



Code on Real Estate Investment Trusts

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Code on Real Estate Investment Trusts (“REITs”)

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Authorisation of REITs and its General Principles

Explanatory Notes

The Securities and Futures Commission (“Commission”) is empowered under section 104(1) of the Securities and Futures Ordinance (Cap. 571) (“SFO”) to authorise collective investment schemes, subject to such conditions as it considers appropriate.

This Code on Real Estate Investment Trusts together with the Practice Note(s) issued from time to time (“Code”) establish guidelines for the authorisation of a collective investment scheme which is a real estate investment trust (“REIT”).

The Commission is empowered under section 105(1) of the SFO to authorise the issue of an advertisement or invitation to the public in Hong Kong to invest in a collective investment scheme, subject to such conditions as the Commission considers appropriate.

The Commission may at any time review its authorisation of a REIT, or of an advertisement or invitation relating thereto, and may modify, add to or withdraw any of the conditions of such authorisation, or revoke the authorisation, as it considers appropriate.

The issue of a false or misleading advertisement or an invitation to the public in Hong Kong to invest in an unauthorised collective investment scheme may amount to an offence under section 103(1) of the SFO.

This Code does not have the force of law and shall not be interpreted in a way that will override the provision of any law.

General Principles

The Commission has modelled the Code on principles developed by the International Organization of Securities Commissions and other principles that the Commission believes to be fundamental for the proper regulation of REITs. The management company, the trustee and their agents or delegates are expected to comply with the spirit of these principles in managing or administering any matters relating to the operation of a REIT.

GP1. Clarity of legal form and ownership structure

The assets of a REIT shall be held in a trust and segregated from the assets of its trustee, its management company, its related entities, other collective investment schemes and any other entity.

GP2. Effective oversight by trustee

The trustee shall be functionally independent of the management company of a REIT and shall act in the best interests of holders in maintaining the legal integrity of the assets of the REIT. The trustee shall ensure that it discharges its duties with diligence and prudence.

GP3. Eligible management company

The management company of a REIT shall satisfy the Commission that it possesses

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GP6. Good governance and avoidance of conflicts of interest

The management company shall act in the best interests of the REIT's holders, to whom it owes a fiduciary duty. Transactions entered into by the management company for the REIT shall be at arm's length and on normal commercial terms. The management company shall ensure that procedures are in place to ensure that its staff do not enter into transactions for the REIT which may compromise the interests of the REIT's holders. Unless otherwise specified in this Code, transactions involving connected parties to the scheme shall be subject to holders' approval, and those holders having a material interest in the transactions which is different from the interests of all other unit-holders, shall abstain from voting.

The management company shall adhere to and uphold good corporate governance principles and best industry standards for all activities and transactions conducted in relation to the REIT and any matters arising out of its listing or trading on any stock exchange. The trustee, management company, property valuer and any other delegates of the scheme shall observe the best governance standards.

GP7. Valuation of the scheme

The management company shall ensure that the assets of a REIT are regularly valued in good faith according to market practice and in accordance with procedures that are approved by the Commission, and prepared in accordance with accepted accounting principles.

GP8. Investment and borrowing limitations

There shall be investment restrictions and borrowing limitations that take into account the investment objectives, risk profile and liquidity required for a REIT. Such restrictions and limitations shall be disclosed clearly in the offering document of the REIT.

GP9. Management fees and investor rights

Management fees shall be disclosed clearly in the offering document. A REIT shall ensure that holders are able to participate in significant decisions concerning the REIT and are treated fairly and equitably. Any material change in the REIT's activities shall not unfairly prejudice the rights of the holders.

GP10. Marketing and disclosure

Potential investors and current holders in a REIT shall be provided with full, accurate and timely information regarding the REIT in order to enable them to fully understand the investment and risk profile of the REIT and to help them make informed investment decisions. All transactions, appointments or activities that could create a conflict of interest or be perceived to create such a conflict should be disclosed to investors and holders. Advertising shall not contain information which is false or misleading nor be presented in a deceptive manner.

Chapter 1: Administrative Arrangements

- 1.1 The Commission has delegated its powers under section 104 of the SFO with respect to REITs to its Executive Director (Intermediaries and Investment Products) and any of its delegates appointed pursuant to the SFO.
- 1.2 According to section 8 of the SFO, the Commission is empowered to set up committees whether for advisory or other purposes. The Commission will establish a Committee on REITs for the purpose of consultation and advice on matters that may relate to the Code. The remit of the Committee on REITs and its membership shall be laid down in its Terms of Reference.

Data Privacy

- 1.3 The information requested under the Code may result in the applicant providing the Commission with personal data as defined in the Personal Data (Privacy) Ordinance. The data supplied will only be used by the Commission to perform its functions, in the course of which it may match, compare, transfer or exchange personal data with data held or obtained by the Commission, government bodies, other regulatory authorities, corporations, organizations or individuals in Hong Kong or overseas for the purpose of verifying those data. Subject to the limits in sections 378 of the SFO, the Commission may disclose personal data to other regulatory bodies. Persons

- 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.
- 2.17 “property valuer” or “Principal Valuer” refers to the property valuer appointed to a scheme pursuant to Chapter 6 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).
- 2.19 “REIT” shall be a scheme authorised by the Commission under this Code.
- 2.20 “scheme” means a REIT authorised under this Code.
- 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.
- 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.
- 2.24 “substantial financial institution” means a licensed banking institution authorised under the Banking Ordinance or a financial institution with a minimum paid-up capital of HK\$150,000,000 or its equivalent in foreign currency.
- 2.25 “trustee” means the entity appointed pursuant to Chapter 4 of this Code.

Chapter 3: Basic Requirements for the Authorisation of a REIT

What is a REIT

- 3.1 A REIT is a collective investment scheme constituted as a trust that invests primarily in real estate with the aim to provide returns to holders derived from the rental income of the real estate. Funds obtained by a REIT from the sale of units in the REIT are used in accordance with the constitutive documents to maintain, manage and acquire real estate within its portfolio.

Requisite Conditions for REIT Authorisation

- 3.2 A REIT seeking authorisation from the Commission shall have the following characteristics:
- (a) dedicated investments in real estate that generates recurrent rental income;
 - (b) active trading of real estate is restricted;
 - (c) the greater proportion of income shall be derived from rentals of real estate;
 - (d) a significant portion of income is distributed to holders in the form of regular dividends;
 - (e) a maximum borrowing limit is defined; and
 - (f) connected party transactions are subject to holders' approval.
- 3.3 Pursuant to sections 104(2) and 105(2) of the SFO, there shall be an individual approved by the Commission for the purposes of being served by the Commission with notices and decisions for, respectively, the REIT and the issue of any related advertisement, invitation or document. An applicant for authorisation is, therefore, required to nominate an individual for approval by the Commission as an approved person.
- 3.4 An approved person shall:
- (a) have his/her ordinary residence in Hong Kong;
 - (b) inform the Commission of his/her current contact details, including, in so far as applicable, the address, telephone and facsimile numbers, and electronic mail address;
 - (c) be capable of being contacted by the Commission by post, telephone, facsimile and electronic mail during business hours;

- (d) inform the Commission of any change in his/her contact details within 14 days after the change takes place; and
 - (e) comply with any other requirements as the Commission considers appropriate.
- 3.5 An individual approved by the Commission as an approved person for a REIT shall generally be approved also for the issue of any advertisement, invitation or document made in respect of that REIT.
- 3.6 It is a condition for a REIT to be authorised by the Commission that it will be listed on the Exchange within a period acceptable to the Commission.

Chapter 4: Trustee

Appointment of Trustee

- 4.1 Every scheme for which authorisation is requested shall be structured as a trust and appoint a trustee acceptable to the Commission.

General Obligations of Trustee

- 4.1A The trustee has the fiduciary duty to hold the assets of a scheme in trust for the benefit of the holders, and to oversee the activities of the management company for compliance with the relevant constitutive documents of, and regulatory requirements applicable to, the scheme. This includes ensuring that all investment activities carried out by the management company are in line with the investment objective and policy of a scheme and its constitutive documents, and are in the interests of the holders.
- 4.2 The trustee shall:
- (a) (i) exercise all due diligence and vigilance in carrying out its functions and duties and in protect

4.6 The trustee shall:

- (a) possess key personnel with the knowledge, organizational resources

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

Appointment of a Management Company

- 5.1 Every scheme for which authorisation is requested shall appoint a management company acceptable to the Commission.

General Obligations of a Management Company

- 5.2 A management company shall:
- (a) manage the scheme in accordance with the scheme's constitutive documents in the sole interest of the holders. It shall also fulfill the duties imposed on it under general law;
 - (b) ensure that the financial and economic aspects of the assets of the scheme are professionally managed in the sole interest of the holders; including, without limitation:
 - (i) formulating the investment strategy and policy of the scheme and managing risks connected with the scheme efficiently;
 - (ii) determining the borrowing limit of the scheme;
 - (iii) investing in real estate that meets the investment objective of the scheme;
 - (iv) managing the cash flows of the scheme;
 - (v) managing the financial arrangements of the scheme;
 - (vi) formulating dividend payment schedules of the scheme;
 - (vii) arranging adequate property insurance and public insurance coverage in relation to the real estate of the scheme;
 - (viii) planning the tenant mix and identifying potential tenants;
 - (ix) formulating and implementing leasing strategies;
 - (x) enforcing tenancy conditions;
 - (xi) ensuring compliance with government regulations in respect of the real estate under management;
 - (xii) performing tenancy administration work, such as managing tenant occupancy and ancillary amenities, and negotiating with tenants on grant, surrender and renewal of lease, rent review, termination and re-letting of premises;
 - (xiii) conducting rental assessment, formulating tenancy terms, preparing tenancy agreements, rent collection and accounting, recovery of arrears and possession;

- (xiv) securing and administering routine management services, including security control, fire precautions, communication systems and emergency management;
 - (xv) formulating and implementing policies and programmes in respect of building management, maintenance and improvement; and
 - (xvi) initiating refurbishment and monitoring such activity;
- (c) ensure that the scheme has proper legal title to the real estate owned by the scheme, as well as to the contracts (such as rental agreements) entered on behalf of the scheme with respect to its assets, and that all such contracts are legal, valid and binding, and enforceable by or on behalf of the scheme in accordance with its terms;
- (ca) implement appropriate policies and conduct due diligence such that investments are made only after careful and diligent investigations by the management company. All such procedures and processes followed, and decisions made in relation to whether to invest or not to invest in a particular country or a property by a scheme shall be fully, properly and clearly documented as part of the record-keeping function of the management company;

- (d) maintain or cause to be maintained proper books and records of the scheme (and where applicable of all SPVs and joint ownership arrangements) in Hong Kong and prepare the scheme's financial statements which are in agreement with the scheme's books and records and in accordance with the relevant provisions of this Code, the constitutive and offering documents or circulars in relation to the scheme and which give a true and fair view of the state of affairs of the scheme at the end of the financial period and of the financial transactions of the scheme for the financial period then ended;
- (e) prepare and publish reports, and at least two reports shall be published in respect of each financial year, such reports to be sent to all holders and filed with the Commission within the time frame specified in Chapter 10;
- (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 during normal office hours at the place of business of the management company and that of the approved person; and ensure that copies of such documents are available upon request by any person upon the payment of a reasonable fee;
- (g) ensure that holders are given sufficient prior notice, and where applicable, right to vote, with respect to any material change to the scheme, such as an increase in the level of management fees, changes in investment objectives or proposal to de-authorise the scheme; and
- (h) ensure compliance with any applicable laws, rules, codes or guidelines issued by governmental departments, regulatory bodies, exchanges or any other organizations regarding the activities of the scheme or its administration.

5.2A The management company and each of its directors are jointly and severally responsible for the contents, completeness and accuracy of the information contained in a scheme's offering document, circulars and any notices and announcements published or distributed and for ensuring that all material statements therein have been verified and that they comply with all relevant laws and regulations.

Criteria for Acceptability of Management Company

- 5.5 The management company shall:
- (a) demonstrate that it has sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities; in particular, it shall comply with any financial requirement applicable to the company under the Securities and Futures (Financial Resources) Rules; and
 - (b) not lend to a material extent.
- 5.6 Indebtedness owed by the management company to its parent company will be considered as part of capital for the purpose of 5.5 in the following circumstances:
- (a) the indebtedness shall not be settled without the prior written consent of the Commission; and
 - (b) the indebtedness shall be subordinated to all other liabilities of the management company, both in terms of its entitlement to income and its rights in a liquidation.
- 5.7 The management company may delegate one or more functions in relation to the scheme, and it shall:
- (a) ensure that its delegates have sufficient experience and financial resources at their disposal to enable them to conduct their business and meet their liabilities; and
 - (b) demonstrate that it has proper due diligence procedures and management or administrative structures in place for the selection and on-going monitoring of the delegate(s).

- (a) communications with the Exchange – the agent will deal with the Exchange on all matters arising from the listing application and ensure that all the applicable procedural and documentary requirements are complied with;
- (b) overall management of the offer of interests in the scheme through the Exchange and the listing process – the agent will ensure that the offer and listing process are managed and conducted in a fair, timely and orderly manner; and
- (c) duties as a sponsor - the listing agent is in effect assuming the responsibilities of, and discharging a function no different from, the sponsor of an initial public offering. It shall conduct its own independent due diligence on the properties of the scheme and demonstrate comparable standards of due diligence in this regard as those required by the Exchange and the Commission in respect of sponsors.

5.12 Subject to the approval of the Commission, the management company may itself perform the functions and duties described in 5.11, or appoint a listing agent for such purpose. In the case of a transaction, the management company shall, where necessary or required by the Code, engage a financial adviser.

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

Retirement of a Management Company

- 5.14 The management company shall be removed by the trustee by notice in

- (b) when the Commission withdraws its approval of the management company.
- 5.16 The trustee shall inform the Commission forthwith of any proposal or decision to remove the management company.
- 5.17 Upon the retirement or dismissal of the management company, the trustee shall appoint a new management company as soon as possible whose appointment has been subject to the prior approval of the Commission.

Appointment of the Auditor

- 5.18 The management company shall, at the outset and upon any vacancy, appoint an auditor for the scheme and any special purpose vehicles acquired or to be acquired by the scheme.
- 5.19 The auditor shall normally have an international name and reputation, and shall be qualified under the Professional Accountants Ordinance for appointment as an auditor of a company and independent of the management company, the trustee and any other party concerned.
- 5.20 The management company shall cause the scheme's financial statements to be audited by the auditor. Such statements shall contain the information in Appendix C.

Chapter 6: Property Valuer

Appointment of a Principal Valuer

- (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 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 significant holders of the scheme; or
 - (iv) the holding company, subsidiary or associated company of the scheme's management company, the scheme's trustee, or any of the 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 significant holders of the scheme; or
 - (iv) the holding company, subsidiary or associated company of the scheme's management company, trustee or any of its 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 associated companies).
- 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.

- 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

- (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.

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

Chapter 7: Investment Limitations and Dividend Policy

Core Requirements

- (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) the scheme has no more than two layers of special purpose vehicles;
- (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 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.

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;

- (c) the legal opinion on the arrangement shall include:
 - (i) a description of the significant terms of the joint ownership arrangement;
 - (ii) a description of the equity and profit sharing arrangements of the parties to the agreement;
 - (iii) a legal opinion that the relevant contract and joint ownership arrangements are legal, valid, binding and enforceable under applicable law;
 - (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 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).

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.

- 7.10 The scheme shall disclose at least the following data on its borrowings and
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- (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

- 8.7 All transactions carried out by or on behalf of the scheme shall be:
- (a) carried out at arm's length;
 - (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) in the best interests of holders; and
 - (e) properly disclosed to holders.
- 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

- 8.14 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.
- 8.15 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 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 9: Operational Requirements

Scheme Documentation

- 9.1 Authorised schemes shall issue an up-to-date offering document when they offer units to the public, containing information necessary for investors to be able to make an informed judgement of the investment proposed to them, and in particular containing the information set out in Appendix B.
- 9.2 All the circulars, notices, announcements, offering documents, and valuation report in relation to the scheme shall be provided in the English and Chinese languages.
- 9.3 The offering document may disclose the rental yield actually achieved by the real estate at the time the valuation report was made.
- 9.4 A forecast of the scheme's dividend yield is permitted only if it is made on reasonable grounds and on condition that:
- (a) the relevant forecasts are compiled in accordance with the requirements set out in Appendix F, and
 - (b) when results are published relating to the period covered by the forecast dividend yield, the published financial statements shall disclose the relevant figure and account for the discrepancy between the forecast and the actual yield.

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.

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

- (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;
- (g) a proposed disposal of real estate within a period of less than two years since acquisition;

- (x) a proposal to terminate the scheme; or
 - (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).
- 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.

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 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

- (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;
- (iii) a material change in the scheme's financial forecast;
- (iv) an issue of new units (other than units issued pursuant to a dividend reinvestment plan) that does not require holders' approval; and
- (v) a valuation of the real estate of the scheme, conducted upon request by the trustee under 4.2(d).

10.8 A circular shall be sent within 21 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.

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.

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;
- (h) where applicable, the nature and extent of the interest of the connected person in the transaction;
- (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 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) 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;

- (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;
- (s) prominent warning statement:

Reporting Requirements

Chapter 11: Termination or Merger of a REIT

- 11.1 The scheme may be wound up by the court, otherwise, termination of the scheme shall be subject to holders' approval by special resolution at a general meeting. Where the proposal to terminate the scheme is recommended by the

- (h) such other material information that the holders should be informed of.
- 11.5 A notice shall be sent to holders informing them of the result of the holders' voting at the general meeting.
- 11.6 Upon holders' approval of the termination of the scheme or merger of schemes, the scheme(s) shall cease to create, cancel or sell units. No transfer of the units may be registered and no other change to the register of holders may be made without the sanction of the trustee(s).
- 11.7 The terminating scheme shall not make further investments. The obligations of the trustee, the management company and the Principal Valuer shall continue until the scheme is dissolved.
- 11.8 In the case of termination, the trustee shall oversee, as soon as practicable after the scheme falls to be wound up, the realisation of the real estate of the scheme by the management company, and ensure that, after paying all outstanding liabilities and providing adequate provisions for liabilities, the proceeds of that realisation are distributed to the holders proportionately to their respective interests in the scheme at the date of the termination of the scheme.
- 11.9 Subject to any order of the court, while a scheme is being wound up, the scheme shall continue to prepare its annual or semi-annual report, whichever is applicable.

11.10 On completion of the liquidation of the scheme or merger of schemes, the following shall be prepared:

- (a) the management company's review

Chapter 12: Issue of New Units

- 12.1 A scheme shall be so structured as to enable a holder to protect his proportion of the total units held by having the opportunity to subscribe for any new issue of units. Accordingly, unless the Code otherwise permits, all issues of units by the scheme shall be offered to the existing holders pro rata to their existing holdings, and only to the extent that the units offered are not taken up by such holders may they be allotted or issued to other persons or otherwise than pro rata to their existing holdings.
- 12.2 If new units are not offered to holders on a pro rata basis, holders' approval by way of ordinary resolution at a general meeting is required, unless the aggregate number of new units issued under this 12.2 during the financial year does not increase the total number of units outstanding at the end of the previous financial year by more than 20% (or such lower amount as may from time to time be specified by the Commission).

- 12.5 Where applicable, the management company and its connected persons shall abstain from voting in relation to any unit issuance.

Practice Note on Overseas Investments by SFC-authorised REITs

Introduction

1. With effect from June 2005, the Code on REITs (the “Code”) has been amended to allow SFC-authorised REITs to invest in overseas properties in accordance with the provisions of the Code. It is generally accepted that the market characteristics, investment considerations, and types and level of risks faced by a scheme when investing in and managing overseas properties may be different from those faced by a scheme that invests in Hong Kong properties. These differences may arise in areas such as legal and accounting systems, regulatory framework for properties, valuation methodology, and political and economic environment.
2. The management company is expected to have the requisite competence, experience, and effective internal controls and risk management system for conducting property investments and management in the relevant overseas jurisdiction. It is also required to comply with applicable laws and regulations governing its conduct as an intermediary in investment management business. Decisions to invest in overseas properties shall be made solely in the best interests of holders. A management company’s responsibility and duty towards holders shall not be diminished or undermined when a scheme invests in overseas properties. While a management company may delegate functions, it cannot delegate or absolve itself from its responsibilities and duties in relation to the management of a scheme.
3. The Code has set out the general principles and requirements to be followed by the parties involved in the operation of a scheme including the management company, trustee, valuer and auditor (collectively, the “REIT operators”). Such general principles and requirements shall equally apply in the case of a scheme investing in overseas properties. However, with a potentially different operating environment for a scheme investing in overseas properties, the Commission is mindful of the need to reiterate and, where necessary, to elaborate on the practical application of the Code provisions to schemes that own and manage overseas properties.
4. REIT operators shall possess relevant expertise and implement effective risk control system when carrying out their respective functions in connection with a scheme that invests in overseas properties. However, it is also recognized that certain overseas investment risks, though capable of being minimised, cannot be completely eliminated.
5. This Practice Note aims to highlight to REIT operators that they are responsible for applying appropriate measures and safeguards to mitigate foreign investment risks as much as practicable and to clearly, reasonably and accurately disclose the risks involved in investing overseas to investors so as to enable them to make informed investment decisions.

6. This Practice Note forms part of the Code and is to be read in conjunction with the Code for an overall view of the regulatory framework for schemes that invest in overseas properties.
7. This Practice Note also supplements the disclosure requirements set out in the Code. Applicants are reminded to refer to the Code which, among other things, also identifies circumstances where specific disclosure is required and the manner in which such disclosure has to be made.
8. Unless otherwise stated, words and expressions defined in the Code shall bear the same meaning in this Practice Note.

Safeguarding Measures for Overseas Investments

9. The complexity and risks involved in making property investments and divestment vary from country to country, as each jurisdiction has its own unique legal framework, legislative requirements, business operations model and stage of economic development. In determining whether a scheme shall invest in overseas properties, the management company shall assess the suitability of such decision with reference to its expe

- (b) the expertise of the key personnel and senior management, and the competence, knowledge and experience of staff and their ability to devote their time and attention to investing in and managing the properties in the jurisdiction(s) and the type(s) of properties that the scheme invests or proposes to invest in;
 - (c) the regulatory and/or disciplinary records of the management company and its key personnel, as a manager of a collective investment scheme or a listed vehicle;
 - (d) the track record of the management company or its key personnel in investing in and managing the type(s) of properties in the jurisdiction(s) that it intends to invest in;
 - (e) the operating system and compliance standards of the management company;
 - (f) the accounting and internal controls systems of the management company;
 - (g) the contingency plans of the management company to deal with exigencies that may arise in overseas jurisdiction(s) and to address any consequential impact that may affect the scheme's investments in such jurisdiction(s);
 - (h) the financial resources of the management company; and
 - (i) the nature and extent of technical and human resources that the management company may obtain from the group it belongs to.
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

13. Subject to compliance with the principles and rules relating to delegation in the Code and this Practice Note (including without limitation those in GP4 and Rule 5.7 of the Code), the management company may delegate one or more functions in relation to the management of the scheme's overseas investments to an overseas partner or appoint an overseas agent/expert (each an "overseas entity") to perform such functions. However, it shall conduct due diligence work to ensure that such overseas entity is competent to perform the functions so delegated or appointed, and shall establish adequate measures to monitor and/or supervise the activities of such overseas entity. The management company's accountability to investors is neither diminished nor compromised as a result of such delegation or appointment. The management company remains fully responsible for the acts and omissions of the overseas entity.

14. The management company shall implement appropriate measures to oversee and supervise an overseas entity it has appointed. There shall also be a mechanism in place to identify and address any potential conf

- (f) taxation matters e.g. land appreciation tax or other special levy or tax for the business, withholding tax or any other taxes that may affect operations of a scheme investing in the overseas property concerned;

18. Notwithstanding that part or all of the preparation of the valuation report of an overseas property is carried out by an overseas valuer, the Principal Valuer shall remain fully responsible for the work carried out by the overseas valuer in accordance with 6.2 of the Code and shall certify the valuation report of such overseas property for the purpose of inclusion in the offering document or circular where applicable.
19. The Principal Valuer is expected to conduct due diligence in the identification of an appropriate overseas valuer and it shall ensure that the overseas valuer meets the same criteria for acceptability of the Principal Valuer, as set out in Chapters 6.4 to 6.7 (except for 6.4(b) and (c)) of the Code.

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22. The management company shall ensure that the characteristics and risks of investing in the relevant property market are disclosed. The management company shall at least disclose the following:
- (a) the overseas jurisdictions that a scheme invests or will invest in, or a description of the criteria for selecting the overseas jurisdiction(s) for investment;
 - (b) an assessment of the financial aspects of overseas property investment, such as the ability to hedge against currency risks, foreign exchange controls or restrictions imposed by overseas government, taxation in respect of appreciation in property values, rental income and gains on disposal of properties, the state of the overseas capital market and access to such market, and the ability to preserve and repatriate gains, profits and capital;
 - (c) an explanation of the operational matters specific to property investments in each of the relevant overseas jurisdictions, such as its practice of rental collections and rental deposit refunds, the requirement to obtain the relevant licences, the administrative requirements laid down by the relevant governing authorities, laws governing repossession of properties, and tenant protection laws; and
 - (d) where there is a significant fluctuation in exchange rates between the date of property valuation and the latest practicable date prior to publication of the relevant document, this fact together with the effect of the fluctuation on the valuation as stated in the valuation report shall be set out.
23. A scheme investing or proposing to invest in overseas properties shall explain to investors the regulatory framework in which proprietary rights and title of such overseas real estate can be vested in the scheme. The management company shall, with the information provided by experts, prepare a commentary to be included in the offering document or circular that covers the following aspects concerning the overseas properties:
- (a) overview of the legal framework of the relevant overseas market that governs the conveyance of proprietary and legal title of real estate (including the land and the superstructure on it) in that market;
 - (b) comparison of the extent of legal protection of proprietary rights over real estate conferred by the legal system in the relevant overseas market and that of Hong Kong;
 - (c) brief description of any previous restructuring, transactions and derivation of title of the overseas property that is to be or has been acquired by the scheme, for a period of not less than 5 years before the date of the latest valuation of the property;

- (d) any applicable (whether in force, announced or proposed) policy changes or government administrative measures that might have an impact on the enforcement and protection of the title of the property and any of the related proprietary rights of the property acquired or to be acquired by the scheme, and an assessment of the implication thereof on all material aspects in relation to the scheme;
 - (e) any laws protecting tenants or restricting rental reviews;
 - (f) assessment and explanation by the management company of the key areas of concerns in relation to the ownership and enforcement of proprietary rights of the overseas property and the operational aspects in managing such property in view of the overseas legal and regulatory regime;
 - (g) the nature and extent of title insurance acquired in respect of the property, where applicable;
 - (h) description of any material conditions affecting either the status of the legal title to the subject property as disclosed in the legal opinion in respect of such property, or the assumptions adopted by the valuer in the valuation of such property as disclosed in the valuation report; and
 - (i) description of all known relevant taxes and premiums which may be charged in respect of the subject property.
24. To ensure that investors have a clear understanding of the manner in which overseas investments are conducted, the offering document or circular shall also clearly explain whether an overseas entity is appointed and the criteria for such appointment. The offering document or circular shall, at least, provide names and succinct descriptions of the overseas entities, their relationships with the operators of the scheme or with the property that the scheme invests in, and the major terms (including duration) of each of the arrangements with the respective overseas entities.

Overseas Regimes Acceptable to the Commission

Management companies in the following jurisdictions are regarded as subject to an acceptable inspection regime acceptable to the Commission and may be considered as approved management companies under 5.3 of this Code. As a general guide, the Commission looks to the following matters in determining the acceptability of an overseas management company:

- (a) the management company is licensed by an overseas regulator who carries out inspections of the management company (including its activities in relation to REITs or schemes of a similar nature) within its jurisdiction in a manner generally consistent with that of the Commission; and
- (b) the Commission and the overseas regulator concerned have satisfactory procedures for the timely exchange of information regarding the management company.

The regulators of management companies in respect of the following overseas jurisdictions are regarded as acceptable to the Commission:

Jurisdiction	Regulator
Australia	Australian Securities & Investments Commission (ASIC)
Germany	Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin) (German Financial Supervisory Authority)
Ireland	Financial Services Regulatory Authority
Luxembourg	The Commission de Surveillance du Secteur Financier (CSSF)
United Kingdom	Financial Services Authority (FSA)

Information in the Offering Document

This list is not intended to be exhaustive. The management company is obliged to disclose any information which may be necessary for investors to make an informed judgement.

Constitution of the Scheme

- B1** Name, registered address and place and date of creation of the scheme.

Investment Objectives and Restrictions

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

- (a) the investment policy and strategy of the scheme;
- (b) the proposed use of the monies raised from the public offering of the units in the scheme and any business plan for the scheme;
- (c) a discussion of the business plan for property investment and management covering the scope and type of investments made or intended to be made by the scheme, including the type(s) of real estate (e.g. residential/commercial/industrial);
- (d) the general character and competitive conditions of all real estate now held or intended to be acquired by the scheme and how it meets the established criteria for selection;
- (e) the nature and risks of making property investments in each of the relevant locations, including:
 - (i) demographics; 0035 Tw[2001 Tc040659 Tw(ii(e))28m)8. thd cometithe

- (g) transaction history of the relevant property in the five years immediately preceding the date of the valuation report included in the offering document or circular;
- (h) any proposed program for renovation or improvement to the real estate, including the estimated costs thereof and the method of financing to be used;
- (i) the operating data of each of the real estate, including the occupancy rate, number of tenants and its mix in terms of occupation or business, principal provisions of the leases, average annual rental per square foot, and schedule of lease expirations for the next five years;
- (j) the borrowing policy and the method or proposed method of operating and financing the scheme's real estate investments;
- (k) the measures in place to mitigate or minimize risks relating to the investment and management of real estate owned by the scheme;
- (l) the dividend policy;
- (m) the insurance arranged for the scheme;

- (r) particulars of any bank overdrafts or similar indebtedness of the scheme, or if there is no such indebtedness, a statement to that effect.

B3 If the nature of the investment policy so dictates, a warning that investment in the scheme is subject to abnormal risks, and a description of the risks involved.

Operators and Principals

B4 The names, registered addresses and responsibilities of the parties involved in the management, operation and valuation of the scheme, including the following parties (where applicable):

- (a) the management company;
- (b) the trustee;
- (c) delegates of the management company;

Significant Holders

- B5** The names of the significant 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 significant holders intends to hold the units after the scheme becomes authorised.

Characteristics of Units

- B7** Minimum investment and subsequent holding (if any).
- B8** A description of the different types of units, including their currency of denomination.
- B9** Form of certification.
- B10** Proforma net asset value per unit upon completion of fundraising.

Application Procedures

- B11** Procedure for subscribing units.
- B12** Statement that no money shall be paid to any intermediary in Hong Kong who is not licensed or registered to carry on Type 1 regulated activity under Part V of the SFO.

Distribution Policy

- B13** The approximate dates on which dividends will be paid.

Fees and Charges

- B14** (a) The levels of all fees and charges payable by an investor (see 9.10 to 9.13), including all charges levied on subscription and conversion;
- (b) The levels of all fees and charges payable by the scheme, including management fees, trustee fees, start-up expense and fees in relation to listing (including underwriting fees, where applicable); and
- (c) The notice period for fee increases.

Taxation

- B15** Details of Hong Kong and principal taxes levied on the scheme's income and capital, including tax, if any, deducted on distribution to holders.

Reports and Accounts

- B16** The date of the scheme's financial year.
- B17** Particulars of what reports will be sent to holders and when (including those in 10.12).
- B18** A yield forecast may be incorporated into the offering document, subject to the requirements stated in Appendix F.

Warnings

- B19** Statements/warnings shall be prominently displayed in the offering document

- B23** In B22 above, the expression “expert” includes engineer, valuer, accountant and any other person whose profession gives authority to a statement made by him. For the purposes of B22 a statement shall be deemed to be included in a offering document if it is contained therein or in any report or memorandum appearing on the face thereof or by reference incorporated therein or issued therewith.

General Information

- B24** A list of constitutive documents and an address in Hong Kong where they can be inspected free of charge or purchased at a reasonable price.
- B25** The date of publication of the offering document.
- B26** A statement that the management company and its directors accept responsibility for the information contained in the offering document as being accurate at the date of publication.
- B27** Details of unauthorised schemes shall not be shown in the offering document. Where names of such schemes are mentioned, these shall be clearly marked as unauthorised and not available to Hong Kong residents.
- B28** Details of listing procedures and special information relating to listing.

Termination of Scheme

- B29** A summary of the circumstances in which the scheme can be terminated.

Merger of Scheme

- B30** A summary of the circumstances in which the scheme can be merged with another scheme(s).

Accompaniment to the Offering Document

- B31** The offering document shall be accompanied by:
- (a) the scheme’s most recent audited annual report and accounts (where applicable);
 - (b) the scheme’s semi-annual report if published after th

- (c) a valuation report prepared by a property valuer that meets the qualification requirements stated in Chapter 6. The effective date as at which the real estate was valued shall not be more than three months before the date on which the offering document is issued and the valuation report shall comply with the requirements of Chapter 6.

B32 No application form may be supplied to any person not a holder unless accompanied by the offering document, except that an advertisement or report containing all the requirements in this Appendix may be allowed to incorporate an application form.

Contents of Financial Reports

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

1. Manager's discussion and analysis of financial conditions and results of operations, explanation of any potential conflicts of interest and the manner in which they are dealt with; and discussions on the strategy, plans and operations for the coming year;
2. Summary of all real estate sales and purchases as well as connected party transaction(s) entered into during the relevant period;
3. Valuation report as described in Chapter 6;
4. Trustee's report as required under 4.2;
5. A report of the names of the top five real estate agents and contractors engaged by the scheme during the financial year, based on the value of commissions paid or the value of the service contracts. Such report shall include a breakdown of the consideration attributable to each of the agents or contractors by way of figures and percentages, and a description of the services/works contracted for;
6. Holdings of each of the connected persons to the scheme;
7. Number of new units issued;
8. A set of financial statements comprising:
 - (a) balance sheet;
 - (b) income statement;
 - (c) cash flow statement;
 - (d) 80004 Tc0aruf the d o150ar1suer n1suer n1sv1.8858 ananct
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The semi-annual report shall contain, at a minimum, the following:

1. Manager's discussion a

10. Net asset value
11. Number of units in issue
12. Net asset value per unit

Income Statement

The income statement shall separately disclose, where applicable, at least the following items:

1. Gross rental income from real estate
2. Other income, broken down by category
3. Deficit/Surplus on revaluation taken to the Income Statement during the accounting period
4. Profit or loss on disposal of any investment real estate
5. Equalization on issue and cancellation of units
6. An itemized list of various expenditure charged to the scheme including:
 - (a) fees paid to the management company
 - (b) remuneration of the trustee
 - (c) fees paid to delegates of the management company
 - (d) fees paid to Principal Valuer
 - (e) other amounts paid to any connected persons of the scheme
 - (f) interest on borrowings
 - (g) directors' fee and remuneration
 - (h) safe custody and bank charges

3. Cash flows from financing activities

Distribution Statement

The distribution statement shall separately disclose, where applicable, at least the following items:

1. Net after tax income for the period
2. Interim distribution per unit and date of distribution
3. Final distribution per unit and date of distribution

Statement of Movements in Capital Account

The statement of movements in capital account shall separately disclose, where applicable, at least the following items:

1. Value of the scheme as at the beginning of the period
2. Number of units issued and the amounts received upon such issuance (after equalization if applicable).
3. Any items resulting in an increase/decrease in value of the scheme including:
 - (a) surplus/loss on sale of real estate
 - (b) exchange gain/loss
 - (c) unrealised appreciation/diminution in value of real estate
 - (d) net income for the period less distribution
4. Amounts transferred to and from the Income Statement
5. Value of the scheme as at the end of the period

Notes to the Accounts

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

1. Principal Accounting Policies
 - (a) in respect of real estate, the basis of valuation, the treatment of changes in their value and the treatment of any revaluation on their sale;
 - (b) the revenue recognition policy regarding rental income, dividend income and other income;

- (c) the basis of treatment of formation costs;
- (d) taxation; and
- (e) any other accounting policy adopted to deal with items which are judged material or critical in determining the transactions and in stating the disposition of the scheme.

Any changes to the above accounting policies and their financial effects upon the accounts shall also be disclosed.

2. Transactions with Connected Persons

5. Contingent Liabilities and Commitments

Details of any contingent liabilities and commitments of the scheme.

6. If the free negotiability of any asset is restricted by statutory or contractual requirements, this shall be stated.

Contents of the Auditors' Reports

Two reports shall be prepared by the auditor, namely:

1. An auditor's report on compliance with the regulatory requirements, in which the auditor expresses an opinion as to whether the financial statements prepared for that period have been properly prepared in accordance with the relevant provisions of the trust deed and the Code; and
2. An auditor's report on the financial statements, in which the auditor expresses an opinion as to whether the financial statements give a true and fair view of the disposition of the scheme at the end of the period and of the transactions of the scheme for the period then ended;

If the auditor is of the opinion that proper books and records have not been kept by the scheme and/or the financial statements prepared are not in agreement with the scheme's books and records, that fact should be stated in the auditors' report in (2) above.

If the auditor has failed to obtain all the information and explanations which, to the best of his knowledge and belief, are necessary for the purposes of the audit, that fact should be stated in the auditors' report in (2) above.

Performance Table

A comparative table covering the last 5 financial years or since launch, whichever is later, and including, for each financial year:

- (a) the total net asset value at the end of the financial year;
- (b) the net asset value per unit at the end of the financial year;
- (c) the highest premium or discount of the traded price to net asset value; and
- (d) the net yield per unit at the end of the financial year.

Contents of the 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.

1. Name of Scheme

2. Participating Parties

A statement to specify the participating parties such as the management company and the trustee.

3. The scheme is subject to and governed under the laws of Hong Kong.

4.

- (c) A statement that sets out the situations under which the management company shall send circulars to holders (see Chapter 10).
- (d) A statement that sets out the situations under which the management company shall send notices to holders (see Chapter 10).
- (e) A statement that lists out the procedures that the management company shall follow in issuing announcements, circulars and notices to holders.

10. Issuance of Units

The following shall be stated:

- (a) The procedures that a scheme should follow when new units are issued (see Chapter 12).
- (b) The method of determining the issue price.

11. Fees & Charges

The following shall be stated:

- (a) the maximum percentage of the initial charge (if any) payable to the management company out of the issue price of an unit;
- (b) the maximum fee payable to the management company out of the assets of the scheme, expressed as an annual percentage;
- (c) fee payable to trustee;
- (d) fee payable to Principal Valuer;
- (e) preliminary expenses to be amortized against the assets of the scheme;
and
- (f) all other material fees and charges payable out of the property of the scheme.

12. Meetings

Provisions on the manner in which meetings are conducted in accordance with 9.9; and on the circumstances under which meetings are to be held.

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;
 - (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) 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.

14. Annual Accounting Period

Calendar year date on which the annual accounting period of the scheme ends.

15. Base Currency

A statement of the base currency of the scheme.

16. Modification of the Trust Deed

A statement of the means by which modifications to the trust deed can be effected (see Chapter 9).

17. Termination of Scheme

(a) A statement of the circumstances in which the scheme can be terminated.

(b) A statement to list the procedures that are to be followed upon termination of the scheme (see Chapter 11).

18. Merger of Scheme

A statement to list the procedures that are to be followed upon the merger with another scheme(s) (see Chapter 11).

Appendix E

Contents of Financial Statements for Liquidation or Merger of Schemes

Preparation and Presentation of Forecast

No forecast of profits or dividends based on an assumed future level of profits may be made, unless it is made on reasonable grounds and supported by a formal profit forecast.

The forecast shall cover a period which is coterminous with the scheme's financial year-end. If, exceptionally the forecast period ends at a half year-end, the Commission will require an undertaking from the management company that the interim report for that half year will be audited. Forecast periods not ending on the financial year end or half year-end will not be permitted.

The principal assumptions underlying the forecast, including commercial assumptions, upon which it is based, shall be stated. The assumptions shall be specific and precise, and readily understandable by investors. Such assumptions shall draw the investors' attention to, and where possible quantify, those uncertain factors which could materially disturb the ultimate achievement of the forecast. The assumptions shall not relate to the general accuracy of the estimates underlying the forecast. Any statement or information relating to the forecast shall be clear and unambiguous. Assumptions and limits regarding the prospective financial information shall be disclosed in a way that is no less prominent than the forecast itself.

Rental income, which forms a material element of the forecast, shall be examined and reported on by the valuer and its report shall be set out.

The accounting policies and calculations for the forecast shall be reviewed and reported on by the auditor and its report shall be set out.

The forecast and the assumptions on which it is based are the sole responsibility of the management company. The management company shall ensure that it exercises due care and consideration in the compilation of the forecast, and that sufficient information is disclosed to enable investors to interpret the forecast and to form a view as to its reasonableness. The management company shall report in addition that it has satisfied itself that the forecast has been stated after due and careful enquiry, and such report shall be set out.

There should be appropriate risk disclosures, including risks that the prospective financial information will not be achieved.