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證券及期貨事務監察委員會

(Extracts)

## Code on Real Estate Investment Trusts

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**Securities and Futures Commission**  
8th Floor, Chater House  
8 Connaught Road Central  
Hong Kong  
Tel: 2840-9222  
Fax: 2521-7836  
E-mail: [enquiry@sfc.hk](mailto:enquiry@sfc.hk)  
Website: <http://www.sfc.hk>  
Electronic Investor Resources Centre web site: <http://www.eirc.hk>

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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 the human, technical and financial resources to effectively and responsibly discharge its functions in relation to the REIT, including carrying out its stated investment policy. In this aspect, the management company shall observe high standards of integrity, market conduct, fair dealing and corporate governance. Further, the management company shall not exceed the powers conferred upon it by the constitutive documents of the REIT.

### **GP4. Delegation of management functions**

A REIT management company shall perform all the key functions in relation to the management of the REIT. No management function shall be delegated unless the management company can properly monitor and ensure proper performance by the delegate. Notwithstanding that certain subsidiary functions can be delegated to a third party, the management company remains fully liable to the REIT's holders and trustee for the proper performance thereof. The management company shall ensure that a delegate remains competent to undertake the function in question. The legal relationship between the management company and a delegate shall be unambiguous.

### **GP5. Compliance with relevant requirements**

The management company of the REIT shall satisfy the Commission that sufficient systems, controls and procedures are in place to ensure that all applicable regulatory and other legal requirements are complied with. The management company and the trustee of a REIT shall bear ultimate responsibility in ensuring compliance with this Code and they shall deal with the Commission in an open and co-operative manner.

#### **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.

## **Effect of Breach of the Code**

Failure by any person to comply with any applicable provision of the Code

- (a) shall not by itself render the person liable to any judicial or other proceedings, but in any proceedings under the SFO before any court, the Code shall be admissible in evidence, and if any provision set out in the Code appears to the court to be relevant to any question arising in the proceedings, it shall be taken into account in determining the question; and
- (b) may cause the Commission to consider whether such failure adversely reflects on the person's fitness and properness and the suitability of the REIT to remain authorised.



## Chapter 8: Transactions with Connected Persons

### Connected Persons

8.1 Connected persons to the scheme include:

- (a) the management company of the scheme;
- (b) the Principal Valuer of the scheme;
- (c) the trustee of the scheme;
- (d) a significant holder;

*Notes: (1) A holder is a significant holder if it holds 10% or more of the outstanding units of the scheme.*

*(2) The following holdings will be deemed holdings of a holder:*

- (i) holdings of the associate of the holder who is an individual; or*
  - (ii) holdings of the director, senior executive, officer, controlling entity, holding company, subsidiary or associated company of the holder if the holder is an entity.*
- (e) a director, senior executive or an officer of any of the entities in 8.1 (a), (b), (c) or (d) above;
  - (f) an associate of the persons in 8.1(d) or 8.1(e); and
  - (g) a controlling entity, holding company, subsidiary or associated company of any of the entities in 8.1 (a) to (d).

8.2 The following shall be disclosed in the scheme's offering document, semi-annual reports, annual reports and circulars in relation to connected party transactions:

- (a) beneficial interests, and any changes thereof, of the connected persons in the scheme; and
- (b) any potential conflicts of interests involving the connected persons and the measures implemented to address such conflicts.

8.3 Where any of the connected persons as described in 8.1 has an interest in a business ("related business") which competes or is likely to compete, either directly or indirectly, with the scheme's activities, the offering document shall prominently disclose the following:

- (a) a description of the related business of the connected person and its management, to enable investors to assess the nature, scope and size of such business, with an explanation as to how such business may compete with the scheme;
- (b) where applicable, a statement from the relevant connected person that it is capable of performing, and shall perform, its duty in relation to the scheme independently of its related business and in the best interests of the scheme and its holders; and
- (c) a statement as to whether the scheme may acquire any of the related business or assets of the connected person in the future, together with the time frame during which such acquisition will take place or no such acquisition is intended. If there is any change in such information after the scheme is authorised, the management company shall announce it by way of a press announcement as soon as the management company or the trustee becomes aware of such change.

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

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

### **Connected Party Transactions**

#### *Categories of Transactions*

- 8.5 For the purpose of this Code, a connected party transaction is any transaction between the scheme and any of the persons described in 8.1 or any transaction falling within 8.6.
- 8.6 If the management company manages more than one scheme and a transaction involves two or more of the schemes managed by the management company, transactions between these schemes shall be deemed connected party transactions for each of the schemes involved in the transactions.

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

(a) carried out at arm's length;

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

(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 scheme's borrowings from the trustee, the management company, the Principal Valuer of the scheme or any other connected persons (being an institution licensed to lend money).

8.9 Holders' prior approval is not required for connected party transactions where:

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

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

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

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

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

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

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

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

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

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

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

*Disclosure and Reporting Requirements for Connected Party Transactions*

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

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

- 8.15 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

#### *Matters to be Disclosed in Offering Document*

- 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.

#### *English and Chinese Documentation*

- 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.

#### *Inclusion of Performance Data*

- 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.

*Notes: (1) The dividend yield forecast shall only cover a period of up to two years. The second year covered by the forecast shall not exceed the end of the next fiscal year.*

*(2) The assumptions pertaining to any forecasts and dividend yield calculation shall be clearly stated.*

*(3) There shall be appropriate risk disclosures, including risks that the prospective financial information and the projected yield may not be achieved.*

### *Contents of Constitutive Documents*

- 9.5 The constitutive documents of a scheme shall contain the information set out in Appendix D. Nothing in the constitutive documents shall provide that the trustee or management company may be exempted from any liability to holders imposed under any relevant law or breaches of trust through fraud or negligence or willful default, nor may they be indemnified against such liability by holders or at the scheme's expense.

### *Changes to Scheme Documentation*

- 9.6 The constitutive documents may be altered by the management company and trustee, without consulting holders, provided that the trustee certifies in writing that in its opinion the proposed alteration:
- (a) is necessary to comply with fiscal or other statutory or official requirements; or
  - (b) does not materially prejudice holders' interests, does not to any material extent release the trustee, management company or any other person from any liability to holders and does not increase the costs and charges payable from the scheme property; or
  - (c) is necessary to correct a manifest error.

In all other cases no alteration may be made except by a special resolution of holders.

### **Register of Holders**

- 9.7 The trustee or the person so appointed by the trustee shall maintain a register in Hong Kong of holders. The Commission shall be informed of the address(es) where the register is kept. The register shall be open for inspection by holders during business hours. Where the trustee is empowered under the constitutive documents to direct disclosure of any particulars of the holdings of a holder and its associates in the scheme, the trustee shall keep proper records of any particulars obtained under such direction.

### **Offers of Units**

- 9.8 If an initial offer of units is made, no investment of subscription money can be made until the conclusion of the first issue of units at the initial price.

### **Meetings**

- 9.9 A scheme shall arrange to conduct general meetings of holders as follows:
- (a) holders shall be able to appoint proxies;

- (b) votes shall be proportionate to the number of units held or to the value of units held where there are accumulation units;
- (c) the quorum for meetings at which a special resolution is to be considered shall be the holders of 25% of the units in issue and 10% if only an ordinary resolution is to be considered;
- (d) if within half an hour from the time appointed for the meeting a quorum is not present, the meeting shall be adjourned for not less than 15 days. The quorum at an adjourned meeting will be the number of those holders present at the adjourned meeting in person or by proxy;
- (e) if the possibility exists of a conflict of interest between different classes of holders there shall be provision for class meetings;
- (f) holders shall be prohibited from voting their own units at, or counted in the quorum for, a meeting at which they have a material interest in the business to be contracted and that interest is different from the interests of all other holders;
- (g) an ordinary resolution may be 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;
- (h) a special resolution 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 poll; and

*Note: A special resolution shall be required in the event of circumstances specified in this Code, or in such other cases as provided for in the constitutive documents of the scheme.*

- (i) two or more holders holding not less than 10% of the outstanding units of a scheme shall have the right to requisition a general meeting of the scheme subject to satisfying any quorum requirement laid down by the scheme's constitutive documents.

## **Fees**

- 9.10 The level/basis of calculation of all costs and charges payable from the scheme's property shall be clearly stated in the offering document, with percentages expressed on a per annum basis (see Appendix B). The aggregate level of fees for investment management and property management functions shall also be disclosed.

*Note: Percentage-based transaction fees payable to the management company or any of its connected persons may be disallowed as being inconsistent with the management company's fiduciary responsibility.*



9.11 Where appropriate, all fees and expenses (including underwriting fees) incurred in relation to the listing of a scheme shall be disclosed in the offering document.

9.12 A performance fee is payable by the scheme, the fee shall be payable:

- (a) no more frequently than annually; and
- (b) if the net asset value per unit exceeds the net asset value per unit on which the performance fee was last calculated and paid (i.e. on a “high-on-high” basis).

*Note: The Commission may consider a calculation basis for performance fees which is different from the mechanism as set out above only if the calculation basis could adhere to the “high-on-high” principle, truly reflect the operation and performance of the management company, does not prejudice the interests of holders, and is fair and objectively calculated.*

9.13 The following fees, costs and charges shall not be paid from the scheme’s property:

- (a) commissions payable to sales agents arising out of any dealings in units of the scheme;
- (b) expenses arising out of any advertising or promotional activities in connection with the scheme;
- (c) expenses which are not ordinarily paid from the property of schemes authorised in Hong Kong; and
- (d) expenses which have not been disclosed in the offering documents or constitutive documents as required by Appendix D.

## 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.

*Note: Announcements shall be published in at least one leading Hong Kong English language and one Chinese language daily newspaper. Other electronic means of publication may also be considered by the Commission.*

### Announcements

- 10.3 The management company shall inform holders as soon as reasonably practicable of any information or transaction concerning the scheme which:
- (a) is necessary to enable holders to appraise the position of the scheme; or
  - (b) is necessary to avoid a false market in the units of the scheme; or
  - (c) might be reasonably expected to materially affect market activity in the scheme or affect the price of the units of the scheme, or
  - (d) requires holders' approval.
- 10.4 The following are examples of information that would require disclosure under 10.3. These examples do not constitute a complete list:
- (a) a material change in the scheme's financial forecast;
  - (b) a valuation of the real estate of the scheme, conducted upon request by the trustee under 4.2(d);
  - (c) issuance of semi-annual or annual report;
  - (d) any connected party transactions, subject to the HK\$1 million threshold in 8.14;
  - (e) a transaction (other than a connected party transaction) the value of which exceeds 15% of the gross asset value of the scheme;

- (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;
- (h) a proposed change in the management company of the scheme;
- (i) a proposed change in the general character or nature of the scheme, such as the investment objective and/or policy of the scheme;
- (j) a recommendation or declaration or cancellation of a dividend or distribution;
- (k) issuance of new units (other than units issued pursuant to a dividend reinvestment plan);
- (l) a copy of a document containing market sensitive information or any financial documents that the scheme lodges with an overseas stock exchange (where applicable) or other regulator which is available to the public;
- (m) giving or receiving a notice of intention to undertake a merger or takeover;
- (n) a merger or acquisition;
- (o) a breach of the borrowing limit;
- (p) material litigation;
- (q) a significant dispute or disputes with contractors or with any parties;
- (r) a valuation of the scheme's real estate that has a material impact on the scheme's financial position or performance;
- (s) a major change in accounting policy adopted by the scheme;
- (t) a proposal to change the scheme's auditor;
- (u) a proposal to change the scheme's trustee;
- (v) a proposal to alter the level or structure of fees and charges only if such alteration requires holders' approval;
- (w) a decision or recommendation to request de-authorisation or delisting of the scheme;

- (x) a proposal to terminate the scheme; 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 the investment objective and/or policy of the scheme;
  - (vi) alter the level or structure of fees and charges only if such alteration requires holders' approval;
  - (vii) enter into a connected party transaction which requires holders' approval under Chapter 8; and
  - (viii) request de-authorisation or delisting of the scheme.
- (b) material information in relation to the scheme includes, but is not limited to:
  - (i) a transaction (other than a connected party transaction) the value of which exceeds 15% of the gross asset value of the scheme;

- (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;

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

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

(r) where the circular includes a statement purporting to be made by an expert, a declaration by such expert of his interest in the scheme;

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

(s) prominent warning statement:

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

(t) responsibility statement:

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

(u) disclaimer statement:

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

## **Notice**

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

## **Reporting Requirements**

### *Reporting to Holders*

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

### *Reporting to the Commission*

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

### **Advertising**

- 10.16 Advertisements and other invitations to invest in a scheme shall be submitted for authorisation prior to their issue or publication in Hong Kong. The general principle is that no advertisement can be made that is false, biased, misleading or deceptive. Any advertisement or announcement which concerns the trustee shall be accompanied by its written consent. Authorisation may be varied or withdrawn by the Commission as it deems fit.
- 10.17 If a scheme is described as having been authorised by the Commission, it shall be stated that authorisation does not imply official approval or recommendation.
- 10.18 Advertisements and marketing materials shall have proper risk warning statements, including a reference to the offering document of the scheme for a detailed discussion of the risk factors of the scheme.



**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;
  - (ii) state of the economy, economic risks and foreign exchange risk;
  - (iii) political risks;
  - (iv) legal risks and tax considerations;
  - (v) policies that affect property investments and property sales;
  - (vi) overview of the property market;
  - (vii) analysis of the specific property sector and the competitive dynamics in the rental market;
  - (viii) operational requirement; and
  - (ix) rules and regulations governing property ownership and tenancy matters;
- (f) details of the arrangement that has been entered into by the scheme for it to own the legal and beneficial title of that property and the benefits and drawbacks of such arrangement;

*Note: The management company shall disclose, as a minimum, the information in relation to properties not directly or wholly owned by a scheme, as set out in 7.7A.*

- (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;
- (n) the exit strategy in the event of divestment (including the exit from any joint ownership arrangement), factors and risks which may impact or act as an impediment to an exit, and the contingency plan;
- (o) a statement with respect to any material policy regarding real estate activities; details of transactions or agreements entered into with connected parties;
- (p) full particulars of the nature and extent of the interest, if any, of any director of the trustee, the management company, the Principal Valuer or any other connected persons to the scheme, in the property owned or proposed to be acquired by the scheme; and where the interest of such a director consists in being a partner in a firm, the nature and extent of the interest of the firm, with a statement of all sums paid or agreed to be paid to him or the firm for services rendered to the scheme;
- (q) a valuation report prepared by the Principal Valuer in accordance with Chapter 6 with respect to all the scheme's interest in real estate, including particulars of each property owned by the scheme or contracted for purchase by the scheme; and

*Note: If the scheme has obtained more than one valuation report regarding any of its real estate within six months before the issue of the offering document, then all other such reports shall be included.*

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

*Note: All the above information has to be disclosed in the context of the specific characteristics and circumstances of the investments made or to be made by a scheme, and shall not be generic statements of investment in the property market.*

- 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;

*Note: Information on the management company shall include:*

- (i) *a description of the expertise, experience, resources, internal controls and risk management system regarding the investment activities of scheme; and*
- (ii) *a description of the scheme management activities that the management company is licensed by the Commission to perform and any applicable conditions placed on the licence;*

- (b) the trustee;
- (c) delegates of the management company;
- (d) the property valuer;
- (e) the auditor; and
- (f) the registrar.

### **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.

*Note: In the case of indeterminable fees and charges, the basis of calculation or the estimated ranges shall be disclosed.*

### **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 as follows:
- (a) "Important - if you are in any doubt about the contents of this offering document, you shall seek independent professional financial advice".
  - (b) A statement to the effect that the rental yield on real estate held by the scheme is not equivalent to the yield on the units.
- B20** A statement to explain:
- (a) the current rental receipts and that yields may not be sustained;
  - (b) the value of the property may rise as well as fall; and
  - (c) the standards according to which the property valuations are conducted.
- B21** A statement to explain the investment characteristics and risk profile of the scheme.

### **Expert Statement**

- B22** Where the offering document includes a statement purporting to be made by an expert, a statement that he has given his consent to the issue of the offering document with the statement included in the form and context in which it is included.

- 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.

*Note: A responsibility statement as required under 10.10(t) shall be made in the offering document.*

- 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 the annual report (where applicable); and

- (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 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.
  - (a) A statement that the deed is binding on each holder as if he had been a party to it and so to be bound by its provisions and authorises and requires the trustee and the management company to do as required of them by the terms of the deed.
  - (b) A provision that a holder is not liable to make any further payment after he had paid the purchase price of his units and that no further liability can be imposed on him in respect of the units which he holds.
  - (c) A declaration that the assets of the scheme is held by the trustee on trust for the holders of the units *pari passu* according to the number of units held by each holder.
5. Trustee
  - (a) A statement to set out the obligations of the trustee as set out in Chapter 4.
  - (b) A statement that the trustee shall retire in the manner as stipulated in Chapter 4.
  - (c) A statement to empower the trustee to require holders to disclose to it upon its request, their beneficial interests in the scheme.
  - (d) A statement to requiring a holder to promptly disclose to the trustee when the holder becomes a significant holder.
6. Management Company
  - (a) A statement to list the obligations of the management company including (see Chapter 5):
    - (i) its general obligations with respect to the scheme;



- (ii) its obligations with respect to the delegation of functions;
- (iii) its obligations with respect to the scheme that is seeking a listing on an exchange; and
- (iv) appointment of auditor.

(b) A statement that the management company shall retire as set out in Chapter 5.

## 7. Investment Limitations and Dividend Policy

The following shall be specified (see Chapter 7):

- (a) core investment requirements;
- (b) criteria for using special purpose vehicles;
- (c) minimum holding period for the scheme's real estate assets;
- (d) limitations on borrowing; and
- (e) the income distribution policy/mechanism of the scheme and approximate date when income will be distributed.

## 8. Valuation

The following rules on valuation shall be stated:

- (a) the method of determining the value of the assets and liabilities of the scheme and the net asset value accordingly; and
- (b) the frequency of valuing the assets and liabilities of the scheme (see Chapter 6).

## 9. Issuance of Announcement, Circular and Notice

- (a) A statement that the management company shall keep holders informed of any material information pertaining to the scheme in a timely and transparent manner as set out in Chapter 10.
- (b) A statement that the management company shall inform its holders by way of announcement as soon as reasonably practicable of any information concerning the scheme which:
  - (i) is necessary to enable holders to appraise the position of the scheme; or
  - (ii) is necessary to avoid a false market in the units of the scheme; or
  - (iii) might be reasonably expected materially to affect market activity in and the price of the units of the scheme (see 10.3 and 10.4); or
  - (iv) requires holders' approval.

- (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;  

*Note: The management company shall ensure that all transactions are carried out in an open and transparent manner. Where circumstances permit, transactions shall be carried out by way of open tender or competitive bidding by auction.*
  - (ii) valued, in relation to a property transaction, by an independent valuer that meets the requirements of Chapter 6;
  - (iii) consistent with the investment objectives and strategy of the scheme; and
  - (iv) 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).