

APPENDIX 1

DRAFT AMENDMENTS TO THE SECURITIES AND FUTURES ACT (CAP. 289)

**DISCLAIMER: This version of the Act Amendments is in draft form and is subject to change.
It is also subject to review by the Attorney-General's Chambers.**

Interpretation

283.—(1) In this Division, unless the context otherwise requires —

“authorised real estate investment trust” means a collective investment scheme that is —

(a) authorised under section 286; and

(b) a trust that invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes and all or any of the units of which are listed for quotation on a securities exchange.

[...]

“recognised real estate investment trust” means a collective investment scheme that is —

(a) recognised under section 287; and

(b) a trust that invests primarily in real estate and real estate-related assets specified by the Authority in the Code on Collective Investment Schemes and all or any of the units of which are listed for quotation on a securities exchange.

[...]

Authorised schemes

286. —(1) The Authority may, upon an application made to the Authority in such form and manner as may be prescribed by regulations made under section 341, authorise a collective investment scheme constituted in Singapore, subject to —

(a) subsection (2);

(b) the conditions specified in subsection (3); and

(c) such conditions or restrictions as the Authority may think fit to impose by notice in writing.

[Act 34 of 2012 wef 18/03/2013]

[...]

(10A)(1) The manager of an authorised real estate investment trust shall –
(a) act in the best interests of all the participants of the authorised real estate investment trust as a whole; and

(b) give priority to the interests of all the participants of the authorised real estate investment trust as a whole over its own interests and the interests of its shareholders in the event of a conflict between the interests of all the participants as a whole and its own interests or the interests of its shareholders.

(10A)(2) A director of the manager of an authorised real estate investment trust shall –

(a) take all reasonable steps to ensure that the manager discharges its duties under subsection 10A(1); and

(b) give priority to the interests of all the participants of the authorised real estate investment trust as a whole over the interests of the manager and the shareholders of the manager in the event of a conflict between the interests of all the participants as a whole and the interests of the manager or the shareholders of the manager.

(10B) A duty of a director of the manager under subsection (10A)(2) shall override any conflicting duty of such director under section 157 of the Companies Act (Cap. 50).

(10C) No civil or criminal proceedings shall lie against a director of the manager of an authorised real estate investment trust for a breach of section 157 of the Companies Act, any fiduciary duty or any other duty under common law in relation to any act or omission to act if such act or omission was required by subsection (10A)(2).

(10D) For the avoidance of doubt, no action or proceedings whatsoever may be brought by or on behalf of all or any of the participants of an authorised real estate investment trust against a director of the manager of that authorised real estate investment trust for any breach or alleged breach of the duties imposed by subsection (10A)(2) except to the extent and in the manner provided for under section 295C.

[...]

(15) Any person who contravenes subsection (10) or (13) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

(15A) A manager of an authorised real estate investment trust, which contravenes subsection (10A)(1) —

- (a) shall be liable to all the participants of the authorised real estate investment trust as a whole for any profit or financial gain directly or indirectly made by it or any of its related corporations or for any damage suffered by all the participants of the authorised real estate investment trust as a whole as a result of the contravention; and
- (b) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

(15B) A director of the manager of an authorised real estate investment trust who contravenes subsection (10A)(2) —

- (a) shall be liable to all the participants of the authorised real estate investment trust as a whole for any profit or financial gain directly or indirectly made by him or the manager or any related corporation of the manager or for any damage suffered by all the participants of the authorised real estate investment trust as a whole as a result of the contravention; and
- (b) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both.

Recognised schemes

287. —(1) The Authority may, upon an application made to the Authority in such form and manner as may be prescribed by regulations made under section 341, recognise a collective investment scheme constituted outside Singapore, subject to

- (a) subsection (2);
- (b) the conditions specified in subsection (3); and
- (c) such conditions or restrictions as the Authority may think fit to impose by notice in writing.

[Act 34 of 2012 wef 18/03/2013]

[...]

(9A)(1) The manager of a recognised real estate investment trust shall –

(a) act in the best interests of all the participants of the recognised real estate investment trust as a whole; and

(b) give priority to the interests of all the participants of the recognised real estate investment trust as a whole over its own interests and the interests of its shareholders in the event of a conflict between the interests of all the participants as a whole and its own interests or the interests of its shareholders.

(9A)(2) A director of the manager of a recognised real estate investment trust shall =

(a) take all reasonable steps to ensure that the manager discharges its duties under subsection 9A(1); and

(b) give priority to the interests of all the participants of the recognised real estate investment trust as a whole over the interests of the manager and the shareholders of the manager in the event of a conflict between the interests of all the participants as a whole and the interests of the manager or the shareholders of the manager.

(9B) A duty of a director of the manager under subsection (9A)(2) shall override any conflicting duty of such director under section 157 of the Companies Act (Cap. 50).

(9C) No civil or criminal proceedings shall lie against a director of the manager of a recognised real estate investment trust for a breach of section 157 of the Companies Act, any fiduciary duty or any other duty under common law in relation to any act or omission to act if such act or omission was required by subsection (9A)(2).

(9D) For the avoidance of doubt, no action or proceedings whatsoever may be brought by or on behalf of all or any of the participants of a recognised real estate investment trust against a director of the manager of that recognised real estate investment trust for any breach or alleged breach of the duties imposed by subsection (9A)(2) except to the extent and in the manner provided for under section 295C.

[...]

(14) Any person who contravenes subsection (9), (12) or (13) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 and, in the case of a continuing offence, to a further fine not exceeding \$10,000 for every day or part thereof during which the offence continues after conviction.

[UK FSMA 2000, s. 272, s. 273, s. 274, s. 275 and s. 276; ASIC Policy Statement 65 (modified)]

(14A) A manager of a recognised real estate investment trust, which contravenes subsection (9A)(1) —

- (a) shall be liable to all the participants of the recognised real estate investment trust as a whole for any profit or financial gain directly or indirectly made by it or any of its related corporations or for any damage suffered by all the participants of the recognised real estate investment trust as a whole as a result of the contravention; and
- (b) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000.

(14B) A director of the manager of a recognised real estate investment trust, who contravenes subsection (9A)(2) —

- (a) shall be liable to all the participants of the recognised real estate investment trust as a whole for any profit or financial gain directly or indirectly made by him or the manager or any related corporation of the manager or for any damage suffered by all the participants of the recognised real estate investment trust as a whole as a result of the contravention; and
- (b) shall be guilty of an offence and shall be liable on conviction to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding 2 years or to both.

[...]