



**EPRA** | REPORTING

European Public Real Estate Association

## Global REIT Survey 2016

ASIA



# Hong Kong – HK REIT



A COMPARISON OF THE MAJOR REIT REGIMES AROUND THE WORLD

# 1 General introduction

	Enacted year	Citation	REIT type
HK – REIT	2003	Code on Real Estate Investment Trusts	Trust type

The Code on Real Estate Investment Trusts (Code on REITs) was first introduced in July 2003 and revised in June 2005, June 2010, April 2013 and July 2014. REITs in Hong Kong are structured as trusts. They have to comply with the Code on REITs issued by the Securities and Futures Commission (SFC) for authorisation.

There are currently ten REITs with a total market capitalisation of approximately EUR 17.697 billion as at July 10, 2014 (to be supplied by Consilla Capital).

## Sector summary\*

Listing Country	Number of REITs	Number in EPRA REIT Index	Sector mkt cap (EUR€m)	% of global REIT Index
Hong Kong	13	3	€ 28.828	1.58%

## Top REITs\*

Company name	Mkt Cap (EUR€m)	1 yr return (EUR€) %	Div Yield %	% of Global REIT Index
Link Real Estate Investment Trust	€ 14.608	29.14%	3.56%	1.33%
Champion REIT	€ 3.146	8.80%	4.43%	0.12%
Fortune Real Estate Investment Trust	€ 2.084	17.75%	4.71%	0.13%



\* All market caps and returns are rebased in EUR and are correct as at 29 July 2016. The Global REIT Index is the FTSE EPRA/NAREIT Global REITs Index. EPRA, August 2016.

# 2 Requirements

## 2.1 Formalities / procedure

Key requirements
<ul style="list-style-type: none"> <li>- To be authorised by the SFC of Hong Kong.</li> <li>- Appointment of a trustee.</li> <li>- Appointment of a management company.</li> </ul>

REITs have to be in the legal form of a trust and governed by the Code on REITs. They also need to be authorised by the SFC of Hong Kong.

One trustee that is functionally independent of the management company of the REIT must be appointed, but may be part of the same corporate group if certain requirements are met. The REITs listed in Hong Kong have all appointed independent trustees.

Furthermore, a management company that is acceptable to the SFC has to be appointed. An independent property appraiser has to also be appointed. An annual valuation of the REIT's assets must take place. In the case of a transaction (not defined in the Code on REITs, but generally understood to refer to significant transactions such as an acquisition or a disposal of property etc), the management company shall, where necessary or required by the Code, engage a financial adviser.

The management company may choose to itself perform all the functions required of it under the Code on REITs or delegate or contract out to one or more outside entities one or more of these functions.

Certain transactions with connected parties, such as the management company, the trustee, a significant unit holder of 10% or more, the property-valuer or transactions between trusts which are managed by the same management company, are subject to approval by the unit holders.

## 2.2 Legal form /minimum initial capital

Legal form	Minimum initial capital
Unit trust	No

### Legal form

REITs have to be in the legal form of a trust. A REIT may hold real estate directly or indirectly through special purpose vehicles that are legally and beneficially owned by the REIT.

### Minimum initial capital

No formal minimum capital requirements exist in the Code on REITs.

## 2.3 Unit holder requirements / listing requirements

Unit holder requirements	Listing mandatory
No requirements.	Yes

### Unit holder requirements

All REITs in Hong Kong are in the form of a trust, and investors are the unit holders of the trust. There are no specific unit holder conditions that have to be fulfilled for REITs to be authorised in Hong Kong. Also there are no restrictions on foreign unit holders.

### Listing requirements

All REITs in Hong Kong have to be listed on the Stock Exchange of Hong Kong Limited ('SEHK') within a period acceptable to the SFC. The REITs in Hong Kong are subject to the listing rules of SEHK.

## 2.4 Asset levels / activity test

Restrictions on activities / investments
<ul style="list-style-type: none"> <li>- Must primarily invest in real estate.</li> <li>- Must hold the real estate for at least two years.</li> <li>- Prohibited from investing in vacant land with exception, or engage in property development activities with</li> </ul>

<p>exception.</p> <ul style="list-style-type: none"> <li>- Must not acquire any asset that involves the assumption of any unlimited liability.</li> <li>- May invest in real estate located in Hong Kong or overseas.</li> </ul>
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REITs must invest primarily in real estate that generates recurring rental income. The REIT may not acquire non-income generating real estate in excess of 10% of the total net asset value of the REIT at the time of acquisition.

A REIT must hold its real estate for a period of at least two years, unless consent is obtained from its unit holders by way of a special resolution at a general meeting.

A REIT is permitted to establish and own special purpose vehicle companies (SPVs) to hold its real estate investments. Under the Code on REITs, SPVs must be legally and beneficially owned by the REIT, and the REIT must have majority ownership and control of the SPVs. Generally, no more than two layers of SPVs are allowed unless specifically approved by the SFC. Where the REIT invests in hotel, recreation parks or serviced apartments, such investments shall be held by SPVs.

REITs are prohibited from investing in vacant land unless the management company has demonstrated that such investment is part-and-parcel of a permitted property development (see below).

In engaging or participating in property development activities (refurbishment, retro-fittings and renovation excepted), the aggregate investments in all property developments undertaken, together with the aggregate contract value of the uncompleted units of real estate acquired, shall not exceed 10% of the gross asset value of the REIT.

A REIT must not acquire any asset that involves the assumption of any liability that is unlimited.

If a REIT indicates a particular type of real estate in its name, it must invest at least 70% of its non-cash assets in such type of real estate.

There is no limitation to the holding of units in a REIT in Hong Kong.

REITs may invest in foreign assets.

## 2.5 Leverage

Leverage
Limitation to 45% of total gross asset value.

The gearing ratio limit is 45% of total gross asset value of the REIT.

## 2.6 Profit distribution obligations

Operative income	Capital gains	Timing
90% of audited annual net income after tax.	Specified in the trust deed.	Annually.

### Operative income

A REIT shall distribute not less than 90% of its audited annual net income after tax in the form of dividends to its unit holders each year.

### Capital gains

Whether any capital gains on disposal of real estate could be distributed is generally specified in the trust deed when a REIT is launched for sale to the public.

## 2.7 Sanctions

Penalties / loss of status rules
<ul style="list-style-type: none"> <li>- De-listing.</li> <li>- Loss of authorisation by the SFC.</li> </ul>

## 3 Tax treatment at the level of REIT

### 3.1 Corporate tax / withholding tax

Current income	Capital gains	Withholding tax
<ul style="list-style-type: none"> <li>- REIT is exempt from profits tax.</li> <li>- REIT may be subject to property tax.</li> <li>- SPV is subject to profits tax.</li> <li>- Dividends from SPV tax-exempt.</li> <li>- Foreign sourced income tax-exempt.</li> </ul>	N/A	N/A

#### Current income

A REIT is exempt from Hong Kong profits tax under the Inland Revenue Ordinance of Hong Kong. However, where the REIT holds real estate in Hong Kong directly and derives rental income thereon, such rental income will be subject to Hong Kong property tax at the prevailing rate of 15%.

Where the REIT holds real estate in Hong Kong indirectly via SPVs, such SPVs will be subject to profits tax at the prevailing rate of 16.5% in respect of the profits derived from the real estate. Such SPVs would generally be exempt from property tax.

Income derived from real estate situated outside Hong Kong and capital gains are generally exempt from property tax and profits tax.

Dividends paid by a SPV to another SPV are generally exempt from profits tax.

#### Capital gains

There is no capital gains tax in Hong Kong.

#### Withholding tax

There is no withholding tax on interest, dividends or distributions from a REIT in Hong Kong.

Hong Kong has a territorial tax system and does not tax foreign-sourced income. There is therefore no question of any entitlement to a refund of a tax credit for foreign taxes withheld on the foreign-sourced income of a REIT.

#### Other taxes

There is no special tax treatment applicable to REITs in Hong Kong.

#### Accounting rules

REITs in Hong Kong are required to comply with the local GAAP, which is in line with IFRS.

### 3.2 Transition regulations

Conversion into REIT status
N/A

There are no specific tax privileges and concessions when converting into REIT status.

### 3.3 Registration duties

Registration duties
Stamp duties.

The transfer of Hong Kong real estate or shares of Hong Kong incorporated SPVs would be subject to stamp duty in Hong Kong. On February 22, 2013, the Financial Secretary announced that the Government would amend the Stamp Duty Ordinance to adjust the ad valorem stamp duty (AVD) rates. Unless specifically exempted from the new AVD, any residential property (except that acquired by a Hong Kong permanent resident who does not own any other residential property in Hong Kong at the time of acquisition) and non-residential property acquired on or after February 23, 2013, either by an individual or a company, will be subject to the new AVD rates. Transactions took place before February 23, 2013 will be subject to the original stamp duty regime. Stamp duty on sale of immovable property in Hong Kong is charged at rates which vary with the amount or value of the consideration. Under the new stamp duty regime, the maximum rate of 8.5% applies where the transfer consideration or value of real estate is above HKD 21,739,130. Where shares in a Hong Kong company are transferred, Hong Kong Stamp Duty at the rate of 0.2% applies to the higher of the transfer consideration or the value of the shares.

Hong Kong Stamp Duty also applies to a lease of real estate in Hong Kong, generally at a rate of 0.25% to 1% of the average yearly rent, depending on the term of the lease.

Hong Kong introduced a Special Stamp Duty (SSD) with effect from November 20, 2010. Unless specifically exempted, any residential property acquired on or after November 20, 2010, either by an individual or a company (regardless of where it is incorporated), and resold or transferred within a specified period of time after acquisition, would be subject to SSD. The SSD payable is calculated by reference to the stated consideration or the market value, whichever is higher, at the following regressive rates for the different holding periods by the vendor or transferor before the disposal. The SSD rates were revised for any residential property acquired on or after October 27, 2012. All parties to a contract are liable to the SSD.

Period within which the residential property is resold or transferred after its acquisition	SSD Rates	SSD Rates
	(for residential property acquired between November 20, 2010 and October 26, 2012)	(for residential property acquired on or after October 27, 2012)
6 months or less	15%	20%
More than six months but for 12 months or less	10%	15%
More than 12 months but for 24 months or less	5%	10%
More than 24 months but for 36 months or less	Not applicable	10%

Hong Kong introduced a Buyer's Stamp Duty (BSD) with effect from October 27, 2012. Unless specially exempted, a purchaser (any individual without Hong Kong permanent residence or any

corporation irrespective of its place of incorporation) would be liable to BSD for transfer of residential property on or after October 27, 2012. BSD is charged at 15% on the higher of sales consideration or market value.

## 4 Tax treatment at the unit holder's level

### 4.1 Domestic unit holder

Corporate unit holder	Individual unit holder	Withholding tax
Tax-exempt.	Tax-exempt.	N/A

#### Corporate unit holder

While distributions from REITs are not specifically tax-exempt, the Inland Revenue Department's practice so far is not to tax a REIT's distributions, whether they are received by individual or non-individual unit holders.

Gains on the disposal of REIT units are not subject to profit tax in Hong Kong if such gains are capital gains. A unit holder carrying on a trade, profession or business in Hong Kong consisting of the acquisition and disposal of units in a REIT is subject to Hong Kong profits tax in respect of any gains derived from the disposal of the units in Hong Kong.

#### Individual unit holder

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Gains on the disposal of REIT units are not subject to profit tax in Hong Kong if such gains are capital gains. A unit holder carrying on a trade, profession or business in Hong Kong consisting of the acquisition and disposal of units in a REIT is subject to Hong Kong profits tax in respect of any gains derived from the disposal of units in Hong Kong.

#### Withholding tax

There is no withholding tax in Hong Kong on the distribution of profits.

#### Stamp duty

Hong Kong stamp duty is chargeable in respect of the transfer of the REIT units at 0.2% of the transfer consideration (payable by the transferor and transferee at 0.1% each). In addition, a fixed duty of HKD5 is currently payable on any instrument of transfer of units.

### 4.2 Foreign unit holder

Corporate unit holder	Individual unit holder	Withholding tax
Tax-exempt.	Tax-exempt.	N/A

#### Corporate unit holder

While distributions from REITs are not specifically tax-exempt, the Inland Revenue Department's practice so far is not to tax a REIT's distributions, whether they are received by individual or non-individual unit holders.

Gains on the disposal of REIT units are not subject to profit tax in Hong Kong if the foreign unit holder is not carrying on any trade, profession or business in Hong Kong or such gains are capital gains. A unit holder carrying on a trade, profession or business in Hong Kong consisting of the acquisition and disposal of units in a REIT is subject to Hong Kong profits tax in respect of any gains derived from the disposal of units in Hong Kong.

In addition, certain transactions undertaken by genuine foreign funds are exempt from Hong Kong tax.

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In addition, certain transactions undertaken by genuine foreign funds are exempt from Hong Kong tax.

#### Withholding tax

There is no withholding tax in Hong Kong on distribution of profits.

#### Stamp duty

Hong Kong stamp duty is chargeable in respect of the transfer of the REIT units at 0.2% of the transfer consideration (payable by the transferor and transferee at 0.1% each). In addition, a fixed duty of HKD 5 is currently payable on any instrument of transfer of units.

## 5 Tax treatment of foreign REITs and its domestic unit holder

Foreign REIT	Corporate unit holder	Individual unit holder
Local tax rules apply.	No taxation.	No taxation.

#### Foreign REIT

Local tax rules apply. Rental income derived from properties in Hong Kong is subject to either Hong Kong profits tax or property tax.

#### Corporate unit holder

No Hong Kong tax if no business consisting of the acquisition and disposal of investment in REITs is carried on in Hong Kong.

#### Individual unit holder

No Hong Kong tax if no business consisting of the acquisition and disposal of investment in REITs is carried on in Hong Kong. ■



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