

24 May 2024

BY POST and EMAIL

Securities and Futures Commission
54/F, One Island East
18 Westlands Road
Quarry Bay, Hong Kong

Dear Sirs,

Re: Consultation on proposals to (i) introduce a statutory scheme of arrangement and compulsory acquisition mechanism for real estate investment trusts and (ii) enhance the SFO market conduct regime for listed collective investment schemes (the “Consultation Paper”)

We, Hong Kong REITS Association (“**HKREITA**”), are writing to provide our views on the captioned Consultation Paper.

By way of introduction, HKREITA is an industry association of real estate investment trusts (“**REITs**”) in Hong Kong, with Link REIT, SF REIT and Yuexiu REIT being our co-founding corporate members. HKREITA represents the local REIT market, with a shared aim of driving the REIT industry to greater prominence in global capital markets.

HKREITA is supportive of the proposals set out in the Consultation Paper to (i) introduce a statutory scheme of arrangement and compulsory acquisition mechanism for REITs and (ii) enhance the Securities and Futures Ordinance (“**SFO**”) market conduct regime for listed collective investment schemes (“**CIS**”).

The introduction of a statutory scheme of arrangement and compulsory acquisition mechanism for REITs was one of the policy recommendations HKREITA made to the Hong Kong authorities for promoting the growth of the REIT industry. HKREITA is pleased that the SFC positively responded to market requests. We agree that the same takeover/privatisation tools available to listed companies should also be available to REITs considering their similar economic features and substance.

Currently, there is no statutory mechanism for the offeror to address the recalcitrant minority unitholders in a takeover and merger situation regardless of how small their stake may be. Takeovers and mergers are common ways of corporate expansion and transformation to ensure market efficiency through effective price discoveries. From an investor’s perspective, a REIT and a listed property company are in substance very similar. Therefore, implementing a statutory compulsory acquisition following a general offer for REITs will enable them to navigate such situations in a transparent and orderly manner safeguarding the interests of shareholders and enhancing investor confidence.

A scheme of arrangement is another common method available to listed companies for carrying out privatisation or corporate restructuring, but there are currently no similar provisions for REITs to that under the Companies Ordinance (“**CO**”) for corporate entities. Other overseas jurisdictions such as Singapore and Australia have made such provisions available to “trust scheme” allowing merger or privatisation to take place. Therefore, by making schemes of arrangement or compulsory acquisition mechanisms available to Hong Kong REITs will put them on a levelled playing field with Hong Kong listed property companies, as well as overseas REITs. Furthermore, the mechanism would enable REITs to navigate privatisation or other corporate restructuring in a transparent and

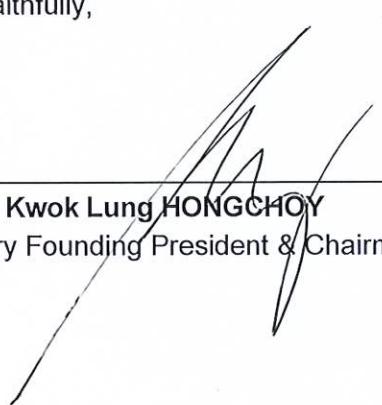
orderly manner, protecting the interests of unitholders and thereby reducing potential disruptions to the market.

Regarding the proposal to enhance the SFO market conduct regime for listed CIS including REITs, we agree that such enhancements are crucial for establishing a robust corporate governance regime, instilling investor confidence and maintaining Hong Kong's integrity as an international financial centre. These enhancements align with compliance management responsibilities and contribute to effective oversight of REITs, ensuring their compliance with regulatory standards and upholding high standards of conduct.

A thriving REIT industry benefits various stakeholders beyond real estate. It stimulates demand for listing, legal, financing and other capital market activities and services. The Consultation Paper adequately addresses the potential challenges and concerns associated with the development of the market. The proposals demonstrate the SFC's commitment to protecting the interests of the market as well as those of investors. To compete on a global level and facilitate capital mobility, the SFC should continue advocating for further reforms to position the REIT industry as a leader among its global counterparts.

Please find attached our detailed responses to the questions set out in the Consultation Paper. Should you have any questions, please do not hesitate to reach out to Elaine Leung, Administrator of HKREITA at 2175 1222.

Yours faithfully,



George Kwok Lung HONGCHOY
Honorary Founding President & Chairman of HKREITA

Question 1

Do you agree with the proposal to introduce a statutory arrangement or compromise mechanism similar to that under the CO with the proposed features and modifications for REITs? Please explain your view.

Our response:

We agree with the proposal which establishes a clearer exit option and a more direct mechanism for REITs. The SFC has acknowledged the REIT industry's strong preference for such an option, similar to what is currently available to companies under the CO.

Although REIT units and shares in a listed company have distinct legal forms and structures, they share similar economic characteristics and basic rights and interests. Additionally, merger and acquisition activities involving REITs and listed companies exhibit comparable commercial features. The introduction of a statutory arrangement or compromise mechanism similar to that under the CO supports SFC's long-established policy to regulate REITs in the same manner as listed companies.

It is observed that some comparable overseas jurisdictions such as Australia, Singapore, and the UK have laws providing for a compulsory acquisition regime for REITs. REITs in Australia and Singapore may also implement "trust schemes" to effect privatisation or mergers through contractual arrangements with unitholders, subject to court sanction or advice of the scheme. The new proposal aligns with overseas regulations and reflects current global trends.

Consequently, we also support the proposal to introduce appropriate adaptations and customisations (such as providing for the roles and responsibilities of the management company and the trustee of a REIT) in the implementation of the scheme or compulsory acquisition to cater to the specific nature and features of REITs.

Question 2

Do you agree with the proposal to introduce a statutory compulsory acquisition mechanism similar to that under the CO with the proposed features and modifications for REITs? Please explain your view.

Our response:

We agree with the proposal to allow a statutory compulsory acquisition mechanism to (i) "squeeze out" the non-assenting or silent unitholders and (ii) to introduce "sell-out" provisions which enable minority unitholders to request the offeror to acquire the remaining units following a takeover offer or general offer to buy-back units of a REIT. Together with the safeguards and framework provided under The Codes on Takeovers and Mergers and Share Buy-backs, the proposal would ensure a high level of protection for all unitholders, especially those with smaller stakes in the cases of takeovers, corporate restructurings, and privatisations. We believe these provisions could ensure that all unitholders be fairly treated promoting transparency and fairness in the operations of REITs in Hong Kong.

We note from the Appendix to the Consultation Paper that the current proposal is for the relevant units in a general offer for unit buy-back to be cancelled. The Consultation Conclusion on the Proposed Amendments to Listing Rules Relating to Treasury Shares issued by the Stock Exchange of Hong Kong dated April 2024 ("**Revised Listing Rules**") states that the requirement to cancel repurchased shares will be removed. We, therefore, suggest the SFC to align the Revised Listing Rules to effect the notion that units need not be cancelled in a unit buy-back situation.

Question 3

Do you have any comments on the proposed interpretations and definitions to be used in the new Part of the SFO which are modified from the CO to cater for the nature and features of a REIT?

Our response:

While REIT units and shares in listed companies have different legal structures, they share similarities in terms of economic nature and investors' interests. Mergers and acquisitions involving REITs and listed companies also share similar commercial characteristics. Tailored interpretations and definitions for REITs in the new Part of the SFO would accommodate the unique characteristics of a REIT.

Question 4

Do you have any comments on the proposed deeming provisions to be introduced in the new Part of the SFO having regard to the REIT structure?

Our response:

We agree with the deeming provisions set out under 36(a) to (f) of the Consultation Paper to be introduced in the new Part of the SFO having regard to the REIT structure. As a REIT lacks a legal personality, it is important to clarify in the legislation that it is for REITs to take action or exercise the powers through their trustee and management company or its directors. It is worth noting that the deeming provisions in relation to trustee, management company and directors of the management company are only limited to their capacity as trustee of the REIT or on behalf of a REIT, instead of their personal interests or liabilities.

Question 5

Do you have any comments on the proposed amendments?

Our response:

REITs have always been subject to ongoing close monitoring and surveillance of the SFC and various disclosure requirements. REIT managers are also subject to the SFC's supervision and conduct requirements. However, there is a gap in the SFO that certain types of market misconduct offences are not applicable to all listed CIS including REITs.

The proposed amendments explicitly denoting that market conduct regimes apply to REITs would create greater certainty in the market and enhance investor protection. This is consistent with the regulatory approach adopted in comparable jurisdictions such as the UK, Australia and Singapore.

Question 6

Do you have any comments on the proposed implementation timelines?

Our response:

We agree that a transition period before implementation is not necessary given the nature of the proposed legislative amendments.