

Frequently Asked Questions relating to Real Estate Investment Trusts

This FAQ is prepared by the Investment Products Division and aims to provide basic information to market practitioners concerning the authorization of real estate investment trusts (REITs) under the Code on Real Estate Investment Trusts (the REIT Code). Applicants are encouraged to contact the relevant case team in the Investment Products Division of the Securities and Futures Commission (the SFC) if in doubt on any specific issues arising from the application/interpretation of the REIT Code. Please note that each application for authorization is considered on a case-by-case basis.

The information set out below is not meant to be exhaustive. This FAQ may be updated and revised from time to time. This FAQ is only for general reference. Compliance with all the requirements in this FAQ does not necessarily mean an application will be accepted or authorization will be granted. The SFC reserves the rights to exercise all powers conferred under the law.

Unless otherwise defined herein, all capitalised terms shall have the meanings given to such terms in the REIT Code.

	Question	Answer
Basic Requirements for Authorization		
1.	What does SFC authorization of REIT involve?	In order to be authorized as a REIT, the structure and investment restrictions of the scheme must comply with the REIT Code, unless a waiver is granted by the SFC. The scheme should

	Question	Answer
--	----------	--------

The SFC may modify or relax the application of a requirement in the REIT Code if it considers that, in particular circumstances, strict application of the requirement would operate in an unduly burdensome or unnecessarily restrictive manner.

	Question	Answer
		umbrella should allow for inclusion of non-REIT collective investment schemes, and whether additional requirements are needed to ensure investors' interests are properly protected.

6.

	Question	Answer
--	----------	--------

	Question	Answer
		in the "Forms" section on the SFC's website (www.sfc.hk). To help market practitioners prepare the supporting documents for their applications, the SFC has designed an Application Checklist for REITs, which can be downloaded from the above-mentioned section on the SFC's website. Any subsequent changes to documents submitted to the SFC should be properly and comprehensively marked up to facilitate review by SFC staff. A written confirmation of compliance signed by a senior executive or officer of the management company, or their respective legal advisers for the final version of the offering document and the constitutive documents should also be submitted via e-IP. During the application process, the SFC may request further information from the applicant to either support statements made in the application or to clarify specific issues. To facilitate the reviewing of an application, the SFC may invite an applicant to discuss its proposal with the SFC during the application process. An applicant should also note that an application fee has to be paid for an application (please refer to FAQ12 below on payment of fees). Once authorization is granted, the applicant has to pay an annual authorization fee and the first annual fee for the authorization to be effective. Please refer to the Securities and Futures (Fees) Rules for applicable fees. The SFC will normally issue a letter confirming that the application has been taken up within five business days of the receipt of the application unless the application is returned as referred to in FAQ10. Applicants are reminded that the application fee will not be returned once the application is taken up by the SFC, regardless of whether the Application Proof is subsequently returned by the SFC. - -

	Question	Answer
		For the avoidance of doubt, submission of hard copies of the Relevant Forms is not required under both options. C) Payment of application fee The SFC will take up new REIT applications if they are in good order (please refer to FAQ10). The application fee has to be paid upon submission of the application or as soon as practicable following submission. In the latter case, the applicant shall contact its SFC case team to discuss the payment arrangement.
13.	Will an application lapse after a certain period of time? If so, how long? What should I do if my application has lapsed?	Reference is made to the circular of the SFC to applicants of SFC-authorized investment

	Question	Answer
14.	Since an authorized REIT has to be listed, are there any other rules that a REIT should observe to facilitate its listing?	Yes. Since a REIT has to be listed on the HKEX, it must possess sufficient resources and expertise to meet the requirements of the HKEX and comply with the Listing Rules. The management company is expected to appoint a listing agent who is responsible for dealing with the HKEX on all matters in relation to its listing application and to discharge the duties as a sponsor. The SFC has reached an understanding with the HKEX to expedite the listing process of SFC-authorized funds, including REITs authorized under the REIT Code, in order to shorten the time process for the listing of SFC-authorized REITs. Essentially, the SFC is responsible for authorizing REITs, including the vetting of constitutional and offering documents, and the monitoring of ongoing compliance with the REIT Code. The HKEX deals with the listing of REITs, including the vetting of listing documents, supervision over the listing process and the monitoring of ongoing compliance with the Listing Rules.
15.	Paragraph B31 of Appendix B to the	

	Question	Answer
--	----------	--------

The amount and level of indemnities to be obtained should take into account factors such as the (a) magnitude of risks; (b) presence of any known title issues or non-conformities; and (c) extent and results of the due diligence exercise performed. Typically, a REIT would be entitled to make an indemnity claim within two or three years after the listing, and for claims relating to fundamental warranties and tax, the time limit to make a claim would be seven years. In addition, the providers of the indemnities should be of good standing and credit.

	Question	Answer
	Management of REITs	

16.



	Question	Answer
Valuation		
21.	Where a REIT is to acquire new properties, whether a valuation report on the existing properties held by the REIT has to be produced and be included in the relevant circular?	In general, the REIT Code does not require a valuation report on the existing portfolio of the REIT to be produced each time a REIT is to acquire a new property. 6.2 of the REIT Code only requires the Principal Valuer to produce a valuation on real estate to be acquired or sold by the REIT.

	Question	Answer
		(d) ensuring it has competent and adequate staff with sufficient and appropriate skills, resources and expertise in place, either as part of its in-house skills or by way of outsourcing to a competent external party (e.g. engaging a reputable, suitably qualified and financially sound developer or contractor to undertake the development or construction activities) under its oversight, to manage the Property Development and Related Activities.
23.	When would an acquisition of vacant land be considered as 'part-and-parcel' to the property development project for the purposes of the REIT Code?	In determining whether an acquisition of vacant land is 'part-and-parcel' of a property development project, factors such as whether the land can be readily used for the property development project to be undertaken pursuant to 7.2A of the REIT Code and whether additional approvals (e.g. in relation to zoning and planning, government lease conditions, etc.) have to be obtained from relevant government and authorities for commencing the property development project would generally be considered. REIT managers are encouraged to consult the Investment Products Division at an early stage.
24.	For the purpose of calculating the Property Development Cap under	

	Question	Answer
		practice to cater for cost overruns that may arise during the course of development. Where the Property Development and Related Activities are conducted overseas, REIT Managers should also take into account any currency impact in the calculation. The above are merely examples of Property Development Costs and are not meant to be exhaustive.
27.	What should be disclosed in the announcements and periodic updates in the interim and annual report of the REIT in relation to the Property Development and Related Activities?	Under the REIT Code, REIT Managers have a general duty to keep unitholders informed of any material information pertaining to the REIT in a timely and transparent manner and to keep unitholders apprised of the position of the REIT. In this connection, REIT Managers are generally expected to issue an announcement to inform unitholders upon the REIT entering into a contract for the Property Development and Related Activities, including a summary of the key terms and conditions, the Property Development Costs and the risks involved. REIT Managers shall also provide periodic updates to investors about the status of the Property Development and Related Activities in the interim and annual reports. REIT Managers shall ensure that all material information concerning these Property Development and Related Activities (such as the development progress, costs incurred and the extent to which the Property Development Cap has been applied etc.) is set out in such updates. REIT Managers should also note their general disclosure obligation under 10.3 of the REIT Code.
Minority-owned Properties		

28. Is a majority owner's drag option to force the

	Question	Answer
29.	How do the announcement requirements under the REIT Code apply to transactions by a joint venture entity in which the REIT holds a minority interest?	The announcement, circular, unitholders' approval, disclosure and reporting requirements

Question	Answer
	(iii) have the effect of incentivizing the REIT to redeem its units (e.g. step-up in interest rates); redemption of the bonds is at the sole discretion of the REIT; the securities are deeply subordinated in the event of liquidation; and trustee's consent is obtained. In calculating the Coupon Cap and demonstrating compliance, the REIT Manager must exercise prudence in determining the total issue size of perpetual bonds. Calculation should also be made on the basis that the coupon payment will not be accounted for as interest expense or other expense of the REIT. Should a REIT proceed to redeem the perpetual bonds issued, the REIT manager must confirm that: the redemption would not result in material adverse impact on the REIT and not affect compliance with the gearing limit under the REIT Code; and trustee's consent has been obtained. An announcement must be made by the REIT upon issuance and upon redemption of perpetual bonds. The announcement must be submitted to the SFC for pre-vetting. REIT managers are further reminded that an issuance of perpetual bonds to connected persons will be subject to the connected party transaction requirements under the REIT Code.

	Question	Answer
38.	Can investment in other listed REITs and property-related asset-backed securities (ABS) be counted as Qualified Minority-owned Properties, adopting the substance over form approach?	Investments in other listed real estate investment trust or property-related ABS as Qualified Minority-owned Properties would have to be considered on a case-by-case basis having

	Question	Answer
		account of the interests of unitholders. The management company should inform the SFC and unitholders as to the pro

	Question	Answer
		resolution is specifically provided for under a REIT's constitutive documents, an increase of the Property Development Cap may be approved by way of an ordinary resolution.

Transactions with Connected Persons

42. What transactions between the trustee's banking group and the REIT's group will not be regarded as connected party transactions of the REIT for the purposes of 8.17 of the REIT Code?

The following transactions with the trustee's banking group will not generally be regarded as connected party transactions of the REIT for the purposes of 8.17 of this Code:

- (a) where a member of the trustee's banking group acts for a third party as nominee, custodian, agent or trustee and conducts 'agency transactions' with the REIT's group;
- (b) where a collective investment scheme (including another REIT) transacts with the REIT's group, and a member of the trustee's banking group acts as the REIT manager

	Question	Answer
--	----------	--------

(b) loans extended by a Trustee's Banking Group Intermediary being a transaction in the

	Question	Answer
--	----------	--------

	Question	Answer
		(a) The Trustee Continuing CPTs should comply with 8.7 of the REIT Code (including they will be carried out at arm's length, on normal commercial terms and in the best interests of holders). <i>Sufficient safeguards to ensure the independence of the trustee</i>

	Question	Answer
		(i) the REIT manager must implement adequate internal controls, compliance procedures and corporate governance policies to ensure that the Trustee Continuing CPTs are monitored and undertaken on terms in compliance with the REIT Code; and (ii) the REIT manager must demonstrate to the audit committee and the independent non-executive directors of the REIT manager that the Trustee Continuing CPTs satisfy all applicable requirements, which may entail (where practicable) obtaining quotations from parties unrelated to the trustee. For example, for non-daily corporate finance transactions there should be procedures to ensure (a) competitive best pricing (having regard to the nature of the services being sought and market conditions); and (b) the trustee should

	Question	Answer
--	----------	--------

Question	Answer
requirements with respect to corporate finance transactions with trustee's banking group provided that they can satisfy the conditions set out in 8.18 of the REIT Code?	disclosure and reporting requirements under Chapter 8 with respect to such transactions may be modified as described below: (a) the offering document and any circular issued by the REIT in respect of such corporate finance transactions shall include upfront disclosure of this exemption and, with respect to those corporate finance transactions under categories (a) and (b) of FAQ44, full disclosure of the material terms of the relevant agreements; (b) the annual report of the REIT shall include disclosure of the aggregate fees paid to the trustee's banking group in respect of all the corporate finance transactions conducted for the REIT's group in the relevant financial year; (c) in respect of any corporate finance transaction conducted by the trustee's banking group whose fees, payable by the REIT's group, exceed HK\$1 million, the relevant annual report of the REIT shall include disclosure of: (i) the occurrence and nature of the transaction; (ii) the parties to the transaction; and (iii) the date of the transaction; (d) the annual report of the REIT shall disclose a statement made by each of the REIT manager and the trustee to confirm that the corporate finance transactions under categories (a), (b) and (c)

Question	Answer
	(iii) in accordance with the relevant agreement governing them on terms that are fair and reasonable and in the interests of unitholders as a whole; and (f) the auditors' report shall cover all the relevant corporate finance transactions. <i>Note: For example, it is generally expected that the auditors of the REIT shall report to the REIT manager confirming that:</i> (i) <i>the transactions were duly approved by the board of directors of the REIT manager in accordance with the internal procedures of the REIT manager;</i> (ii) <i>the transactions were</i>

Question	Answer
requirements with respect to leasing or licensing transactions with trustee's banking group or a director or chief executive of the trustee provided that they can satisfy the conditions set out in 8.18 of the REIT Code?	of the trustee will not be subject to any requirements for announcement or unitholders' approval under Chapter 8 of the REIT Code, and the disclosure and reporting requirements under Chapter 8 of the REIT Code with respect to such leasing or licensing transactions may be modified as described below:

	Question	Answer
		For existing continuing connected party transactions, the REIT may, with a proper announcement to unitholders, make use of the exemption for reporting or annual review requirements (if applicable) under the revised REIT Code. All existing 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 where additional connected persons are identified and exemptions are not available under the revised REIT Code.
Ongoing Requirements		
51.	Once a REIT is authorized by the SFC, is it required to comply with any ongoing requirements?	The management company of an SFC-authorized REIT has an obligation to inform holders, in a timely and transparent manner, of any material information regarding the REIT. The management company shall inform holders by way of announcement 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.

	Question	Answer
--	----------	--------

successfully acquire those Units, especially when the percentage ownership of the Property by the REIT has further increased.

(iv)

Question

	Question	Answer
	that are not subject to pre-vetting by the SFC?	to the relevant case officers at the same time as the filing of the relevant announcements/circulars via e-IP.
56.	What are the disclosure requirements in respect of the composition of distribution made by a REIT?	In order to enhance transparency and investors' understanding of the composition of distributions declared by REITs, all REITs must disclose clearly (a) the extent to which the distribution declared or made by it is composed of, and the types of, income and capital and (b) any amounts deducted (such as taxes in respect of distributions paid/payable to unitholders) pursuant to its trust deed, in all of their results announcements, semi-annual and annual reports. For example, any adjustment

	Question	Answer
	loss and the assets and liabilities of such SPVs be dealt with in the accountantsöreport for the purpose of complying with 7.6h in the	

	Question	Answer
	Issue and Repurchase of Securities	
62.	Under what circumstances can convertible instruments (such as securities convertible or exchangeable into units or any options or warrants or similar rights for the subscription or issue of units) be issued by a REIT pursuant to the 20% general mandate permitted under 12.2 of the REIT Code? How would 12.2 of the REIT Code be applied in relation to an issue of convertible securities or an agreement to issue units where the units may be issued at a date later than the financial year in which the convertible securities or agreement are/is granted?	In the case of issuance of such convertible instruments by a REIT, the relevant time for calculating whether the general mandate is exceeded should generally be at the time when the REIT enters into a binding agreement or commitment (conditional or otherwise) relating to the proposed issuance of units (e.g. when it enters into an underwriting agreement for the issuance of the convertible instruments). For future calculations of the general mandate, no account may be taken of any units which are or may be issued p TJET(ss)3(u13()-4s)-4(w)5(hi

	Question	Answer
		<i>issue of the relevant convertible instruments or taken into account subsequently (e.g. as a result of an unforeseen adjustment not contemplated in the calculation)</i> <i>any new units issued or issuable pursuant to any agreement for the issuance of units to the extent that new units have already been taken into account in the initial calculation at the time</i>

	Question	Answer
		Managers should note that the above is intended to provide some general guidance only and the SFC would consider each case according to its particular circumstances on a case-by-case basis. Managers should consult the Investment Products Division at the earliest opportunity should it wish to proceed with the issue of any convertible instruments under the general mandate permitted under 12.2 of the REIT Code.
63.	What are the major regulatory requirements Managers should note in respect of secondary offerings?	A REIT may raise funds by way of a secondary offering subsequent to its IPO. The following are a few major regulatory requirements Managers should note in this connection. Any secondary offering must be conducted in accordance with the trust deed and other constitutive documents of the relevant REIT and in compliance with all applicable laws and regulations (including the REIT Code). If new units are not offered to holders on a pro rata basis, holders' approval by way of an ordinary resolution at a general meeting is required unless the number of new units issued falls within the 20% general mandate prescribed under 12.2 of the REIT Code (see also FAQ62 above). Where new units are issued on a pro rata basis but the issue increases the market capitalisation of the REIT by more than 50%, holders' approval by way of ordinary resolution at a general meeting is also required (see 12.3 of the REIT Code). Under section 103 of the SFO, an advertisement, invitation or document which, among other things, contains an invitation to the public to acquire an interest in a collective investment scheme has to be authorized by the SFC, unless it falls within an exemption in the SFO. One exemption often being relied upon is where the interests in the collective investment scheme are or are intended to be disposed of only to professional investors as defined under the SFO. Managers should consider, and seek

Question	Answer
	also note the requirement to issue an announcement where there is an issuance of new units under 10.4 of the REIT Code. Under the trust deeds of all SFC-authorized REITs, an issue of new units at an issue price that is at a discount of more than 20% to the market price will generally require specific prior approval of holders by way of an ordinary resolution at a general meeting. Managers should note that the above is intended to provide some general guidance only and should seek legal advice where appropriate. Managers are welcomed to consult the SFC to seek further guidance on specific regulatory aspects concerning their proposed secondary

65A. Can the number of units repurchased by a REIT under a repurchase mandate in the year be added to the 20% mandate under 12.2 of the REIT Code? How can one determine the total number of units available for issue or resale?

Under 12.2 of the REIT Code, a REIT may issue new units during the financial year which does not increase its total number of units outstanding at the end of the previous financial year by more than 20% (issue mandate). In line with the Listing Rules, the number of units repurchased by a REIT in the year under a repurchase mandate and held in treasury (Relevant Treasury Units) may be added to such issue mandate limit. As the issue mandate is not subject to unitholders' approval, no separate unitholders' approval would be required for the resale of the Relevant Treasury Units in the year. Both the issue mandate limit and the repurchase mandate limit should be calculated based on the number of issued units of a REIT excluding any treasury units held by the REIT at any given time.

Please see below an illustrative example demonstrating how to determine the available repurchase mandate limit and issue mandate limit after units have been repurchased and issued.

Assuming a REIT repurchased its units and resold/issued treasury/new units as follows:

A REIT had 1,000 units in issue at the beginning of Year 1, and obtained a repurchase mandate (to buy back up to 100 units) from its unitholders and was entitled to an issue mandate (to issue or resell up to 200 units, plus the number of units repurchased in the year under the repurchase mandate).

During Year 1, it repurchased 100 units first and then issued 200 units.

During Year 2, it obtained a new repurchase mandate, repurchased 80 units first and then issued 300 units under the issue mandate for Year 2.

	At beginning of Year 1	During Year 1	During Year 1	At beginning of Year 2



The number of issued units in circulation (ie, excluding treasury units) would be the same under both of the following scenarios:

Scenario 1: All issuances are in the form of resale of treasury units first, with any

	Question	Answer
66.	Paragraph 6 of the repurchase circular dated 31 January 2008 issued by the SFC provides that any REIT proposing to repurchase its units shall also comply with the other restrictions and notification requirements applicable to listed companies purchasing their own shares on a stock exchange under Rule 10.06 of the Listing Rules (‘Rule 10.06’), with necessary changes being made, as if the provisions therein were applicable to REITs. Is the restriction on subsequent issue of new shares within 30 days after a purchase under Rule 10.06(3) applicable to an issue of new units to the REIT manager as payment of management fees?	Payment of management fees to the REIT manager in the form of units (‘management fee units’) is a common practice adopted by listed REITs in Hong Kong. The detailed payment mechanism, including the timing of issue of the management fee units and the basis for determining the price and number of management fee units to be issued, will normally be set out in the trust deed of the relevant REIT and usually put in place at the time of the authorization of the REIT. One key rationale of Rule 10.06(3) is to ensure that the issue of new shares does not take place at a market price that has been affected by the issuer’s previous repurchase of its own shares². Rule 10.06(3) also provides that the restriction on subsequent issue does not apply to an issue of securities pursuant to the exercise of warrants, share options or similar instruments requiring the issuer to issue securities, which were outstanding prior to that purchase of its own securities. In light of the above, it is hereby clarified that the restriction on subsequent issue under Rule 10.06(3) is not intended to be applicable to the issue of management fee units by a REIT for the purposes of paragraph 6 of the repurchase circular in general provided that the REIT manager can demonstrate that: (a) the management fee units are issued pursuant to the terms of the trust deed of the REIT or any other pre-existing arrangements binding on the REIT, which were outstanding prior to that purchase of its own units; and (b) the issue of the management fee units will not take place at a market price that has been affected by the REIT’s previous repurchase of its own units. REIT managers should consult the Investment Products Division at the earliest opportunity if they are in doubt.

² see Listing Decision HKEX-LD99-1

	Question	Answer
67.	Can a REIT adopt an incentive plan similar to a share option scheme or employees' share award scheme commonly adopted by listed companies to incentivise and/or reward the employees of the Manager? What are the relevant requirements for adopting such plan?	In principle, the SFC has no objection to REITs adopting such incentive plan. Managers should note the following in relation to the adoption of such incentive plan. (a) The plan must be authorized by the Commission pursuant to section 105 of the SFO. The SFC would expect the plan to comply with the relevant requirements set out in Chapter 17 of the Listing Rules as if they were applicable to the plan. (b) The adoption of the plan must be permitted under the trust deed and other constitutive documents of the REIT. (c) The grant of awards to connected persons of the REIT will be subject to Chapter 8 of the REIT Code which is broadly aligned with the Listing Rules, and Chapter 12 of the REIT Code. REIT m



