

GUIDANCE ON REIT AUTHORISATION PROCESS AND DOCUMENTARY REQUIREMENTS

This document sets out the procedure and requirements for applications for the authorisation of real estate investment trusts (“REITs”) under the Code on Real Estate Investment Trusts (the “Code”).

Authorisation Process

1. A new applicant must apply for a listing on the Application Form for Real Estate Investment Trusts.
2. The applicant should ensure that the information in the draft offering circular (“Application Proof”) that is submitted to the Commission together with the Application Form and other application documents for the authorization of the scheme for the purpose of listing are substantially complete (except in relation to information that by its nature can only be finalized and incorporated at a later date). If the Commission decides the information is not substantially complete, the Commission will not continue its review and return all documents to the applicant except for the retention of a copy of these documents for record. An 8-week moratorium (“Moratorium”) will be imposed whereby the applicant can only submit the new Application Form and Application Proof not less than 8 weeks after the date of return letter.
3. The Commission will normally issue a letter (“Take-up Letter”) confirming that the application has been taken up within five business days of the receipt of the application and the prescribed application fee.¹
4. The first requisition letter in respect of the application will be issued within 14 business days of the date of the Take-up Letter.
5. The actual time required for processing an application largely depends on the level of compliance of the applicant scheme with the Code, the complexity of the scheme, and the quality of the application materials.
6. Management Company and listing agent(s) should refer to the Frequently Asked Questions relating to Real Estate Investment Trusts for ancillary guidance.

Documentary Requirements

The following are the basic documents which should be submitted to the Commission for review in support of each authorisation application. This list should not be considered as exhaustive and where appropriate, applicants should also submit such other additional documents relevant to the specific features and requirements of their schemes as requested by the Commission.

¹ Unless the application is returned as referred to in paragraph 2.

A. Documents to be submitted upon the lodging the application

- (1) Such number of copies of the advanced draft of offering circular (together with an electronic version of the same in text-searchable format) as the Commission may require
- (2) Application Checklist and the other documents referred to therein
- (3) Payment of application fee
- (4) A copy of the confirmation submitted by the listing agent(s) to The Stock Exchange of Hong Kong Limited ("SEHK") in relation to the submission of an Application Proof for posting on the website of SEHK
- (5) A copy of the engagement letter of the listing agent(s), who should be formally appointed for a minimum period of two months before submission of the application (if not already submitted)

B. Documents to be submitted at least one clear business day before the expected date of the issue of the approval-in-principle letter by the Commission

- (1) Original signed Management Company's Confirmation and Undertaking in the form as set out in **Annex A** hereto
- (2) Original signed Listing Agent's Confirmation and Undertaking in the form as set out in **Annex B** hereto
- (3) A certified copy of the in-principle approval letter from SEHK in respect of the proposed spin-off of vendor's interests in the properties to be acquired by the scheme for separate listing in the form of real estate investment trust (if applicable and available)

C. Documents to be submitted at least one clear business day before the expected date of formal authorisation by the Commission

- (1) Updated Application Checklist and the documents referred to therein
- (2) A certified copy of each of the material agreements referred to in the offering circular
- (3) A certified copy of the in-principle approval letter from SEHK for the listing application of the interests of the scheme
- (4) Payment of authorisation fee and first annual fee
- (5) Original signed undertaking from the Management Company of the scheme that the finalised facility agreement (if still subject to negotiation) will have no material adverse impact on the basis and assumptions of the profit and working capital forecast and disclosures made in the offering circular

- (6) Original signed confirmation from the Management Company or its legal counsel that the photos appearing on the front page and other sections of the offering circular and marketing material (if any, including brochure, folder, poster and banner etc) are predominantly of those properties to be acquired by the scheme
- (7) A certified copy of the Management Company's resolution authorising the proposed offering and listing of the units of the scheme on SEHK and related matters
- (8) Original signed confirmation from the Management Company that no material changes to or omission of material facts from the offering circular and that no new information has arisen which requires disclosure in the offering circular since the date of issue of the approval-in-principle letter by the Commission and that the Management Company undertakes to inform the Commission promptly upon discovery or becoming aware of any material changes to or omission of facts from the offering circular
- (9) Original signed copy of confirmation from the listing agent(s) that no material changes to or omission of material facts from the offering circular and that no new information has arisen which requires disclosure in the offering circular since the date of issue of the approval-in-principle by the Commission and that the listing agent(s) undertake(s) that it will inform the Commission promptly upon discovery or becoming aware of any material changes to or omission of facts from the offering circular

D. Documents to be submitted at or before 11:00 am on the business day prior to the date of distribution of the offering circular to the public

- (1) A certified copy of every letter, report, financial statement, contract, valuation, resolution or other document any part of which is extracted, referred to or appended to the offering circular
- (2) A certified copy of the confirmation from the Management Company that the scheme has sufficient working capital to meet its present requirements, that is, for at least the next twelve months after the date of the offering circular as demonstrated by its working capital forecast
- (3) A certified copy of the confirmation from each of the listing agent(s) (based on the listing agent(s) own due diligence work) and the auditors that the working capital statement has been made by the Management Company after due and careful enquiry and that persons or institutions providing finance have stated in writing that the relevant financing facilities exist
- (4) A certified copy of the confirmation from the Management Company that (a) it has exercised due care and consideration in the compilation of the profit forecast; (b) it has satisfied itself that the profit forecast has been stated after due and careful enquiry; and (c) it considers that the bases, accounting policies and assumptions used in the forecast to be appropriate and reasonable
- (5) A certified copy of the report from the auditors confirming that it has reviewed the accounting policies and calculations for the profit forecast and that the forecast has been properly compiled on the bases and assumptions adopted and presented on a basis consistent with the adopted accounting policies

- (6) A certified copy of the confirmation from the valuer that it has examined the rental income used in the calculations of the profit forecast and that such rental income forecast have been compiled in accordance with the assumptions made and such assumptions are reasonable
- (7) A certified copy of the confirmation from the listing agent(s) that the profit forecast has been made after due and careful enquiry
- (8) A certified copy of the letter from the auditors in relation to the unaudited pro forma financial information of the scheme
- (9) A certified copy of the written consent from each of the experts to the issue of the offering circular with the inclusion therein of its opinion(s), report(s) and letter(s) and references to its name in the form and context in which they are included in the offering circular
- (10) Two printed copies of the offering circular dated and signed by all directors of the Management Company or by his/her agent authorised in writing
- (11) Where any document referred to in item (10) above is signed by an agent, a certified copy of the authorisation for such signature
- (12) Electronic version of the offering circular in text-searchable format and original signed certification by the Management Company that such electronic version is identical to the printed offering circular
- (13) Two printed copies of the application forms to subscribe for the units of the scheme
- (14) In the case of a spin-off of vendor's interests in the properties to be acquired by the scheme, two printed copies of the covering letter to shareholders of the vendor who qualify for subscription for the interests in the scheme and the blue application form (*if applicable*)
- (15) Final form of the formal notice in respect of the initial public offering of units in the Scheme
- (16) Waiver application in respect of strict compliance with Rule 2.07A of The Rules Governing the Listing of Securities on the Stock Exchange of Hong Kong with regard to the despatch of electronic version of the offering circular to qualifying shareholders of the vendor and related matters and the corresponding letter from SEHK granting such waiver (*if applicable*)
- (17) Original signed certificate issued by the translator certifying that the Chinese translation of the English version of the offering circular is true and accurate
- (18) Original signed certificate issued by the Hong Kong legal counsel to the Management Company or the listing agent(s) certifying that the translator is competent to have given the Chinese translation certificate
- (19) Original signed confirmation from the Hong Kong legal counsel to the Management Company that the offering circular duly complies with relevant provisions in the Code and the SFO, and all other applicable rules and regulations



- (20) A certified copy of the Hong Kong Public Offer Underwriting Agreement
- (21) Original signed confirmation from the Management Company that no material changes to or omission of material facts from the offering circular and that no new information has arisen which requires disclosure in the offering circular since the date of issue of the formal authorisation of the scheme and that the Management Company undertakes to inform the Commission promptly upon discovery or becoming aware of any material changes to or omission of facts from the offering circular
- (22) Original signed copy of confirmation from the listing agent(s) that no material changes to or omission of material facts from the offering circular and no new information has arisen which requires disclosure in the offering circular since the date of issue of the formal authorisation of the scheme and that the listing agent(s) undertake(s) that it will inform the Commission promptly upon discovery or becoming aware of any material changes to or omission of facts from the offering circular
- (23) Original signed letter from the auditors confirming that they have checked (a) the arithmetic accuracy of the distribution per unit and found that it is arithmetically accurate and in agreement with the profit / dividend forecast as set out in the circular; and (b) the total/ annual distributable income is in agreement with such profit/ dividend forecast
- (24) A certified copy of the confirmation submitted by the listing agent(s) to the SEHK in relation to the submission of a Post Hearing Information Pack for posting on the website of SEHK

E. Documents to be filed with SFC at least 15 minutes before the commencement of the pre-opening session on the date of listing

- (1) Original signed confirmation from each of the Management Company and the listing agent(s) (except for item (i) to be confirmed by the Management Company only) that:
 - (i) the scheme has been validly constituted under Hong Kong law pursuant to the trust deed of the scheme;
 - (ii) all documents required for authorisation of the scheme under section 104 of the Securities and Futures Ordinance and under Application Checklist have been duly filed and all such documents and information comply with the Code;
 - (iii) no material alterations or amendments have been made to the offering circular submitted to the Commission;
 - (iv) all pre-conditions for the authorisation of the scheme and its offering circular and for the waivers from strict compliance with certain conditions in the Code have been fulfilled;
 - (v) all units offered under the offering have been subscribed for in cash and duly issued to the subscribers;
 - (vi) all unit certificates have been despatched in accordance with the offering circular;
 - (vii) all proceeds from the issue of the units have been received and transferred to accounts as directed by the Management Company and/or the Trustee; and
 - (viii) the underwriting agreements have become unconditional and not been terminated.



F. Documents to be filed with SFC as soon as possible but in any event within three business day after the date of listing

- (1) A certified copy of the duly executed Listing Agreement



Annex A

Management Company's Confirmation and Undertaking

We, *[insert name of Management Company]*, are the manager of *[insert name of the scheme]* (the "Scheme") and have offices located at *[insert address of Management Company]*.

In connection with the application for authorisation of the Scheme (the "Authorisation Application") pursuant to section 104 of the Securities and Futures Ordinance (the "SFO") and the Code on Real Estate Investment Trusts (the "Code"), we hereby confirm to and undertake with the Securities and Futures Commission (the "SFC") as follows.

Compliance

- (1) We confirm that all documents required to be submitted to the SFC for the purpose of the Authorisation Application under the Code have been submitted and are in compliance with the Code.
- (2) We confirm that the Scheme is in compliance with the Code except to the extent application for waiver from strict compliance with which have been made to the SFC.

Trust Deed

- (3) We confirm that the trust deed of the Scheme contains all the information listed in Appendix D to the Code and conforms with the provisions set out in Annex G to the Checklist for Application for Authorisation of Real Estate Investment Trust (the "Application Checklist"). We further undertake that we shall ensure that the trust deed of the Scheme will at all times contain and conform with the aforesaid, taking into account any amendments to Annex G to the Application Checklist issued by the SFC from time to time.

Offering Circular

- (4) We confirm that the offering circular of the Scheme (the "Offering Circular") contains sufficient particulars and information to enable a reasonable person to form as a result thereof a valid and justifiable opinion of the units and the financial position and profitability of the Scheme at the time of the issue of the Offering Circular and there is no omission of material facts in the Offering Circular.

Due Diligence

- (5) We confirm that we have conducted proper and adequate due diligence as regards the properties, the special purpose vehicles and joint ownership arrangements (if any) held/to be acquired by the Scheme as required by the Code and the Practice Note on Overseas Investments by SFC-authorized REITs (as applicable) except to the extent application for waiver from strict compliance with which have been made to the SFC.
- (6) We confirm that we have obtained all relevant legal opinions from competent legal counsels in order to satisfy ourselves reasonably that the Scheme, including its special purpose vehicles and joint ownership arrangements (if any), complies with Chapter 7 of the Code except to the extent application for waiver from strict compliance with which have been made to the SFC.



Compliance Manual

- (7) We confirm that our Compliance Manual contains written procedures which (a) address all applicable regulatory requirements to ensure the Management Company has reasonable assurance of the adequacy of internal controls; and (b) conform with all key points set out in Annex A to the Application Checklist issued by the SFC. We further undertake that we shall ensure that our Compliance Manual will at all times contain such written procedures, taking into account any amendments to Annex A to the Application Checklist which may be issued or notified by the SFC from time to time.

Responsible officers

- (8) We confirm that we have at least three responsible officers. We further undertake that in the event the number of responsible officers shall fall below three, we shall notify the SFC as soon as reasonably practicable and update the SFC of the succession plan. We shall also use our best endeavours to restore the number of responsible officers to at least three as soon as reasonably practicable.

In-principle Approval for Spin-off from SEHK (if applicable)

- (9) We confirm that The Stock Exchange of Hong Kong Limited has given its in-principle approval for the proposed spin-off of [Vendor]'s interests in the properties to be acquired by the Scheme for separate listing in the form of real estate investment trust.

Signature :

Name :

Title :

For and on behalf of the board of
[insert name of Management Company] :

Dated :

Listing Agent's Confirmation and Undertaking

We, *[insert name of Listing Agent]*, are the listing agent appointed by *[insert name of the applicant]* for *[insert name of the scheme]* (the "Scheme") on *[insert date of appointment]* and have offices located at *[insert address of Listing Agent]*.

In connection with the application for authorisation of the Scheme (the "Authorisation Application") pursuant to section 104 of the Securities and Futures Ordinance and the Code on Real Estate Investment Trusts (the "Code"), we hereby confirm to and undertake with the Securities and Futures Commission (the "SFC") as follows.

- (1) All documents required to be submitted to the SFC for the purpose of the Authorisation Application under the Code have been submitted.
- (2) Having made reasonable due diligence inquiries, we have reasonable grounds to believe and do believe that:
 - (i) the Scheme is in compliance with Chapters 3 and 7 of the Code except to the extent application for waiver from strict compliance with which have been made to the SFC;
 - (ii) the offering circular of the Scheme (the "Offering Circular") contains sufficient particulars and information to enable a reasonable person to form as a result thereof a valid and justifiable opinion of the units and the financial condition and profitability of the Scheme at the time of the issue of the Offering Circular;
 - (iii) the information in the non-expert sections of the Offering Circular:
 - (a) contains all information required by relevant legislation and rules;
 - (b) is true, accurate and complete in all material respects, and not misleading or deceptive in any material respect, or, to the extent it consists of opinions or forward looking statements by the directors of the management company of the Scheme (the "Management Company") or any other person, such opinions or forward looking statements have been made after due and careful consideration and on bases and assumptions that are fair and reasonable; and
 - (c) does not omit any matters or facts the omission of which would make any information in the non-expert sections of the Offering Circular or any other part of the Offering Circular misleading in a material respect; and
 - (iv) there are no other material issues bearing on the Authorisation Application which, in our opinion, should be disclosed to the SFC.



- (3) In relation to each expert section in the Offering Circular, having made reasonable due diligence inquiries, we have reasonable grounds to believe and do believe (to the standard reasonably expected of a listing agent which is not itself expert in the matters dealt with in the relevant expert section) that:
- (i) where the expert does not conduct its own verification of any material factual information on which the expert is relying for the purposes of any part of the expert section, such factual information is true in all material respects and does not omit any material information. Factual information includes:
 - (a) factual information that the expert states it is relying on;
 - (b) factual information we believe the expert is relying on; and
 - (c) any supporting or supplementary information given by the expert or the Management Company to the SFC relating to an expert section.
 - (ii) all material bases and assumptions on which the expert sections of the Offering Circular are founded are fair, reasonable and complete;
 - (iii) the expert is appropriately qualified, experienced and sufficiently resourced to give the relevant opinion;
 - (iv) the expert's scope of work is appropriate to the opinion given and the opinion required to be given in the circumstances (where the scope of work is not set by a relevant professional body);
 - (v) the expert is independent from the Scheme, the Management Company and its directors and the Scheme's significant holders; and
 - (vi) the Offering Circular fairly represents the views of the expert and contains a fair copy of or extract from the expert's report.
- (4) In relation to the information in the expert reports, we, as a non-expert, after performing reasonable due diligence inquiries, have no reasonable grounds to believe and do not believe that the information in the expert reports is untrue, misleading or contains any material omissions.
- (5) *We confirm that The Stock Exchange of Hong Kong Limited has given its in-principle approval for the proposed spin-off of [Vendor]'s interests in the properties to be acquired by the Scheme for separate listing in the form of real estate investment trust. (* if applicable)

Signature :

Name :

Title :

For and on behalf of : *[insert name of listing agent]*

Dated :



Notes:

- (1) The SFC expects that this form would be signed by the Principal(s) who act(s) as the supervisor(s) of the Transaction Team (as defined in paragraph 17 of the SFC's Code of Conduct for Persons Licensed by or Registered with the Securities and Futures Commission ("Code of Conduct")) undertaking the Authorization Application. However, notwithstanding who signs this form on behalf of the listing agent, the Management (as defined in paragraph 17 of the Code of Conduct) of the listing agent will be ultimately responsible for supervision of the work carried out by the listing agent firm and quality assurance in respect of that work. The SFC reminds listing agents of their obligations to have effective internal systems and controls and proper supervision and oversight including but not limited to those obligations under paragraph 17 of the Code of Conduct.
- (2) Each and every director of the listing agent firm, and any officer or representative of the listing agent firm supplying information sought in this form, should note that any representation in, or referred to in, an application to the SFC, and any representation made from time to time in support of an application to the SFC, which is false or misleading in a material particular, the provision of any information to the SFC which is false or misleading in a material particular and the provision of any record or document which is false or misleading in a material particular constitute an offence under either section 383(1), 384(1) and/or 384(3) of the Securities and Futures Ordinance. If you have any queries you should consult your professional adviser immediately.