



4th March 2013

Mr Ashley Alder
Chief Executive Officer
Securities and Futures Commission
35/F, Cheung Kong Center
2 Queen's Road Central, Hong Kong

Dear Ashley,

Collective Investment Scheme - Investment offered by Property Developers in collective Hotel ownership in Hong Kong

As you are aware, the new hotel property investment scheme in Kwai Chung offered by a certain property developer in Hong Kong has raised many questions concerning the relevant laws and regulations, and especially in relation to the investment risks arising from such investment schemes.

Pursuant to section 103 of the Securities and Futures Ordinance (Cap. 571) (SFO) all collective investment schemes offered to the public are subject to the regulation and monitoring by the Securities and Futures Commission, and the relevant approvals must be applied for before any such offer can be made to the public.

The SFO defines "collective investment scheme" as follows:

collective investment scheme (集體投資計劃) means-

(a) arrangements in respect of any property-

(i) under which the participating persons do not have day-to-day control over the management of the property, whether or not they have the right to be consulted or to give directions in respect of such management;

(ii) under which-

(A) the property is managed as a whole by or on behalf of the person operating the arrangements;
(B) the contributions of the participating persons and the profits or income from which payments are made to them are pooled; or
(C) the property is managed as a whole by or on behalf of the person operating the arrangements, and the contributions of the participating persons and the profits or income from which payments are made to them are pooled; and

(iii) the purpose or effect, or pretended purpose or effect, of which is to enable the participating persons, whether by acquiring any right, interest, title or benefit in the property or any part of the property or otherwise, to participate in or receive-

(A) profits, income or other returns represented to arise or to be likely to arise from the acquisition, holding, management or disposal of the property or any part of the property, or sums represented to be paid or to be likely to be paid out of any such profits, income or other returns; or

(B) a payment or other returns arising from the acquisition, holding or disposal of, the exercise of any right in, the redemption of, or the expiry of, any right, interest, title or benefit in the property or any part of the property; or

Based on the wordings of the above statutory definition for "collective investment scheme", it would appear that, prima facie, the investment scheme offered by the property developer in joint hotel ownership does fall within the definition as prescribed by the SFO and should fall within the ambit of the regulatory regime of the Securities and Futures Commission. I enclose the relevant documents involved in the said hotel ownership scheme for your reference.

Although the LegCo Development Panel has already discussed this issue last week, it did not involve the Securities and Futures Commission and members of that Panel did not discuss the possible regulatory implications for investment products regulated under the SFO which are matters falling within the terms of reference of the LegCo Financial Affairs Panel.

Based of my understanding, there are or will be more hotel investment schemes of a similar nature that would be offered to the public in the near future.

In light of the above, I write to enquire whether the Commission would be looking into this matter and I look forward to your reply as soon as possible.

Yours sincerely,

A handwritten signature in black ink, consisting of a large, stylized 'D' followed by a series of loops and a horizontal line at the end.

Dennis Kwok
Member of the Financial Affairs Panel