (v) a valuation of the real estate of the scheme, conducted upon request by the trustee under 4.2(d).

10.7A A circular shall be issued in respect of a connected party transaction or a notifiable

transaction in accordance with Chapter 8 or 10.10B (as the case may be) where applicable.

- 10.8 In general, Aa circular shall be sent within 2115 business days to holders after the issuance of an announcement. Where a general meeting is to be held, the relevant circular shall be sent to holders 21 days (for special resolution) and 14 days (for ordinary resolution) prior to the day of such meeting, at the same time as or before the scheme gives the relevant notice of general meeting.

Note: In determining the timing within which a circular shall be despatched to holders, reference should generally be made to requirements applicable to listed companies under the Listing Rules (modified as appropriate pursuant to 2.26) to the extent appropriate and practicable except as otherwise provided in this Code or the guidelines issued by the Commission from time to time. The management company should refer to the relevant requirements under the Listing Rules, for example, in cases where a delay in distribution of the circular by the date previously announced is expected and where it is aware of any material information relating to the transaction after the circular is issued.

- 10.9 The following guidance shall be borne in mind in preparing circulars that are required by the Code:

- (a) the primary objective of the circular is to enable holders to properly and in an informed manner examine the reasonableness and fairness of the proposed transaction. The balance of advantage or disadvantage to the scheme shall therefore be readily apparent to enable a holder to reach his own conclusions on the proposal;
- (b) the circular shall provide sufficient information to holders to evaluate the proposal; and
- (c) where applicable, provide a fair and objective valuation of the relevant real estate of the scheme.

Note: Reference should generally be made to requirements applicable to listed companies under the Listing Rules (modified as appropriate pursuant to 2.26) to the extent appropriate and practicable except as otherwise provided in this Code or the guidelines issued by the Commission from time to time.

- 10.10 The circular shall where applicable, at a minimum, contain the full particulars of the transaction or matter disclosed in the announcement to which the circular pertain. The items listed below are not meant to be exhaustive. The Commission may require additional information to be disclosed:

- (a) the date of the transaction and the parties thereto;
- (b) a general description of the nature of the real estate concerned (if any);
- (c) the total consideration and the terms and composition thereof;
- (d) the financing arrangement and justification for such arrangement;
- (e) a description of the impact to the financial position and the capital structure of the scheme in relation to the transactions contemplated in the circular;

- (f) in the case of a new issue, the proposed use of proceeds from the new issue and any other arrangements related to the new issue;
- (g) ~~where applicable, the name of the connected person concerned and of the relevant associate (if any) and details of how the person is connected;~~  
[deleted]
- (h) ~~where applicable, the nature and extent of the interest of the connected person in the transaction;~~[deleted]
- (i) where the transaction involves a special purpose vehicle, the particulars of the special purpose vehicle, a general description of its activities, and an accountants' report prepared in accordance with 7.6;
- (j) the date and the location of any~~the~~ general meeting;
- (k) where applicable, an independent valuation in respect of the real estate concerned (if any) prepared in accordance with Chapter 6;
- (l) if the matter pertains to changes to a financial forecast, information set out in Appendix F;
- (m) a statement by the management company of any material adverse change in the financial or trading position of the scheme since the date to which its latest published audited accounts have been made up, or an appropriate negative statement;
- (n) where appropriate, the nature of any resolutions required to approve the transaction and a statement that holders who have a material interest, whether direct or indirect, in the transaction and such interest is different from the interests of all other holders, will not vote in the general meeting;
- (o) an opinion, ~~in the form of a separate letter,~~ by the trustee or the management company (insofar as it is not conflicted out by virtue of its interest in the transaction) as to whether the transaction is fair and reasonable so far as the holders of the scheme are concerned and such opinion shall set out the reasons for, the key assumptions made and the factors taken into consideration in, forming that opinion;
- (p) [deleted]~~for connected party transactions, an opinion prepared in the form of a separate letter by an independent expert acceptable to the Commission, stating as to whether the transaction is fair and reasonable so far as the holders of the scheme are concerned. Such opinion shall set out the reasons for, the key assumptions made and the factors taken into consideration, in forming that opinion;~~

*Note: Where the transaction is a transaction with a connected person of the scheme, the unit holdings and identities of that particular connected person, and of any holders that have a prospective interest (other than interests via their holdings as holders in the scheme) in the transactions proposed to be entered into by the scheme, shall also be disclosed in the circular.*

- (q) where a transaction is not a connected party transaction, an opinion from an independent expert may be sought by the trustee or the management company after having regard to the interests of the holders and the nature of the transactions e.g. the scheme undergoes restructuring or mergers or other transactions that have a material impact on its financial or commercial interest;
- (r) where the circular includes a statement purporting to be made by an expert, a declaration by such expert of his interest in the scheme;

*Note: The expression “expert” includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him.*

- (s) prominent warning statement:

*“THIS DOCUMENT IS IMPORTANT AND REQUIRES YOUR IMMEDIATE ATTENTION. IF IN DOUBT, PLEASE SEEK PROFESSIONAL ADVICE.”*

- (t) responsibility statement:

“The management company and its directors collectively and individually accept full responsibility for the accuracy of the information contained in this document and confirm, having made all reasonable enquiries, that to the best of their knowledge and belief there are no other facts the omission of which would make any statement herein misleading.”

- (u) disclaimer statement:

“The Commission takes no responsibility for the contents of this circular, makes no representation as to its accuracy or completeness and expressly disclaims any liability whatsoever for any loss howsoever arising from or in reliance upon the whole or any part of the contents of this circular.”

*Note: The above requirements in 10.10 are not applicable to circulars issued in respect of connected party transactions or notifiable transactions in compliance with Chapter 8 or 10.10B (as the case may be) save for sub-paragraphs (d), (e), (f), (i), (k), (l), (n), (o), (q), (s), (t) and (u) above.*

## **Notifiable Transactions**

10.10A A scheme considering to enter into a notifiable transaction must at an early stage consider the requirements set out in 10.10A to 10.10D. The management company should consult the Commission at an early stage if it is in any doubt as to the application of the requirements.

10.10B Notifiable transactions entered into by a scheme will be regulated with reference to requirements applicable to listed companies under Chapter 14 of the Listing Rules (modified as appropriate pursuant to 2.26) to the extent appropriate and practicable, including but not limited to:

- (a) definition of “transaction”;
- (b) classification of transactions;

- (c) notification, publication, shareholders' approval and other requirements;
- (d) whether any exemption is available; and
- (e) content requirements applicable to the announcements and circulars to be issued in relation to notifiable transactions.

A scheme entering into a notifiable transaction shall comply with all applicable requirements.

10.10C The Commission has the power to specify that an exemption will not apply to a particular transaction.

10.10D The Commission may waive any requirements under 10.10A in individual cases, subject to any conditions that it may impose.

## **Notice**

- 10.11 Holders shall be informed of the results of any holders' voting at a general meeting by way of a notice.

## **Reporting Requirements**

### *Reporting to Holders*

- 10.12 At least two reports shall be published in respect of each financial year. Annual reports and accounts shall be published and distributed to holders within four months of the end of the scheme's financial year and semi-annual reports shall be published and distributed to holders within two months of the end of the period they cover. The contents of the annual reports and semi-annual reports shall comply with the requirements set out in Appendix C.

### *Reporting to the Commission*

- 10.13 Subsequent to the authorisation of the scheme, all financial reports produced by or for the scheme, its management company and trustee shall be filed with the Commission within the time frame specified in 10.12.
- 10.14 The management company shall supply to the Commission, upon request, all information relevant to the scheme's financial reports and accounts.
- 10.15 The management company shall notify the Commission as soon as practicable of any change to the data in the application form.

## **Advertising**

- 10.16 Advertisements and other invitations to invest in a scheme shall be submitted for authorisation prior to their issue or publication in Hong Kong. The general principle is that no advertisement can be made that is false, biased, misleading or deceptive. Any advertisement or announcement which concerns the trustee shall be accompanied by its written consent. Authorisation may be varied or withdrawn by the Commission as it deems fit.
- 10.17 If a scheme is described as having been authorised by the Commission, it shall be stated

that authorisation does not imply official approval or recommendation.

- 10.18 Advertisements and marketing materials shall have proper risk warning statements, including a reference to the offering document of the scheme for a detailed discussion of the risk factors of the scheme.

## Chapter 11: Termination or Merger of a REIT

- 11.4 A circular shall be served on holders of all the relevant schemes within 15 business 24 days of the announcement. Where a general meeting is to be held, the relevant circular shall be sent to holders at the same time as or before the scheme gives the relevant notice of general meeting. The circular shall at least contain information including the following and that required by Chapter 10:
- (a) the rationale for the termination of the scheme or merger of schemes;
  - (b) the effective date of the termination or merger;
  - (c) the manner in which the assets held by the scheme(s) are to be dealt with;
  - (d) the procedures and timing for the distribution of the proceeds (in the case of termination) or issuance or exchange of new units (in the case of a merger) arising therefrom;
  - (e) a valuation report for each relevant scheme prepared in accordance with Chapter 6;
- Note: The date of the valuation report shall be a date which is not more than three months before the date of the circular.*
- (f) the alternatives available to investors (including, if possible, a right to switch without charge into another authorised scheme);
  - (g) the estimated costs of the termination or merger and who is expected to bear these costs; and
  - (h) such other material information that the holders should be informed of.

## Practice Note on Overseas Investments by SFC-authorised REITs

### Safeguarding Measures for Overseas Investments

#### *Qualifications of the Management Company*

10. At a minimum, a management company that proposes to invest overseas must be able to demonstrate that it has the requisite competence, experience and resources to analyse the issues and risks involved in overseas investment, to develop, implement and keep up-to-date a set of effective internal controls and risk management system to deal with existing and foreseeable risks involved in overseas investments, and to inform investors in a clear, concise and timely manner of the investment profile and risks of a scheme. ~~It shall include in its application to the Commission a detailed business plan to demonstrate how it can implement its investment strategy, given its resources and circumstances.~~

12. The management company shall have a comprehensive compliance plan that is appropriately devised to ensure that risks involved in overseas investments, such as legal, regulatory, fiscal and operational risks etc. are adequately mitigated and proper checks and balances are in place to monitor the activities performed in relation to a scheme. The management company shall also have a contingency plan that enables it to proactively respond to any exigencies that may arise in the course of its investment and management of overseas properties, its divestment of such properties and any matters arising in the course of a public offering of any units in the scheme. ~~Such compliance plan has to be submitted to the Commission.~~

## Appendix B

### Information in the Offering Document

#### Investment Objectives and Restrictions

**B2** The offering document of the scheme shall clearly include:

- (e) the nature and risks of making property investments including those pursuant to 7.2A, 7.7A and 7.7B in each of the relevant locations, including:
- (i) demographics;
  - (ii) state of the economy, economic risks and foreign exchange risk;
  - (iii) political risks;
  - (iv) legal risks and tax considerations;
  - (v) policies that affect property investments and property sales;
  - (vi) overview of the property market;
  - (vii) analysis of the specific property sector and the competitive dynamics in the rental market;
  - (viii) operational requirement; and
  - (ix) rules and regulations governing property ownership and tenancy matters;

#### SubstantialSignificant Holders

**B5** The names of the substantialsignificant holders and the number of units held and deemed to be held by each of them; or the identity of investors each of whom has agreed to subscribe to 10% or more of the scheme, and the number of units each of them has agreed to subscribe for.

**B6** The minimum period that each of the substantialsignificant holders intends to hold the units after the scheme becomes authorised.

#### General Information

**B24** A list of constitutive documents, and the scheme's website address or an address in Hong Kong where they can be inspected free of charge or purchased at a reasonable price.

## Contents of Financial Reports

The annual report shall contain, at a minimum, the following:

- 2B. The extent (in percentage terms) to which each of the ~~10% GAV~~Property Development Cap and the Maximum Cap has been applied pursuant to ~~Note (6) to 7.2A and 7.2C~~Note (2) to 7.2B respectively;
- 2C. Summary of all real estate, including all investments in all Minority-owned Properties pursuant to 7.7C and 7.7D;

The semi-annual report shall contain, at a minimum, the following:

- 3B. The extent (in percentage terms) to which each of the ~~10% GAV~~Property Development Cap and the Maximum Cap has been applied pursuant to ~~Note (6) to 7.2A and 7.2C~~Note (2) to 7.2B respectively;

## Notes to the Accounts

The following matters shall be set out in the notes to the accounts:

### 2. Transactions with Connected Persons

The following shall be disclosed:

- (a) a description of the nature and extent of any transactions entered into during the period between the scheme and the management company, ~~the Principal Valuer of the scheme~~ or any entity in which the management company ~~these parties~~ or their its connected persons have a material interest, and a statement confirming that these transactions have been entered into in the ordinary course of business and on normal commercial terms;
- (b) details of all transactions which are outside the ordinary course of business or not on normal commercial terms entered into during the period between the scheme and the management company, or any entity in which these parties or their connected persons have a material interest;
- (c) name of the management company, the director of such entities or any connected persons of such entities or director who is entitled to profits from transactions in units or from management of the scheme, and the amount of profits to which each of them becomes entitled;
- (d) where the scheme does not have any transactions with connected persons during the period, a nil statement to that effect; and
- (e) the basis of the fee charged for the management of the scheme and the name of the management company.



## Contents of Trust Deed

The trust deed of a scheme shall be submitted to the Commission for prior approval. It shall, at a minimum, contain all the information listed in this Appendix. The items listed are not meant to be exhaustive, the Commission may require additional information to be disclosed in the trust deed.

### 5. Trustee

- (a) A statement to set out the obligations of the trustee as set out in Chapter 4.
- (b) A statement that the trustee shall retire in the manner as stipulated in Chapter 4.
- (c) A statement to empower the trustee to require holders to disclose to it upon its request, their beneficial interests in the scheme.
- (d) A statement to requiring a holder to promptly disclose to the trustee when the holder becomes a substantial ~~significant~~ holder.

### 13. Transactions with Connected Persons

The following shall be stated:

- (a) Cash forming part of the scheme's assets may be deposited with the trustee, the management company, ~~the Principal Valuer of the scheme~~ or with any other connected persons (being an institution licensed to accept deposits) so long as that institution pays interest on the deposit at a rate not lower than the prevailing commercial rate for a deposit of that size and term.
- (b) Money can be borrowed from the trustee, the management company, ~~the Principal Valuer of the scheme~~ or any other connected persons (being an institution licensed to lend money) so long as that institution charges interest at no higher rate, and any fee for arranging or terminating the loan is of no greater amount than the prevailing commercial rate for a loan of the size and nature of the loan in question negotiated at arm's length.
- (c) All transactions carried out by or on behalf of the scheme shall be:

- (i) carried out at arm's length and on normal commercial terms;

*~~Note: The management company shall ensure that all transactions are carried out in an open and transparent manner. Where circumstances permit, transactions shall be carried out by way of open tender or competitive bidding by auction.~~*

- (ii) valued, in relation to a property transaction, by an independent valuer that meets the requirements of Chapter 6;
- (iii) consistent with the investment objectives and strategy of the scheme; and
- (iv) on terms that are fair and reasonable and in the best interests of holders.



- (d) Any transactions between the scheme and any of its connected persons shall be carried out in accordance with the requirements set out in Chapter 8.