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Our comments relate to paragraphs 25(a), 29 and 30 of the Draft Practice Note on Overseas Investments by SFC-Authorised Real Estate Investment Trusts attached as Appendix 1 to the Consultation Paper (the "Draft Practice Note"):

Paragraph 25(a)

We do not think that any value is added by the trustee's involvement in the requirement for the management company to demonstrate "to the reasonable satisfaction of the trustee" that a joint investment arrangement is in the interest of the holders.

Given that the management company (and not the trustee) possesses the expertise for selection of investments for a REIT, it should not be the trustee's responsibility to second-guess the management company's expert decision for the REIT to enter into a joint investment arrangement, for the same reason that the trustee should not be called upon to decide whether other investments of the REIT are in the interest of the holders. It should be sufficient for the management company to demonstrate this without reference to the trustee, i.e. deleting the wording of "to the reasonable satisfaction of the trustee". The management company can demonstrate this, for example, by stating in its board resolutions that it considers such investment to be in the interest of the holders and therefore resolves to make the investment.

Alternatively, the SFC can consider either requiring prior approval by ordinary resolution of holders for joint investments (applying the same principles as for connected transactions under the current Code on REITs), or requiring sufficient advance notice to be provided to holders.

If the trustee is to be involved, then the trustee should be entitled to rely on a written certification from the management company that the joint investment arrangement is in the interest of the holders, and in providing such written certification to the trustee, the management company should be considered as having demonstrated "to the reasonable satisfaction of the trustee" that the joint investment arrangement is in the interest of the holders for the purpose of Paragraph 25(a) of the Draft Practice Note.

Paragraph 29

The last sentence of this paragraph expands the trustee's duties under the Code on REITs and places an unduly onerous duty on the trustee. Such duty without qualification is inconsistent with the general standard of care for other trustee's duties under the Code on REITs.

We suggest that the last sentence be amended to: "This includes ***taking reasonable care*** to ensure that all investment activities carried out by the management company are in line with the investment objective and policy of a REIT and its constitutive documents~~, and are in the interest of the holders~~."

The addition of the words "taking reasonable care" brings the provision in line with the general standard of care for trustee's duties under the Code on REITs. The deletion of the words ", and are in the interest of the holders" is for the same reason as per our comments on Para 25(a), namely that it is beyond the expertise of the trustee to determine whether the investment activities of the management company are in the interest of the holders and the trustee should not be expected to make such determination.

Paragraph 30

It is unduly onerous to require the trustee to make reasonable endeavours to verify the legality and authenticity of all agreements in relation to a REIT.

We suggest that the first part of the paragraph be revised to: "The trustee shall also ***make~~reasonable endeavours to verify~~ take all reasonable care to ensure*** the legality and authenticity of ***~~all~~ material*** agreements in relation to a REIT …".

The current wording of "make reasonable endeavours to verify" in the Practice Note is inconsistent with the standard of care required of the trustee under paragraph 4.2(k) of the Code on REITS in relation to ensuring proper legal title of Hong Kong real estate. We consider the wording in the Draft Practice Note as imposing a more stringent standard of care on the trustee. In any event, there should not be a difference in the standard of care in ensuring the proper legal title for Hong Kong and overseas properties, and the same wording should be adopted in both cases. Also the requirement for reasonable verification should be limited to material agreements only. Such limitation would still provide the desired safeguard for protection of the interests of holders, whilst reducing the burden on the trustee.

In addition, the trustee should not be responsible for verifying agreements in relation to a REIT that are executed by other service providers with third parties, e.g. an agreement between management company and its overseas delegate, or an agreement between the Principal Valuer and its appointed overseas valuer. Instead, under such circumstances, the trustee should be entitled to delegate the responsibility for reasonable verification to the REIT service provider entering into such agreements with third parties.

I would be happy to discuss with you any of the above comments if that would be helpful.