

## Recent Developments in Regulation of REITs

by Ong Eu Jin and Eileen Tan Yuh Wen

### History of SC Guidelines

In March 2005, Securities Commission Malaysia issued its Guidelines on Real Estate Investment Trusts, applicable to listed and unlisted REITs. Shortly thereafter, in November, the SC introduced its Guidelines for Islamic REITs. While the Guidelines on REITs were revised twice (in 2008 and 2012), the Guidelines for Islamic REITs have stood for some 13 years.

Recently, on 15 March 2018, the SC issued a new set of guidelines for listed REITs<sup>1</sup> and the existing Guidelines on REITs<sup>2</sup> were revised and made applicable to unlisted REITs. The new 2018 guidelines now incorporate the requirements relating to Islamic REITs.

### Streamlining of post-listing requirements

For listed REITs, the regulatory provisions under the SC and Bursa Malaysia were streamlined to improve efficiency for listed REITs to undertake post-listing transactions.<sup>3</sup> Bursa Malaysia amended the listing requirements for collective investment schemes (which include REITs) to complement the changes made by the SC, for example, where the issuance of new securities and related party transactions are concerned.

### Issuance of new securities

Under the new regime, Bursa Malaysia is now the approving authority for the issue of new securities by listed REITs<sup>4</sup> as is the case for listed corporations. Therefore, listed REITs

are no longer required to obtain the prior approval of the SC<sup>5</sup> for secondary fund raisings, such as placements, rights issues and issuance of new securities as purchase consideration to finance acquisition of assets.<sup>6</sup>

Currently, listed corporations are allowed to issue new securities under a general mandate from shareholders, provided that such issuance does not exceed 10% of the nominal value of their issued and paid-up capital<sup>7</sup> and subject to the requirements of Chapter 6 *New Issue of Securities*, Part C *General Requirements for New Issue of Securities*, of the Main Market Listing Requirements of Bursa Malaysia.

Similar requirements are now applicable to listed REITs, but with a different threshold. A listed REIT may seek a general mandate from its unitholders for the issuance of new units of up to 20% of its total number of issued units.<sup>8</sup>

### Related party transactions

The requirements for related party transactions by listed REITs have also been aligned with that for listed corporations and are no longer governed by the earlier SC guidelines.

Under the earlier SC guidelines, the approval of unitholders was required if the related party transaction value was 5% or more of the total asset value of the fund (after acquisition).

The threshold for listed REITs has now been revised to that applicable to listed corporations. The requirements to be complied with by the listed entity where a related party transaction involves a consideration of RM500,000 or more are summarised in the following table:

1 Guidelines on Listed Real Estate Investment Trusts (SC-GL/1-2018) (first issued: 15 March 2018; effective date upon first issuance: 9 April 2018) <[https://www.sc.com.my/wp-content/uploads/eng/html/resources/guidelines/cis/gl\\_listed\\_reits\\_180315.pdf](https://www.sc.com.my/wp-content/uploads/eng/html/resources/guidelines/cis/gl_listed_reits_180315.pdf)>

2 Guidelines on Real Estate Investment Trusts (SC-GL/UnlistedREITs-2008(R1-2018)) (first issued: 21 August 2008 and revised: 15 March 2018; effective date of revision: 9 April 2018) <[https://www.sc.com.my/wp-content/uploads/eng/html/resources/guidelines/cis/gl\\_reits\\_180315.pdf](https://www.sc.com.my/wp-content/uploads/eng/html/resources/guidelines/cis/gl_reits_180315.pdf)>

3 SC's Public Consultation Paper No 3/2016: Proposed Amendments to Guidelines on REITs and Streamlining of Post-Listing Requirements for Listed REITs with Listed Corporations dated 14 July 2016 <[https://www.sc.com.my/wp-content/uploads/eng/html/consultation/160714\\_PublicConsultation\\_3.pdf](https://www.sc.com.my/wp-content/uploads/eng/html/consultation/160714_PublicConsultation_3.pdf)>

4 Bursa Malaysia media release <<http://www.bursamalaysia.com/corporate/media-centre/media-releases/5597>>

5 Capital Markets and Service Act 2007, s 212

6 Main Market Listing Requirements of Bursa Malaysia, Chapter 6, Part J

7 Main Market Listing Requirements of Bursa Malaysia, para 6.03

8 *Ibid*, para 6.59(1A)

Transaction value (%)	Requirements
0.25% or more	<ul style="list-style-type: none"> <li>• announcement</li> </ul>
5% or more	<ul style="list-style-type: none"> <li>• announcement</li> <li>• unitholders' approval</li> <li>• appointment of independent adviser</li> <li>• valuation</li> </ul>
25% or more	<ul style="list-style-type: none"> <li>• announcement</li> <li>• unitholders' approval</li> <li>• appointment of independent adviser</li> <li>• valuation</li> <li>• appointment of main adviser</li> </ul>

#### *Additional disclosure requirements*

The new SC Guidelines has liberalised some of the activities previously prohibited for REITs, such as property development, acquisition of real estate through a private lease arrangement and acquisition of real estate under construction. In tandem with this, Bursa Malaysia has introduced additional requirements for such activities.

#### *Property development activities*

Where a listed REIT disposes of developed real estate within two years from completion of property development activities, it is required under the listing requirements to:

- (a) obtain the trustee's consent for the disposal;
- (b) issue an announcement of the disposal which includes the information set out in Appendix 10A *Contents of announcements for transactions*;

- (c) issue a circular to its unitholders which includes the information set out in Appendix 10B *Contents of circular for transactions*;
- (d) seek unitholders' approval for the disposal in a general meeting by way of a special resolution; and
- (e) comply with the valuation requirements in paragraph 10.04 *Valuation*, in particular, subparagraphs (3) to (9).

Where applicable, the requirements for related party transactions must be complied with.

#### *Lease arrangement*

A listed REIT which invests in any real estate through a lease arrangement must also ensure that it complies with Chapter 10 *Transactions* of the listing requirements, in particular:

- (a) compliance with the requirements in paragraph 10.04 *Valuation*, where a valuation is conducted on the lease arrangement that requires unitholders' approval; and
- (b) the announcement and circular to unitholders must include the information set out in Part C(A) *Additional specific information to be included in relation to a transaction entered into by a REIT which involves an investment in real estate through a lease arrangement* of Appendices 10A and 10B.

## Unlisted REITs

For various reasons, unlisted REITs have not developed to the same extent as listed REITs. In revising the Guidelines on REITs, the SC recognised that unlisted REITs may serve a purpose by providing managers with an avenue to scale up their portfolio of income-generating assets before going for listing.<sup>9</sup>

However, the SC has now limited investment in unlisted REITs to *sophisticated investors* who are the accredited investors, high net worth entities and individuals defined in the Capital Markets and Services Act 2007<sup>10</sup> as they are deemed to have better knowledge on the potential risk and return. The earlier guidelines had imposed no such restriction.

The rationale for this limitation appears to be their unlisted nature, which means that information on the REIT would not be publicly available to investors. In addition, sophisticated investors, who usually have stronger holding power compared to retail investors, would have the ability to demand for information.

## Possibilities

The response from corporate financial advisers, industry players and property development companies has been supportive.<sup>11</sup> Now that the guidelines are enforced, it remains to be seen how they will play out in the market.

**LH-AG**

9 Proposal 16 of the SC's Public Consultation Paper No 3/2016: Proposed Amendments to Guidelines on REITs and Streamlining of Post-Listing Requirements for Listed REITs with Listed Corporation dated 14 July 2016

10 Part 1, and Schedules 6 and 7

11 Public Response Paper No 1/2018: Proposed Amendments to Guidelines on REITs and Streamlining of Post-Listing Requirements for Listed REITs with Listed Corporation dated 15 March 2018