

LEGISLATION UPDATE

NEW LICENSING FRAMEWORK FOR REIT MANAGERS

MAS introduces subsidiary legislation under the SFA for regulation of REIT activities

A new licensing regime for managers of real estate investment trusts ("REITs") has been launched pursuant to the Securities and Futures Act (the "SFA"). The legislative and regulatory changes prescribe the management of REITs as a regulated activity under the SFA and set out the appropriate business conduct requirements for REIT managers.

The new regulatory framework came into operation on **1 August 2008**.

The Subsidiary Legislation

Securities and Futures Act (Amendment of Second Schedule and Other Provisions to Act for REIT management) Order 2008 (the "Order")

"Real estate investment trust management" (referred to as "**REIT management**") is defined as managing or operating a collective investment scheme that has all of the following attributes:

- (a) it is a trust;
- (b) it invests only in real estate and real estate-related assets specified by the Monetary Authority of Singapore (the "**MAS**") in the Code of Collective Investment Schemes; and
- (c) all or any of its units are listed for quotation on a securities exchange.

This definition is inserted into the Second Schedule of the SFA, thereby prescribing REIT management as a "regulated activity" under the SFA.

All regulated activities under the SFA are subject to licensing requirements unless certain exemptions apply. Hence, persons carrying out the business of REIT management are now required to apply for a capital markets services licence (a "**CMS licence**") under Section 82 of the SFA. If they are corporations, their representatives would require licensing pursuant to Section 83 of the SFA.

The Order also makes consequential amendments to the SFA to:

- provide that a holder of a CMS licence for REIT management is an "institutional investor" (new Section 4A(1)(c)(ix)). All licensed REIT managers would henceforth be classified as institutional investors, thereby expanding the pool of institutional investors in Singapore ;

MAIN OFFICE

20 Raffles Place
#17-00 Ocean Towers
Singapore 048620

t +65 6535 0733

f +65 6535 4906

mail@drewnapier.com
www.drewnapier.com

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- make holders of CMS licences for REIT management and their representatives “relevant persons” under Division 1 of Part VII of the SFA (new Section 130(2)(a)(iv)), thus requiring such persons to maintain a register of their interests in securities. This amendment obliges REIT managers to be more transparent in their dealings with investors; and
- provide explicitly, as one of the conditions required for the MAS’ approval of a collective investment scheme (a “**CIS**”) investing in REITS, that a manager of that CIS must hold a CMS licence for REIT management (amended Section 286(3)(a)).

*Securities and Futures (Licensing and Conduct of Business) (Amendment No. 2) Regulations 2008 (the “**LCB Regulations**”)*

The LCB Regulations state that the licence fees for CMS licence holders in respect of REIT management shall be \$4,000. The licence fees for REIT management representatives will be \$300.

Transitional periods for existing industry participants have been provided for and are applicable to persons who are exempted under the SFA from holding a CMS licence in fund management, or to persons carrying on business in REIT management (being persons who hold a CMS licence in fund management).

*Securities and Futures (Financial and Margin Requirements for Holders of Capital Markets Services Licences) (Amendment No. 2) Regulations 2008 (the “**F&M Regulations**”)*

The F&M Regulations provide, as one of the conditions for the MAS to grant a CMS licence in respect of REIT management, that the applicant has to meet a base capital requirement of \$1 million.

The F&M Regulations also effect an amendment to the Third Schedule of its parent regulation - the Securities and Futures (Financial and Margin Requirements for Holders of Capital Markets Services Licences) Regulations. The Third Schedule provides for the calculation of the total risk requirement, which is a financial requirement for CMS licence holders dealing in securities or trading in futures contracts who are members of an approved exchange or a designated clearing house. REIT managers have been included as sub-underwriting counterparties, amounts sub-underwritten to whom can be deducted from gross underwriting commitments for the purpose of determining the net underwriting exposure for securities, which in turn is used to calculate the total risk requirement.

Effect of Regulations

As the REITs market continues to develop and internationalise in Singapore, the number of industry players will naturally increase. Some of the REIT managers may be based in Singapore while others may be based abroad. With the imposition of the CMS licence requirement, all REIT managers will be subject to closer regulatory scrutiny.

The new regulations impose compliance and regulatory requirements, such as the maintenance of records, safeguarding of customer assets, audit certification under Part V of the SFA and business

conduct requirements under Part VI of the SFA. It is envisaged that these developments will serve to increase the accountability of REIT managers to the investing public and improve overall governance within the industry.

References

Please click on the links below to refer to the new subsidiary legislation.

1. [Securities and Futures Act \(Amendment of Second Schedule and Other Provisions to Act for REIT Management\) Order 2008](#)
2. [Securities and Futures \(Licensing and Conduct of Business\) \(Amendment No. 2\) Regulations 2008](#)
3. [Securities and Futures \(Financial and Margin Requirements for Holders of Capital Markets Services Licences\) \(Amendment No. 2\) Regulations 2008](#)

If you have any queries on this update, or wish to discuss how it may potentially affect you or your business, please feel free to contact the banking and corporate lawyers in Drew & Napier LLC (please refer to the Directors' Profiles on our [website](#)), or any of the following lawyers:

[Sin Boon Ann](#)

Director (Banking & Corporate)
T: 65 6531 2206
E: boonann.sin@drewnapier.com

[Petrus Huang](#)

Director (Banking & Corporate)
T: 65 6531 2208
E: petrus.huang@drewnapier.com

[Marcus Chow](#)

Director (Banking & Corporate)
T: 65 6531 2790
E: marcus.chow@drewnapier.com

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OUR BUSINESS GROUPS AND PRACTICE AREAS

BANKING/GENERAL FINANCE

David Ang
T +65 6531 2236
F +65 6535 4864
E david.ang@drewnapier.com

Valerie Kwok

T +65 6531 2222
F +65 6535 4864
E valerie.kwok@drewnapier.com

BIOMEDICAL SCIENCES

Tony Yeo
T +65 6531 2512
F +65 6220 0324
E tony.yeo@drewnapier.com

BUILDING & CONSTRUCTION

Tan Liam Beng
T +65 6531 4139
F +65 6533 3591
E liambeng.tan@drewnapier.com

CAPITAL MARKETS

Sin Boon Ann
T +65 6531 2206
F +65 6535 4906
E boonann.sin@drewnapier.com

Petrus Huang

T +65 6531 2208
F +65 6535 4906
E petrus.huang@drewnapier.com

CHINA BUSINESS GROUP

David Chin
T +65 6531 2304
F +65 6535 1952
E david.chin@drewnapier.com

COMPETITION LAW

Cavinder Bull, SC (contentious)
T +65 6531 2416
F +65 6533 3591
E cavinder.bull@drewnapier.com

Lim Chong Kin (non-contentious)

T +65 6531 4110
F +65 6535 4864
E chongkin.lim@drewnapier.com

OTHER OFFICES

Shanghai Office
#2501 Office Tower
Bund Center
222 Yan An Road East
Shanghai 200002
China
T +86 21 6335 1628
F +86 21 6335 0638
E china@drewnapier.com

Drewmarks Patents & Designs (Malaysia) Sdn Bhd
9th floor
Bangunan Getah Asli (Menara)
148 Jalan Ampang
50450 Kuala Lumpur, Malaysia
T +603 2162 2522/2162 2529
F +603 2162 2804
E drewmark@tm.net.my

PT Drewmarks Konsultama
Correspondence address:
20 Raffles Place
#17-00 Ocean Towers
Singapore 048620
T +65 6531 2503/6531 2504
F +65 6533 0694
E ip@drewnapier.com

DrewCorp Services Pte Ltd
20 Raffles Place
#09-01 Ocean Towers
Singapore 048620
ROC No. 200102492H
T +65 6531 2266
F +65 6533 1542/6533 7649
E services@drewcorpservices.com

CORPORATE

David Ang
T +65 6531 2236
F +65 6535 4864
E david.ang@drewnapier.com

Gary Pryke

T +65 6531 4104
F +65 6535 4864
E gary.pryke@drewnapier.com

Yeo Wee Kiong

T +65 6531 2500
F +65 6535 4864
E weekiong.yeo@drewnapier.com

CORPORATE INSOLVENCY & RESTRUCTURING

Sushil Nair
T +65 6531 2410
F +65 6533 9029
E sushil.nair@drewnapier.com

Manoj Sandrasegara

T +65 6531 4156
F +65 6533 9029
E manoj.sandra@drewnapier.com

EMPLOYMENT & IMMIGRATION

Indranee Rajah, SC
T +65 6531 4100
F +65 6532 7149
E indranee.rajah@drewnapier.com

FAMILY & MATRIMONIAL

Randolph Khoo
T +65 6531 2418
F +65 6532 7149
E randolph.khoo@drewnapier.com

FUND MANAGEMENT, REIT & PRIVATE EQUITY

Petrus Huang
T +65 6531 2208
F +65 6535 4906
E petrus.huang@drewnapier.com

TELECOMMUNICATIONS, MEDIA & TECHNOLOGY

Lim Chong Kin
T +65 6531 4110
F +65 6535 4864
E chongkin.lim@drewnapier.com

INSURANCE & REINSURANCE

Gary Pryke
T +65 6531 4104
F +65 6535 4864
E gary.pryke@drewnapier.com

INTELLECTUAL PROPERTY

Morris John (Patents)
T +65 6531 2503
F +65 6533 0694
E mj@drewnapier.com

Redar Singh Gill (Trade Marks)

T +65 6531 2507
F +65 6533 0694
E redar.singh@drewnapier.com

LITIGATION & DISPUTE RESOLUTION

Jimmy Yim, SC
T +65 6531 2504/2505
F +65 6533 9029
E jimmy.yim@drewnapier.com

PROJECT FINANCE

Gary Pryke
T +65 6531 4104
F +65 6535 4864
E gary.pryke@drewnapier.com

PROPERTY

Chua Bee Lan
T +65 6531 2302
F +65 6535 1952
E chua.beelan@drewnapier.com

SHIPPING & INTERNATIONAL TRADE

Ian Koh
T +65 6531 2436
F +65 6533 3591
E ian.koh@drewnapier.com

TAX, TRUSTS, ESTATE PLANNING & PROBATE

Teoh Lian Ee
T +65 6531 2248
F +65 6535 4864
E lianee.teoh@drewnapier.com

TRANSNATIONAL & CROSS-BORDER WORK

Julian Kwek
T +65 6531 2485
F +65 6533 9029
E julian.kwek@drewnapier.com