



SABANA SHARI'AH COMPLIANT INDUSTRIAL REAL ESTATE INVESTMENT TRUST
(a real estate investment trust constituted on 29 October 2010 under the laws of the Republic of Singapore)

Response to Governance for Stakeholders Article

The Board of Directors (the “**Board**”) of Sabana Real Estate Investment Management Pte Ltd (the “**Sabana Manager**”) refers to the online article by Associate Professor Mak Yuen Teen published on the Governance for Stakeholders website on 22 September 2020 titled “*Sabana REIT: Independent Overnight?*”, in relation to the proposed merger (the “**Merger**”) of ESR-REIT and Sabana Shari'ah Compliant Industrial Real Estate Investment Trust (“**Sabana REIT**”) announced on 16 July 2020 (the “**Joint Announcement**”). All capitalised terms used herein but not otherwise defined shall have the meanings ascribed to them in the Joint Announcement.

The Board and the Nominating and Remuneration Committee of the Sabana Manager (the “**NRC**”) had reviewed and assessed Ms Ng Shin Ein’s (“**Ms Ng**”) independence closely before approving her re-designation from a Non-Executive Director to an Independent Director on 1 November 2019 and were satisfied that Ms Ng was able to act in the best interests of all Sabana Unitholders as a whole pursuant to the Securities and Futures (Licensing and Conduct of Business) Regulations (the “**SFLCBR**”) and the Code of Corporate Governance (“**CG Code**”).

For purposes of recommending the Merger to be carried out by way of a trust scheme of arrangement under the Singapore Code on Take-overs and Mergers (the “**Takeover Code**”), Ms Ng’s independence has to be assessed in accordance with the Takeover Code. The Board has assessed Ms Ng to be independent for the purposes of the Scheme in accordance with the Takeover Code. Please refer to Question 8 below for further details. Accordingly, all the Sabana Independent Directors¹, including Ms Ng, are required under the Takeover Code to assume responsibility for the recommendation on the Scheme to Sabana Unitholders.

The Sabana Manager’s responses and clarifications in relation to the points raised by Associate Professor Mak Yuen Teen in his article are set out below.

1 “**Sabana Independent Directors**” refers to the directors of the Sabana Manager who are considered independent for the purposes of the Scheme, being Mr Tan Cheong Hin, Mr Wong Heng Tew and Ms Ng. The Sabana Independent Directors are all the directors for the time being of the Sabana Manager.

Sabana Manager's Responses and Clarifications to Associate Professor Mak's Points

1. ***“Regulation 13(G)(2)(b) refers to the “current or immediately preceding financial year” and the payments that Ms Ng received were within the period specified in the Regulation. The purpose of this regulation is to capture recent business relationships, not just whether there continues to be payments to her.”***

The only relationship that could potentially deem Ms Ng to be non-independent for the purpose of the SFLCBB would be the payments made to Ms Ng by InfinitySub Pte. Ltd. (a related corporation of the Sabana Manager and a wholly-owned subsidiary of ESR Cayman Limited) (“**InfinitySub**”), which fell within Regulation 13G(2)(b) of the SFLCBB.

The NRC was aware that Ms Ng's receipt of payments from the related corporation of the Sabana Manager gave rise to a deemed business relationship under Regulation 13G(2)(b) and the NRC and the Board had specifically taken these payments into account when they evaluated Ms Ng's suitability as an independent director. The re-designation of Ms Ng as an independent director was in accordance with Regulation 13D(8) of the SFLCBB. Under Regulation 13D(8), a director who has a business relationship with the REIT manager or the REIT may nevertheless be treated as an independent director of the REIT manager if the board of the REIT manager is satisfied that the director is able to act in the best interests of all the unitholders of the REIT that is managed or operated by the REIT manager, as a whole. In this case, the NRC and the Board had assessed Ms Ng's suitability as an independent director against her deemed business relationship and were satisfied that Ms Ng would be able to exercise independent judgment and act in the best interests of all Sabana Unitholders as a whole and that accordingly, she was to be regarded as an independent director. The fact that there was no further payment or transaction between Ms Ng and InfinitySub was just one of the grounds taken into account by the NRC and the Board in assessing her independence as a director. The NRC and the Board had reviewed and assessed Ms Ng's independence closely before approving her re-designation to an independent director on 1 November 2019.

2. ***“Submitting a self-confirmation of independence is useful if accompanied by full disclosure of any relationships which may affect, or be perceived to affect, the independence of a director, including relationships which may not be specifically captured by regulations, listing rules or the Code. The nominating committee (NC) can then use this to determine the independence of the director. But the self-confirmation itself is a matter of oneself confirming oneself as independent.”***

The Sabana Manager would like to clarify that Ms Ng's confirmation of independence was just one of the grounds which the Board and NRC took into account in their deliberation and was meant to provide assurance from Ms Ng to the Board and the NRC of her independence.

As mentioned in the Addendum to Sabana REIT's Annual Report 2019, other grounds which the NRC and the Board took into account, which are separate from Ms Ng's self-confirmation of independence, include:

- (i) the payments received by Ms Ng were for the divestments and following the last payment on 30 August 2019, there was no further payment from InfinitySub to her;

- (ii) subsequent to the receipt of the final payment for the divestments on 30 August 2019, and given that Ms Ng had ceased to be a director of Blackwood Investment Pte. Ltd. (“**Blackwood**”) on 25 October 2019, Ms Ng no longer had any other relationship with the Sabana Manager, Sabana REIT or their related corporations for purposes of the SFLCBR; and
- (iii) Ms Ng fulfilled the requirements set out in the CG Code.

The above are some of the grounds which the NRC and the Board had taken into account in determining Ms Ng’s independence. However, the Sabana Manager would like to reiterate that what is more relevant is that the NRC and the Board had ultimately assessed and were satisfied with her ability to exercise independent judgment and act in the best interests of all Sabana Unitholders as a whole notwithstanding her deemed business relationship arising from the payments which she had received from InfinitySub for the divestment of her indirect interest in the Sabana Manager.

- 3. ***“On Ms Ng fulfilling the requirements of the Code of Corporate Governance, it should be noted that while the Provision in the Code on independence no longer includes business relationships, with such business relationships now covered in Practice Guidance 2, the Practice Guidance refers to payments of \$50,000 aggregated over any financial year where received by a director, in the current or immediate past financial year. In its addendum, the manager did not disclose how much Ms Ng received, so it is unclear if the “letter” of the Practice Guidance was complied with.”***

The Sabana Manager wishes to clarify that Practice Guidance 2 (“**PG2**”) covers payments to a director “received from the company or any of its subsidiaries”. As InfinitySub holds 100% of the beneficial interest in the shares of the Sabana Manager, and is neither the Sabana Manager nor a subsidiary of the Sabana Manager, its payments to Ms Ng do not fall within the ambit of PG2.

The Sabana Manager wishes to point out that with effect from 6 August 2018, the CG Code had been restructured such that compliance with the Practice Guidance is on a voluntary basis and what is important is that the board has an appropriate level of independence and diversity of thought and background in its composition to enable it to make decisions in the best interests of the company. The Sabana Manager wishes to highlight that while the actual amount of the payment was not disclosed, what is more important is that the NRC and the Board had in accordance with the regulations specifically assessed whether Ms Ng’s ability to exercise independent judgment and act in the best interests of all Sabana Unitholders as a whole would be affected by her business relationship, and they were satisfied that she would be able to do so notwithstanding her business relationship. Accordingly, the Sabana Manager is of the view that both the spirit and letter of the CG Code had been complied with.

- 4. ***“I would also note that Provision 4.4 on the NC’s determination of independence of directors states that directors should disclose relationships, including business relationships, to the board. Footnote 15 states that this includes disclosing the amount of payments received. Did Ms Ng disclose this to the board? Further, the Provision states that if the board, on the advice of the nominating committee, still considers a director to be independent notwithstanding such relationships, the relationships and reasons should be disclosed in the annual report. For full transparency, I believe that the amount received by Ms Ng for the sale of her stake should have been disclosed.”***

The Sabana Manager believes that the footnote referred to by the author should be footnote 14, which states: "...Where the director or his or her immediate family member, or a company that he, she or they are a substantial shareholder in, provides to or receives from the company or its subsidiaries any significant payments or material services, the amount and nature of the service is disclosed."

Footnote 14 relates to the context where the director receives a payment from the company or its subsidiaries. Hence, footnote 14 is not strictly applicable in Ms Ng's case.

In any case, in compliance with Principle 4 and Provision 4.4 of the CG Code, the NRC and the Board had assessed her suitability as an independent director against her deemed business relationship and were satisfied that Ms Ng would be able to exercise independent judgment and act in the best interests of all Sabana Unitholders as a whole.

5. ***"In Ms Ng's case, there was no meaningful break between her business relationship ending, and her appointment to the board and subsequent re-designation – in fact, she was appointed to the board on August 27, 2019 and received the final payment for the sale of her shares on August 30, 2019.***

Ms Ng was appointed to the Board on 27 August 2019 as a Non-Independent Director. Her deemed business relationship under Regulation 13G(2)(b) arising from the payments which she had received from InfinitySub for the divestment of her indirect interest in the Sabana Manager ended with the final payment for her divestment on 30 August 2019. Ms Ng was re-designated with effect from 1 November 2019 upon the retirement of the then Chairman and Independent Director of the Board, Mr Yong Kok Hoon.

While Ms Ng's re-designation as an independent director took place shortly after the end of her business relationship, the business relationship had been taken into account by the NRC and the Board when they approved her re-designation as an independent director. Accordingly, Ms Ng's re-designation as an independent director was in accordance with Regulation 13D(8) of the SFLCBB which specifically provides that a director who has a business relationship with the REIT manager or the REIT may nevertheless be treated as an independent director of the REIT manager if the board of the REIT manager is satisfied that the director is able to act in the best interests of all the unitholders of the REIT that is managed or operated by the REIT manager, as a whole.

6. ***"Ms Ng's relationship with the manager as a non-independent non-executive director dates back to 2010, and she acquired a 4.5% indirect stake in the manager in 2011. She bought a stake in the manager and not the trust, which meant that her interests are aligned with the manager and not unitholders. At the time of her re-appointment to the board in August 2019, her indirect interest in Sabana REIT, by virtue of her stake in Blackwood which held a 45% interest in the manager which in turn held a 1.01% stake in the REIT, was negligible."***

In relation to the author's above point that Ms Ng's indirect interest in Sabana REIT (by virtue of her stake in Blackwood) was negligible, the Sabana Manager would like to clarify that there is no requirement that an independent director must have any stake in a REIT to qualify as an independent director. The re-designation of Ms Ng as an independent director was properly carried out in accordance

with Regulation 13D(8) of the SFLCBR. Please refer to the responses to Questions 1 and 5 above for further details.

Further, Ms Ng had completed the divestment of her interest in the Sabana Manager on 30 August 2019, and by the time she was re-designated as an independent director on 1 November 2019, she no longer had a stake in the Sabana Manager or its related corporations, or any other relationship with the Sabana Manager, the Sabana REIT or their related corporations for purposes of the SFLCBR. In relation to the author's point that Ms Ng's relationship with the Sabana Manager as a non-independent non-executive director dates back to 2010, the Sabana Manager would like to clarify that Ms Ng had resigned in May 2017 from her position as a director of the Sabana Manager. By the time Ms Ng re-joined the Board of the Sabana Manager more than two years later on 27 August 2019, the Board (other than Ms Ng) was comprised solely of independent directors and apart from the then Chairman and Independent Director of the Board, Mr Yong Kok Hoon, all the directors on the Board were newly appointed to the Board after Ms Ng's resignation in 2017.

7. ***“Given that Ms Ng is legally trained and an experienced director, I am confident that she would not have given any undertaking to support the merger with ESR REIT that has proven to be highly contentious. Nevertheless, of all possible candidates in the market, why was she chosen given her long-standing relationship? What was the search and nomination process like? All these, in my view, raise further questions about her independence.”***

As mentioned, the then Chairman and Independent Director of the Board, Mr Yong Kok Hoon, was retiring and as part of the subsequent reconstitution of the Board as set out in the Sabana Manager's SGX announcement titled “*Reconstitution of Board and Board Committees*” dated 31 October 2019, Ms Ng had been appointed to the Board.

Ms Ng had been appointed to the Board because of her experience and her understanding of the business strategy and operations of Sabana REIT. Further, during her participation at Board deliberations, Ms Ng had shown the ability to exercise independent judgement even in the course of her service as Non-Independent Director. Accordingly, the Board was satisfied that Ms Ng had demonstrated herself to be independently-minded and was able to exercise independent judgement, and approved her re-designation as Independent Director. The Board is also satisfied that following her re-designation as Independent Director, Ms Ng has continued to show the ability to exercise independent judgement during Board deliberations.

8. ***“this episode will just give more ammunition to minority unitholders to question the merits of the merger and the independent directors' support for it.”***

For purposes of recommending the Merger to be carried out by way of a trust scheme of arrangement under the Takeover Code, Ms Ng's independence has to be assessed in accordance with the Takeover Code.

The Board has assessed Ms Ng to be independent for the purposes of the Scheme in accordance with the Takeover Code. The divestment of Ms Ng's stake in Blackwood to the ESR Group² was fully

2 “ESR Group” refers to the group of companies which ESR Cayman Limited is the holding company of.

completed by 30 August 2019. Following the divestment, Ms Ng ceased to be a director of Blackwood on 25 October 2019. The Merger was first explored between the ESR-REIT Manager and the Sabana Manager in late April 2020 (being at least six months after Ms Ng's divestment of her remaining stake in Blackwood and after she had ceased to be a director of Blackwood). Ms Ng has also disclosed to the Board the terms of the divestment, which were determined on a willing buyer willing seller basis. After the divestment, Ms Ng does not have any agreement or understanding with the ESR Group in relation to Sabana REIT and/or Sabana Units. The Board notes that the consideration received by Ms Ng for the divestment was at a valuation in line with the consideration received by another indirect shareholder for the divestment of its effective stake in the Sabana Manager based on the public disclosure made by that shareholder on SGXNET in 2019.

Accordingly, the Board considers Ms Ng is not deemed to have an irreconcilable conflict of interest for the purposes of the Takeover Code. All the Sabana Independent Directors, including Ms Ng, are required under the Takeover Code to assume responsibility for the recommendation on the Scheme to Sabana Unitholders.

By Order of the Board

Sabana Real Estate Investment Management Pte. Ltd.
(Company registration number: 201005493K, Capital markets services licence number: CMS100169)
As Manager of Sabana Shari'ah Compliant Industrial Real Estate Investment Trust

Han Yong Lee
Chief Executive Officer
5 October 2020

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Sabana REIT

Sabana REIT was listed on the SGX-ST on 26 November 2010. It was established principally to invest in income-producing real estate used for industrial purposes, as well as real estate-related assets, in line with Shari'ah investment principles. As at 30 June 2020, Sabana REIT has a diversified portfolio of 18 properties in Singapore, in the high-tech industrial, warehouse and logistics, chemical warehouse and logistics, as well as general industrial sectors. The total assets of the Group amount to approximately S\$0.9 billion as at 30 June 2020.

Sabana REIT is listed in several indices within the SGX S-REIT Index, Morgan Stanley Capital International, Inc (MSCI) Index and FTSE index. Sabana REIT is one of the constituents of the FTSE ST Singapore Shariah Index.

Sabana REIT is managed by Sabana Real Estate Investment Management Pte. Ltd. (in its capacity as the Manager of Sabana REIT) in accordance with the terms of the trust deed dated 29 October 2010 (as amended). Sabana REIT is a real estate investment trust constituted on 29 October 2010 under the laws of Singapore.

For further information on Sabana REIT, please visit www.sabana-reit.com.

Directors' Responsibility Statement

The directors of the Manager (including those who may have delegated detailed supervision of this announcement) have taken all reasonable care to ensure that the facts stated and opinions expressed in this announcement (other than those relating to ESR-REIT and/or the ESR-REIT Manager) are fair and accurate and that there are no other material facts not contained in this announcement, the omission of which would make any statement in this announcement misleading. The directors of the Manager jointly and severally accept responsibility accordingly.

Where any information has been extracted or reproduced from published or otherwise publicly available sources or obtained from a named source (including ESR-REIT and the ESR-REIT Manager), the sole responsibility of the directors of the Manager has been to ensure through reasonable enquiries that such information is accurately extracted from such sources or, as the case may be, reflected or reproduced in this announcement. The directors of the Manager do not accept any responsibility for any information relating to ESR-REIT and/or the ESR-REIT Manager.

Important Notice

The value of units in Sabana REIT ("**Units**") and the income derived from them may fall as well as rise. Units are not obligations of, deposits in, or guaranteed by, the Manager, HSBC Institutional Trust Services (Singapore) Limited, as trustee of Sabana REIT, or any of their respective affiliates.

An investment in Units is subject to investment risks, including the possible loss of the principal amount invested. Investors have no right to request that the Manager redeem or purchase their Units while the Units are listed. It is intended that Sabana Unitholders may only deal in their Units through trading on the SGX-ST. Listing of the Units on the SGX-ST does not guarantee a liquid market for the Units.