

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
1.	What does SFC authorization of REIT involve?	<p>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 also be listed on the Stock Exchange of Hong Kong.</p> <p>In summary, the scheme must be in trust form. Qualified parties meeting the REIT Code requirements must be appointed to play the key roles of listing agent, trustee, management company, property valuer and auditor for the scheme. Where certain functions are delegated to third parties, the delegator should ensure that the delegatee(s) are qualified to perform the functions delegated and the delegator should maintain on-going supervision over the delegatee(s).</p>

	Question	Answer
		The scheme should observe, on an ongoing basis, its post authorization obligations such as obtaining SFC's approval for marketing materials, changes to offering documents or constitutive documents, announcements, circulars and notices, prior to distribution to investors. The scheme should also ensure that such approved documents are disseminated to investors in a timely manner or within the timeframe specified in the REIT Code.
2.	Can a potential REIT applicant approach the SFC to discuss its authorization requirements before submitting a formal application?	<p>The SFC welcomes such inquiries and invites applicants to discuss their applications and proposed schemes with SFC staff beforehand. Such preliminary meetings are useful to help SFC staff gain a better understanding of the scheme/strategy, and may also help the applicant to clarify specific requirements and structural issues.</p> <p>Do note that any views or comments by SFC staff during these preliminary meetings are not considered binding and are given on a without prejudice basis. Without reviewing the complete set of scheme documentation following a formal application, the SFC is unable to offer firm views.</p>
3.	What are some important tips to remember when submitting an application to the SFC for REIT authorization?	<p>Two main points to bear in mind:</p> <p><u>Good quality documentation and adequate time</u> SFC staff should be given a reasonable amount of time to consider the documents submitted. The SFC expects submissions or draft documentation in relation to a REIT are prepared in accordance with the REIT Code requirements and should be in an advanced form. Applicants should also be upfront in drawing the attention of the SFC to issues of difficulty and expect that more time may be needed to consider complex outstanding points or issues of difficulty.</p> <p><u>Verification</u> The SFC will <i>not</i> verify the accuracy of statements made in the application or any documents submitted in connection with it. The onus is on the applicant and/or their professional advisers e.g. legal counsels to ensure that any statements made in the documentation are verified, up to date and accurate. If it subsequently becomes apparent that any statement made is inaccurate, the SFC reserves the right to require immediate action to rectify the error and take any appropriate actions against the applicant or persons making the statements, depending on the circumstances.</p>

	Question	Answer
4.	Who is qualified to manage a REIT?	<p>The SFC recognises the property portfolio management experience of the key personnel for the purpose of assessing the qualifications of a REIT management company. To be an approved REIT manager, the manager must demonstrate, at a minimum, that it has the requisite competence, experience and resources to analyse the issues and risks involved in property investment, to develop, implement and keep up-to-date a set of effective internal controls and risk management system to deal with existing and foreseeable risks involved in property investments. The management company should ensure that it holds a licence for Type 9 regulated activity (asset management) and, where applicable, other type(s) of regulated activity such as Type 6 (advising on corporate finance). Where the management company is a newly formed company, an application has to be made to the Licensing Department of the SFC. Please refer to our Licensing Department's FAQs on REIT management company for further details. Do note that when applying for the management company's licence, it must be supported by a concurrent application to the SFC for authorization of a REIT in Hong Kong.</p>
5.	How do I apply for authorization as a REIT (Application Form? Fees?)	<p>As a start, you have to complete and submit to the SFC the REITs Application Form. A copy of the form is available under "Investment Products: Forms & Checklists" in the "Investment Products" 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.</p> <p>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.</p> <p>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. Generally, the SFC estimates a period of 30-35 business days (excluding waiting time) to process an application, assuming that all relevant information are submitted and the documents are in compliance with the REIT Code requirements.</p> <p>To facilitate the reviewing of an application, the SFC may invite an applicant to discuss its proposal with the SFC during the application process.</p>

	Question	Answer
		<p>An applicant should also note that an application fee has to be paid upon submission of an application. 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.</p> <p><i>*Agreements between the operators and their delegates are not required to be submitted to the SFC but should be made available to the SFC upon request. However, where there are delegations of duties involved, each of the delegators has to submit a written confirmation to the SFC stating that they have delegated all relevant and necessary functions as required by the delegatee(s) to properly perform their duties, and that the delegation agreements are legally enforceable.</i></p>
6.	What are the essential conditions for REIT authorization?	<p>A REIT seeking authorization from the SFC must have at least the following characteristics:</p> <ul style="list-style-type: none"> (a) dedicated investments primarily in real estate that generate recurrent rental income; (b) engagement of operators that meet the qualification requirements of the REIT Code; (c) established risk control measures and, where applicable, procedures in place for monitoring the activities of delegates; (d) a dividend distribution policy whereby the scheme distributes at least 90% of its after tax net income to its holders; (e) a defined borrowing limit of not more than 45% of gross asset value; (f) provision for holders' approval on connected party transactions and such major decisions that will affect the interests of the holders; (g) adequate and proper disclosure in offering documents; and (h) evidence of intention to list on the Stock Exchange of Hong Kong.
7.	What type of REIT structure and form is acceptable?	The REIT has to be formed as a trust governed by Hong Kong Law with its assets held in a trust and segregated from the assets of its trustee, the management company, related entities, other collective investment schemes and any other entity.
8.	What about the use of Special Purpose Vehicles (SPVs)?	In the case where a REIT holds properties via SPVs, the REIT must at all times maintain a majority ownership and control of each SPV. There should be no more than 2 layers of SPVs. While these SPVs may be domiciled overseas, they should be established in jurisdictions which have established laws and corporate governance standards commensurate with those observed

	Question	Answer
		by companies in Hong Kong. The board of directors of these SPVs have to be appointed by the trustee of the scheme. In the case where there are more than 2 layers of SPVs or an SPV has to be set up in a jurisdiction that does not fully satisfy the requirements in the REIT Code, the management company should demonstrate to the SFC's satisfaction that such establishment is necessary for the purpose of meeting the regulatory or legal requirements of an overseas jurisdiction or in special circumstances with valid justifications.
9.	Can I domicile a REIT in an overseas jurisdiction?	REITs must be domiciled in Hong Kong. However, REITs may invest in Hong Kong and/or overseas properties. Where SPVs are used to hold properties, these SPVs may be domiciled overseas whose corporate laws and legal framework are commensurate with the Hong Kong system, in line with the practice among listed companies.
10.	Would I be able to set up umbrella REIT structures?	<p>An umbrella fund structure is commonly found in conventional mutual funds/unit trusts in which various sub-funds are established under the same umbrella. Each sub-fund has a specific investment policy and operates independently from other sub-funds.</p> <p>However, the REIT Code currently only provides for a single-fund structure, in line with SFC's policy of introducing a simple product that is easily understood by retail investors at this initial stage of REIT development in Hong Kong. Given the novelty of REITs, the SFC has to further study whether an umbrella structure is acceptable, and if so, whether such an umbrella should allow for inclusion of non-REIT collective investment schemes, and whether additional requirements are needed to ensure investors' interests are properly protected.</p>
11.	Are there restrictions as to the types or geographical locations of properties that a REIT can invest in?	With the release of the revised REIT Code on 17 June 2005, a REIT authorized by the SFC may invest in properties whether they are located in Hong Kong or abroad. There is no restriction on the type or geographical locations of properties that it may invest in, except that investments in hotels, serviced apartments and recreational parks have to be held through majority owned SPVs (special purpose vehicles). However, the aggregate investments in uncompleted units in a building together with the Property Development Costs referred in 7.2A of the REIT Code are limited to 10% of the gross asset value of a REIT. A REIT is also prohibited from investing in vacant land unless the management company can demonstrate that such investment is part-and-parcel of the property development which may be undertaken pursuant to 7.2A of the REIT Code and within the investment objective or policy of the REIT.

	Question	Answer
12.	Are all REITs required to fully comply with the REIT Code? Can waivers be obtained?	<p>Applicants are expected to fully comply with the requirements set out in the REIT Code. These requirements should be construed in light of the General Principles of the REIT Code, which are designed to provide fairness to all parties concerned with an emphasis on safeguarding the interests of investors.</p> <p>The SFC will only grant waivers in <i>exceptional</i> circumstances specific to a REIT, bearing in mind that the SFC will not consider waiver applications that compromise any of the General Principles. Furthermore, costs alone are not sufficient justification for any waiver from compliance with the REIT Code. Each application for waiver will be considered on its own merits and an applicant should provide the SFC with clear and cogent reasons in support of the application for waiver, and demonstrate to the SFC that there are sufficient mechanisms in place to ensure that investors' interests will not be compromised.</p> <p>The SFC has the sole discretion to grant or refuse any waivers requested and may require, depending on the circumstances, that any approved waivers be disclosed in the scheme's prospectus.</p>
13.	Under what circumstances is a management company allowed to contract out functions to third parties?	<p>The REIT Code does not stipulate the type of activities that the management company may delegate to third parties, as the types of functions delegated should depend on the pool of expertise available in the management company. However, the REIT Code requires the management company to ensure that it exercises care and due diligence in its selection and engagement of delegates, and that it only appoints delegates who are sufficiently qualified to perform the activities contracted out.</p> <p>The management company is also required to have appropriate procedures and monitoring arrangements in place to supervise the activities of its delegates on a continuous basis. The legal relationship between the management company and a delegate shall be unambiguous, and the delegation contracts should clearly set out the duties of the delegate. No management function shall be delegated unless the management company is able to properly monitor and ensure proper performance by the delegate. Notwithstanding that certain functions can be delegated to a third party, the management company retains full responsibility for the management of the REIT.</p>

	Question	Answer
14.	How long does the REIT authorization process take?	<p>The actual time required for processing an application largely depends on the level of compliance of the applicant scheme with the REIT Code, the complexity of the scheme, and the quality of the application materials. In general, a straightforward REIT application should take around 30-35 business days to process (excluding waiting time). This figure refers to the actual processing time spent by the SFC on the application and does not take into account the time needed for the applicant to respond to SFC's requests and comments.</p> <p>The applicant should approach the SFC as soon as possible to discuss its licensing requirements.</p>
15.	Since an authorized REIT has to be listed, are there any other rules that a REIT should observe to facilitate its listing?	<p>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.</p> <p>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.</p>
16.	Once a REIT is authorized by the SFC, is it required to comply with any ongoing requirements?	<p>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.</p> <p>The management company shall inform holders by way of announcement (by publishing in the newspapers) as soon as reasonably practicable of any information or transaction concerning the scheme which:</p> <ul style="list-style-type: none"> (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
		<p>The management company should also observe and comply with on going disclosure and reporting requirements such as annual, semi-annual or financial reports.</p> <p>All documents to be disseminated to unitholders have to be approved beforehand by the SFC.</p>
16A.	Can an independent non-executive director ("INED") of the management company of a REIT serve more than 9 years?	<p>In view of the obligation to adhere to and uphold good corporate governance principles and best industry standards under General Principle 6 of the REIT Code for all activities and transactions conducted in relation to the REIT and matters arising out of its listing or trading on Exchange, REIT managers are expected to comply with the corporate governance practices under the Listing Rules, with necessary changes, as if they were applicable to REITs.</p> <p>As such, it is generally expected that if an INED of the REIT manager serves more than 9 years, his/her further appointment should be subject to a separate resolution to be approved by unitholders of the REIT. The papers to the unitholders accompanying that resolution should include the reasons why the board of the REIT manager believes he/she is still independent and should be re-elected.</p> <p>Where the REIT manager believes an INED who has served for over 9 years should be re-elected, it should seek unitholders' approval for the further appointment as soon as possible and as a matter of best practice generally no later than the annual general meeting immediately following the 9th anniversary of the INED's appointment.</p>
16B.	Is a REIT required to issue an announcement under Chapter 10 of the REIT Code each time it makes an acquisition of property?	<p><u>Disclosure requirement</u></p> <p>The REIT manager is subject to the general disclosure obligation under 10.3 and 10.4 of the REIT Code. In particular, under 10.4(n) of the REIT Code, a merger or acquisition would require disclosure under 10.3 of the REIT Code.</p> <p>As such, and also given the nature of a REIT as a vehicle which invests primarily in real estate, a REIT is required to issue an announcement each time it makes an acquisition of property in accordance with Chapter 10 of the REIT Code to keep unitholders informed as soon as reasonably practicable (the "Disclosure Requirement"). REIT managers should strictly comply with such Disclosure Requirement in respect of all acquisitions of properties made by a REIT</p>

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		<p>save in the exceptional case of a unification of property ownership acquisition where the Disclosure Requirement may be discharged as set out below.</p> <p><u>Unification of property ownership acquisitions</u></p> <p>(i) It is noted that there are situations where a REIT has already owned a majority interest by undivided shares in a property (<i>Note</i>) and the REIT may wish to make a series of acquisitions (“Acquisitions”) of the remaining strata-titled units (“Units”) in the same property from their respective owners with a view to unifying the ownership of the property (“Property”).</p> <p>(ii) It has been submitted that unification of ownership of the Property would very often be in the interests of unitholders as it is expected to enhance the capital value and the overall internal rate of return of the Property. Such unification of ownership could provide the REIT manager with greater autonomy and flexibility in terms of usage and asset enhancement and it is expected that the REIT will be able to achieve better economies of scale on operating synergies (such as in terms of satisfying tenants’ requirements and sharing of property management resources). In additional, it is also expected that the value of the Property through en-bloc sale will be enhanced (as compared with the value where certain strata-titled units in the Property remain to be owned by other third parties).</p> <p>(iii) However, it has been submitted that with strict compliance with the Disclosure Requirement, the chances of success in unifying the ownership of the Property through acquiring all the remaining Units of the Property will likely be prejudiced or at least become more uncertain. In particular, it is likely that the REIT may have to offer a higher purchase price to the third-party owners of these remaining Units in order to be able to successfully acquire those Units, especially when the percentage ownership of the Property by the REIT has further increased.</p> <p>(iv) In view of the unique nature of such Acquisitions to be undertaken by a REIT with a view to unifying ownership of the Property and their potential benefits to a REIT, the Disclosure Requirement may be discharged by way of an announcement issued as soon as reasonably practicable at the completion of the series of intended Acquisitions provided that:</p> <p>(a) each Acquisition is not a connected party transaction as defined under the REIT Code;</p>

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		<p>(b) in the REIT manager's reasonable opinion taking into account all relevant factors including the size of each Acquisition and the aggregate size of all the Acquisitions, the Acquisitions are (i) immaterial; (ii) not price sensitive in nature; and (iii) not otherwise disclosable under any other limbs in 10.3 and 10.4 as well as any other provisions of the REIT Code;</p> <p>(c) it can be demonstrated that, on balance, strict compliance with the Disclosure Requirement would be prejudicial to the interests of the REIT unitholders as a whole; and</p> <p>(d) details of each individual Acquisition shall be disclosed in the REIT's next semi-annual / annual report (as the case may be) in accordance with the REIT Code.</p> <p>(v) For the avoidance of doubt, and notwithstanding paragraph (iv) above, the REIT manager is required to issue an announcement and comply with any other applicable requirements in accordance with Chapter 10 of the REIT Code where the Acquisitions made by the REIT during any 12-month period, on a cumulative basis, amount to a percentage ratio being 5% or more under the Size Tests (accessible via the following link http://www.sfc.hk/web/EN/forms/products/forms.html).</p> <p>REIT managers should consult the Investment Products Division at the earliest opportunity should they wish to proceed with any such Acquisition(s).</p> <p><i>(Note: Where the property forms part of a complex which is of composite use (for instance, apportioned into retail portion, office portion and carparks), reference may be made to FAQ18 below in considering whether a REIT has already owned a majority interest in such property. REIT managers are encouraged to consult the Investment Products Division in such a case.)</i></p>
16C.	Are the new mandatory electronic filing of disclosure of interests notifications arrangements which are to take effect on 3 July 2017 applicable to SFC-authorized REITs?	<p>An SFC-authorized REIT is currently required to adopt provisions substantially equivalent to those in Part XV of the SFO governing disclosure of interests obligations in its trust deed.</p> <p>Accordingly, REIT managers, their directors and chief executive, as well as any person who is interested in 5% or more of the units in an SFC-authorized REIT should comply with the mandatory electronic filing provisions under Part XV of the SFO (with necessary adaptations) as if they were applicable to REITs.</p>

	Question	Answer
		You may refer to the press release dated 5 May 2017 issued by the SFC for details of the electronic filing arrangements: http://www.sfc.hk/edistributionWeb/gateway/EN/news-and-announcements/news/doc?refNo=17PR63
17.	Is the management company of a REIT allowed to own units of the REIT it manages?	Yes. However, the management company must disclose its interests in the REIT in the offering documents and annual reports of the REIT. Where the management company receives units as remuneration for services rendered, the mechanism for such payment of services must be fair and objective and clearly disclosed to investors.
18.	Is there any minimum percentage of interest that an SFC-authorized REIT has to maintain in each of the properties that it invests in?	<p>The manager of an SFC-authorized REIT is required to manage and enhance the value of the properties of the REIT, thus it is important that the REIT has “majority ownership and control” in the properties at all times to enable the manager to exercise control over the management and strategic development of the properties. Such requirement applies irrespective of the manner in which the properties are held.</p> <p>Generally speaking, a REIT will be considered to satisfy the “majority ownership and control” criteria if it has over 50% interest in the building/complex. Depending on the specific circumstances, the majority (over 50%) rule may be applied with reference to floor area, undivided shares or other relevant factors as appropriate. In the case where the building/complex is of composite use (for instance, apportioned into retail portion, office portion and carparks), if a REIT owns over 50% of the relevant portion of the building/complex and the REIT manager has either acquired majority control over the estate management issues of the relevant portion through means such as sub-deed of mutual covenant or separate owners’ committees for that relevant portion of the property (in the case of Hong Kong properties), or it can demonstrate the establishment of proper safeguards or measures to increase its autonomy and influence over matters relating to the property management of the relevant portion to the extent allowed under the applicable mainland laws or regulations (in the case of mainland properties), then the REIT will also be considered to have “majority ownership and control” in the property.</p>
19.	Is there any allowance for investment in properties that the REIT does not have “majority	In order to provide a certain degree of flexibility to cater for practical situations, a REIT may own less than a “majority ownership and control” in a property. However, investments in such properties should in aggregate not exceed 10% of the gross asset value of the REIT. Further, the

	Question	Answer
	ownership and control”?	REIT manager shall demonstrate to the satisfaction of the Commission that investment in such properties is in line with the REIT’s investment strategy and objectives and in the best interest of the REIT unitholders.
20.	What are the disclosure requirements in respect of such properties that are not 100% owned by a REIT?	There must be prominent disclosures and risk warnings in the relevant documents on the risks and potential impact on a REIT regarding its ownership structure in the properties. For instance, proper disclosure has to be made so that investors will be informed about the characteristics or potential disadvantages regarding the lack of 100% or majority ownership and control in a property.
21.	Will an application lapse after a certain period of time? If so, how long? What should I do if my application has lapsed?	<p>Reference is made to the circular of the SFC to applicants of SFC-authorized investment products relating to the revised application lapse policy dated 29 November 2013.</p> <p>In respect of applications received by the SFC on or after 1 January 2014, if, for any reason, 6 months (the “6-month Period”) have elapsed from the date on which the SFC formally takes up the application (“Take-up Date”) and no authorization has been granted, the application will lapse, subject to the SFC’s right to grant an extension, at its sole discretion.</p> <p>If, for any reason, 4 months have elapsed from the Take-up Date (the “4-month Period”) and no authorization has been granted, the SFC will issue a letter reminding and informing the applicant that the application will in general lapse at the expiry of 6 months from the Take-up Date.</p> <p>In cases of non-compliance with any key requirement(s), the SFC would be minded to issue a letter of mindedness to refuse an application earlier than 4 months from the Take-up Date where appropriate so that there is efficient use of resources for processing proper applications.</p> <p>In general, the SFC will only consider granting an extension under exceptional circumstances upon the submission of satisfactory grounds by the applicant. The application fee will not be refunded to the applicant. Once an application has lapsed, if the applicant wishes to re-submit its application, the applicant shall make a new application, whereupon it will need to pay the application fee for the new application and repeat the application procedures.</p>
22.	What are the disclosure requirements in respect of the composition of distribution made by	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

	Question	Answer
	a REIT?	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 made to the distribution amount as a result of the adding back of the amortisation charge of the upfront swap payment to distributable income will normally be regarded as an effective return of capital for this purpose, and the SFC would require disclosure of such amount on a per unit basis as a minimum. Managers should consult the Investment Products Division if they have any query as to the extent of disclosure required.
22A.	What should a REIT manager note on giving prior notice to investors regarding dividend distribution made by a REIT to investors?	<p>In line with the obligations under GP6, 10.3 and 10.4(j) of the REIT Code regarding adherence to good corporate governance principles, best industry standards and disclosure requirements respectively, REIT managers should inform investors by way of public announcement information on dividend distribution as soon as practicable. REIT managers are also reminded that they should keep such information strictly confidential before public announcement is made.</p> <p>Furthermore, sufficient time should be allowed for investors to act in light of the information disclosure relating to distribution. Taking into account the requirements in Rule 13.66 of the Listing Rules and prevailing market practices, it is generally expected that a REIT manager should inform investors details of dividend distribution by way of public announcement:</p> <ul style="list-style-type: none"> (i) at least 10 business days before the record date; and (ii) where there is an alteration of the record date, at least five business days before the announced record date or the new record date, whichever is earlier. <p>Where it is not practicable for a REIT manager to provide the amount of dividend payment 10 business days before the record date, the REIT manager should issue a separate announcement on the amount of dividend payment at least one business day before the ex-dividend date.</p>
23.	Is the payment of roadshow expenses in relation to the listing of a REIT allowed to be made out of a REIT's assets?	9.11 of the REIT Code contemplates the payment out of a REIT's assets of all fees and expenses (including underwriting fees) that are incurred in relation to the listing of a REIT, if such payment is permitted under the trust deed of the REIT and is disclosed in the offering circular. This rule governs the treatment of listing-related expenses and takes precedence over 9.13 of the REIT Code. As such, roadshow expenses (such as costs for press conference, luncheons and presentations to investors, overseas travelling and fees for public relations consultants) incurred

	Question	Answer
		in connection with the listing of a REIT can be paid out of the assets of a REIT if they are allowed under the trust deed of the REIT and are disclosed in the offering circular.
24.	7.6 of the REIT Code requires the preparation of an accountants' report in respect of the special purpose vehicles (SPVs) through which a REIT will acquire real estate. To the extent that any of such SPVs owns assets and liabilities (the "Business") and/or companies (including subsidiaries and associates) (the "Companies") that will not be acquired by the REIT, how should the profit and loss and the assets and liabilities of such SPVs be dealt with in the accountants' report for the purpose of complying with 7.6 of the REIT Code?	<p>The REIT Code allows the holding of real estate through one or more SPVs and generally expects that there are no more than two layers of SPVs to ensure transparency. Where a REIT acquires real estate through the acquisition of more than one SPV, an accountants' report shall be prepared on the top-layer SPV(s) that is (are) directly held by the REIT on a combined or consolidated basis (where applicable) for the purposes of 7.6 of the REIT Code, unless otherwise agreed by the Commission.</p> <p>In the case where any SPV(s) to be acquired by a REIT directly or indirectly own(s) the Business and/or the Companies during the period covered by the accountants' report that will not be acquired by the REIT, the results and assets and liabilities attributable to such Business and/or the Companies shall normally be excluded from the profit/loss and the assets and liabilities of the SPV(s) presented in the accountants' report, as if they had not been in existence throughout the period covered by the accountants' report, unless otherwise agreed by the Commission.</p> <p>The accountants' report shall cover the profit and loss of the SPV(s) to be acquired by the REIT in respect of each of the three financial years immediately preceding the transaction and the stub period (where applicable), as well as the assets and liabilities as at the last date of each of the three relevant financial years and the stub period. Further, the profit and loss of the SPV(s) for the comparative stub period shall also be presented in the accountants' report.</p>
25.	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	<p>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 pursuant to such convertible instruments again to the extent that such units have already been taken into account in the initial or subsequent calculations.</p> <p>This approach is substantially in line with the application of the general mandate requirement for</p>

	Question	Answer
	<p>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?</p>	<p>companies listed on the Hong Kong Stock Exchange and consistent with the spirit and regulatory intent of 12.2 of the REIT Code.</p> <p>Accordingly, provided that it is so permitted under the trust deed of the REIT and that the new units are not issued or issuable to a connected person or in relation to a connected party transaction which requires unitholders' approval, a REIT may in any financial year issue or agree to issue (whether directly or pursuant to any convertible instruments or otherwise) units otherwise than on a pro rata basis to all existing holders without the approval of unitholders if "T" referred to in the formula below does not increase the number of units that were outstanding at the end of the previous financial year (or that as at the date of commencement of listing, where the convertible instruments are issued or the agreement is entered into in the first financial year) by more than 20% (or such lower amount as prescribed by the SFC).</p> $T = A + B + C$ <p>where,</p> <p>A is the total number of new units issued or agreed to be issued in that financial year*;</p> <p>* <i>New units issued or agreed to be issued under the following categories may generally be excluded from the calculation of "A":</i></p> <ul style="list-style-type: none"> • <i>any new units issued or issuable pursuant to any issued convertible instruments to the extent that such units have already been taken into account in the initial calculation at the time of the 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 of "C" at the time of issue)</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 of when the relevant agreement was entered into</i> • <i>any new units issued or issuable pursuant to any convertible instruments or any agreement for the issuance of units as a result of adjustments arising from the consolidation or sub-division or re-designation of units</i> • <i>any new units issued or agreed to be issued in respect of which a special mandate has already been obtained from unitholders</i> <p>B is the maximum number of new units issuable at the initial conversion/issue price pursuant to</p>

	Question	Answer
		<p>the any convertible instruments issued or agreed to be issued otherwise than on a pro rata basis to all existing unitholders in that financial year; and</p> <p>C is the maximum number of any other new units which may be issuable pursuant to any such convertible instruments as at the time of issue as estimated or determinable by the Manager in good faith and using its best endeavours and confirmed in writing to the Trustee and the SFC under the terms of such convertible instruments (including any additional new units issuable under any adjustment mechanism other than consolidation, sub-division or re-designation of units).</p> <p>If an adjustment mechanism is triggered subsequently (e.g. in the next financial year, FY2) with the unforeseen result that the maximum number of new units issuable under the above paragraph as at the time of such occurrence exceeds C, the additional units issuable shall be taken into account in the calculation of “A” in FY2 (i.e. deducted against the general mandate available for FY2) and an announcement should be made by the Manager as soon as practicable. If the number of additional units so issuable had exceeded the remaining general mandate available for FY2, then special approval of unitholders would be required.</p> <p>In the event of any consolidation, sub-division or re-designation of units during a financial year, the 20% threshold in terms of number of units may be proportionally adjusted to give effect to such consolidation, sub-division or re-designation.</p> <p>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.</p>
26.	6.2 of the REIT Code provides, among other things, that the Principal Valuer shall value all the real estate under the scheme for the purposes of issuance of new units. Is this rule applicable to the	<p>Good corporate governance requires fair pricing and transparency in the valuation of units in the event of unit issuance. It is noted that where units are issued to a REIT manager as payment of management fees, or pursuant to an exercise of unit options in relation to an option plan, or in respect of a dividend reinstatement plan, the new units are issued at a price calculated in accordance with a defined calculation mechanism.</p>

	Question	Answer
	issuance of new units pursuant to (a) payment of management fees to the REIT manager in units; (b) grant of options in relation to the units of a scheme; and (c) dividend reinvestment?	In the case of payment of management fees in units, the unit price calculation mechanism is set out in the trust deed and offering circular of the relevant REIT; in the case of issue of new units pursuant to a grant of options, the issuance is communicated to unitholders by way of circular and approved by ordinary resolution of the unitholders of the relevant scheme; and in the case of dividend reinvestment, the offer is available to unitholders in general and provided for in the trust deed. Such arrangement already achieves the purpose of fairness and transparency. It is hereby clarified that 6.2 does not apply to such unit issuance.
27.	What are the content requirements in respect of interim/annual reports and results announcements of an SFC-authorized REIT?	<p>An SFC-authorized REIT should ensure that its interim/annual reports and results announcements comply with the relevant requirements set out in the REIT Code and the relevant content requirements set out in the Listing Rules (currently contained in Appendix 16 to the Listing Rules) as if those requirements were applicable to REITs.</p> <p>The requirements set out in the REIT Code and the Listing Rules are the minimum content requirements. The Manager should incorporate into the interim/annual reports and results announcements such other information it considers necessary for unitholders to appraise the matters relating to the REIT. Further, there should not be any material discrepancy between the information contained in the results announcements and that in the audited results, and the Manager should inform the SFC contemporaneously as it notifies the Hong Kong Stock Exchange of the event.</p> <p>Managers should also notify unitholders about declarations of distribution through the interim/annual reports and results announcements of the REITs for the relevant periods. Such notification should include details of the composition of the distribution as discussed in FAQ 22 above, and take note of the prior notice requirement as set out in FAQ22A above where appropriate.</p>
27A.	Are SFC-authorized REITs required to publish ESG report in accordance with the Environmental, Social and Governance Reporting Guide (the “ESG Guide”) in Appendix 27 to the Listing Rules?	<p>Yes, REIT managers are reminded that they are expected to publish ESG report in accordance with the ESG Guide as required under Appendix 16 to the Listing Rules, effective for financial years commencing on or after 1 January 2016.</p> <p>As set out in the SFC circular to REIT managers dated 16 March 2009, the SFC in general seeks to regulate REITs, to the extent appropriate and practicable, with reference to the requirements applicable to listed companies under the Listing Rules (as amended from time to time), except</p>

	Question	Answer
		<p>otherwise provided in the REIT Code or the guidelines issued by the SFC from time to time.</p> <p>General Principle 6 of the REIT Code also requires REIT managers to 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 the Stock Exchange.</p> <p>Further, as discussed in FAQ 27 above, an SFC-authorized REIT should ensure its interim/annual reports and results announcements comply with the relevant content requirements set out in the Listing Rules (currently contained in Appendix 16 to the Listing Rules). Accordingly, similar to listed companies, REIT managers are expected to publish ESG report in accordance with the ESG Guide as required under Appendix 16 to the Listing Rules, with necessary changes, as if such requirements were applicable to REITs.</p>
28.	Do interim/annual reports or results announcements of an SFC-authorized REIT need to be vetted by the SFC prior to their publications?	<p>The interim/annual reports or results announcements of an SFC-authorized REIT are not subject to pre-vetting by the SFC prior to their publications and it is the duty of the Manager to ensure that the interim/annual reports and results announcements of the REIT comply with all the relevant requirements set out in the REIT Code, the Listing Rules (as referred to in FAQ 27 above) and the trust deed of the REIT. In the event that the REIT fails to comply with any of the applicable requirements, the SFC may require the REIT to take further action to rectify the matter as it deems appropriate (including the issue of further announcements and/or documents).</p> <p>The Manager is required to file the interim/annual reports and results announcements of the REIT with the SFC as soon as practicable after their publication.</p>
29.	Does an SFC-authorized REIT need to hold annual general meetings (“AGMs”)?	<p>GP6 of the REIT Code stipulates, among other things, that the management company of a REIT shall adhere to and uphold good corporate governance principles and best industry standards for all activities and transactions conducted in relation to the REIT. As the holding of an AGM is very much an established good corporate governance requirement of listed companies in Hong Kong and it being a regular channel of communication with unitholders, the SFC is of the view that the holding of an AGM is part of the good corporate governance principles and standards of the REIT which are expected to be adhered to by SFC-authorized REITs as a matter of policy.</p> <p>Accordingly, the SFC would expect the trust deed of an SFC-authorized REIT to contain</p>

	Question	Answer
		<p>provisions in relation to the holding and conduct of AGMs. In respect of the conduct of the AGM, the SFC would expect the agenda of the AGM will cover at least the following:</p> <p>(a) presentation of the audited financial statements together with the auditors' report to unitholders; and</p> <p>(b) appointment of auditors and fixing of auditors' remuneration.</p> <p>To the extent the notice of AGM only contains information on the matters stated in items (a) and (b) above, Managers are only required to file such notice with the SFC as soon as it is issued. Otherwise, prior approval of such notice by the SFC has to be obtained pursuant to 10.2 of the REIT Code.</p>
30.	Under the Listing Rules, "top-up placings" conducted by listed companies are, subject to certain conditions being fulfilled, exempted from the reporting, announcement and independent shareholders' approval requirements applicable to connected transactions. Is there a similar exemption for "top-up placings" conducted by REITs?	<p>"Top-up placing" in the context of a listed company typically refers to a placing of existing shares and subscription for the same number new shares by its connected person. In placing out his existing shares in the company and subscribing for new shares to replace those placed out, the connected person is merely providing the company with a means to raise funds expeditiously. Provided that the number of new shares subscribed is exactly the same as the number of existing shares placed out and the subscription price is the same as the price at which his existing shares were placed out, the net effect on the shareholder is nil. Therefore, the subscription is exempted from connected transaction requirements under Rule 14A.31(3)(d) of the Listing Rules if the connected person subscribes for the new shares within 14 days after reducing his percentage interest in the company as a result of the placing.</p> <p>In principle, the SFC has no objection to managers of REITs conducting "top-up placings" in substantially the same manner as those being conducted by listed companies in accordance with the relevant provisions of the Listing Rules.</p> <p>As such, the SFC is prepared to grant a waiver from strict compliance with the reporting, announcement, disclosure and holders' approval requirements under 10.7(b)(iv) and 12.2 and Chapter 8 of the REIT Code and the valuation requirement under 6.2 of the REIT Code where,</p> <p>(a) units are issued to a connected person within 14 days after such connected person has executed an agreement to reduce its holding in the units by placing units to a third person</p>

	Question	Answer
		<p>who is not its associate;</p> <p>(b) the units are issued at a price not less than the placing price, which may be adjusted for the expenses of the placing; and</p> <p>(c) the number of units issued to the connected person does not exceed the number of units placed by it,</p> <p>provided that:</p> <p>(i) an announcement shall be issued in accordance with 10.3 and 10.4(k) of the REIT Code containing details of the placing and subscription of units by the connected person; and</p> <p>(ii) issuance of such units is sufficiently covered under the general mandate permitted under 12.2 of the REIT Code and no holders' approval would otherwise have to be sought under such Rule.</p> <p>Managers should also ensure that all "top-up placings" are conducted in accordance with the provisions in the trust deed and other constitutive documents of the relevant REIT.</p>
31.	<p>Under the Listing Rules, issuance of new securities to connected persons of a listed company in certain other circumstances is also exempted from the reporting, announcement and independent shareholders' approval requirements applicable to connected transactions. Is there a similar exemption for issuance of units by REITs in such circumstances?</p>	<p>Under the Listing Rules, issuance of new securities to connected persons of a listed company is, subject to certain conditions being fulfilled, exempted from the reporting, announcement and independent shareholders' approval requirements applicable to connected transactions where,</p> <p>(a) the connected person receives a pro rata entitlement to securities in its capacity as shareholder; or</p> <p>(b) securities are issued under an approved share option scheme; or</p> <p>(c) the connected person is acting as underwriter or sub-underwriter of an issue of securities by the listed company.</p> <p>In line with the regulatory intent to achieve parity for REITs and listed companies in Hong Kong where appropriate and practicable, the SFC is prepared to grant a waiver from strict compliance</p>

	Question	Answer
		<p>with the reporting, announcement, disclosure and holders' approval requirements under 10.7(b)(iv) and 12.2 and Chapter 8 of the REIT Code and the valuation requirement under 6.2 of the REIT Code where units are issued to connected persons of a REIT in the above situations in accordance with the relevant provisions of the Listing Rules, with necessary changes being made, as if those provisions were applicable to REITs.</p> <p>In respect of units issued to connected persons of a REIT pursuant to an approved incentive plan similar to a share option scheme or employees' share award scheme commonly adopted by listed companies, please also refer to FAQ 36 below.</p>
32.	What are the major regulatory requirements Managers should note in respect of secondary offerings?	<p>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.</p> <ul style="list-style-type: none"> • 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 FAQ 25 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 Securities and Futures Ordinance (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 legal advice where appropriate, as to whether the offering circular in respect of the secondary offering has to be submitted to the SFC for authorization under the SFO. • Managers should note the general disclosure obligation under 10.3 of the REIT Code. For

	Question	Answer
		<p>instance, even where the offering circular in respect of the secondary offering is not required to be authorized by the SFC pursuant to section 103 of the SFO, the Manager concerned must ensure any price-sensitive information disclosed in such circular is simultaneously released to the market by way of an announcement. Managers should also note the requirement to issue an announcement where there is an issuance of new units under 10.4 of the REIT Code.</p> <ul style="list-style-type: none"> • 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. <p>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 offerings.</p>
33.	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?	<p>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.</p> <p>The SFC is prepared to grant a waiver from strict compliance with the valuation requirement on the existing portfolio of the REIT under 6.2 of the REIT Code where new units are issued in connection with acquisitions on a case by case basis depending on its own merits.</p> <p>In considering whether a waiver will be granted, the SFC will consider, among other things, whether there is fairness in pricing and transparency in the valuation of units being issued and whether holders'/investors' interests will be prejudiced if such valuation report is not produced.</p>
34.	Paragraph B31 of Appendix B to the REIT Code provides that the offering document shall be accompanied by, among other things, the scheme's most recent audited accounts. What specific detail concerning financial	<p>7.6 of the REIT Code sets out the general requirements on reports made by accountants in respect of special purpose vehicles. However, the REIT Code does not prescribe the specific details concerning financial information to be disclosed in an offering document.</p> <p>As investors are most familiar with the accountants' reports prepared for listed companies under Chapter 4 of the Listing Rules, the SFC generally expects and requires the audited accounts of the scheme contained in an offering document of a REIT to follow the same format, and to the</p>

	Question	Answer
	information does the SFC expect these audited accounts to disclose? Does the SFC expect these audited accounts to be presented in any specific format?	extent applicable contain the same financial and other information, as an accountants' report under Chapter 4 of the Listing Rules, apart from the information requirements in Appendix C to the REIT Code.
35.	Can a REIT repurchase its own units?	A REIT may repurchase its own units on the Exchange and the SFC in general seeks to regulate on-market unit repurchases by REITs with reference to requirements applicable to listed companies as set out in the Listing Rules. Please refer to the circular dated 31 January 2008 issued by the SFC to REIT managers for the detailed restrictions and notification requirements applicable to on-market unit repurchases by REITs.
35A.	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	<p>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.</p> <p>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 shares¹.</p> <p>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.</p> <p>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:</p> <p>(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</p>

¹ see Listing Decision HKEx-LD99-1

	Question	Answer
	management fees?	<p>that purchase of its own units; and</p> <p>(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.</p> <p>REIT managers should consult the Investment Products Division at the earliest opportunity if they are in doubt.</p>
36.	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?	<p>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.</p> <p>(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.</p> <p>(b) The adoption of the plan must be permitted under the trust deed and other constitutive documents of the REIT.</p> <p>(c) Pursuant to 12.2 of the REIT Code, the adoption of the plan, the grant of awards to connected persons of the REIT and/or the issue of units pursuant to the awards in accordance with the plan will require holders' approval by way of an ordinary resolution.</p> <p>(d) Issuance of units to connected persons of the REIT pursuant to the plan constitutes connected party transactions under the REIT Code. As indicated in FAQ 31 above, in line with the regulatory intent to achieve parity for REITs and listed companies in Hong Kong where appropriate and practicable, the SFC is prepared to grant a waiver from strict compliance with the relevant reporting, announcement, disclosure and holders' approval requirements under 10.7(b)(iv) and 12.2 and Chapter 8 of the REIT Code and the valuation requirement under 6.2 of the REIT Code in this connection. Such waiver would normally be granted subject to the following conditions:</p> <p>i. any grant of awards, and the issue of units pursuant thereto, to a director of the Manager who is appointed as a result of a specific nomination or request (whether pursuant to a contractual entitlement or otherwise) by, or as a result of a specific</p>

	Question	Answer
		<p>invitation by the board to, a unitholder holding not less than 5% of the Units in issue, or any associate of such director, shall be subject to prior approval by independent unitholders by way of an ordinary resolution unless otherwise permitted by the SFC (subject to such conditions as the SFC may in its discretion impose);</p> <p>ii. the provisions of the plan in respect of the matters stated in Chapter 17.03 of the Listing Rules, as if they were applicable to the Plan, shall not be altered to the advantage of the grantees or prospective grantees unless with the prior approval of independent unitholders by way of an ordinary resolution;</p> <p>iii. any alterations to (1) the terms and conditions of the plan; (2) the terms of awards granted; and (3) the authority of the directors or the committee administering the plan in relation to any alteration to the terms of the plan, must be approved by the unitholders except where the alterations as stated in (1) and (2) above take effect automatically under the existing terms of the plan;</p> <p>iv. the amended terms of the plan must still comply with the relevant requirements of Chapter 17 of the Listing Rules, as if they were applicable to the plan; and</p> <p>v. the REIT shall comply with the ongoing disclosure requirements similar to those required under Chapter 17 of the Listing Rules.</p> <p>Managers should note that the above is intended to provide some general guidance only. Managers should consult the Investment Products Division at the earliest opportunity if they would like to adopt such incentive plan.</p>
37.	What should a REIT manager do if the aggregate borrowings of the REIT have exceeded the 45% limit imposed under 7.9 of the REIT Code as a result of a decline in property values due to any revaluation exercise?	Under 7.9 of the REIT Code, the aggregate borrowings of a REIT shall not at any time exceed 45% of the total gross asset value of the REIT. As provided in Note 1 to 7.9, if the aggregate borrowings of a REIT have exceeded the 45% limit as a result of a decline in property values due to a revaluation exercise, the REIT manager shall inform the SFC immediately and issue an announcement to inform unitholders. The REIT manager shall provide to the SFC and unitholders information on the magnitude by which such gearing limit has been exceeded and the proposed method of rectification (including the proposed period for rectification).

	Question	Answer
		Generally, the REIT would not be required to dispose of assets to pay off part of the borrowings in these circumstances where such disposal is prejudicial to the interest of the unitholders. However, the REIT manager shall not incur any further borrowings for the REIT. The REIT manager shall use its best endeavours to reduce the excess borrowings as soon as practicable and shall inform the SFC and the unitholders as to the progress of the rectification in the REIT's annual and semi-annual reports.
38.	Under the Listing Rules, the acquisition or realisation of consumer goods or consumer services by a listed issuer from or to a connected person is exempted from the reporting, announcement and independent shareholders' approval requirements applicable to connected transactions under certain circumstances. Is there a similar exemption for REITs?	<p>Under the Listing Rules, the acquisition as consumer or realisation in the ordinary and usual course of business of consumer goods or consumer services by a listed issuer from or to a connected person of the listed issuer on normal commercial terms is exempted from the reporting, announcement and independent shareholders' approval requirements applicable to connected transactions provided that such goods and services fall within the scope as set out in Rule 14A.31(7) of the Listing Rules.</p> <p>In line with the regulatory intent to achieve parity in terms of corporate governance principles for REITs and listed companies in Hong Kong where appropriate and practicable, it is hereby clarified that the acquisition or realisation of consumer goods or consumer services by a REIT from or to its connected person falling within the scope and conditions as set out in Rule 14A.31(7) of the Listing Rules (as amended from time to time), with necessary changes being made, would not be regarded as connected transactions under Chapter 8 of the REIT Code. As such, the aforesaid transactions would not be subject to strict compliance with the reporting, announcement and independent shareholders' approval requirements applicable to connected party transactions under 8.11 and 8.14 of the REIT Code. Managers who are in doubt are encouraged to consult the Investment Products Division at an early stage.</p>
Investments in property development and financial instruments pursuant to REIT Code (as amended on 29 August 2014)		
39.	What are the key matters that a management company should consider before deciding to undertake or invest any in Property Development and Related Activities pursuant to 7.2A of the REIT Code?	In addition to the requirements as set out under 7.2A of the REIT Code, the management company would be expected to carefully assess and put in place an effective internal risk controls and monitoring system to ensure that the relevant risks associated with such Property Development and Related Activities such as construction risks, risk of default of the construction project counterparties and risk of rising financing costs due to possible delay in completion or changing market environment are properly managed in the best interests of the REIT and its

	Question	Answer
		<p>investors as a whole. In this connection, the management company should also consider how to reasonably mitigate and contain these risks by:</p> <ul style="list-style-type: none"> a. ensuring that construction contracts are entered into on an arm's length basis, on normal commercial terms and contain adequate risks ring-fencing measures in line with best industry practices, for example, appropriate payment and indemnity terms such as fixed sum contract, payment by stages, sufficient indemnity against wrongful time delays, etc.; b. conducting proper due diligence to ensure all relevant government and regulatory approvals required for the Property Development and Related Activities have been obtained and all applicable laws and regulations are complied with; c. ensuring the REIT has sufficient resources to finance the Property Development and Related Activities having regard to the limitations on borrowing under the REIT Code and any exigencies that may arise in the course of construction; and 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.
40.	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.
41.	For the purpose of calculating the 10% GAV Cap under 7.2A of the REIT Code, how should the denominator (i.e. the gross asset	The denominator used in the 10% GAV calculation should be calculated by reference to the latest published accounts of the REIT as adjusted for any distribution declared and published valuation in a manner similar to determination of the total assets figure in the context of notifiable transactions under the Exchange's Listing Rules, with necessary changes. It should not include

	Question	Answer
	value (GAV) of the REIT) be determined?	the value of any investment properties under development.
42.	Who will be considered as independent experts acceptable to the SFC to provide opinion in support of the calculation of the Property Development Costs?	The SFC would generally be prepared to accept an opinion prepared by the principal valuer of the REIT or other experts whose key personnel are members of the Hong Kong Institute of Surveyors and Royal Institution of Chartered Surveyors (Hong Kong Branch). The SFC would also accept other professional experts provided that they are able to demonstrate to the SFC that they have the relevant competence and expertise to give the opinion.
43.	What would Property Development Costs under Chapter 7 of the REIT Code include?	<p>Property Development Costs refer to the total project costs borne and to be borne by the REIT in relation to the property development project, inclusive of all costs associated with such project. These costs would include, where applicable, the costs for the acquisition of land, development or construction costs, financing costs, stamp duty and professional fees. The REIT manager is expected to include a prudent buffer in line with best industry standards and practice to cater for cost overruns that may arise during the course of development. Where the Property Development and Related Activities are conducted overseas, REIT Managers should also take into account any currency impact in the calculation.</p> <p>The above are merely examples of Property Development Costs and are not meant to be exhaustive.</p>
44.	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?	<p>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.</p> <p>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 10% GAV Cap has been applied etc.) is set out in such updates.</p>

	Question	Answer
		REIT Managers should also note their general disclosure obligation under 10.3 of the REIT Code.
45.	How should the value of the Relevant Investments be calculated for the purposes of 7.2B of the REIT Code?	The management company should ensure that all Relevant Investments invested by the REIT are independently and fairly valued on a regular basis in accordance with the REIT's constitutive documents, in consultation with the trustee. In particular, valuation of the Relevant Investments should be made in accordance with requisite accounting standards as well as best industry standards and practice. For example, there should be daily marked-to-market valuation wherever practicable.
46.	What do the terms "securities", "unlisted debt securities", "government and other public securities", "property funds", "other internationally recognized stock exchanges" and "any single group of companies" refer to for the purpose of 7.2B of the REIT Code?	<p>The definitions of the Relevant Investments should generally be understood in the context of the SFO where applicable (such as "securities", "debt securities", "group of companies"), and would otherwise bear the meanings by which they are commonly understood.</p> <p>As regards whether an overseas stock exchange would be regarded an "internationally recognized stock exchange" for the purposes of 7.2B of the REIT Code, the SFC generally expects the management company to exercise professional judgment in its assessment in consultation with the trustee. In making such assessment, the management company should assess whether the relevant overseas stock exchange is of a similar standing to that of Hong Kong. REIT managers may consult the Investment Products Division if in doubt.</p>
47.	Does a "see-through" approach apply in calculating the 45% gearing limit under 7.9 of the REIT Code and the 5% limit on single group of companies exposure under 7.2B of the REIT Code when a REIT is investing through, for example, a property fund or the securities of another company ("Invested Entity")?	<p>Management companies are expected to calculate the gearing limit under 7.9 of the REIT Code in accordance with requisite accounting standards with reference to the latest published consolidated accounts of the REIT (as adjusted for any distribution declared and relevant acquisitions and disposals post reporting), including determining whether a "see-through" approach is required.</p> <p>The SFC does not in general expect that a "see-through" approach would be required for the 5% limit on single group of companies exposure in normal circumstances given that any investment made by a REIT in the Relevant Investments pursuant to 7.2B of the REIT Code should be in the nature of an ancillary investment. Given the nature of a REIT as a vehicle which invest primarily in real estate that generates recurrent rental income, it is not expected that a REIT would have a substantial ownership interest in or exposure to any Invested Entity which may not be compatible</p>

	Question	Answer
		with the requirements in the REIT Code and the nature of a REIT. In case where a REIT intends to acquire a substantial interest in any Invested Entity (e.g. an interest of over 10%), the REIT manager should consult the SFC at the earliest opportunity.
48.	What may be disregarded as “other non-real estate assets” as referred in Note (1) to 7.2B of the REIT Code?	<p>Real estate related assets (e.g. plant, machinery and equipment, fixtures and fittings) which could be considered as part-and-parcel of the properties of the REIT may be disregarded as “other non-real estate assets” for the purposes of 7.2B of the REIT Code provided that they are included as part of the real estate of the REIT in its valuation and accounted for as such in accordance with requisite accounting standards.</p> <p>In addition, plain vanilla hedging instruments in the nature of treasury tools for REITs to manage interest rate and currency exposures may also be disregarded as “other non-real estate assets”. However, such exclusion would be strictly limited to those instruments to the extent used for genuine hedging purpose in connection with the ordinary course of business of a REIT and not with the aim of yield enhancement.</p>
49.	Is it necessary for the trust deed to be amended before a REIT may undertake Property Development and Related Activities and/or invest in Relevant Investments?	<p>Notwithstanding the revised REIT Code allows a REIT to undertake Property Development and Related Activities and/or invest in Relevant Investments, it is up to a REIT manager to consider whether or not to make use of the flexibility and determine its investment strategy and policy.</p> <p>Before an existing SFC-authorized REIT may commence to undertake any Property Development and Related Activities and/or invest in Relevant Investments, the management company should first amend the existing investment scope set out in the constitutive documents of the REIT because this would amount to a change in investment objective/policy of the existing REIT. These amendments to the constitutive documents would require the approval of unitholders by way of a special resolution under the REIT Code.</p> <p>Whether and how a REIT should revise its constitutive documents would vary depending on whether, and to what extent, the REIT intends to make use of such flexibilities provided under the REIT Code and the existing provisions of the particular constitutive documents. The management company should carefully consider how the constitutive documents of the REIT should be revised to achieve compliance with the regulatory and legal requirements in consultation with the trustee of the REIT. The management company should also consider seeking legal advice where</p>

	Question	Answer
		appropriate.
50.	What should a management company do if there is any breach of the investment caps?	<p>Where the 10% GAV Cap and/ or the Maximum Cap is exceeded, the management company should inform the SFC in writing immediately and issue an announcement to inform investors as soon as reasonably practicable. The management company shall provide to the SFC and unitholders information on the magnitude of and reasons for the breach and the proposed rectification plan, including the proposed period for rectification.</p> <p>While the REIT may not be required to dispose of such investments if the disposal is prejudicial to the interests of the unitholders, the management company shall take all reasonable steps and measures to rectify the breach as soon as reasonably practicable, depending on the nature and circumstances of the breach on a case-by-case basis taking due account of the interests of unitholders. The management company should inform the SFC and unitholders as to the progress of the rectification in the annual and semi-annual reports of the REIT.</p> <p>Management companies should note that breaches of the REIT Code may cause the SFC to consider whether such failure adversely reflects on the person's fitness and properness and the suitability of the REIT to remain authorized.</p>

Last updated: 5 May 2017