

# Practice Note 28 – Guidance Note on the application of the Codes on Takeovers and Mergers and Share Buy-backs to listed closed-ended alternative asset funds

## Purpose

1. The purpose of this Practice Note is to provide guidance to market practitioners on the application of the Takeovers Code and the Share Buy-backs Code (collectively, the “**Codes**”) to listed closed-ended alternative asset funds (“**LAFs**”) with a primary listing in Hong Kong.

## Background

2. LAFs refer to closed-ended collective investment schemes (“**CIS**”) investing mainly in private, illiquid assets, authorised by the Commission pursuant to section 104 of the Securities and Futures Ordinance (“**SFO**”) and 8.11 of the Code on Unit Trusts and Mutual Funds (“**UT Code**”), and listed on the Stock Exchange of Hong Kong (“**Stock Exchange**”) under Chapter 20 of the Main Board Listing Rules.
3. On 17 February 2025, the Commission issued a circular<sup>1</sup> clarifying the requirements when it considers authorising an LAF seeking a listing on the Stock Exchange (“**Circular**”). On 30 June 2026, the Commission further issued a set of frequently asked questions (“**FAQ**”)<sup>2</sup> in respect of LAFs.
4. LAFs may be structured in either non-corporate<sup>3</sup> or corporate form. Despite their differences in legal form, corporate and non-corporate LAFs are substantially the same in terms of control mechanism and holders’ rights<sup>4</sup>. They are subject to substantially the same regulatory requirements, including requirements on eligibility of the management company, investment diversification, distribution policy, valuation and disclosure, as set out under the UT Code and Circular.
5. To maintain a level playing field and ensure due compliance with 8.11(i)<sup>5</sup> of the UT Code, all takeovers, mergers and share buy-backs affecting an LAF, whether structured in corporate or non-corporate form, are required to, inter alia, comply with the principles and rules of the Codes unless otherwise permitted by the Commission in advance<sup>6</sup>. The constitutive document of an LAF should also provide that no issuance, repurchase, buy-back or redemption of any units /

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<sup>1</sup> See the Circular issued by the Commission on listed closed-ended alternative asset funds dated 17 February 2025.

<sup>2</sup> See the FAQs on Listed Closed-ended Alternative Asset Funds published by the Commission on 30 June 2026, and as amended from time to time.

<sup>3</sup> For example, as unit trusts.

<sup>4</sup> The following matters require approval from holders of the LAFs: (i) appointment or removal of the management company; (ii) material changes in the investment objective, policy or restriction of the LAF, (iii) issue of new units / shares at a price below NAV and (iv) delisting or de-authorisation.

<sup>5</sup> 8.11(i) of the UT Code provides that the management company and trustee/custodian of a closed-ended fund shall consult the Commission as soon as practicable on the manner in which any proposed redemption, takeover, merger, amalgamation or restructuring could be carried out to ensure that it is fair and equitable to all holders.

<sup>6</sup> See Q7 of the FAQ.

shares of the LAF may be conducted unless and until they are undertaken in accordance with applicable legal and regulatory requirements (including the UT Code and the Codes), save as otherwise waived<sup>7</sup>.

6. Paragraphs 7 to 17 below explain the Executive's view on how the Codes should be interpreted and applied in respect of LAFs.

## **Application of the Codes to LAFs**

### *Introduction*

7. Pursuant to the Introduction to the Codes, the Codes apply to takeovers, mergers and share buy-backs affecting public companies in Hong Kong, companies with a primary listing of their equity securities in Hong Kong and SFC-authorized real estate investment trusts ("REIT")<sup>8</sup>. Accordingly, corporate LAFs fall within the scope of the Codes as being either public companies in Hong Kong or companies primarily listed in Hong Kong.
8. Following the "same risks, same rules" principle, the Executive believes that unitholders of a non-corporate LAF should be afforded the same level of protection as shareholders of a corporate LAF under the Codes. Therefore, the Executive treats non-corporate LAFs in the same manner as corporate LAFs as far as the Codes are concerned, subject to such modifications as appropriate taking into account their differences in legal form.
9. Paragraphs 10 to 15 below elaborate on how the key provisions of the Codes apply to non-corporate and corporate LAFs. These guidelines are not intended to cover all scenarios. The Executive should be consulted at an early stage if the parties anticipate difficulties in complying with any provisions of the Codes or this Practice Note.

### *General*

10. Given the similarities of LAFs and REITs<sup>9</sup> in terms of governance structure, we consider that the REIT Guidance Note<sup>10</sup> has provided a useful reference for the regulation of LAFs under the Codes. Appendices 1 and 2 (as derived from the REIT Guidance Note<sup>11</sup>) illustrate how various provisions of the Codes are expected to apply to non-corporate and corporate LAFs respectively.
11. Similar to the REIT Guidance Note<sup>12</sup>, the guidance set out in this Practice Note is intended to provide guidance to all parties involved in takeovers, mergers and

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<sup>7</sup> See also Q7 of the FAQ.

<sup>8</sup> Pursuant to Section 4.1 of the Introduction to the Codes.

<sup>9</sup> For example, both LAFs and REITs are required to be managed by management companies that satisfy relevant eligibility requirements and comply with applicable requirements on an ongoing basis under the UT Code and the REIT Code respectively. Both LAFs and REITs are also closed-ended in nature.

<sup>10</sup> Schedule IX to the Codes.

<sup>11</sup> In general, as shown in Appendices 1 and 2, all references to "REIT" in the REIT Guidance Note are modified to refer to "LAF" in the context of an LAF unless otherwise specified in this Practice Note (including the Appendices).

<sup>12</sup> See section 1(b) of REIT Guidance Note.

share buy-backs of non-corporate and corporate LAFs respectively (including without limitation relevant holders of units/shares of LAFs and potential offerors).

12. In addition, the Executive will apply this Practice Note in accordance with its spirit as well as its letter so as to achieve the underlying purpose.

*Special points to note for corporate LAFs*

13. In the case of a corporate LAF, while its management company (including directors of the management company) is responsible for the investment management functions of the fund, the corporate LAF also has its own directors responsible for overseeing the operations of the corporate LAF<sup>13</sup> (including the activities of the management company and the custodian of the fund). The custodian of the corporate LAF, similar to the trustee of a non-corporate LAF in unit trust form, in turn oversees the activities of the management company for compliance with the relevant constitutive documents of and regulatory requirements for the LAF<sup>14</sup>.
14. Consistent with our approach to REITs, the Executive takes the view that the term “*director(s)*” in the context of LAFs should be taken to include the management company and/or any one or more of its directors and/or persons with whose instructions the management company or its directors or a director of such management company is accustomed to act<sup>15</sup>.
15. Therefore, in the context of a corporate LAF,
  - (a) the “*directors of a company*” in the Codes shall be construed to include the management company and the director(s) of both the corporate LAF and the management company, whereas the “*board*” shall similarly be construed to include the board of directors of the corporate LAF, the management company and/or its board of directors; and
  - (b) all references to “*trustee*” in the REIT Guidance Note shall be modified to refer to “*custodian*” of the corporate LAF where applicable.

*Consultation*

16. Similar to the requirements of the REIT Code, the FAQ<sup>16</sup> provides that an LAF’s management company and trustee/custodian should as soon as practicable consult the Commission on the manner in which any proposed redemption,

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<sup>13</sup> Section 5.3 of the Code on Open-Ended Fund Companies (“**OFC Code**”) provides that the OFC must have in place at all times an investment management agreement in writing for the delegation of the investment management functions of the OFC to the management company. The investment management functions to be delegated should include, at a minimum, the investment management, valuation and pricing of the scheme property. In addition, section 5.4 of the OFC Code provides that the directors of an OFC should use reasonable care, skill and diligence to oversee the activities of the management company and custodian as part of their overall duty to oversee the operations of the OFC.

<sup>14</sup> See the general obligations of the custodian and trustee under the UT Code (in particular section 4.5) and Schedule 11 to the SFC of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission where the trustee / custodian is licensed/registered for type 13 regulated activity.

<sup>15</sup> See the definition of “Director(s)” in the REIT Guidance Note.

<sup>16</sup> See Q7 of the FAQ.

takeover, merger, amalgamation or restructuring could be carried out and on the detailed application of the relevant requirements.

17. If there is any doubt about the interpretation of the Codes or any part of this Practice Note in the context of LAFs, the Executive and the Investment Products Division of the Commission should be consulted at the earliest opportunity.

30 June 2026

**Note: this guidance note (as derived from REIT Guidance Note) serves to illustrate how the Codes are to be interpreted and applied in respect of non-corporate LAFs and is non-exhaustive.**

## **APPENDIX 1**

### **GUIDANCE NOTE FOR NON-CORPORATE LAFS**

#### **1. Introduction**

This Guidance Note applies to LAFs set up in non-corporate forms (hereinafter referred to as “**non-corporate LAFs**”).

#### **2. Definitions**

Unless the context otherwise requires in the context of a **non-corporate LAF**:–

“**Acting in concert**”: In addition to the presumptions set out in the Definitions section of the Codes, persons in the following class will be presumed to be acting in concert with others in the same class unless the contrary is established:–

- (10) a **non-corporate LAF**, its management company (together with persons controlling<sup>#</sup>, controlled by or under the same control as the management company) and any director (together with their close relatives, related trusts and companies controlled<sup>#</sup> by any of the directors, their close relatives or related trusts) of such management company; and

*Notes:*

- 1. *The Executive must be consulted where a management company acts at the same time for more than one of the following:–*
  - (i) *offeror or possible offeror;*
  - (ii) *competing offeror or possible competing offeror; and*
  - (iii) *offeree **non-corporate LAF**.*
- 2. *The role carried out by a management company pursuant to its obligations under the **UT** Code should be distinguished from a fund manager under class (4) and a financial or other professional adviser under class (5). Nonetheless, class (4) and/or (5) will also apply to a management company where the management company is acting in such capacity for a **non-corporate LAF**.*

- (11) a **non-corporate LAF** and its trustee acting in such capacity.

*Notes:*

- 1. *The Executive must be consulted where a trustee acts at the same time in its capacity as trustee for more than one of the following:–*

- (i) offeror or possible offeror;
  - (ii) competing offeror or possible competing offeror; and
  - (iii) offeree *non-corporate LAF*.
2. For the purpose of calculating the voting rights held by a group acting in concert, the voting rights held by a trustee in its capacity as trustee of unrelated trusts will not normally be counted. In case of doubt, the Executive must be consulted.

**“Associate”**: In addition to the persons listed under the definition of “associate” in the Definitions section of the Codes, with respect to an offeror or potential offeror or the offeree company (the “first person”), the term “associate” normally includes the following:–

- (7) any trustee (in its capacity as trustee of a *non-corporate LAF*) of an offeror, the offeree *non-corporate LAF* or any company in class (1) of the definition of acting in concert; and
- (8) any management company (together with persons controlling<sup>#</sup>, controlled by or under the same control as the management company) of an offeror, the offeree *non-corporate LAF* or any company in class (1) of the definition of acting in concert.

**“Board”**: should be taken as a reference to include a management company and/or its board of directors.

**“Company”**: should be taken as a reference to a *non-corporate LAF* and/or a company as the context requires.

*Note:*

*In the context of a non-corporate LAF, the concept of parent, subsidiary, fellow subsidiary and associated company should apply to non-corporate LAFs (see also the Notes to Definitions in this Guidance Note).*

**“Connected fund manager and connected principal trader”**: In addition to the four classes of persons listed under the definition of “connected fund manager and connected principal trader” in the Definitions section of the Codes, a new class (5) is introduced:–

- (5) the management company of an offeror *LAF* or an offeree *non-corporate LAF*.

**“Constitutive documents”**: has the meaning attributed to such term by the *UT Code*.

**“Director(s)”**: should be taken as a reference to include a management company and/or any one or more of its directors and/or persons with whose instructions a management company or its directors or a director of such management company is accustomed to act.

Note:

With respect to classes (2) and (6) of the presumptions of acting in concert set out in the Definitions section of the Codes, references to “directors” will also be taken as references to include the management company of a **non-corporate LAF** (together with persons controlling<sup>#</sup>, controlled by or under the same control as the management company).

“**Employee share scheme**”: includes any employee share scheme of a management company adopted in connection with the **non-corporate LAF** it manages.

“**General meeting**”: should be taken as a reference to a meeting of the unitholders of a **non-corporate LAF** held in accordance with the **non-corporate LAF**’s constitutive documents.

“**LAF**”: means a closed-ended collective investment scheme investing mainly in private, illiquid assets, authorised by the Commission pursuant to section 104 of the SFO and 8.11 of the UT Code, and listed on the Stock Exchange under Chapter 20 of the Main Board Listing Rules.

“**Management company**”: has the meaning attributed to such term in the **UT Code**.

“**Pension funds**”: includes any pension funds of a management company established in connection with the **non-corporate LAF** it manages.

“**Provident funds**”: includes any provident funds of a management company established in connection with the **non-corporate LAF** it manages.

“**Shares**”: should be taken as a reference to the units (**or equivalent interests**) of a **non-corporate LAF**.

“**Share capital**”, “**Issued share capital**”, “**Equity share capital**” or “**Equity shares**”: should be taken as references to the units of a **non-corporate LAF** which are issued and outstanding from time to time.

“**Shareholders**”: should be taken as a reference to unitholders of a **non-corporate LAF**.

“**Trustee**”: **has the meaning attributed to such term in the UT Code**.

“**UT Code**”: means the Code on **Unit Trusts and Mutual Funds**.

Notes to Definitions:–

1. *Action by a trustee, a management company and/or any of its directors*

*Where an action is taken by a trustee (in its capacity as trustee of a **non-corporate LAF**) or a management company and/or any of its directors (in their respective capacity on behalf of a **non-corporate LAF**), that action will be deemed to be an action taken by such **non-corporate LAF**. In case of doubt, the Executive must be consulted.*

2. *Voting rights owned, controlled or held by a trustee, a management company and/or any of its directors*

*Any voting rights owned, controlled or held by a trustee (in its capacity as trustee of a **non-corporate LAF**) or a management company and/or any of its directors (in their respective capacity on behalf of a **non-corporate LAF**) will be deemed to be voting rights owned, controlled or held by such **non-corporate LAF** of which any of the trustee/the management company and/or any of its directors acted on its behalf. In case of doubt, the Executive must be consulted.*

3. *Assets owned, controlled or held by special purpose vehicle(s)*

*Any assets owned, controlled or held by any special purpose vehicle will be deemed to be assets owned, controlled or held by the **non-corporate LAF** that owns or controls the special purpose vehicle(s). In case of doubt, the Executive must be consulted.*

### **3. Clarification of various provisions of the Codes**

#### **(a) Application of Note 7 to Rule 2 of the Takeovers Code**

In the context of a **non-corporate LAF**, paragraph (i) of Note 7 to Rule 2 of the Takeovers Code should be replaced by "as a result of such proposal the **non-corporate LAF** may not be regarded as suitable to remain authorised by the SFC under section 104 of the Securities and Futures Ordinance (Cap. 571); or".

#### **(b) Directors of a company (Rule 2.8 and Note 2 to Rule 7 of the Takeovers Code)**

For the purpose of Rule 2.8 and Note 2 to Rule 7 of the Takeovers Code, "director(s)" of a company will be construed as "director(s) of the relevant management company". In case of doubt, the Executive must be consulted.

#### **(c) Announcement of firm intention to make an offer (Rule 3.5(b) of the Takeovers Code)**

In cases where the offeror is a **non-corporate LAF**, in addition to disclosing the relevant information under Rule 3.5(b) of the Takeovers Code, the relevant announcement must also contain the identity of each of the management company and the trustee of such **non-corporate LAF**.

#### **(d) No frustrating action (Rule 4 of the Takeovers Code)**

In accordance with Rule 4 of the Takeovers Code and its notes, in cases where the offeree company is a **non-corporate LAF**, no frustrating action should be taken by any of the offeree **non-corporate LAF**, the management company and/or any of its directors and/or the trustee (in its capacity as trustee of such offeree **non-corporate LAF**). In particular, in addition to the matters set out under Rule 4 of the Takeovers Code, the relevant parties must not, without the approval of the unitholders of the offeree **non-corporate LAF**, do or agree to do the following:–

- (a) alter the terms of engagement between the offeree **non-corporate LAF** and its management company; or
- (b) enter into, or alter the terms of, the service contracts between the management company of the offeree **non-corporate LAF** and any of its directors otherwise than in the ordinary course of business.

**(e) Service contracts (Rule 4, Rule 8.5, Note 1(j) to Rule 8 of the Takeovers Code and paragraph 13 of Schedule II to the Codes)**

References to “directors’ service contracts or service contracts of the directors” will be construed to include (i) any service contract between the management company and each of its directors; and (ii) any service contract in whatever form with the management company of the **non-corporate LAF** in such capacity. In case of doubt, the Executive must be consulted.

**(f) Availability of information – information issued by associates (Note 4 to Rule 8.1 of the Takeovers Code)**

With respect to Note 4 to Rule 8.1 of the Takeovers Code, attention should also be drawn to classes (7) and (8) of the definition of “associate” under this Guidance Note.

**(g) Resignation and appointment of the management company and its directors (Rule 7 and Rule 26.4 of the Takeovers Code)**

In cases where any management company and/or any of its directors have difficulty in complying with Rule 7 and Rule 26.4 of the Takeovers Code due to compliance with any other rules, regulations and/or the constitutive documents of the **non-corporate LAF** such management company manages, the Executive must be consulted.

**(h) Documents to be on display (Note 1 to Rule 8 of the Takeovers Code)**

In cases where the offeror or the offeree company is a **non-corporate LAF**, in addition to the documents set out in Note 1 to Rule 8 of the Takeovers Code, copies of the relevant constitutive documents must also be made available for inspection in accordance with such note.

**(i) Dividend forecasts (Rule 10.6(d) of the Takeovers Code)**

*[Note: this paragraph in the REIT Guidance Note is not applicable to LAFs, which are not subject to the minimum dividend distribution requirement under Rule 7.12 of the REIT Code.]*

**(j) Appropriate offers for convertibles, warrants, etc. (Rule 13 of the Takeovers Code)**

References to convertible securities in the context of a **non-corporate LAF** in Rule 13 of the Takeovers Code will be construed to include those convertible securities issued by a **non-corporate LAF**'s special purpose vehicle(s) that are convertible into units of, and whether or not guaranteed by such **non-corporate LAF** (through its trustee acting in such capacity).

**(k) Offer to remain open for a longer period after unconditional in all respects (Rule 15.3 of the Takeovers Code)**

To the extent no compulsory acquisition mechanism is available to a non-corporate LAF, where an offer is made to the unitholders of such non-corporate LAF in relation to or together with:-

- (i) a proposal to withdraw the listing of the units of the non-corporate LAF on the Stock Exchange; or
- (ii) a proposal which might result in the non-corporate LAF being not regarded as suitable to remain authorised by the SFC under section 104 of the Securities and Futures Ordinance (Cap.571); and

where such offer becomes or is declared unconditional in all respects, it should remain open for acceptance for a longer period than normally required by Rule 15.3. A corresponding extension of the written notice period will also be required. In the circumstances, a clear explanation of the implications of the proposal should be clearly and prominently disclosed in the offer document sent to those unitholders who have not accepted the offer.

**(l) Lowest percentage holding for the 12 month period preceding 25 June 2010 (Rule 26.1 of the Takeovers Code)**

*[Note: this paragraph in REIT Guidance Note is a grandfathering provision for REITs listed before 25 June 2010 and is not applicable to LAFs and therefore is not included in this illustrative guidance note for LAFs.]*

**(m) Requisitioning shareholder meetings after an offer becomes unconditional in all respects (Rule 31.5 of the Takeovers Code)**

In cases where the offeree company is a non-corporate LAF, the trustee (in its capacity as trustee of such offeree non-corporate LAF) must also comply with Rule 31.5(ii). In case of doubt, the Executive should be consulted.

**(n) Intentions regarding the offeree non-corporate LAF (paragraph 3 of Schedule I and paragraph 4 of Schedule III to the Codes)**

If the offeree company is a non-corporate LAF, instead of the disclosure requirements under paragraph 3 of Schedule I or paragraph 4 of Schedule III (as the case may be), the offeror's intentions regarding the following should be disclosed:-

- (i) the continued operation of the non-corporate LAF;
- (ii) any major changes to be made to the operation of the non-corporate LAF, including any redeployment of the assets of such non-corporate LAF and any transitional arrangements;
- (iii) any major changes to be made to the investment policy of the non-corporate LAF;

- (iv) any plan to remove the current management company (and/or its directors) and/or appoint a new management company (and/or its directors) and any corresponding transitional arrangements;
- (v) the long-term commercial justification for the proposed offer; and
- (vi) the listing status of the **non-corporate LAF**.

**(o) Further information in cases of securities exchange offers (paragraph 17 of Schedule I to the Codes)**

If the offeror is a **non-corporate LAF**, instead of the disclosure requirements under paragraph 17 of Schedule I, the date of establishment and the governing law of the offeror should be disclosed.

**(p) Shareholdings and dealings (paragraph 2 of Schedule II to the Codes)**

In cases where the offeree company is a **non-corporate LAF**, the disclosure obligations under paragraph 2 of Schedule II and Note 2 to such paragraph should also apply to any person who is an associate of the offeree company by virtue of classes (7) and (8) of the definition of associate.

**4. Early consultation**

Consultation with the Executive at an early stage is essential.

**Note: this guidance note (as derived from REIT Guidance Note) serves to illustrate how the Codes are to be interpreted and applied in respect of corporate LAFs and is non-exhaustive.**

## **APPENDIX 2**

### **GUIDANCE NOTE FOR CORPORATE LAFS**

#### **1. Introduction**

This Guidance Note applies to LAFs set up in corporate forms (hereinafter referred to as “**corporate LAFs**”).

#### **2. Definitions**

Unless the context otherwise requires in the context of a **corporate LAF**:–

“**Acting in concert**”: In addition to the presumptions set out in the Definitions section of the Codes, persons in the following class will be presumed to be acting in concert with others in the same class unless the contrary is established:–

- (10) a **corporate LAF**, its management company (together with persons controlling<sup>#</sup>, controlled by or under the same control as the management company) and any director (together with their close relatives, related trusts and companies controlled<sup>#</sup> by any of the directors, their close relatives or related trusts) of such management company; and

*Notes:*

1. *The Executive must be consulted where a management company acts at the same time for more than one of the following:–*

- (i) offeror or possible offeror;*
- (ii) competing offeror or possible competing offeror; and*
- (iii) offeree **corporate LAF**.*

2. *The role carried out by a management company pursuant to its obligations under the **UT** Code should be distinguished from a fund manager under class (4) and a financial or other professional adviser under class (5). Nonetheless, class (4) and/or (5) will also apply to a management company where the management company is acting in such capacity for a **corporate LAF**.*

- (11) a **corporate LAF** and its **custodian** acting in such capacity.

*Note:*

*The Executive must be consulted where a **custodian** acts at the same time in its capacity as **custodian** for more than one of the following:–*

- (i) offeror or possible offeror;
- (ii) competing offeror or possible competing offeror; and
- (iii) offeree **corporate LAF**.

**“Associate”**: In addition to the persons listed under the definition of “associate” in the Definitions section of the Codes, with respect to an offeror or potential offeror or the offeree company (the “first person”), the term “associate” normally includes the following:–

- (7) any **custodian** (in its capacity as **custodian** of a **corporate LAF**) of an offeror, the offeree **corporate LAF** or any company in class (1) of the definition of acting in concert; and
- (8) any management company (together with persons controlling<sup>#</sup>, controlled by or under the same control as the management company) of an offeror, the offeree **corporate LAF** or any company in class (1) of the definition of acting in concert.

**“Board”**: should be taken as a reference to include a management company and/or its board of directors.

**“Company”**: should be taken as a reference to a **corporate LAF** and/or a company as the context requires.

*Note:*

*In the context of a **corporate LAF**, the concept of parent, subsidiary, fellow subsidiary and associated company should apply to **corporate LAFs** (see also the Notes to Definitions in this Guidance Note).*

**“Connected fund manager and connected principal trader”**: In addition to the four classes of persons listed under the definition of “connected fund manager and connected principal trader” in the Definitions section of the Codes, a new class (5) is introduced:–

- (5) the management company of an offeror **LAF** or an offeree **corporate LAF**.

**“Constitutive documents”**: has the meaning attributed to such term by the **UT Code**.

**“Custodian”** has the meaning attributed to such term in the **UT Code**.

**“Director(s)”**: should be taken as a reference to include a management company and/or any one or more of its directors and/or persons with whose instructions a management company or its directors or a director of such management company is accustomed to act. **For the avoidance of doubt, references to “Directors” shall continue to include directors of the corporate LAF.**

*Note:*

*With respect to classes (2) and (6) of the presumptions of acting in concert set out in the Definitions section of the Codes, references to “directors” will also be taken as references to include the management company of a **corporate LAF** (together with persons controlling<sup>#</sup>, controlled by or under the same control as the management company).*

**“Employee share scheme”**: includes any employee share scheme of a management company adopted in connection with the **corporate LAF** it manages.

**“General meeting”**: should be taken as a reference to a meeting of the **shareholders** of a **corporate LAF** held in accordance with the **corporate LAF’s** constitutive documents.

**“LAF”**: means a closed-ended collective investment scheme investing mainly in private, illiquid assets, authorised by the Commission pursuant to section 104 of the SFO and 8.11 of the UT Code, and listed on the Stock Exchange under Chapter 20 of the Main Board Listing Rules.

**“Management company”**: has the meaning attributed to such term in the **UT Code**.

**“Pension funds”**: includes any pension funds of a management company established in connection with the **corporate LAF** it manages.

**“Provident funds”**: includes any provident funds of a management company established in connection with the **corporate LAF** it manages.

**“UT Code”**: means the Code on **Unit Trusts and Mutual Funds**.

*Notes to Definitions:–*

1. *Action by a **custodian**, a management company and/or any of its directors*

*Where an action is taken by a **custodian** (in its capacity as **custodian** of a **corporate LAF**) or a management company and/or any of its directors (in their respective capacity on behalf of a **corporate LAF**), that action will be deemed to be an action taken by such **corporate LAF**. In case of doubt, the Executive must be consulted.*

2. *Voting rights owned, controlled or held by a **custodian**, a management company and/or any of its directors*

*Any voting rights owned, controlled or held by a **custodian** (in its capacity as **custodian** of a **corporate LAF**) or a management company and/or any of its directors (in their respective capacity on behalf of a **corporate LAF**) will be*

*deemed to be voting rights owned, controlled or held by such **corporate LAF** of which any of the **custodian**/the management company and/or any of its directors acted on its behalf. In case of doubt, the Executive must be consulted.*

3. *Assets owned, controlled or held by special purpose vehicle(s)*

*Any assets owned, controlled or held by any special purpose vehicle will be deemed to be assets owned, controlled or held by the **corporate LAF** that owns or controls the special purpose vehicle(s). In case of doubt, the Executive must be consulted.*

**3. Clarification of various provisions of the Codes**

**(a) Application of Note 7 to Rule 2 of the Takeovers Code**

In the context of a **corporate LAF**, paragraph (i) of Note 7 to Rule 2 of the Takeovers Code should be replaced by "as a result of such proposal the **corporate LAF** may not be regarded as suitable to remain authorised by the SFC under section 104 of the Securities and Futures Ordinance (Cap. 571); or".

**(b) Directors of a company (Rule 2.8 and Note 2 to Rule 7 of the Takeovers Code)**

For the purpose of Rule 2.8 and Note 2 to Rule 7 of the Takeovers Code, "director(s)" of a company will be construed as "**directors of the corporate LAF**" and/or "director(s) of the relevant management company" **as the context requires**. In case of doubt, the Executive must be consulted.

**(c) Announcement of firm intention to make an offer (Rule 3.5(b) of the Takeovers Code)**

In cases where the offeror is a **corporate LAF**, in addition to disclosing the relevant information under Rule 3.5(b) of the Takeovers Code, the relevant announcement must also contain the identity of each of the management company and the **custodian** of such **corporate LAF**.

**(d) No frustrating action (Rule 4 of the Takeovers Code)**

In accordance with Rule 4 of the Takeovers Code and its notes, in cases where the offeree company is a **corporate LAF**, no frustrating action should be taken by any of the offeree **corporate LAF**, the management company and/or any of its directors and/or the **custodian** (in its capacity as **custodian** of such offeree **corporate LAF**). In particular, in addition to the matters set out under Rule 4 of the Takeovers Code, the relevant parties must not, without the approval of the **shareholders** of the offeree **corporate LAF**, do or agree to do the following:—

- (a) alter the terms of engagement between the offeree **corporate LAF** and its management company; or

(b) enter into, or alter the terms of, the service contracts between the management company of the offeree **corporate LAF** and any of its directors otherwise than in the ordinary course of business.

**(e) Service contracts (Rule 4, Rule 8.5, Note 1(j) to Rule 8 of the Takeovers Code and paragraph 13 of Schedule II to the Codes)**

References to “directors’ service contracts or service contracts of the directors” will be construed to include (i) any service contract between the management company and each of its directors; and (ii) any service contract in whatever form with the management company of the **corporate LAF** in such capacity. **For the avoidance of doubt, references to “directors’ service contracts or service contracts of the directors” shall continue to include any service contract between the corporate LAF and its directors.** In case of doubt, the Executive must be consulted.

**(f) Availability of information – information issued by associates (Note 4 to Rule 8.1 of the Takeovers Code)**

With respect to Note 4 to Rule 8.1 of the Takeovers Code, attention should also be drawn to classes (7) and (8) of the definition of “associate” under this Guidance Note.

**(g) Resignation and appointment of the management company and its directors (Rule 7 and Rule 26.4 of the Takeovers Code)**

In cases where any management company and/or any of its directors have difficulty in complying with Rule 7 and Rule 26.4 of the Takeovers Code due to compliance with any other rules, regulations and/or the constitutive documents of the **corporate LAF** such management company manages, the Executive must be consulted.

**(h) Documents to be on display (Note 1 to Rule 8 of the Takeovers Code)**

In cases where the offeror or the offeree company is a **corporate LAF**, in addition to the documents set out in Note 1 to Rule 8 of the Takeovers Code, copies of the relevant constitutive documents must also be made available for inspection in accordance with such note.

**(i) Dividend forecasts (Rule 10.6(d) of the Takeovers Code)**

*[Note: this paragraph in the REIT Guidance Note is not applicable to LAFs, which are not subject to the minimum dividend distribution requirement under Rule 7.12 of the REIT Code.]*

**(j) Appropriate offers for convertibles, warrants, etc. (Rule 13 of the Takeovers Code)**

References to convertible securities in the context of a **corporate LAF** in Rule 13 of the Takeovers Code will be construed to include those convertible securities issued by a **corporate LAF**’s special purpose vehicle(s) that are convertible into shares of, and whether or not guaranteed by such **corporate LAF** (through its **custodian** acting in such capacity (**where applicable**)).

**(k) Offer to remain open for a longer period after unconditional in all respects (Rule 15.3 of the Takeovers Code)**

To the extent no compulsory acquisition mechanism is available to a corporate LAF, where an offer is made to the shareholders of such corporate LAF in relation to or together with:-

- (i) a proposal to withdraw the listing of the shares of the corporate LAF on the Stock Exchange; or
- (ii) a proposal which might result in the corporate LAF being not regarded as suitable to remain authorised by the SFC under section 104 of the Securities and Futures Ordinance (Cap.571); and

where such offer becomes or is declared unconditional in all respects, it should remain open for acceptance for a longer period than normally required by Rule 15.3. A corresponding extension of the written notice period will also be required. In the circumstances, a clear explanation of the implications of the proposal should be clearly and prominently disclosed in the offer document sent to those shareholders who have not accepted the offer.

**(l) Lowest percentage holding for the 12 month period preceding 25 June 2010 (Rule 26.1 of the Takeovers Code)**

*[Note: this paragraph in the REIT Guidance Note is a grandfathering provision for REITs listed before 25 June 2010 and is not applicable to LAFs and therefore is not included in this guidance note for LAFs.]*

**(m) Requisitioning shareholder meetings after an offer becomes unconditional in all respects (Rule 31.5 of the Takeovers Code)**

In cases where the offeree company is a corporate LAF, the custodian (in its capacity as custodian of such offeree corporate LAF) must also comply with Rule 31.5(ii). In case of doubt, the Executive should be consulted.

**(n) Intentions regarding the offeree corporate LAF (paragraph 3 of Schedule I and paragraph 4 of Schedule III to the Codes)**

If the offeree company is a corporate LAF, instead of the disclosure requirements under paragraph 3 of Schedule I or paragraph 4 of Schedule III (as the case may be), the offeror's intentions regarding the following should be disclosed:-

- (i) the continued operation of the corporate LAF;
- (ii) any major changes to be made to the operation of the corporate LAF, including any redeployment of the assets of such corporate LAF and any transitional arrangements;
- (iii) any major changes to be made to the investment policy of the corporate LAF;

- (iv) any plan to remove the current management company (and/or its directors) and/or appoint a new management company (and/or its directors) and any corresponding transitional arrangements;
- (v) the long-term commercial justification for the proposed offer; and
- (vi) the listing status of the **corporate LAF**.

**(o) Further information in cases of securities exchange offers (paragraph 17 of Schedule I to the Codes)**

If the offeror is a **corporate LAF**, the disclosure requirements under paragraph 17 of Schedule I **apply**.

**(p) Shareholdings and dealings (paragraph 2 of Schedule II to the Codes)**

In cases where the offeree company is a **corporate LAF**, the disclosure obligations under paragraph 2 of Schedule II and Note 2 to such paragraph should also apply to any person who is an associate of the offeree company by virtue of classes (7) and (8) of the definition of associate.

**4. Early consultation**

Consultation with the Executive at an early stage is essential.