

**REVIEW OF THE REGULATORY ISSUES
RELATING TO REAL ESTATE FUNDS**



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**REPORT OF THE TECHNICAL COMMITTEE
OF THE
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Review of the Regulatory Issues Relating to Real Estate Funds

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Introduction

In October/November 2007, a questionnaire about real estate funds was circulated among the members of the IOSCO Technical Committee Standing Committee on Investment Management (SC5). The intention of the questionnaire was to compare the regulation of real estate funds in the different jurisdictions and, if possible, to identify common themes and problems to be able to decide whether this subject needs further attention of SC5 in the near future.

SC5 determined that the real estate fund subject was a very important one to be kept under close watch. In this regard and in consideration of its immediate priorities, SC5 therefore decided to consider whether to undertake further work in this field in the medium-term. For the time being, SC5 believes that the summary of SC5 members' responses to the questionnaire provides useful information.

The scope of this questionnaire on real estate does not embrace all types of real estate investment vehicles. It is limited to collective investment schemes (CISs) that directly invest in real property (such that the CIS holds direct ownership interests in buildings). It covers the main issues relevant to such funds, whether listed or non-listed, in the case of both open ended and closed ended funds.

The main findings are summarized below:

Overview

- Most SC5 members regulate real estate funds. Only China and the US CFTC reported not to regulate real estate funds, which is why neither China nor the US CFTC appears in the summary of the responses to the questionnaire. In addition, the US SEC generally does not regulate CIS issuers that invest directly in real property. The different regulatory cultures become clear when comparing the answers: some jurisdictions rely on transparency and broad principles, whereas others provide for precise rules and limits. Some jurisdictions are in the process of changing their regulation or have just finalized that process.
- Most jurisdictions make no principal difference between real estate funds and "normal" CIS so that they are basically treated the same, even if in most cases additional rules apply to real estate funds.
- The range of regulatory cultures is reflected in the different portfolio diversification requirements. Where some jurisdictions allow a single property as the only asset in the portfolio, others ask for a minimum of five properties.
- Regarding permitted borrowing, the answers vary from not regulated to different maximum percentages of the net asset value (NAV).
- All jurisdictions require real estate funds to disclose their features in a prospectus and report about the past financial period at least once a year. A few jurisdictions rely on the general disclosure principles that apply to all CIS including those investing in real estate. Most jurisdictions however address specific elements of

real estate investments that should be disclosed in detail in the prospectus and/or annual report.

- In most jurisdictions a certain level of experience in the real estate industry –in addition to general management skills and financial knowledge- is required for the real estate fund management.

Valuation

- Most jurisdictions require a valuation by independent valuation experts at least once a year. However, estimations by the management are generally authorized in between the independent valuations.
- One of the assumptions was that valuation could be a problem area. The responses indicated that most jurisdictions recognize the potential difficulties in establishing a fair price.

Liquidity of real estate fund shares / units

- Different regulation exists for the registration of real estate funds. Sometimes only closed ended funds are allowed, while other jurisdictions only accept open ended funds. A number of jurisdictions allow both.
- Different regulation also exists with regard to guaranteeing a certain minimum of liquidity, lock in periods and postponing of redemptions. The most common regulation to guarantee sufficient liquidity requires an obligated minimum percentage of liquid assets in the portfolio, fixed moments of redemptions and subscription and a minimum period of notice for investors.
- Whether by rule or common practice, the calculation of the NAV is largely the same everywhere.

Conflicts of interest

- In most jurisdictions management companies have to observe some sort of corporate governance codes, sometimes established by law and in some cases by self-regulation by the local fund industry.
- In many cases, the management company is allowed to sell its own property to the fund, but most jurisdictions recognise the conflicting interests here and have set specific rules for such cases.
- In cases where independent oversight for managing possible conflicts of interest is required, this results usually from the broader regulatory structure for CIS and not from the special nature of real estate funds.

Title / legal ownership structure with respect to the real estate property

- In most cases the assets are held and registered in the name of the fund. In the jurisdictions where that is not the case, safeguards like the obligation to have the consent of the trustee before the property can be disposed of are in place.
- In many jurisdictions a real estate fund is allowed to indirectly invest in property through corporate vehicles or other real estate funds.

Problems

- No serious issues are reported. Some jurisdictions point to valuation issues or conflicts of interests as possible problems, but most SC5 members did not experience actual problems in their own jurisdiction.

Summary of Responses to the Questionnaire

Overview

1. Are investment funds which directly invest in real estate (“real estate funds”) permitted in your jurisdiction? If yes, what is their legal constitution?

Member/ Jurisdiction	
Australia	There is no regulation specific to real estate funds in Australia. Funds that invest in real estate are subject to the general regulation applicable to "managed investment schemes".
Brazil	Yes, real estate funds are permitted in Brazil according to Federal Law number 8.668 of 25 June 1993. They follow a contractual model and must be closed-ended.
France	<p>French real estate funds are permitted under French law. They may be structured as open ended or closed end collective investment schemes (“CIS”).</p> <p>Open ended CIS (“OPCI”) are either contractual funds (“FPI”) or investment companies with variable capital (“SPPICAV”).</p> <p>Closed end CIS are real estate investment companies (“SCPI”). The new regime pertaining to Real Estate Funds as described hereunder provides for open ended CIS (hereinafter “Open ended real estate funds” or “OEREFs”).</p> <p>OEREFs have been introduced into French law very recently. Indeed, the implementing measures of the Law creating OEREFs have entered into force in May 2007. French OEREFs may be established as retail funds or qualifying investor funds (i.e., subject to investor criteria requirements).</p>
Germany	Yes. Open-ended real estate investment funds are permitted according to the German Investment Act. While they are not legal entities in their own right real estate investment funds in Germany are “pools of special assets” (Sondervermoeogen). Their assets are merely legally owned and administered by management companies on behalf of the investors. The special assets are to be kept separate from original property belonging to the management company at all times.
Hong Kong	<p>In Hong Kong, investment funds offered to the public are generally required to obtain authorisation from the Securities and Futures Commission (the “SFC”). As far as SFC-authorized funds are concerned, direct investments in real estate are permitted if the funds concerned are real estate investment trusts (“REITs”) governed under the Code on Real Estate Investment Trusts (the “REIT Code”) issued by the SFC.</p> <p>Under the REIT Code, a REIT is a collective investment scheme constituted as a trust that invests primarily in real estate with an aim to provide returns to holders derived from the rental income of the real estate. REITs in Hong Kong are constituted as closed-ended funds and have to be listed on Hong Kong Stock Exchange (“SEHK”).</p> <p>Except for REITs, SFC-authorized funds are generally prohibited from directly investing in any type of real estate. However, these funds are permitted to invest in shares of real estate companies or interests in REITs that are listed on a stock exchange. Accordingly, the answers to this questionnaire only cover REITs in Hong Kong and their current regulations.</p>
Ireland	<p>Investment funds established in Ireland require authorisation from the Irish Financial Services Regulatory Authority (the “Financial Regulator”). Authorised investment funds are permitted to establish as property/real estate funds.</p> <p>Investment funds, which invest in real estate, can take the following legal forms: Unit Trusts; Investment Companies; Investment Limited Partnerships; and Common Contractual Funds.</p>

	Irish investment funds may be established as retail funds, professional investor funds (minimum subscription requirement) or qualifying investor funds (minimum subscription and investor criteria requirements). While many of the real estate funds which have been established in Ireland, are investment funds that are restricted to professional or qualifying investors, retail real estate funds may also be established.
Italy	<p>Yes, funds which invest in real estate are permitted in the Italian jurisdiction.</p> <p>In particular, real estate funds are funds that invest at least two thirds (66%) of their assets in real property, encompassing both ownership and other types of real interests (“estates”) in immovable goods (lands, buildings etc.), and/or in shares of real estate companies. This limit is reduced from 66% to 51% when at least 20% of the fund’s total assets is invested in asset backed securities (ABS) resulting from the securitization of real property or either home equity loans and mortgages.</p> <p>Real estate funds must be closed-end funds, that is, funds whose shares can be redeemed only at some predetermined dates. These funds can be available for purchase (especially when they are listed on stock exchanges) or subscription by retail investors - in this case their public offering/listing must be necessarily preceded by the publication of a prospectus – or can be reserved to professional investors.</p>
Japan	<p>Yes. Although there is no legal definition of “Real Estate Fund” in Japan, in general, the collective investment schemes (“CIS”) that can directly invest in real estate are as follows: Contractual and corporate type of investment trusts; Special purpose companies and special purpose trusts; Real estate syndication contracts; and Partnership contracts based on the Civil or Commercial Law.</p> <p>All real estate funds listed on exchanges, so-called “J-REITs”, are investment securities of investment corporations based on the Investment Trusts Law.</p> <p>In addition, among the above mentioned schemes investment by the fund is not merely limited to real estate except for real estate syndication contracts.</p>
Jersey	Yes, Companies, unit trusts or limited partnerships
Luxembourg	Yes, investment funds which directly invest in real estate (“real estate funds”) are permitted. Real estate funds may be set up under the contractual type and under the company type.
Mexico	Yes
Netherlands	Yes, investment funds which directly invest in real estate are permitted. There is no special regulation for them and they are treated as any other CIS.
Ontario	<p>Conventional open end redeemable investment funds are not permitted to invest in real estate (with one exception, as discussed below). The most common retail real estate investment vehicles are Canadian Real Estate Investment Trusts (REITs), which are not considered investment funds (i.e. they are not collective investment schemes). REITs are not discussed in this response.</p> <p>In the regulatory framework, closed end non-redeemable funds, which can be both trusts or corporations, can invest in real estate directly. However, the Ontario Regulator is not aware of such funds’ existence.</p>
Portugal	<p>Yes. The jurisdiction recognizes and regulates investment funds which directly invest in real estate. According to the Portuguese law they must be constituted under a contractual structure, but a project of decree-law to implement the corporate structure for real estate investment undertakings has recently been launched for public consultation (http://www.cmvm.pt/NR/rdonlyres/0A70FD7E-9174-4251-8332-F819D19FA305/9278/docconsulta.pdf). According to the Portuguese legal framework the types allowed are real estate investment funds, special real estate funds, funds of funds and guaranteed funds. All may be open-ended, closed-ended or balanced funds.</p>
Quebec	<p>Conventional open end redeemable investment funds are not permitted to invest in real estate (with one exception, as discussed below). The most common retail real estate investment vehicles are Canadian Real Estate Investment Trusts (REITs), which are not considered investment funds (i.e. they are not collective investment schemes). REITs are not discussed in this response.</p>

	In the regulatory framework, closed end non-redeemable funds, which can be both trusts or corporations, can invest in real estate directly.
Spain	<p>Yes, they are permitted. They can have a contractual or a corporate form. They are registered as non financial Collective Investment Schemes (CIS)</p> <p>The real estate funds with corporate form are companies with limited liability. They have fixed capital and therefore they are closed end funds. The shareholders can contribute with properties to the setting up of the company or to increase capital.</p> <p>The real estate funds with contractual form are open end funds. The initial investment and the following investments can be made in properties. However, the fund rules can limit the contributions in kind.</p>
Switzerland	<p>Yes. Swiss real estate funds may be structured as open-ended or closed-ended collective investment schemes (CIS). Open-ended CIS are either contractual investment funds or investment companies with variable capital (SICAV). Closed-ended CIS are either limited partnerships for collective investments (LLP) or investment companies with fixed capital (SICAF).</p> <p>The SICAV and the two forms of closed-ended CIS (LLP and SICAF) were only introduced into the new Swiss legislation on CIS (Federal Act on Collective Investment Schemes, CISA) entering into force on 1 January 2007. While LLPs are restricted to the so-called qualified investors, the CISA is not applicable to SICAFs, provided that they are listed on a Swiss stock exchange, or provided that (I) the shareholders are qualified investors, (II) the shares are registered and (III) these requirements are audited and reported to the supervisory authority annually by recognized auditors.</p>
UK	<p>Yes, these are available in both open-ended and closed-ended form:</p> <p>Open-ended</p> <p>a) funds authorised by the FSA. These would generally be "non-UCITS retail schemes" (NURs), which have wider investment powers than UCITS funds but can still be marketed to the public. They come in two forms: unit trusts or a corporate structure (known as OEICs or ICVCs).</p> <p>b) funds not authorised by the FSA. These cannot be marketed to the public and are not addressed further in this response.</p> <p>Closed-ended</p> <p>"Real estate investment trusts" (REITs) are a listed corporate structure (despite the name).</p>
US SEC	<p>Yes. Real estate funds are permitted in the United States. Under the laws, however, an entity that invests solely and directly in real estate or is primarily in the business of investing directly in real estate would not be deemed to be a CIS. This is because the laws define a CIS as an issuer that is engaged in investing in securities, and the direct ownership interests in real estate would generally not be deemed to be securities.</p> <p>Instead, there are certain other entities commonly referred to as real estate investment trusts ("REITs") that take investor money to purchase, and directly hold and manage, real property. REITs that offer their shares to the public are generally subject to the same securities registration requirements as other public industrial (as opposed to investment) companies. Many of the REITs that register their public offerings of securities with the SEC are listed on a national securities exchange, and as such, are also subject to the listing standards of their respective exchange.</p>

2. Please provide an estimate of the number of real estate funds and their assets under management by completing this table:

Member/ Jurisdiction	total number of funds	total assets under management	as at [date]	listed funds	non listed funds	closed end funds	open end funds
Australia	768	\$124 bln (listed only)	31dec07	64	704	n/a	n/a
Brazil	70	US\$1.8 bln	31oct07	24	46	70	0
France	160	€15.3 bln	15nov07	n/a	160	150	10
Germany	162	€108 bln	29feb08	n/a	n/a	n/a	162
Hong Kong	7	US\$ 8.6 bln	30sept07	7	0	7	0
Ireland	n/a	n/a		n/a	n/a	n/a	n/a
Italy	134			22	106	134	0
Japan	-	-	31mar07	41 (\$57bln)	-(\$240bln)	-(\$298bln)	0
Jersey	172	£ 30.7 bln	30sept07	n/a	n/a	n/a	n/a
Luxembourg	92	€13.0 bln	30sept07	n/a	n/a	n/a	n/a
Mexico	n/a	n/a		n/a	n/a	n/a	n/a
Netherlands	n/a	n/a		n/a	n/a	n/a	n/a
Ontario	1	\$ 2.4 bln		n/a	n/a	n/a	1
Portugal	197	€9.5 bln	30okt07	2	195	181(€5.6bln)	16 (€4.5bln)
Quebec	0						
Spain	18	€9.4 bln	30sept07	-	18	9 (€0.5bln)	9 (€8.9bln)
Switzerland	30	CHF 12.6 bln	31dec07	14	16	-	30
UK	-			17		17	37 (£45.6bln)
US SEC	~ 1000	n/a	31dec06	183(\$438bln)	~ 800	0	0

3. Are real estate funds regulated in the same way as other CIS, or are there special rules for their regulation? Please state the regulations applicable to real estate funds in your jurisdiction.

Member/ Jurisdiction	
Australia	Real estate funds are regulated in the same way as other investment funds
Brazil	Real Estate Funds have specific rules; in principle, they do not follow therefore the same rules applicable to other CIS. However, Instruction CVM number 409, of 18 August 2004, applied for CIS, is used subsidiary in any situation not foreseen by the real estate funds rules. Besides Federal Law number 8.668 of 25 June 1993, real estate funds in Brazil must comply with the rules stipulated by Instruction CVM number 205 and 206 of 14 January 1994. In a near future CVM will bring up for public hearings a project of a new Instruction regulating the constitution, the management, the public offerings of quotas, the operation, and the disclosure of information of the real estate funds.
France	As a general rule, Real Estate Funds are regulated in the same way as other collective investment schemes. However, given the particular nature of Real Estate Funds' investments, specific rules are provided for by law and regulation. Please note that the following answers only relate to Retail OEREFs.
Germany	Open-ended real estate investment funds are generally governed by the same regulations applicable to all other open-ended investment funds.
Hong Kong	In Hong Kong, REITs are governed separately by the REIT Code.
Ireland	Real estate funds are regulated in the same way as other collective investment schemes but some additional rules apply.
Italy	In Italy real estate funds must be closed-end funds, that is, funds that are set up under the contractual legal form, whose shares can be redeemed only at some predetermined dates. Thus, real estate funds comply, as a reference point, with all the legal requirements which hold for

	<p>closed-end funds.</p> <p>In addition, and sometimes in partial exemption from these obligations, real estate funds are addressed specific sets of rules within the different pieces of legislation that regulate collective investment schemes.</p>
Japan	<p>A structure of real estate funds for both types of investment trust and investment corporation is regulated by the Investment Trust Law. A structure of real estate funds for both types of special purpose company and special purpose trust is regulated by the SPC Law.</p>
Jersey	<p>The rules are determined by type of investor for expert/sophisticated investors there are no additional rules above those for other types of fund. However, for retail investors there are additional Rules/guidance.</p>
Luxembourg	<p>The general provisions of part II of the law concerning undertakings for collective investment (UCIs) apply, with some additional rules for real estate assets.</p> <p>Luxembourg real estate funds can also be set up under the law relating to specialised investment funds (SIF) which reserve their securities to one or several institutional or well-informed investors.</p>
Mexico	<p>Real state funds are only foreseen in the regulatory framework (Investment Companies Act) but no secondary regulation has been issued for these funds.</p> <p>However, Income Tax Law provides special rules for trusts that invest on real estate in order to be granted fiscal transparency.</p>
Netherlands	<p>Real estate funds are regulated in the same way as other investment funds</p>
Ontario	<p>There is a prohibition on direct investment in real estate by open end redeemable investment funds subject to the mutual fund investment restrictions rule.</p> <p>For other types of investment funds, there are no specific rules prohibiting direct investment in real estate, but there is no activity in this area.</p>
Portugal	<p>Real estate investment funds are not regulated in the same way as other CIS. Specific regulation is provided for real estate investment funds, which are regulated in an autonomous way by Decree-Law 60/2002 (http://www.cmvn.pt/NR/rdonlyres/62F90832-99C3-46B8-AB7B-8A4B98726A65/9229/DL602002RegimeJuridicosFundosdeInvestimentoImobi.pdf), which is now under review in order to allow real estate investment undertakings to be constituted under corporate form.</p>
Quebec	<p>There is a prohibition on direct investment in real estate by open end redeemable investment funds subject to the mutual fund investment restrictions rule.</p> <p>For other types of investment funds, there are no specific rules prohibiting direct investment in real estate, but there is no activity in this area.</p>
Spain	<p>Real estate funds are regulated as a specific type of CIS under the general regulation of CIS. They have special rules.</p>
Switzerland	<p>As a general rule real estate funds are regulated the same way as other CIS. However, given the specific investment issue, real estate funds are ruled within the separate section of the regulation. Please note: The following answers only relate to open-ended real estate funds.</p>
UK	<p>NURS are not formally categorised into different types of fund (eg property fund, equity fund, etc), so the framework of regulation is the same, although some additional provisions apply to funds substantially invested in real estate ("immovables").</p> <p>From April 2008 NURS will be able to take advantage of a beneficial tax regime if they can meet certain additional criteria (explained below). A NURS that meets these criteria will be referred to as a PAIF (Property Authorised Investment Fund).</p> <p>REITs are subject to the Prospectus Directive and the UK Listing Rules when listed.</p>
US SEC	<p>See response to Question 1 – real estate funds are not regulated as CIS.</p>

Please provide information on the regulation of real estate funds relating to:

- (a) Permitted investments, including an indication of the extent to which real estate funds can invest in
 (i) non-real estate assets and (ii) other financial assets (*e.g.*, securities of property companies, interests in other real estate funds, property derivatives etc.)

Member/ Jurisdiction	
Australia	There is no limitation in relation to permitted investments. Non real estate funds can invest in non-real estate assets and in other financial assets. However, depending on the proportions of the various types of assets, the fund manager may need to consider whether it is appropriate to describe a fund as a real estate fund.
Brazil	<p>According to Instruction CVM 205, real estate funds in Brazil must invest their assets exclusively in real estate property, assets and rights of use of real estate ventures.</p> <p>The Instruction allows that up to a quarter of the net assets of the funds be invested in government bonds or other fixed income securities, as well as in fixed income investment funds' quotas.</p> <p>In the proposed rules that will soon be submitted to public hearings, there's a provision that other types of assets be allowed, such as, Securities issued by public companies whose activities are related to the real estate funds' investments, Quotas of "Fundos de Investimento em Participações" (Private Equity Funds regulated by CVM, which investment target in real estate companies), Quotas of other real estate funds, MBS</p>
France	<p>OEREFs must hold at least 60% of their value in property assets and 10% in liquid assets. OEREFs are not allowed to invest in non-real estate assets other than financial instruments. Other real estate funds are eligible up to 5% of the fund's value.</p> <p>The use of derivatives is permitted, provided that the transactions in derivatives comply with the fund's investment policy and that the commitment does not exceed 100% of the fund's net assets.</p>
Germany	Open-ended real estate investment funds in Germany have to invest at least 51 % of the net asset value in directly held real estate property. Up to 49 % of the net asset value of a real estate investment fund can be invested indirectly in real estate property by means of shares held in real estate companies or in assets of high liquidity such as cash accounts, money market instruments, units in certain other investment funds, certain securities approved by EUROSYSTEM or – to a maximum of 5 % – other listed securities, bonds bearing fixed interest and shares in German or comparable foreign REITs. Indirect investments in real estate property through real estate companies in which the investment management company holds 100 % of the shares (voting rights and capital) on behalf of the fund are for the purpose of the above mentioned restriction considered direct investments.
Hong Kong	Under the REIT Code, REITs shall only invest in real estate which shall generally be income-generating. The real estate properties may be located anywhere. A REIT may acquire uncompleted units in a building which is unoccupied and non-income producing or in the course of substantial development, redevelopment or refurbishment, but the aggregate contract value of such real estate shall not exceed 10% of the total net asset value of the REIT at the time of acquisition. REITs are prohibited from investing in vacant land or engaging or participating in property development activities. Subject to the foregoing, REITs are allowed to include as the "Authorised Investments" under their trust deeds the following - cash and cash equivalent items (such as money market instruments of investment grade and other investments of such high liquidity and safety that are as good as cash) and investments in relation to arrangements for the purposes of enhancing the return on or reducing risks associated with the REIT's investments (such as derivative instruments for hedging purposes).
Ireland	<p>Notice NU 18 imposes the following for real estate funds:</p> <p>Real Estate funds invest in property and property related assets defined as follows - Property – 'freehold or leasehold interest in any land or building'. Property related assets – 'includes other collective investment undertaking, property derivatives and securities issued by a body corporate (<i>e.g.</i>, shares, debentures, warrants or certificates representing these) whose main activity is investing in, dealing in, developing or redeveloping property.</p>

	Other types of assets may be considered in the case of professional and qualifying investor funds.’ There is no restriction on the amount of cash or short-term securities, which can be held by the real estate fund when the purpose of such holdings is to meet redemption requirements or where this is otherwise reasonably necessary.
Italy	Real estate funds must compulsorily invest a minimum share (66% or 51%) of their portfolios in real property or in equity of real estate companies. As regards the remaining part of their portfolios, real estate funds can invest in other types of assets, such as of non real estate credits (loans) and securities (bonds and equities), bank deposits and shares of sub-funds (including hedge funds), either listed or not. In any case, real estate funds are not allowed to engage directly in construction operations.
Japan	Investment trusts and investment corporations are required to invest their assets in specified asset, namely securities, rights on derivatives, real estate, CP, interest on secret partnerships and so on. Special purpose companies and special purpose trusts are prohibited to invest their assets in partnership interests or equities on trusts contributed by way of money. Real estate syndication can only invest in only real estates. There are no regulations for partnership type CISs regarding permitted investments.
Jersey	Recognized Property Fund may invest in (a) approved immovables (up to 80%), (b) property related assets (up to 80%), (c) government and other public securities (up to 35%) and (d) units in collective investment funds (5%). Initially only 15% of pool in one immovable (may rise to 25%), 5% property related assets of one issuer (may rise to 10%) OCIF Property Fund may invest in (a) Freehold real property; (b) Leasehold real property which has an unexpired term of 20 years or more; c) Transferable securities issued by a company, the principal object of which is to invest in, deal in, develop, redevelop or refurbish property, whether directly or indirectly, d) Units in a collective investment scheme which would qualify as a Real Property Fund under the provisions of this schedule; e) Government and other public securities; A OCIF may also hold cash or near cash.
Luxembourg	By real estate assets the circular IML 91/75 means: - Property consisting of land and/or buildings registered in the name of the UCI. - Share holdings in real estate companies (including claims on such companies) the exclusive object and purpose of which is the acquisition, promotion and sale as well as the letting and agricultural lease of property provided that these share holdings must be at least as liquid as the property rights held directly by the UCI. - Property related long-term interests such as surface ownership, lease-hold and options on real estate assets.
Mexico	No specific secondary regulation has been issued.
Netherlands	There is no regulation in relation to permitted investments. Any type of fund, including a real estate fund, may invest in non-real estate assets.
Ontario	Generally, 20% of the fund is invested in liquid assets to provide for liquidity.
Portugal	Only real estate property and liquidity are eligible for investment by real estate funds. The real estate property shall correspond to urban buildings or independent units of the same building. Nevertheless, CMVM defines by regulation other eligible assets for the so called “special real estate investment funds”, namely rural or mixed buildings, investment units in real estate funds and other equivalent assets. The real estate investment funds’ assets may comprise real estate property under right of ownership, superficially, or by means of other rights with similar content. The real estate fund may invest in liquidity, under the form of bank deposits, deposit certificates, investment units from money-market funds and securities issued or guaranteed by a Member State of the European Community with a long-term book value of less than 12 months. The real estate investment fund may invest 25% of the total assets of the funds in investment units in other real estate funds. Investment units in real estate companies are – under certain conditions- also eligible for investment by real estate funds. “Special real estate investment funds” may also invest in derivatives; the exposure resulting from the underlying assets of the derivatives may not be greater than the net asset value of the fund. The fund may not, in relation to each counterparty, present an exposure greater than one third of its net asset value.
Quebec	Generally, 20% of the fund is invested in liquid assets to provide for liquidity.

Spain	<p>Real estate funds are non financial CIS whose main object is the investment in urban real estate assets for renting. According to the CIS Royal Decree, the following categories are considered real estate investments with urban nature:</p> <ul style="list-style-type: none"> a) Investments in real estate/properties, included the investments in shares of real estate companies whose majority of assets are properties designated for renting. The total amount of this kind of investments cannot exceed 15% of net assets of the real estate fund. b) Real estate under construction in planning stage, if the construction company has a licence for building. c) The purchase of call options if the premium does no exceed 5% of the strike price of the building. d) Property rights provided they do not prevent renting. e) Administrative concessions that allow renting properties. <p>The buildings in planning stage and purchase commitments cannot exceed 40% of net assets. The investment in call options cannot exceed 10% of net assets. The properties cannot be sold before three years since the purchase, except for CNMV authorization.</p> <p>Real estate funds with corporate form must invest at least 90% of net assets in the aforementioned real estate investments with urban nature. Real estate with contractual form must invest at least 70% of net assets in the aforementioned real estate assets and they must have a liquidity coefficient of 10% of net assets of the previous month.</p> <p>The rest of the assets can be invested in securities traded in Stock Exchanges or organized trading systems.</p>
Switzerland	<p>Permitted investments for real estate funds are:</p> <ul style="list-style-type: none"> a) property, including fixtures and fittings; b) investments in and claims against real estate companies whose sole objective is the purchase and sale or the rental and lease of their own property, provided that the real estate fund holds at least two thirds of their capital and voting rights; c) units in other real estate funds and listed real estate companies for up to 25 percent of the fund's total assets; d) foreign real estate assets whose value can be adequately assessed. <p>Co-ownership in property is permitted only if the management company or the SICAV can exert a dominant influence.</p> <p>Real estate funds are not allowed to invest in non-real estate assets. On the other hand the use of derivatives is permitted, provided the transactions in derivatives comply with the investment policy.</p>
UK	<p>NURS: A NURS can invest in a wide variety of assets (equities, bonds, gold, derivatives), although concentration and spread limits apply. In terms of the type of immovables that are permitted as investments: the immovable must be situated in a country or territory identified in the prospectus there must be some certainty of legal ownership (eg if in England it must be a freehold or leasehold, or the equivalent in other jurisdictions)</p> <p>PAIFs: For a NURS that wants to be classified as a PAIF, additional criteria will apply. Broadly these are:</p> <ul style="list-style-type: none"> a 60% or greater property holding requirement a 'property investment business condition' which sets out that the business must consist of: <ul style="list-style-type: none"> property rental business owning shares in UK REITs or their overseas equivalent a 'balance of business condition', which are a series of tests concerning the generation of income by the fund and that its assets relate to property investment <p>REITs: A REIT must have a property rental business which forms its 'tax exempt business'. It can also have other businesses. However, the tax exempt business may not involve any owner-occupied properties by the REIT or any associated companies.</p> <p>A REIT must pass 'balance of business' tests which broadly state that 75% of its profits and assets must arise from its tax exempt business. Provided they do not exceed 25% of its activities, a REIT</p>

	<p>can therefore undertake activities other than running a rental property business. These activities could be ancillary services associated with the property rental business, or other activities such as property trading or services.</p> <p>At least 90% of the properties by value must be freehold or long leasehold or equivalent.</p>
US SEC	<p>In order to take advantage of certain tax benefits, a REIT must meet certain requirements imposed under US tax laws. This requires, in part, that: at the close of each quarter, at least 75% of its assets must be in: real estate assets (which means real property, interests in mortgages on real property, and/or shares in other real estate investment trusts); cash and cash items; and government securities; the entity cannot have more than 20% of its assets in stocks of taxable REIT subsidiaries; and the entity cannot have more than 25% of the value of its total assets in securities (other than real estate assets and government securities).</p>

(b) Diversification requirements

Member/ Jurisdiction	
Australia	<p>There is no regulation in relation to diversification of investments in relation to any type of fund, including a real estate fund. The level of diversification has to be disclosed to potential investors, in the obligated disclosure documents.</p>
Brazil	<p>In the current rules there's no requirement of diversification of the real estate fund's investments. It is, by the way, usual that real estate funds have only one property in their assets.</p> <p>In the proposed rules that are about to be submitted to public hearings, however, there's a provision for a diversification requirement that would limit to 20% of the net assets of the fund the bonds from a single issuer, except in cases where this issuer is a public company, a financial institution, or any company whose financial reports are prepared and audited according to the rules applicable to public companies.</p>
France	<p>OEREFs must:</p> <ul style="list-style-type: none"> (i) hold in their portfolios at least 5 properties built for rental purposes; (ii) which represent at least 20% of the fund's property assets. <p>Other diversification requirements are provided as regards the financial instruments held by OEREFs.</p> <p>New OEREFs are exempted from some restrictions as from their creation for a period of 3 years (<i>e.g.</i>, no risk diversification, no investment limits). In exceptional cases, this period may be extended.</p>
Germany	<p>According to Sec. 73 German Investment Act one real estate property may not exceed 15 % of the value of the assets of the investment fund while the total of the individual real estate properties exceeding 10 % has to be no more than 50 % of the value of the assets of the fund. For the purpose of the calculation all debt is assumed to be not existing.</p>
Hong Kong	<p>No such requirement.</p>
Ireland	<p>There is a limit of 20% of the real estate fund's net assets in a single property.</p> <p>Not more than 25% of net assets may be invested in properties that are vacant, in the process of development or requiring development. These requirements are not applicable in the case of qualifying investor funds.</p>
Italy	<p>In general terms real estate funds are subject to the same diversification requirements that apply to other closed-end funds, with the additional prerequisite that no more than one third of funds total assets are invested into a single property having unique urban and functional characteristics (<i>e.g.</i>, a palace whose flats are all licensed for residential use).</p> <p>In addition to the general diversification requirements that regard portfolios of closed-end funds, real estate funds cannot invest, either directly or through parent companies, more than 10% of their total assets in shares of firms that engage in building activities.</p>
Japan	<p>There are no specific regulations.</p>
Jersey	<p>As above, under 3a</p>
Luxembourg	<p>The investment in real estate assets must be diversified to an extent that an adequate spread of the</p>

	<p>investment risk is warranted. In order to achieve a minimum spread of such risks, UCIs subject hereto may not invest more than 20% of their net assets in a single property, such restriction being effective at the date of acquisition of the relevant property. Property whose economic viability is linked to another property is not considered a separate item of property for this purpose.</p> <p>This 20% rule does not apply during a start-up period which may not extend beyond four years after the closing date of the initial subscription period.</p>
Mexico	No specific secondary regulation has been issued.
Netherlands	There is no regulation in relation to diversification of investments in relation to any type of fund, including a real estate fund.
Ontario	Generally, no single real estate investment can be greater than 20% of the fund's net asset value.
Portugal	<p>For open-ended real estate investment funds the law imposes many diversification requirements. As to art. 38 of Decree-Law 60/2002: a) the value of the properties and other equivalent assets must not represent less than 75% of the total assets of the investment fund; b) The development of building projects must not, as a whole, represent more than 25% the total assets of the investment fund; c) The value of a single property, or another equivalent asset must not represent more than 20% of the total assets of the investment fund; d) The value of rented properties, or those which entail other types of onerous use, to a single entity or a set of entities which, under the terms of the law, control or are in a group relationship, or are controlled, directly or indirectly, by the same person, individual or legal, must not exceed 20% of the total assets of an investment fund; e) Holdings in real estate properties must not represent more than 25% of the total assets of the investment fund; f) They may only invest in property located in Member States of the European Union and OECD, and investments outside of the European Union must not represent more than 25% of the total assets of the investment fund;</p> <p>Furthermore, open-ended or closed-ended special real estate funds which are the object of a public subscription offering and which invest in rural buildings are not permitted to invest in: a) More than 20% of the total assets of the fund in the same municipality or equivalent territorial district; b) More than 30% of the total assets of the fund in contiguous municipalities or equivalent territorial districts. If the assets have been insured, the limits established in items a) and b) shall be 50%.</p> <p>The provisions set down for open-ended funds also apply to closed-ended investment funds which are the object of a public subscription offering, with the following adaptations: a) The development of building projects must not, as a whole, represent more than 50% the total assets of the investment fund, except when such projects are aimed at the renovation of property, in which case the limit is 60%; b) The value of a single property must not represent more than 25% of the total assets of the investment fund; c) The value of rented properties, or those which involve other types of onerous use, to a single entity or a set of entities which, under the terms of the law, control or are in a group relationship, or are controlled, directly or indirectly, by the same individual person or legal person, must not exceed 25% of the total assets of an investment fund.</p>
Quebec	<p>A fund shall not acquire any single investment in real property if the cost to the fund of such acquisition (net of the amount of encumbrances assumed) exceeds the greater of:</p> <p>(i) \$5 000 000</p> <p>(ii) 20 per cent of the net asset value of the fund.</p>
Spain	<p>None of the properties or rights can represent more than 35% of the net asset value at the moment of the purchase. This limit and the investment criteria mentioned in answer 3 (a) must be reached in three years since the register of the fund.</p> <p>Properties rented to entities belonging to the same group cannot exceed 35% of net assets. CIS must comply with this limit in twelve months since the register of the fund.</p>
Switzerland	<p>The investments must be diversified by type of property, purpose of use, age, substance of building and location:</p> <p>(I) Real estate funds must spread their investments over at least ten properties. (II) The market value of a single property may not exceed 25 percent of the fund's assets. (III) The following limits shall apply to the investments defined in a-d:</p>

	<p>a. up to 30 percent of the fund's assets may be invested in building land, including properties for demolition, and buildings under construction;</p> <p>b. up to 20 percent of the fund's assets may be invested in leasehold land;</p> <p>c. up to 10 percent of the fund's assets may be invested in mortgage notes and other rights of lien on real estate;</p> <p>d. up to 25 percent of the fund's assets may be invested in other real estate funds and listed real estate companies.</p> <p>(IV) The investments defined in paragraph III a and b may together account for up to 30 percent of the fund's assets.</p> <p>(V) The supervisory authority may grant exemptions in motivated individual cases.</p>
UK	<p>NURS and PAIFs: Not more than 15% in value of the scheme property is to consist of any one immovable (the figure of 15% may be increased to 25% once the immovable has been included in the scheme property).</p> <p>REITs: It must contain at least three single rental properties (commercial or residential). No one property must represent more than 40% of the total value of the property rental business.</p> <p>There must be an adequate spread of investment risk</p>
US SEC	See response to Question 3(a).

(c) Permitted borrowings, including the extent to which the real estate assets may be mortgaged

Member/ Jurisdiction	
Australia	<p>There is no specific limitation on borrowings or on the extent to which real estate assets may be mortgaged.</p> <p>Section 601GA(3) in Chapter 5C of the Act provides generally that a managed investment scheme of any kind only has the power to borrow or raise money if its powers to do so are specified in the scheme's constitution, and that any other agreement or arrangement has no effect.</p>
Brazil	No borrowings are permitted to real estate funds according to the Law.
France	<p>- Up to 40% of the fund's assets in property freeholds and property partnerships (in proportion of the participating percentage in those partnerships).</p> <p>And</p> <p>- Up to 10% of the value of the funds' other assets in respect of cash borrowing.</p>
Germany	According to Sec. 82 Para. 3 Sentence 3 German Investment Act mortgages may not exceed 50 % of the fair market value of the real estate properties held; correspondingly the actual long term borrowings are limited by Sec. 80a German Investment Act. Further to this, additional short term borrowing may be permitted according to Sec. 53 German Investment Act under certain circumstances not exceeding 10 % of the net asset value of the investment fund.
Hong Kong	The aggregate borrowings of a REIT shall not at any time exceed 45% of its total gross asset value. The REIT may pledge its assets to secure such borrowings. However, a REIT shall not lend, assume, guarantee, endorse or otherwise become directly or contingently liable for or in connection with any obligation or indebtedness of any person nor shall it use any assets of the REIT to secure the indebtedness of any person nor shall it use any assets of the REIT to secure any obligations, liabilities or indebtedness without the prior written consent of the trustee.
Ireland	<p>The real estate fund is permitted to borrow up to an amount equal to 25% of the value of the net assets of the fund, which borrowing may be generally secured on the real estate assets. (This provision may be disapplied in the case of a professional investor fund to permit borrowing of up to 100% of net assets, and the provision is disapplied for qualifying investor funds). All fund types must include full disclosure in the prospectus in relation to intended borrowing.</p> <p>Retail real estate funds may not invest more than 25% of net assets in properties which are subject to a mortgage. The amount of the outstanding mortgage on any property must not represent more than 50% of the value of the property.</p>

Italy	<p>Similarly to all closed-end funds, real estate funds can recur to external debt for the purpose of serving shares early redemption requests (before the fund expiration date) as consented by the funds bylaws; this debt must be limited to the 10% of total assets.</p> <p>In any case, real estate funds can raise debt for also other purposes than shares redemption, including in first place regeneration/development of areas and restructuring (or change of destination) of real estate assets, within the limit of 60% of the investments in real property and equity of real estate companies and of 20% of residual assets value. The assets held by the funds can be pledged as collateral (real estate assets can therefore be mortgaged).</p>
Japan	<p>Investment trusts and investment corporations are required to prescribe a limitation on borrowing money and issuing investment corporation bonds in their trust deeds or articles of incorporations.</p> <p>If special purpose companies and special purpose trusts that there is a limitation on borrowing money based on their securitization plan, the borrowing is only allowed by using relation to such as banks.</p> <p>Real estate syndication is required to disclose whether the fund has borrowed money or not in the documents that deliver before concluding the contract in the case of the contract with financing.</p> <p>There are no specific regulations for other real estate funds including partnership- type funds.</p>
Jersey	<p>Recognized Fund not to exceed 10% of value of that part of the property of the pool which does not consist of immovables. Certain approved mortgages up to 15% do not count as borrowing OCIF Funds</p> <p>S6.15 The OCIF may borrow for the purposes of purchasing real property and for short term purposes to defray expenses or facilitate redemption. The maximum aggregate amount which may be borrowed is 35% NAV. Borrowing for the purpose of purchasing real property must not exceed 50% of the purchase price of the real property.</p> <p>S6.16 Relaxation on some limits for OCIF with NAV less than £5m and during the early life of an OCIF may be permitted.</p>
Luxembourg	<p>The aggregate of all borrowings of the UCI may not exceed in average 50% of the valuation of all its properties. In certain cases a derogation going up to 70% of the valuation of all its properties have been given to real estate investment funds.</p>
Mexico	<p>No specific secondary regulation has been issued.</p>
Netherlands	<p>The is no regulation on permitted borrowings or the extent to which the real estate assets may be mortgaged.</p>
Ontario	<p>Mortgages cannot be more than 75% of the value of the real estate. Total borrowing cannot exceed 50% of the total asset value of the fund.</p>
Portugal	<p>The level of indebtedness must not represent more than 25% of the total assets of the open-ended investment fund (art. 38/g Decree-Law 60/2002) or 33% of the total assets of the close-ended fund (art. 46).</p>
Quebec	<p>Borrowings - Limit on Leverage: A fund shall not assume or incur any indebtedness under a mortgage on the security of real property unless, at the date of the proposed assumption or incurring of indebtedness: the aggregate of the amount of all indebtedness secured on such real property and the amount of additional indebtedness proposed to be assumed or incurred does not exceed 75 per cent of the market value of such real property; and the aggregate of the total indebtedness of the fund under mortgages on the security of real property and the amount of additional indebtedness proposed to be assumed does not exceed 50 per cent of the total asset value of the fund.</p> <p>Borrowing other than by way of mortgages on the security of real property is prohibited except for temporary borrowings, up to a maximum of 10 per cent of net asset value of the fund, to meet redemptions.</p>
Spain	<p>Real estate funds can finance the purchase of properties mortgaging the assets. This finance can be used also for renovating buildings. Total finance cannot exceed 50% of net assets and investors must be informed in the annual and quarterly report of the total amount of liabilities.</p> <p>This limit does not include finance relating to public protected residential buildings.</p> <p>Real estate funds are also authorized to borrow up to 10% of their assets in the case of transitory financial difficulties.</p>
Switzerland	<p>In relation to pledging land and ceding the rights of lien as collateral the encumbrance of all</p>

	properties may not exceed on average half of the market value (Art. 96 CISO).
UK	<p>NURS: Not more than 20% in value of the scheme property is to consist of immovables that are subject to a mortgage and any mortgage must not secure more than 100% of the value of the property.</p> <p>The aggregate value of: (a) the mortgages secured on immovables; (b) borrowing of the scheme; (c) transferable securities that are not approved securities; must not exceed 20% of the value of the scheme property.</p> <p>PAIFs: In addition to the rules for NURS, it is proposed that PAIFs must also meet a 'loan creditor' condition, which seeks to make sure borrowing arrangements are not abused for tax purposes.</p> <p>REITs: Under its articles of association, borrowings must not exceed 65% of gross assets</p>
US SEC	A publicly-offered real estate fund must, in its registration statement, describe its policies with respect to borrowing money, including whether such policies may be changed by the officers and directors without a vote of securities holders, the extent to which the registrant proposes to engage in such activities, and the extent to which it has engaged in such activities during the past three years.

(d) Any additional disclosure requirements / reporting requirements

Member/ Jurisdiction	
Australia	<p>There are no additional disclosure requirements that arise solely in relation to a real estate fund.</p> <p>Part 7.9 in Chapter 7 of the Act makes general provision for disclosure documents to be given in relation to financial products, including by the responsible entity of any kind of managed investment scheme in relation to the scheme. These disclosure documents are generally required to describe the significant characteristics, features, risks and benefits of a financial product, and its costs.</p>
Brazil	<p>Both the current rules and the proposed ones stipulate that a set of information must be provided by the real estate fund administrator to the public periodically or eventually.</p> <p>The prospectus must contain:</p> <p>Investment policy, including, but not limited to: what assets may be bought by the fund, geographic location of property that can be acquired, types of property or rights that can be acquired, whether it is intended to gain from capital gains or rent income, maximum percentage of assets that can be invested in only one property, the main characteristics of mortgage backed securities if allowed by the by-law, criteria for selection of other securities allowed by the by-law, any other information relevant to the investor</p> <p>Properties description: specification of which assets the funds already owns and which ones it merely plans to invest in; detailed information on the conditions related to any property that accounts for more than 10% of the net assets value of the fund; studies of financial, economic, technical and commercial viability of the properties; budget and schedule of constructions, if this is the case; fund's administrator's opinion on the sufficiency or the insurances contracted for the properties.</p> <p>Operating data: qualification and main activity of tenants or debtors for any property expected to generate 10% or more of the fund's gross income; percentage of occupation, for income property, or of default, for mortgage backed securities, for each of the five years previous to the registry of the real estate fund; description of taxes applicable on the properties and on the operations of the fund; identification and qualification of the agents responsible for due-diligence and assessment of value of properties</p>

	<p>Information that must be provided periodically to the investors: Monthly: net asset value of the fund and of its quotas, and yields for the period; value of the investments of the fund, including description of assets and rights that integrate its capital; Information on constructions' developments and on investments already undergone, Biannually: administrator's report, financial statements, auditor's report</p> <p>Information that must be provided periodically to the investors: call for quota-holders' assemblies and related documents; prospectus, advertisements and announcements of distribution of quotas; up to eight days after a general quota-holders assembly, its minutes; material event announcements</p> <p>Also, the fund's administrator must keep in its website an updated version of the by-law of the fund at all times</p>
France	<p>The prospectus must contain a description of the costs and the risks related to the investment in such funds, including a prominent risk warning pertaining to the circumstances within the real estate markets which can cause difficulties in meeting the redemption requests.</p> <p>The prospectus must fully disclose the applicable redemption procedures (in particular, the cut-off time and date for centralising subscription and redemption orders for units and shares, the date for determining the net asset value, the latest date at which the net asset value will be calculated and published).</p>
Germany	<p>Generally speaking open-ended real estate funds have to fulfil the same disclosure requirements as other open-ended investment funds while some extra details concerning the real estate property directly held by the investment management company on behalf of the fund or indirectly through shares held in qualifying real estate companies are to be disclosed.</p>
Hong Kong	<p>Manager of a REIT has an obligation to inform holders, as soon as reasonably practicable of any information or transaction concerning the REIT which: is necessary to enable holders to appraise the position of the REIT; or is necessary to avoid a false market in the units of the REIT; or might be reasonably expected to materially affect market activity in the REIT or affect the price of the units of the REIT; or requires holders' approval.</p> <p>A circular shall also be issued to holders in respect of (i) transactions that require, or in the reasonable opinion of the trustee or the REIT manager require, holders' approval; and (ii) material information in relation to the REIT. There are also ongoing disclosure and reporting requirements such as issue of annual and semi-annual reports.</p>
Ireland	<p>The prospectus must contain a description of the risks involved in this type of investment fund and, in the case of an open-end fund, include a prominent risk warning, which will make reference to circumstances in real estate markets which can cause difficulties in meeting redemptions.</p> <p>Real estate funds are generally established as closed end funds or as investment funds with limited liquidity. A real estate fund which proposes to offer redemption rights must fully disclose the proposed redemption procedures.</p>
Italy	<p>In addition to the disclosure obligations that must be fulfilled by all investment funds, real estate funds must disclose the following information: the valuation reports from third independent advisers concerning real estate assets and shares of real estate firms which are either bought from or sold to the funds, or delivered to the funds as subscription payment, by the shareholders or other group members of the management companies; information regarding the investors which deliver real estate assets and equity of real estate firms as payment for the subscription of funds shares, and regarding the contractual terms of such contributions; information concerning the debt raised by the funds to carry out early shares redemption; information about the group membership of the financial intermediary appointed of checking the consistency of the real estate assets and shares of real estate firms brought to the funds for subscription settlement with the funds investment strategies; the decisions taken at the funds shareholders meetings.</p>
Japan	<p>Investment trusts and investment corporations are required to disclose the address, related information on location and each property. In cases of rented properties, operating ratios and aggregate rent revenues by each property must be disclosed.</p> <p>In the case of a listed real estate fund, the exchange requires timely disclosure to the asset</p>

	<p>management company of the fund. Also, the Investment Trusts Association Japan, the SRO, provides guidelines on disclosures including the methods of valuation, the format of disclosure, and etc.</p> <p>Special purpose companies and special purpose trusts are required to disclose the outline of assets and asset management as well as resolution of the companies/trusts in advance in the securitization plan.</p> <p>Real estate syndications are required to disclose the addresses of properties pertaining to the transaction, specific information on location, and appropriate prices and valuation methods for each property. In the case of rented property, operating ratio and aggregate rent revenue must be disclosed.</p> <p>There are no specific regulations for other real estate funds including partnership-type funds.</p>
Jersey	Recognized Fund, state Valuer's name, qualifications, regulatory status and material terms of agreement
Luxembourg	<p>- The issue prospectus must give a description of the investment risks inherent to the UCI's investment policy.</p> <p>In addition, the prospectus must provide details of the type of commissions, expenses and charges to be borne by the UCI and the way in which they are calculated and charged.</p> <p>- Periodical reporting requirements do not differ from the general rules applicable to UCIs in Luxembourg.</p>
Mexico	No specific secondary regulation has been issued.
Netherlands	<p>As for other CIS, the prospectus should contain all the information a potential investor would like to know to base the investment decision on. That includes themes like risks, costs, diversification, mortgages, the nature of the property, the valuation method and frequency, the redemption possibilities etc.</p> <p>In the annual report the management these same themes are showed in retrospect.</p>
Ontario	The one real estate CIS is required to file confidential appraised values for its real estate investments. It is also required to show a summary of its real estate investments by region of location.
Portugal	<p>The management company shall draw up and keep an up-to-date prospectus for each investment fund, the contents of which, permit the investor to make informed decisions regarding the proposed investment. The prospectus should include a clarification that it only includes essential information on each investment fund, and that interested parties may consult more detailed information, including the management rules and the regulations and accounts of the investment fund, at the premises of the management company or of the custodian and in all places and through all means by which it is planned to market the investment units of the investment fund.</p> <p>In the (semi-) annual reports the management companies shall make public a detailed breakdown of the composition of portfolio by each investment fund they run. They must also publish notice of the distribution of the results of the investment funds.</p>
Quebec	The one real estate CIS is required to file confidential appraised values for its real estate investments. It is also required to show a summary of its real estate investments by region of location.
Spain	<p>Public Quarterly reports to investors, must be elaborated by the management company and delivered to investors, as any other CIS and should contain Financial statements, Portfolio statement, NAV distribution, Management report, Relevant issues etc.</p> <p>Investors must be informed of the total amount of liabilities in the annual and quarterly report . The asset management company or the real estate company must inform in the prospectus and economic reports of the internal procedures adopted to avoid conflict of interests and about the trades made.</p> <p>Also a new regulation is foreseen that will establish new information requirements for the valuation reports made by the real estate valuer.</p>
Switzerland	<p>The inventory of real estate funds must be broken down as a minimum into:</p> <p>a. residential buildings; b. commercially used properties; c. mixed-use properties; d. condominiums; e. building land, including properties for demolition, and buildings under construction; f. buildings in leasehold; g. building land encumbered with leasehold; h. units in other real estate funds and real estate companies; i. mortgages and other loans secured by</p>

	<p>mortgage.</p> <p>The following information on each property must be included: a. address; b. purchase price; c. estimated market value; d. gross income generated.</p>
UK	<p>NURS: Where the scheme operates limited redemptions this must be disclosed. For any scheme that invests in moveable and immovable property an estimate of any expenses likely to be incurred by the scheme in respect of moveable and immovable property in which the scheme has an interest must also be provided.</p> <p>PAIFs: Schemes that will be PAIFs must make certain notifications to the taxation authorities. The manager must take reasonable steps to ensure that dividends are not paid to, or for the benefit of, any corporate investor who has a greater than 10% interest in the vehicle. The FSA proposes that PAIF managers undertake periodic reviews of the register and take reasonable steps to keep investors informed of the 10% corporate ownership rule.</p> <p>It is also proposed within HMT regulations that PAIFs include a 'genuine diversity of ownership' condition which must be disclosed within the instrument of incorporation and prospectus in issue for the time being (and including any supplements to the prospectus).</p> <p>REITs: For investment entities that have more than 20% of their assets invested in property a property valuation report will need to be included in their annual report and accounts.</p>
US SEC	<p>Publicly-offered real estate funds are generally required to register their securities with the SEC on a Form S-11.</p> <p>The Form S-11 is a form specifically tailored for companies in the real estate business and requires disclosures about material risks, management's discussion and analysis of financial conditions and the results of operations, and descriptions of the fund's real estate investments.</p> <p>In addition, like other publicly-offered operating companies, publicly-offered real estate funds would be required to make regular periodic disclosures, including quarterly and annual financial reports with audited financial information.</p>

(e) Requirements in relation to the management of the real estate fund

Member/ Jurisdiction	
Australia	<p>There are no specific requirements in relation to the management of a real estate fund.</p> <p>Chapter 5C of the Act makes provision for the governance of any kind of managed investment scheme. These provisions require the responsible entity to be solely responsible for all aspects of the operation of the scheme – see Part 5C.2.</p>
Brazil	<p>The Federal Law governing the real estate funds in Brazil stipulates that they must be managed by institutions authorized by CVM (Brazilian Securities Commission). These institutions have to be: an investment bank or a bank authorised to act in the mortgage industry, a brokerage firm, or a firm authorised to act in the capital market offering securities.</p> <p>In the proposed rules for the industry, it is established that if the real estate fund's by-law allows it to invest in securities, the administrator of the fund must be an entity authorised by CVM to act as asset manager or the fund will have to contract one such entity. The administrator company will also have to indicate a statutory director to be personally responsible for each real estate fund. Also, the proposed rule lists services that must be provided by the administrator, directly or by contracting others: maintenance of a technical department capable of property valuation; treasury, control, and processing of securities; control of issuance and redemption of quotas; custody of financial assets; independent auditing; management of assets owned by the fund.</p>
France	<p>Investors in an OEREF are relying on the asset management company's skill and expertise in selecting underlying property investments and financial instruments in order to achieve the fund's</p>

	<p>objective.</p> <p>For a management company to be authorized under French law, the AMF must be satisfied that it (including its managers) has specific experience in the area of investment in real estate. Other organisational rules and rules of conduct (such as conflicts of interest rules- please see answer to question 14) which are applicable to the management of all types of collective investment schemes will also apply.</p>
Germany	<p>Open-ended real estate investment funds may only be set up and managed by regulated management companies (Kapitalanlagegesellschaften) that require a special permit to be granted by the Regulator (Bundesanstalt fuer Finanzdienstleistungsaufsicht - BaFin). While processing the application for a permit of a company asking for the status of management company, BaFin checks good reputation and qualifications of the directors of the company applying as well as the soundness of the organisational structure of the company with respect to the intended management of open-ended real estate investment funds.</p>
Hong Kong	<p>Every REIT has to appoint a REIT manager licensed under Part V of the Securities and Futures Ordinance (“SFO”) and approved by the SFC to manage the REIT.</p> <p>The REIT manager shall possess sufficient experience and sufficient human, organisational and technical resources for the proper performance of its duties. It shall also maintain satisfactory internal controls and written compliance procedures which address all applicable regulatory requirements.</p> <p>The REIT manager shall demonstrate that it has sufficient financial resources at its disposal to enable it to conduct its business effectively and meet its liabilities.</p>
Ireland	<p>In principle unit-holders in a real estate fund are relying on a manager’s/investment manager’s skill and expertise in selecting underlying property investments in order to achieve the fund’s objective. The Financial Regulator must be satisfied that the management company, general partner and/or, where applicable, investment advisory company, have specific experience in the area of investment in real estate.</p>
Italy	<p>The business conduct rules concerning management of investment funds set diligence, fairness and transparency requirements regarding the operations run by the management companies. In particular, these are obliged to search all the appropriate information on their funds’ eligible assets, and hire all the professional skills and tools that are needed, in order to be able to implement strategies which strictly correspond to the funds’ investment objectives and target risk profiles.</p> <p>In terms of the management of closed-end funds, as real estate funds are, these general principles translate into the need to lay down adequate due diligence procedures for a thorough assessment of the investment/liquidation opportunities both from the perspective of risk and as regards compatibility with the strategies adopted by the management company. As for the last purpose, management companies are specifically required to articulate their investment strategies into business plans, whose utility is meant to go further than the usual budgeting and control functionalities. These documents should in fact work as the main tools to reconcile current operations and long term objectives of the funds, providing also room for the dialogue between valuation methods and hypotheses and the remarks/measurements offered by the risk management services of the company.</p>
Japan	<p>Asset management companies that manage investment trusts, investment corporations or partnership-type real estate fund are required to register with FSA Japan as financial instruments firms (which conduct investment management business). In addition, the regulations on the conduct of financial instruments businesses are imposed on firms.</p> <p>As for real estate syndication business, sources of distribution are limited to revenue or profit generated by real estate transactions.</p>
Jersey	-
Luxembourg	<p>With regard to the professional qualification, the directors of the management bodies and, where applicable, the investment advisors, must establish a specific experience in real estate assets.</p>
Mexico	<p>No specific secondary regulation has been issued.</p>
Netherlands	<p>The management of all CIS (including those investing in real estate) has to pass the ‘fit and proper’-test of the regulator. Although not defined in regulation, ‘Fit’ to manage a real estate fund mean in practice that a manager should have a specific experience in managing real estate objects or the investments in them.</p>

Ontario	NA
Portugal	The management of real estate funds is carried out by a real estate fund management company, hereinafter referred to as management company, having its central management and control in Portugal. The management of real estate funds may also be exercised by a securities investment fund management company, subject to the rules for management companies and for the real estate funds which they manage. Management companies shall adopt the form of a public company limited by shares, and the respective equity capital shall be represented by registered shares. According to the new framework that is being launched for the real estate investment companies, the same rules and the same duties apply to the company in relation to the management of the real estate investment vehicle.
Quebec	NA
Spain	The majority of members of the Board must have knowledge and experience in financial and real estate markets (at least two years).
Switzerland	The persons responsible for the management (board of directors) and the business operations (executive board) must be suitably qualified for the intended activity on the basis of their education, experience and career history.
UK	NURS and PAIFs: The authorised fund manager must obtain the consent of the depositary for the acquisition or disposal of immovable property. REITs: Those responsible for managing the investments must have adequate experience
US SEC	Disclosure about the management team must be made for all publicly-offered real estate funds, including the identification of principal executives and officers and disclosures about the compensation of certain executives.

(f) Requirements in relation to any minimum level of distributions to be made by the real estate fund

Member/ Jurisdiction	
Australia	This is not stipulated in the Corporations Act administered by ASIC. However, there are consequences for non-distribution of income under taxation law.
Brazil	The current rules determine that a real estate fund must raise enough resources to carry on with all the investments listed in its prospectus. The funds raised must be invested in fixed income bonds or investment funds for up to 180 days. After this period, if not enough capital was raised, the fund must return all that was invested to the quota-holders along with the income generated. The proposed rule is more flexible to this matter, and allows that a minimum investment is stipulated in the by-laws even though the fund intends to raise a higher value.
France	Contractual OEREFs have to distribute at least 85% of their net income and 85% of their profits from sale. Corporate OEREFs have to distribute at least 85% of their net income and 50% of their profits from sale.
Germany	Other than the regulatory practice according to which a management company has to clearly state in the fund rules whether a fund is a profit retaining or a profit distributing fund and concerning the latter according to which a profit distributing fund may postpone the distribution of profits to future business years as long as retained profits in total do not exceed 15 % of the net asset value of the fund, there is no legal requirements with respect to distributions defined in the German Investment Act.
Hong Kong	A REIT shall distribute to unitholders as dividends each year an amount not less than 90% of its audited annual net income after tax.
Ireland	None
Italy	-
Japan	In order to receive a tax exemption for fund-level income in the tax system, investment trusts, investment corporations, special purpose companies and special purpose trusts are required to distribute dividends over 90 percent of the distributable profit to investors. As for real estate syndication business, sources of distribution are limited to revenue or profit

	generated by real estate transactions.
Jersey	-
Luxembourg	There are no such requirements.
Mexico	-
Netherlands	-
Ontario	NA
Portugal	No requirements are made made by the law. Nevertheless, the funds' bylaws may impose a minimum level of distribution.
Quebec	There is no requirement in that regard.
Spain	The real estate funds currently registered with the CNMV do not make distribution of benefits, they accumulate them. There is no specific regulation about a minimum level of distribution to be made by this kind of funds.
Switzerland	The management company and the SICAV ensure that real estate fund units are regularly traded through a bank or a securities dealer on a stock exchange or over the counter (art. 67 CISA).
UK	<p>NURS and PAIFs: An authorised fund must have a distribution account to which the income property is transferred at the end of the relevant accounting period. The distribution must be made by way of a dividend or an interest payment within four months of the end of the relevant accounting period.</p> <p>REITs: A minimum of 90% of the REIT's net taxable profits (after interest and capital allowances) from the ring-fenced letting business must be distributed to investors</p> <p>The REIT is required to withhold basic rate tax on the distribution of profits paid to investors. It must not retain more than 15% of its net profits, before gains and losses, on disposals</p>
US SEC	A REIT must distribute at least 90% of its taxable income to shareholders in order to qualify as a pass-through vehicle under the U.S. tax code. If it meets this threshold, a REIT is permitted to deduct dividends distributed to shareholders from its corporate taxable income. Therefore, most REITs remit all of their taxable income to their shareholders and owe no corporate tax.

(g) Any requirements on majority ownership in real estate assets or real estate assets under development

Member/ Jurisdiction	
Australia	This is not stipulated in the Corporations Act administered by ASIC.
Brazil	There's no such requirement. However, if a fund will have a non-controlling participation in a real estate venture, the inherent risks must be mentioned in the prospectus.
France	<p>Under French law, OEREFs have to ensure they have the majority of voting rights (more than 50%) when investing in interests in non-listed property partnerships or other forms of non listed property companies.</p> <p>OEREFs may own less than a "majority ownership and control" in interests in non-listed property partnerships or other forms of non listed property companies. However, investments in such properties should in aggregate not exceed 10% of the properties asset value of the OEREFs.</p>
Germany	<p>Open-ended real estate investment funds in Germany have to invest at least 51 % of the net asset value in directly held real estate property. Up to 49 % of the net asset value of a real estate investment fund can inter alia be invested indirectly in real estate property by means of shares held in real estate companies. However, real estate property indirectly held through shares not granting a majority of voting rights and capital to alter the statutes of the relevant real estate company may not exceed 30 % of the net asset value of the fund.</p> <p>Real estate property with buildings already under construction as well as real estate property consisting of vacant lots intended for prompt construction may each not exceed 20 % of the net asset value of the fund, thus 40 % in total.</p>
Hong Kong	Under the REIT Code, the REIT manager has to ensure that the REIT has majority (more than 50%) ownership and control in each property at all time. This will enable the REIT manager to

	exercise control over the management and strategic development of the properties. In order to provide a certain degree of flexibility to cater for practical situations, a REIT may own less than a “majority ownership and control” in a property. However, investments in such properties should in aggregate not exceed 10% of the net asset value of the REIT.
Ireland	There are no requirements in relation to majority ownership and requirements in relation to assets under development are mentioned in the context of the response to question 3 (b) above.
Italy	
Japan	Special purpose companies and special purpose trusts prohibit the acquisition of unfinished buildings, except so-called development-type schemes.
Jersey	No real property should be acquired by the OCIF if it is subject to any mortgage, charge or other security interest unless it is a mortgage:- a) where the total outstanding sums do not exceed 50% of the unmortgaged value of the property; b) which may be discharged on demand or within 28 days by repayment of all outstanding sums; c) is not secured either immediately or contingently in any other property.
Luxembourg	There are no legal requirements on majority ownership in real estate assets or real estate assets under development. Due to the fact that in practice real estate funds seldom possess direct ownership in property consisting of land and/or buildings, the regulatory practice is that the offering documents of real estate funds mention if the fund is controlling each real estate property through a holding company. These holding companies are in principle fully controlled.
Mexico	-
Netherlands	There are no legal requirements on majority ownership in real estate assets or real estate assets under development.
Ontario	NA
Portugal	For open ended real estate investment funds, the value of the properties and other equivalent assets, defined as such by CMVM in a Regulation, must not represent less than 75% of the total assets of the investment fund. The development of building projects must not, as a whole, represent more than 25% the total assets of the investment fund.
Quebec	NA
Spain	Real estate assets must be 100% property of the fund.
Switzerland	See above 3.a.
UK	NURS and PAIFs: Not more than 50% in value of the scheme property is to consist of immovables which are unoccupied and non-income producing or in the course of substantial development, redevelopment or refurbishment. REITs: Properties which are unoccupied, non-income producing, or which are in the course of substantial refurbishment, must not exceed 25% of the fund's portfolio value. No owner-occupied properties are allowed and one property may contribute a maximum of 40% of the total fund value. Properties under development are acceptable provided they are held for income and not sold within three years of completion.
US SEC	No.

4. Are listed closed-end real estate funds regulated in substantially the same way as other listed companies in your jurisdiction, such as rules in relation to takeovers, market misconduct, disclosure of interests, preemptive rights, disclosure and repurchases?

Member/ Jurisdiction	
Australia	
Brazil	Yes, in relation to market misconduct and disclosure, but not in relation to takeovers, disclosure of interests, and repurchases.

France	Not applicable: French law does not today provide for the listing of Real Estate Funds.
Germany	Closed-ended real estate investment funds are not permitted under the German Investment Act. Companies organised as REITs (REIT-Aktiengesellschaften) according to the German REIT Act are generally regulated like other listed companies while restrictions apply to their ownership structure with respect to taxation matters concerning dividend payments to their shareholders, i.e. double taxation treaties.
Hong Kong	REIT Code is a principle-based code which gives the SFC flexibility in applying the regulations to the REITs. The SFC in general seeks to regulate REITs with reference to requirements in the Listing Rules as they are in substance like listed companies, unless the REIT Code has specific or other requirements. Takeovers: The Takeovers Code does not currently apply to REITs. Disclosure of interests: The disclosure of interests regime applicable to listed companies under the SFO does not apply to REITs at present. It is however the SFC's policy that provisions substantially equivalent to those applicable to listed companies should be adopted in trust deeds of REITs. Pre-emptive rights: Unless otherwise permitted by the REIT Code, all issue of units by the REIT shall be offered to the existing holders pro rata to their existing holdings. Under the Code, if new units are not offered to holders on a pro rata basis, holders' approval by way of ordinary resolution at a general meeting is required, unless the aggregate number of new units issued during the financial year does not increase the total number of units outstanding at the end of the previous financial year by more than 20% (or such lower amounts as may from time to time be specified by the SFC). Disclosure: REITs are subject to similar disclosure requirements as applicable to listed companies, such as timely disclosure of price-sensitive information and financial reporting requirements. Repurchases: As a REIT is structured as a closed-ended fund, unitholders have no right to demand for the repurchase or redemption of their units. REIT managers are not permitted to repurchase or redeem any units of their REITs unless permitted to do so by the relevant codes or guidelines issued by the SFC from time to time.
Ireland	Listed closed-end real estate funds are subject to the Irish legislation which implements each of the Market Abuse Directive, Prospectus Directive and Transparency Directive. Where the closed-end fund is a corporate entity, legislation implementing the Takeover Directive is also applicable. Unlike other commercial companies, listed closed-end real estate funds are also subject to regulation by the Financial Regulator.
Italy	
Japan	Yes
Jersey	Yes
Luxembourg	Yes, listed closed-end real estate funds are regulated in substantially the same way as other listed companies.
Mexico	No specific secondary regulation has been issued.
Netherlands	For listed real estate funds substantially the same rules apply as to other listed companies, such as rules in relation to takeovers, market misconduct, disclosure of interests, pre-emptive rights, disclosure and repurchases.
Ontario	Although there are no closed-end real estate funds at the moment, they would be regulated in substantially the same way as other listed investment funds (subject to the same prospectus and continuous disclosure rules).
Portugal	No special rules are provided by law to listed close-end real estate funds. They are subject to the same rules as any other issuer of listed securities, namely to the Portuguese Securities Code.
Quebec	Yes, they are subject to the provision of the Quebec Securities Act and regulations as for any other listed companies.
Spain	Actually there are no listed closed-end real estate funds, if there were any, general regulation should apply.
Switzerland	At the moment only open-ended CIS (14 contractual investment funds, see above 2.) are listed on the Swiss stock exchange. Regarding the general regulation of closed-ended real estate funds in the form of LLPs see above 3.
UK	Yes
US SEC	Yes.

Valuation

5. Is an independent valuation of the real estate assets required? If so: at what frequency? What requirements are applied to the valuer / valuation process?

Member/ Jurisdiction	
Australia	<p>There is no direct requirement for the valuation of the assets of a managed investment scheme, including a real estate fund, to be independent. However, section 601FC of the Act imposes duties on the responsible entity for any kind of scheme and these include to act honestly and to act in the best interests of members of the scheme. Also, it is a condition on all Australian Financial Services Licences, including those licences authorising a responsible entity to operate a managed investment scheme that the licensee have in place adequate arrangements to manage conflicts of interest. ASIC has generally indicated that provisions in the compliance plan for a scheme that invests in real estate should contemplate independent property valuation.</p> <p>The duties imposed on the responsible entity for a scheme include a general requirement to ensure that the scheme property is valued at regular intervals appropriate to nature of the property. ASIC has generally indicated that provisions in the compliance plan for a scheme that invests in real estate should contemplate valuation at least every three years.</p>
Brazil	<p>Although properties are accounted by its acquisition cost, at the end of each semester, the fund's management report must give, among other information, the market value of the assets and rights owned by the fund, including its average increase or decrease in value. The criteria used for the valuation must also be mentioned in the report. According to the current rules, these criteria must be in accordance with the ones used in the real estate market.</p> <p>It is also admissible, according to the current rules, that an investor pays for quotas of the fund with property or rights related to property. In this case the valuation of the assets must be made by three experts, or by a specialized independent company. The valuation report must contain details of the criteria used and must be approved by the quota-holders in a general assembly. To this situation, the proposed rule is a bit more detailed and determines that the administrator of the real estate fund must act with best efforts to ensure that the information of the valuation report is accurate. Also, this kind of purchase of quotas will be limited to a period that must be stipulated by the fund's by-law.</p>
France	<p>Each property asset must be valued four times a year by two qualified independent valuation agents who are appointed by the management company. Once a year, each property is subject to an "expertise immobilière" (i.e., a valuation after a complete visit of the property).</p> <p>One of the two valuation agents determines the value of a property and the other critically checks such a value. For the purpose of the annual "expertise immobilière", the valuation agents have to rotate each year.</p> <p>Valuation agents have to immediately report to the depositary, the management company, the auditor and the regulator any difficulties encountered in executing the valuation.</p> <p>These valuation agents must issue a valuation report (which explains their valuation methodology) and send it to the OEREF's asset management company, depositary and auditors. The valuation report must be made available to the OEREF's subscribers.</p> <p>The valuation agents are appointed subject to the approval of the AMF. Their mandate is limited to 4 years. For them to be approved, the valuation experts have to have the necessary qualifications and be independent.</p> <p>In any case, the management company remains responsible for the valuation of the assets.</p>
Germany	<p>For the purpose of valuation of the real estate assets of the open-ended real estate investment fund already held, the law provides for committees of independent valuers. At least once a year all real estate property of the fund is to be valued by a committee. A committee consists of three valuers. An investment management company may set up more than one committee.</p> <p>Members have to be independent, trustworthy and accordingly qualified individuals with special experience in the field of valuation of real estate property.</p> <p>A valuer may generally serve no longer than 5 years as a member on a committee of a certain investment management company, unless he confirms that in the previous four years prior to the last year of the term his proceeds from the membership on the committee did not exceed 30 % of</p>

	<p>the total proceeds in this period of time; in this latter case the term may be extended on a yearly basis.</p> <p>The investment management company has to notify the regulator (BaFin) about the nomination of a valuer; in the notification it has to be outlined that the valuer fulfils the above mentioned criteria. As a last resort the Regulator (BaFin) may insist that another valuer is appointed if a nominated valuer does not or no longer fulfil the criteria.</p> <p>Prior to the acquisition of real estate assets (purchase transaction) the relevant real estate has to be valued by an independent valuer not a member of an above mentioned committee set up by the investment management company.</p>
Hong Kong	<p>Independent valuation of REIT's assets is required once a year, and in any event for the purposes of issuance of new units. Independent valuation is also required to be conducted on real estate to be acquired or sold by the REIT.</p> <p>The principal valuer shall be independent of the REIT, the trustee, the REIT manager and each of the significant holders of the REIT. The principal valuer shall have key personnel who are members of the Hong Kong Institute of Surveyors and who are qualified to perform property valuations.</p> <p>The valuation methodology adopted by the principal valuer shall follow the "Valuation Standards on Properties" published from time to time by the Hong Kong Institute of Surveyors or the International Valuation Standards issued from time to time by the International Valuation Standards Committee.</p> <p>Where overseas properties are involved, the principal valuer may appoint an overseas valuer to assist in preparing the valuation. However, the principal valuer shall remain fully responsible for the work carried out by the overseas valuer and shall certify the valuation report of such overseas valuer.</p>
Ireland	<p>The management company of the real estate fund must appoint a qualified independent valuer or valuer(s). The basis for the appointment must be set out in the prospectus and details of the appointment(s) must be provided in the periodic reports.</p> <p>The fund's assets must be valued at market value at least twice yearly, with provision being made for more frequent valuation to be undertaken if market conditions warrant it. The net asset value ('NAV') must be made available after a valuation of the portfolio has taken place.</p>
Italy	<p>As for all closed-end funds, computation of net assets value (NAV) must occur every time that subscription of new shares and/or early redemptions are consented according to the fund's own rules (bylaws). NAV must anyway be calculated at least once per semester, in occasion of the release of funds annual financial statements and half-yearly accounts.</p> <p>The Italian regulatory framework concerning investment funds impose a mandatory intervention of independent advisers (defined in the answer to question1) every time that valuation of real estate assets and of non listed shares of real estate companied must be processed into the NAV calculation.</p> <p>Estimates and reports produced by independent advisers can be disregarded by the fund or by the fund management company (for contractual investment funds – typical case in Italy), which is responsible for the computation of fund's total and net asset value, but in this case the manager must provide a justification for this decision on grounds of the overarching principles concerning real estate valuation.</p> <p>The Italian regulatory framework requires that all available information is processed in the valuation of real estate assets, regardless of whether this is carried out by the independent advisers or by the fund managers. This process should ultimately result in the computation of estimates which appropriately reflect the current value of the assets, having also regard to their current use and possible different future destination. While the valuation process should in theory conform to principles of accuracy, robustness and consistency with the economic fundamental and environmental characteristics of the property. In practice, such flexible approach allows a high level of discretion with respect to the choice of the appropriate valuation method and hypotheses, which eventually results in idiosyncratic applications and volatile valuation estimates. Some of the major issues that according to the supervisory experience are thought to curb the reliability of real</p>

	estate funds valuation processes are commented in more details in the last section of this document (see the answer to question n.16).
Japan	<p>Investment trusts, investment corporations, special purpose companies and special purpose trusts are obliged to examine the valuation of their assets by basing their examinations on valuations by real estate appraisers.</p> <p>Although there are no special regulations for the valuation method of the real estate syndication business, real estate syndication are required to explain the transaction price of the assets, whether valuation has been done by real estate appraisers or not, to investors before the conclusion of contract with investors.</p> <p>There are no specific regulations for partnership-type real estate funds.</p>
Jersey	<p>Recognized Fund, at least once a year through independent valuer</p> <p>The OCIF should acquire an interest in any real property only:-</p> <p>a) if the real property is the subject of a report by a professionally qualified property valuer who is independent of the manager and the trustee/custodian of the OCIF and who is also not connected with the property or with any transaction relating to the property within the previous two months, or with any person who holds an interest in the property;</p> <p>b) if, in addition to stating the value of the property, the valuation report (see (a) above) includes the valuer's professional opinion that if acquired for the OCIF, the interest in the property would be capable of being disposed of reasonably expeditiously at the valuation;</p> <p>c) the acquisition is completed within a reasonable period of time, this being (other than for exceptional reason) usually within 6 months of the date of the valuation report;</p> <p>The assets of a OCIF which comprise real property should be fully revalued at least once each year in conjunction with the preparation of audited report and accounts and should be periodically reviewed for the purposes of calculating the NAV in order to determine the Redemption and Selling prices on each dealing day. Both the revaluation and the reviews should be performed by a qualified property valuer.</p>
Luxembourg	<p>The board of directors must appoint one or more independent property valuers with a specific experience in the field of property valuation. The CSSF checks on the basis of a case by case analysis the acceptability of the independent property experts within the framework of agreeing the investment fund. Therefore the file introduced to the CSSF in the context of agreeing a real estate investment fund has to give all the necessary information permitting the CSSF to judge the acceptability of the independent property valuer.</p> <p>At the end of the financial year, management must instruct the property valuer(s) to examine the valuation of all properties owned by the UCI or by its affiliated real estate companies.</p>
Mexico	No specific secondary regulation has been issued.
Netherlands	<p>The fund is required to state in its prospectus how estimations of the value of the assets are made and with what interval the estimations are based on real valuations by an independent valuer.</p> <p>Most of the time an auditor will only approve the annual report if an independent valuer valued the market price of the assets at the report date.</p>
Ontario	Independent valuation of the real estate assets is generally required annually.
Portugal	<p>The assets held by investment funds must be evaluated every two years by at least two independent expert evaluators, and also under the following conditions:</p> <p>a) Prior to their acquisition or disposal; b) Prior to the development of construction projects, in order to determine the value of the property being built; c) Whenever any circumstances arise that could lead to significant alterations to the value of the property.</p> <p>Expert evaluators of real estate funds are subject to individual registration with CMVM. Expert evaluators must use at least two of the following methods of valuation: a) The comparative method; b) The yield method; c) The cost method.</p>
Quebec	Yes, the fund shall appoint one or more independent professional appraisers to appraise the interest of the fund in the real property investments in its portfolio.
Spain	<p>Yes. At least once a year, and in any case, at the moment when the real estate assets are acquired, contributed to the fund or sold (in this last case, if there is no valuation in the six months prior to the sale date).</p> <p>The process for valuation includes a “valuation calendar”, in order to avoid big fluctuations of the NAV. An official, registered and supervised (by the Bank of Spain) real estate “valuer”, must do the valuation report.</p> <p>Other requirements apply to the valuer and to the content of the valuer’s report.</p>

Switzerland	<p>Yes. The management company and the SICAV appoint at least two natural persons or one legal entity as valuation experts. The valuation experts should have the necessary qualifications, be independent and be recognised by the supervisory authority.</p> <p>Property which the management company or the SICAV wish to purchase or sell must be valued by at least one valuation expert. The valuation expert has to inspect the property for this valuation. The market value of the properties belonging to the real estate fund must be verified by the valuation experts at the end of each financial year.</p>
UK	<p>NURS: The scheme must appoint a valuer, who has to be independent from the scheme manager and have experience in valuing immovables of the relevant kind in the relevant area. The appointment must be approved by the scheme's trustee or depositary.</p> <p>The fund manager must ensure that the standing independent valuer values all the immovables held within the scheme property, on the basis of a full valuation with physical inspection (including, where the immovable is or includes a building, internal inspection), at least once a year. The last full valuation must then be reviewed on a monthly basis.</p> <p>Any valuation of the standing independent valuer must be on the basis of an 'Open Market Value' as defined in Practice Statement 3 in the Royal Institute of Chartered Surveyors' Appraisal and Valuation Manual.</p> <p>PAIFs: For PAIFs it is proposed that for each accounting period: assets must be valued in accordance with generally accepted accounting practice, where generally accepted accounting practice offers a choice of valuation between cost basis and fair value, fair value must be used, and no account shall be taken of liabilities secured against or otherwise relating to assets (whether generally or specifically).</p> <p>REITs: Property investment companies must provide a summary valuation of its property portfolio (the valuation must have been carried out by a third party). The valuation must be in accordance with international accounting standards.</p>
US SEC	<p>Publicly-offered real estate funds are required to file annual audited financial statements. The values imposed upon the real estate assets are those that are required by the U.S. Generally Accepted Accounting Principles (GAAP). In general, the real estate assets held by real estate funds are valued at historical cost less accumulated depreciation.</p> <p>Publicly-offered real estate funds may also elect to provide fair values in the footnotes to the financial statements. Some real estate funds will base those values on appraisals conducted by independent third parties. The real estate assets are not required to be fair valued, however, and an independent appraiser is not required pursuant to federal law. In general, real estate funds that provide these fair values value their assets quarterly.</p>

6. Are estimations of the value between these independent valuations allowed? And to what extent must purchase and sale transactions be carried out at the valuation price?

Member/ Jurisdiction	
Australia	<p>There are no regulations in relation to estimations of value between formal valuations. There is no direct regulation of prices for purchase and sale transactions by the responsible entity for a scheme that invests in real estate.</p> <p>However, the Act imposes duties on the responsible entity for any kind of scheme and these include to act honestly and to act in the best interests of members of the scheme. Also, it is a condition on all Australian Financial Services Licences, including those licences authorising a responsible entity to operate a managed investment scheme that the licensee have in place adequate arrangements to manage conflicts of interest.</p> <p>ASIC expects managers to determine value on a reasonable basis. Where funds are open and unlisted, such valuations are used to determine unit price.</p>
Brazil	<p>An estimation between different valuations would be allowed as long as the criteria used for the estimation are listed in detail in the valuation report and approved by the quota-holders in general</p>

	<p>assembly, according to what was described above.</p> <p>Whenever a valuation is mandatory it must be used to determine the price of purchases and sales, and also in the case of acquisition of quotas paying with assets described in the previous item.</p>
France	<p>Yes. The OEREF's net asset value is calculated on the basis of the property determined by the experts. The management company is however allowed to deviate from such a value if there is a justification.</p> <p>In the case of property purchase and sale transactions, the OEREF is not bound by the property value determined by the independent valuation agents. In any event, the OEREF's property assets will be valued (at market value) under the responsibility of the management company.</p>
Germany	<p>The valuations of committee remain binding until replaced by another valuation at a further point in time no later than one year after the previous valuation. The investment management company may not substitute these fair market values assessed by the committee by estimations, but may ask the committee – if appropriate – to reevaluate a real estate property before 12 months have expired. Real estate property may only be purchased if prior to the transaction an independent valuer not a member of a valuation committee has assessed its fair market value and the transaction price does not or only marginally exceed the assessed value.</p> <p>On the other hand the sale of a real estate property is only permitted if the sale price does not fall short of the fair market value last assessed by the valuation committee. If in the interest of the investors of the fund, two or more real estate properties previously held by the fund may be subject of one single sale transaction and the sale price in total may be as low as 95 % of the sum of fair market values of the relevant real estate properties (portfolio discount).</p>
Hong Kong	<p>The REIT Code does not prohibit estimates of value being made between the independent valuations.</p> <p>The transaction value or the sale/ purchase price of a property is a commercial decision. The REIT Code does not prescribe how the sale/purchase price of a property to be sold/acquired is to be determined, i.e. the sale/purchase price of a property may be at a discount or premium to its valuation as commercially determined among the parties of the transaction. As such, so long as the basis upon which the sale/purchase price of the property is determined and the value/valuation report of the property to be sold/acquired as assessed by the principal valuer of the REIT are clearly disclosed in the circular to unitholders, it would be the commercial decision of the REIT manager, acting in the best interests of the REIT unitholders as a whole.</p>
Ireland	<p>Before a real estate asset is acquired for the fund it must be valued. The valuation report must confirm that if the asset was acquired it could be disposed of at that valuation within a reasonable period. The real estate asset must be acquired within six months from the date of the report and at a price which is within 5% of the valuation price. Derogations may be granted to professional investor and qualifying investor funds to the extent that properties may be purchased within 10% of the valuation price.</p>
Italy	<p>The intervention of independent valuation is also invoked by the regulation in occasion of the sale of real estate assets, when fund managers are required to confront the judgement of external independent advisers in the process of making sure that the perspective deals will be executed at fair prices.</p> <p>Although equivalent provisions do not exist for the purchase of real estate assets from the funds, except for the case of transactions that raise potential conflicts of interest (as better explained in the response to question n.12), the market has autonomously fostered practices that lead to similar results, as managers tend to consult independent advisers – and disclose their valuations to the public - also before the acquisition of properties and not only before disinvestments.</p> <p>However, it must be remarked that, on the contrary of the case of subscription through delivery of real property and/or equity of real estate firms (see the answer to question n.1), where the independent valuation concerning the goods brought to the funds serves as cap (upper bound) for the value of the shares returned to investors, the valuations acquired (compulsorily or voluntarily) from independent advisers in occasion of purchases or sales of real assets are not binding, as fund managers can always carry out the transactions in contrast to the advice received if they can provide reasonable motivations.</p>
Japan	<p>Investment trusts, investment corporations, special purpose companies and special purpose trusts</p>

	<p>are obliged to examine the valuation of their assets by basing their examinations on valuation by real estate appraisers, and it is required to disclose the results to investors. There are no specific regulations for estimations of value among several independent valuations.</p> <p>Although there are no specific regulations for the valuation method of the real estate syndication business, real estate syndication are required to explain the transaction price of the assets, whether valuation has been done by real estate appraisers or not, to investors before the conclusion of contract with investors.</p> <p>There are no specific regulations for partnership-type real estate fund on this point.</p>
Jersey	Independence, timing
Luxembourg	<p>Properties may not be acquired or sold unless they have been valued by the property valuer(s), although a new valuation is unnecessary if the sale of the property takes place within six months after the last valuation thereof.</p> <p>Acquisition prices may not be noticeably higher, nor may sales prices be noticeably lower, than the relevant valuation except in exceptional circumstances which are duly justified. In such case, the managers must justify their decision in the next financial report.</p>
Mexico	No specific secondary regulation has been issued.
Netherlands	Estimations of the value are allowed. The estimation method must be disclosed in the prospectus.
Ontario	Every purchase and sale is generally required to be verified by an appraisal.
Portugal	The valuation of the real estate assets is set up by the management company between the assets purchase price and the arithmetic average of both experts' valuation. It means that if the valuation of one of the two experts is 100, the other expert's valuation is 120 and the purchase price was 70, the management company may (and must) set up the property valuation between 70 and 110 (110 being the 100/120 arithmetic average).
Quebec	No, all properties within the real estate investment fund's portfolio should be appraised once a year.
Spain	<p>The value of the real estate asset assigned in the "valuer's report, is the value used by the management company to calculate the NAV of the real estate CIS, at which subscriptions and redemptions are liquidated.</p> <p>The management company may, with the consent of the "valuer", apply an oscillation up to 3% on the valuation of the report. This value may not exceed the market value included in that report. Also, if the valuation report includes any conditionings, and till deficiencies are resolved, the estimated value of the asset should be the lesser of that value or the last valuation without conditionings.</p>
Switzerland	If the management company and the SICAV do not adopt the valuation experts' valuation, they have to explain this to the auditors.
UK	<p>NURS and PAIFs: As mentioned above, estimations are allowed – the independent valuer must review the last full valuation on a monthly basis. An immovable must not be bought for more than 105% of the valuation. However, for PAIFs and NURS assets must be valued in accordance with generally accepted accounting standards at each accounting period (i.e. at least once a year).</p> <p>REITs: No, legislation states that valuations must be carried out in accordance with International Accounting Standards.</p>
US SEC	Independent valuations are not required. If, however, a real estate fund provides them, estimations between any independent valuations are permitted. Any independent valuation or estimation may influence but does not govern the price at which a purchase or sale of property by the fund is carried out.

7. What are the common problems with valuations?

Member/ Jurisdiction	
Australia	<p>The most common problem with valuations is that they may not be done often enough. The law requires that valuations should be done at periods that are appropriate to the asset that is being valued, which could potentially be for example, three years, yearly, or six monthly. Best practice would mean that it is important that the valuation be done as close as possible to striking a unit price for the asset, which again, should be done as close as possible to the transaction time for the investment.</p> <p>There is also the potential issue of valuations that are not truly independent, affecting the price at which investors transact with the asset.</p> <p>As a separate matter, the quality of the valuation is also an issue – the true value of the asset can only be determined when sold – valuations on property assets are dependent on what is happening in the economy, as well as local issues arising where the property is located.</p>
Brazil	Problems with valuation are not common. That is because the valuation is merely used as a referential for the decision making and deliberations of the investors in general assembly.
France	As from today, the OEREFs legal regime has not known any valuation issues.
Germany	While generally speaking assessment of fair market values by independent valuers has proven to be effective in avoiding conflicts of interest on the side of the investment management company, one may argue that more frequent valuations could further promote the trust put into the valuation process on which the daily calculation of unit prices is based. However, it has to be taken into account that valuations come at considerable costs for the fund. Furthermore regulatory practice asks for the distribution of revaluation dates of the individual real estate properties of a fund evenly over the course of the business year avoiding “leaps” of the unit prices which would occur if all properties were reassessed on the very same day.
Hong Kong	The SFC is not aware of any common problems with valuation so far.
Ireland	Valuation issues have not arisen as such. However, the Irish investment fund industry consider that the valuation rules, which require a physical examination, are too onerous even if this particular requirement is moved to an annual basis. Proposals have been made to permit ‘desk top’ valuations and rely on the expertise of the valuer, who will act in accordance with industry practice.
Italy	See the answer to question n. 16 in the last section
Japan	There are no problems with valuations.
Jersey	
Luxembourg	Valuations do not give a guarantee that a given price will be paid .
Mexico	No specific secondary regulation has been issued.
Netherlands	
Ontario	Real estate is inherently difficult to value, as it is illiquid and valuation may be subjective.
Portugal	<p>The most relevant problems with valuation arise because of the too wide gap that may occur between the purchase price and the experts’ average valuation. The possibility given by the law to the manco to set up the asset’s valuation near to the purchase price or near to the experts valuation price, according to the mancos interest on the NAV value, entails a significant risk of damage to the investors in case of redemption/subscription of the units, allowing the units to be valued on the basis of a unreal value of the fund’s assets, as also a serious lack of transparency and effectiveness to the market.</p> <p>Being aware of this risks, the CMVM is about to work on a Regulation’s amendment in order to replace the existing valuation criteria by another criteria which may guarantee a higher level of matching of the mancos valuation and the market price of the real estate assets of the fund.</p>
Quebec	For example, for a regular CIS redeemable each week, there could be a problem with the accuracy of the value of the properties within the portfolio since it can vary significantly within a year if some events occurred between two appraisals.
Spain	A difference may exist, between the calculated value of the real estate asset and the effective transactions price, due to the special characteristics of these assets.
Switzerland	Generally speaking the system with the independent valuation experts has proved its worth. Only one management company was confronted with severe valuation problems lately, while changing the method of valuation for its real estate funds. During the last years most management

	companies introduced the so-called “Discounted Cash Flow Method” (DCF Method) which is the most recognised dynamic valuation method in Switzerland. For some real estate funds the former applied “Gross rental Method” showed higher valuations than the newly introduced DCF Method.
UK	Common problems with valuations are that the real value of the property is largely due to market sentiment and what another investor would pay for it. Therefore this can fluctuate depending on market conditions. The aim of requiring a valuer independent of the manager and trustee is to avoid the inherent conflicts of interest that can arise.
US SEC	Real estate is difficult to value.

Liquidity of real estate fund shares / units

8. Are real estate funds permitted to be established as open-ended funds?

Member/ Jurisdiction	
Australia	An 'open-ended fund' is understood to be one: where there are no limits set in the documents that constitute the fund as to the number of investors, the number of properties in which the fund can invest or the duration of investments; and in relation to which an investor is able to redeem their interest at any time where the redemption price is determined by dividing the total asset value of property and cash by the number of interests. There are no requirements in the Act in relation to the structure of managed investment schemes that are established to invest in real estate. A scheme is free to be established as 'open-ended' or as some other kind of fund.
Brazil	No.
France	Yes.
Germany	The German Investment Act only provides for open-ended real estate investment funds. Closed-ended real estate investment funds are not permitted.
Hong Kong	REITs in Hong Kong have to be structured as closed-ended funds and listed and traded on the SEHK.
Ireland	Open-ended real estate funds will be considered if they can provide sufficient liquidity but this is generally not the case.
Italy	No, real estate funds domiciled in Italy can only be closed-end funds.
Japan	Yes, however, all corporate type of investments that exist in Japan at present is closed-end type. This is because if real estate investment companies would be established as the open-ended type, they would have to sell the portfolio of real estates or keep the ration of liquid asset too high in order to meet the investor's redemption request.
Jersey	Yes
Luxembourg	Yes, real estate funds are permitted to be established as open-ended funds.
Mexico	No specific secondary regulation has been issued.
Netherlands	Real estate funds can be open ended or closed ended.
Ontario	No – As noted earlier, there is only one surviving “legacy” open end real estate CIS in Canada.
Portugal	Yes.
Quebec	No, they are not permitted pursuant to <i>Regulation 81-102 on Mutual Funds</i> .
Spain	Yes. See Q & A 1
Switzerland	The answer is yes.
UK	Yes, as explained above, as NURS
US SEC	Yes.

9. Are there special rules to guarantee a certain minimum of liquidity?

Member/ Jurisdiction	
Australia	There are no special rules to guarantee any level of liquidity of a managed investment scheme, including a scheme that invests in real estate. However, the Act expressly regulates the redemption of interest in a managed investment scheme of any kind, including a scheme that invests in real estate, where a scheme ceases to be 'liquid scheme' ie if less than 80% of its assets are liquid. Briefly, in this case, a responsible entity is prohibited from accepting redemption requests and may only redeem interests under a withdrawal

	offer made to all members of the scheme and where the available assets are applied proportionately to fund the redemptions requested under the offer.
Brazil	No.
France	OEREFs have to determine and publish their net asset value (“NAV”) at least once every six months and at most twice a month. The NAV needs to be calculated and published on the 30 th day of June and the 31 st day of December of each year. The full prospectus shall specify the periodicity pursuant to which the NAV is determined and published, as well as the related schedule. Once the NAV has been published, subscriptions and redemptions of units and shares in OEREFs may only be carried out on the basis of this value, under the conditions set out in the prospectus. The prospectus of the OEREFs shall indicate the maximum period between the date for centralising subscription and redemption orders and the date of delivery or payment of the units or shares by the depositary. This time lag shall not exceed six months.
Germany	The investment management company has to assure that at least 5 % of the net asset value of the real estate investment fund are held in assets that are available on a daily basis for payments to be made on behalf of the fund.
Hong Kong	Not applicable. All REITs are listed and traded on the SEHK.
Ireland	Investment funds may only be considered open-ended where they permit unit holders to request redemption of their units on at least a monthly basis for retail funds and on at least a quarterly basis for professional and qualifying investor funds.
Italy	No, there are no special rules to guarantee a certain minimum liquidity. See the answer to question n.11
Japan	No, there is no specific regulation.
Jersey	Maximum levels of investment in immovables see 3a above
Luxembourg	Yes, according to regulatory practice, the open real estate investment fund has to provide the CSSF with information how this issue is dealt with in practice.
Mexico	No specific secondary regulation has been issued.
Netherlands	Open ended funds must ensure that they can buy back their shares when asked to by investors. They should show the investors that they are able to do so.
Ontario	No
Portugal	There are no specific rules to guarantee a certain minimum of liquidity, but the legal framework is globally conceived to allow a permanent minimum level of liquidity.
Quebec	No
Spain	Yes, investors must be allowed to subscribe or redeem their units at least once a year, although CNMV may authorise, as an exception, a wider period for market reasons or to guarantee stability of the fund, within the maximum of two years. It is a common practice though, that real estate funds allow subscriptions every month and redemptions between two and four times a year. The management company must calculate the NAV of the funds at least monthly. NAV applicable for subscriptions and redemptions will be the first calculated after the investor request. (at an unknown NAV). All real estate CIS must have a minimum of 10% of its total assets invested in cash, bank deposits or treasury short-term fixed income products, only in those moths where redemptions exist. (“Liquidity coefficient”)
Switzerland	The investors may request the redemption of their units at the end of a financial year observing a notice period of twelve months. To equalize this situation the management company and the SICAV must ensure that real estate fund units are regularly traded through a bank or a securities dealer on a stock exchange or over the counter.
UK	NURS and PAIFs: Open-ended authorised fund managers must be willing to deal in units at the request of the investor unless limited redemption provisions apply. No specific limits apply to liquidity. The manager must have adequate systems and controls. REITs: For REITs a minimum number of shares must be kept in public hands (25%), and they must be listed on a recognised stock exchange.
US SEC	The real estate funds that are traded on national securities exchanges are often subject to the minimum trading requirements imposed by those exchanges. For example, in order to maintain a listing on the New York Stock Exchange, a real estate fund generally must have an average

	<p>monthly trading volume of 100,000 shares.</p> <p>For other real estate funds, there are no special rules to guarantee a certain minimum liquidity in the shares that are imposed by federal law. Instead, real estate funds may provide their own means of liquidity.</p>
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10. Are lock in periods allowed? Please describe the common practice.

Member/ Jurisdiction	
Australia	<p>A lock in period is understood to be a set period of time during which investors cannot redeem their interests in a fund. There are no regulations in relation to lock in periods for the redemption of interests in a managed investment scheme, including a scheme that invests in real estate.</p> <p>However, there is a general requirement for the constitution of any kind of scheme, including a scheme that invests in real estate, that if there are any rights to withdraw from the scheme, these rights and the procedures for dealing with withdrawal requests must be fair to all members.</p> <p>It is common for there to be lock-in periods for unlisted direct property funds. An unlisted direct real property fund may have lock-in periods for up to, for example, ten, fifteen or twenty years, with rental income during the period, and the sale of the property at the end of the period.</p>
Brazil	<p>There's no prohibition, however, that practice is not common in the industry. Usually, the single situation where lock up periods are used is when the fund wants to avoid the need of registering for public offering of quotas. The investors, then, agree to a lock up period to permit that the fund gets full operational before the public offering (ie, the assets were all acquired and are generating income).</p>
France	No.
Germany	<p>Most recent amendments to the German Investment Act enable investment management companies to limit the general right of the investor to have units redeemed on a daily basis. Thus, in the fund rules it may be laid down that under certain circumstances redemptions can be as infrequent as once a month and combined with advance notice periods of up to 12 months to be regarded by investors wishing to be reimbursed for their units.</p> <p>Prior to that some investment management companies have tried to encourage investors to stay invested in a fund or give notice prior to a request for redemption of units by means of providing for higher but degressive retainable amounts to be taken off when paying out on units surrendered by investors and lowering or completely doing away with surcharges on the unit price asked when issuing units to the investor.</p>
Hong Kong	The REIT Code does not prescribe any lock in periods.
Ireland	<p>Real estate funds which establish as limited liquidity funds may provide for lock in periods. However it is up to each fund to determine its policy in this regard. Sufficient disclosure must be made in the prospectus.</p>
Italy	<p>The regulatory framework requires compulsory lock in periods only for the case of transactions that raise issues due to potential conflicts of interest for fund management companies; these circumstances are explained below in the response to question n 12.</p> <p>As regards other lock-in agreements that may voluntarily emerge in the bargaining among shareholders or between the funds and their shareholders, these generally regard professional investors (especially those that have acquired their shares versus the delivery of real assets) and occur in particular when the funds are issued with the perspective of being listed on a stock exchange.</p>
Japan	No, there is no specific regulation.
Jersey	Prospectus statements for sophisticated investor funds, no redemptions until fixed date, extended notice periods
Luxembourg	In principle lock in periods are allowed. The prospectus of the real estate fund has to give full information in this respect. The prospectus has to point out the exact duration of the period during which investors have to keep their assets in the fund.
Mexico	No specific secondary regulation has been issued.

Netherlands	Lock in periods are allowed if stated in the prospectus, where also the precise criteria have to be disclosed.
Ontario	NA
Portugal	The fund's bylaws may establish any lock up periods. No legal restrictions apply
Quebec	NA
Spain	Only for in kind subscriptions the management company may establish a lock in period in the rules and prospectus of the CIS.
Switzerland	See above 9.
UK	<p>NURS rules do not allow for lock in periods per se, they do, however, provide for limited redemptions.</p> <p>The instrument constituting the scheme and the prospectus of a non-UCITS retail scheme that invests substantially in immovables may provide for limited redemption arrangements appropriate to its aims and objectives.</p> <p>In these circumstances the scheme must provide for redemptions at least once every six months.</p> <p>REITs are required to be listed on a recognised stock exchange, so trading in the company's shares would generally be available.</p>
US SEC	Yes. This type of provision is typical among real estate funds that are not exchange-traded. The registration statement for any publicly-offered real estate fund, however, would require disclosure of any lock-in restrictions. Typically, real estate funds that provide redemption rights will not do so until the shareholder holds the security for at least one year. After the one-year period, a charge similar to a contingent deferred sales load may be imposed on any redemption for a period of time, declining in amount after every year that the shareholder holds the shares.

11. What are the circumstances under which redemptions may be postponed?

Member/ Jurisdiction	
Australia	<p>There are no regulations in relation to postponing the redemption of interests in a managed investment scheme, including a scheme that invests in real estate.</p> <p>However, there is a general requirement that the constitution of any kind of scheme, including a scheme that invests in real estate, that if there are any rights to withdraw from the scheme these rights and the procedures form making a dealing with withdrawal requests must be fair to all members.</p> <p>The Act also imposes duties on the responsible entity for any kind of scheme that apply to any aspect of carrying out its duties or exercising its powers. These include to act honestly and to act in the best interests of members of the scheme.</p> <p>If redemptions may be postponed under the constitution of a managed investment scheme it will be required to be disclosed to potential investors.</p>
Brazil	Redemptions of quotas are not possible as only closed ended funds are allowed. There may be amortisation of quotas, if this possibility is allowed by the fund's by-law.
France	<p>Redemptions may be postponed if a unitholder holds more than 20% of the units and requests redemption of 2% of all his units.</p> <p>More generally, redemption by the fund of its units or shares, and the issue of new units, may be provisionally suspended by the management company, pursuant to the fund's regulations, in exceptional circumstances and if the unitholders' interests require it.</p> <p>OEREFs must indicate in their prospectus the circumstances under which redemptions may temporarily be suspended. Only temporary suspensions may be provided for. The prospectus must also provide that the AMF will be notified immediately of any suspension.</p>
Germany	Provided the fund rules contain a clause for postponement of redemptions of units the investment management company may indeed postpone, i.e. temporarily halt redemptions when extraordinary circumstances seem to make this measure appropriate with respect to the interest of the affected

	investors. While this measure is taken, the issuance of new units is generally not permitted; halt and resumption of redemptions have to be indicated to the relevant Regulators (BaFin and those of other host states in which distribution of the units also takes place) and is subject to a public notice by the investment management company addressed to the investors of the relevant fund. At any point in time BaFin can demand the postponement of redemptions when this is deemed a necessary measure to protect the interest of the investors.
Hong Kong	As REITs in Hong Kong are structured as closed-ended funds, unitholders have no right to request for a redemption of their units.
Ireland	All investment funds must list in their prospectus the circumstances under which redemptions may temporarily be suspended and this will apply also to open-ended real estate funds. Only temporary suspensions may be provided for. The prospectus must also provide that the Financial Regulator will be notified immediately of any suspension.
Italy	In general terms funds/fund management companies can always be authorized to suspend for a short period redemptions if this is in the interests of investors, provided that particular and unexpected events are striking the markets so much to make current prices, or estimates of current prices, unreliable. However, given the mandatory closed-end form that real estate funds must adopt, which consents ongoing redemption of existing shares only at some predetermined dates and within the amount raised through new subscriptions (with the addition of the debt margin as explained at point n.3), liquidity problems are not likely to hit the funds over their life. On the contrary, these issues may become relevant at maturity, when, in fact, the regulation allow management companies to be authorized to extend the life of real estate funds up to a maximum of three extra years to accommodate for averse liquidity conditions which may affect the sale of the assets.
Japan	Amendments of the trust deeds of investment trusts or articles of incorporation of investment corporations are required. Amendments of the securitization plan of special purpose companies or special purpose trusts is required. As for real estate syndication businesses, it is required that real estate syndication business provisions have requirements and procedures concerning the postponing of the redemptions.
Jersey	Recognized Fund, suspension of redemptions for 28 days (extension available) insufficient liquid/near liquid assets to meet demand or likely demand for redemptions OCIF Funds exceptional circumstances, having regard to the interests of holders
Luxembourg	Should the investors have the right to present their securities for redemption, the UCI may provide for certain restrictions hereto. In addition, where it is justified, notably with regard to a specific investment policy, the real estate fund has the obligation to restrict such right of redemption. These restrictions must be clearly and precisely described in the prospectus. The real estate fund may inter alia provide for delays of payment in case it does not hold sufficient liquid assets to immediately settle redemption requests.
Mexico	No specific secondary regulation has been issued.
Netherlands	The principle is that the prospectus discloses how the fund management will act in certain situations. If an unforeseen scenario takes place, the fund should inform the regulator and propose a solution that takes in account the interests of all investors.
Ontario	Same as those for all conventional CIS (generally, if trading of more than 50% of the underlying portfolio is suspended). They may also apply for regulatory approval to suspend redemptions in extraordinary circumstances.
Portugal	Whenever requests for repurchase of investment units exceed requests for subscription on a single day by 5% of the total assets of the investment fund, or, in a period of no more than five consecutive days, by 10% of the same set of assets, the management company is permitted to suspend repurchase operations. The management company shall suspend repurchase operations or issues whenever the interests of unit-holders make such action advisable.
Quebec	Same as those for all conventional CIS (generally, if trading of more than 50% of the underlying portfolio is suspended). They may also apply for regulatory approval to suspend redemptions in extraordinary circumstances.
Spain	Only temporally and as an exception, when redemptions exceed 10% of the NAV of the fund or when Minister of Finance establish so, in order to ensure the management of the fund. In this case

	prorate redemptions should be executed for the 10% of the NAV. CNMV must authorise this exceptions.
Switzerland	The fund regulations may provide for the temporary and exceptional deferral of the repayment if: <ul style="list-style-type: none"> a. a market that is the basis for the valuation of a significant part of the fund's assets is closed or the trading in such market is limited or suspended; b. there is a political, economical, monetary or other emergency; c. transactions for the collective investment scheme become inexecutable due to restrictions for currency transfers or transfers of assets; d. for numerous units termination notice is given and therefore the interests of the other investors can be affected significantly.
UK	NURS: If the fund has a daily valuation point, redemptions may be deferred to the next valuation point where requested redemptions exceed 10%, or some other reasonable proportion disclosed in the prospectus of the authorised fund's value. PAIFs: In addition it is proposed for PAIFs that dealing in units can be suspended in circumstances where a corporate body obtains beneficial ownership of 10% or more of the net asset value of the fund. REITs: REITs are required to be listed on a recognised stock exchange.
US SEC	In certain instances, redemption rights may be postponed as described in the prospectus. These redemption rights may be limited by factors such as a determination by the board of directors, in its sole discretion: that such redemption would impair the capital or operations of the fund; that an emergency makes such redemption not reasonably practical; that any governmental or regulatory agency with jurisdiction over the fund demands so for the protection of shareholders; that such redemption would be unlawful; that such redemption would cause the fund to fail to qualify as a REIT under the Internal Revenue Code; and/or that a suspension of redemption would be in the best interest of the fund.

12. How does the calculation of the relevant issuance and redemption price of the real estate fund shares / units take place?

Member/ Jurisdiction	
Australia	The calculation of the issue and redemption price take place under the particular provisions of the constitution of each managed investment scheme. There is no requirement to use a particular method of calculation. There is a general requirement that the constitution make "adequate provision" for this which ASIC administers to require that the prices be "independently verifiable". This requires that the prices cannot be influenced by any party that has an interest in the scheme, including the responsible entity or parties related to it. However, ASIC has also permitted a range of other particular pricing methods for use in particular circumstances, and has permitted the responsible entity to exercise influence over pricing through the exercise of limited discretions consistent with commercial practices.
Brazil	When the first issuance of quotas occurs the administrator of the fund is responsible for the calculation. For following issuances the price must be approved by quota-holders in general assembly.
France	The NAV per unit or share which is calculated by the management company is based on the market value of the investments less all the fund's liabilities, divided by the number of units in circulation. It shall take into account the valuation of the real estate by the independent experts (please see answer to question 5). Shares and units in OEREFs shall be issued at all times at the request of the holders on the basis of the first net asset value determined after the cut off time for centralising subscription requests, plus: 1° The variable portion of the subscription fees kept by the OEREFs (in order to cover the fees

	<p>and taxes related to the buying and selling of the property assets); 2° Where applicable, the subscription fees.</p> <p>OEREFs' shares and units shall be redeemed at all times at the request of the holders on the basis of the first net asset value determined after the cut off time for centralising redemption requests, minus any applicable redemption fees.</p>
Germany	<p>Unit pricing is generally obligatory on every stock exchange trading day in Germany; pricing is voluntary on public holidays, Christmas Eve and New Year's Eve. Pricing is to be carried out either by the custodian (Depotbank – depositary bank) with assistance of the management company or by the management company in its own responsibility.</p> <p>By legal definition the fund unit price is the net asset value of the fund divided by the total number of units issued and in circulation; the net asset value of the fund is to be calculated on the basis of the relevant valuations for the assets of the fund from which all debt is to be set off.</p>
Hong Kong	The REIT Code does not prescribe how the issue price of the units of a REIT should be determined. However, it requires that the trust deed of a REIT must specify the procedures that a REIT should follow when new units are issued and the method of determining the issue price.
Ireland	Normal rules applicable to all collective investment schemes apply and therefore issue and redemption prices are based on the underlying net asset value of the portfolio.
Italy	
Japan	In general, issuance and redemption price is based on the amount that divided the total net assets value by total number of shares/units at the beginning or the end of the fund. In addition, an issue price may be determined by book-building method when it is listed on an exchange.
Jersey	
Luxembourg	<p>The net asset value (NAV) per unit of each class shall be expressed in the relevant currency of denomination of such units and shall be determined as at any valuation day by dividing (i) the net assets of the fund attributable to each class of units, being the value of the portion of assets less the portion of liabilities attributable to such class, on any such valuation day, by (ii) the number of units in the relevant class then outstanding, in accordance with certain valuation rules.</p> <p>Real estate will be valued by the independent appraiser. In respect of real estate assets, the real estate fund may use the valuation established at the year end throughout the following year unless there is a change in the general economic situation or in the condition of the properties which requires new valuations to be carried out under the same conditions as the annual valuation. The securities of real estate companies which are listed on a stock exchange or dealt in on another regulated market will be valued on the basis of the last available publicised stock exchange or market value. The securities of real estate companies which are not listed on a stock exchange nor dealt in on another regulated market will be valued on the basis of the probable net realisation value estimated with prudence and in good faith. The net asset value on which the issue and redemption prices of the securities are based must be determined at least once a year, namely at the end of the financial year, as well as on each day on which shares or units are issued or redeemed</p>
Mexico	No specific secondary regulation has been issued.
Netherlands	The prospectus discloses how (and how often) the NAV is calculated and at what price (and when) issuance and redemption can take place.
Ontario	Real estate investments are valued at fair market value, and an independent appraisal would be the best indicator of the fair market value. The value is normally verified further by the income approach to value. The one Canadian real estate CIS currently calculates issue and redemption prices twice per month.
Portugal	The value of the unit is determined by dividing the net asset value of the fund by the number of units in circulation and is calculated and published with reference to the last day of each month and on all the days on which subscription and redemption transactions are permitted, in the latter case, in accordance with the terms of the management rules and regulations.
Quebec	In determining net asset value, the value of each real property may be determined by either of the following methods (or by any other method acceptable to the AMF Quebec): the value of a real property on any valuation date, if prior to the first appraisal, shall be the

	purchase price and thereafter the market value stated in the most recent appraisal report; or the value of a real property upon any valuation date, if prior to the first appraisal, shall be the purchase price and thereafter the market value stated in the most recent appraisal report and, monthly thereafter until annual or interim reappraisal is obtained, shall be the amount determined by computing the present value of the stabilized net operating income stream at a capitalization rate acceptable in the market place at the time of valuation.
Spain	NAV calculation of the CIS, takes into account the last value assigned by the valuer's report. Changes in the value assigned will be attributed in the month when valuation has taken place.
Switzerland	The general rule for the calculation of the net asset value (nav) is applicable: The net asset value per unit is based on the market value of the investments less all the fund's liabilities, divided by the number of units in circulation. Further the calculation of the nav must take into account taxes (real estate tax and, if applicable, real estate transfer taxes) incurred in connection with any liquidation of the real estate fund.
UK	NURS and PAIFs: The price of a unit of any class is calculated by reference to the net value of the scheme property after deducting any outstanding borrowings, whether immediately due to be repaid or not and in accordance with the provisions of both the instrument constituting the scheme and the prospectus. Any unit price must be expressed in a form that is accurate to at least four significant figures. REITs: The share price is dependent upon the supply and demand in the market.
US SEC	For publicly-offered real estate funds that are not exchange-traded, but instead offer periodic redemption rights, management often discloses that they will use the values calculated quarterly or annually by a third-party independent appraiser. Publicly-offered, exchange-traded real estate funds use these values often as an informal baseline for trades that occur on the open market.

13. If your jurisdiction provides for the authorisation of closed end real estate funds, are there any rules to provide investors with an exit mechanism?

Member/ Jurisdiction	
Australia	A 'closed-end fund' is understood to be one in relation to which the number of interests issued in the fund is limited, an investor is not able to redeem their interest but these interests can change hands by trading on financial markets. A fund manager of a closed fund can assist members to buy and sell interests, however an exemption is usually required. As noted above, there are no requirements in the Act in relation to the structure of managed investment schemes that are established to invest in real estate. A scheme is free to be established as 'closed-end' or as some other kind of fund.
Brazil	There are no such rules. The exit is achieved only by selling the quotas at the stock exchange or over-the-counter. In order to increase the liquidity of the quotas, there are intermediaries that act as market makers, and there are specific rules stipulated by CVM for the provision of that service. It is worth noting that in the prospectus of the public offerings of quotas of real estate funds, a warning to the investors regarding the low liquidity of the quotas is mandatory.
France	Not applicable.
Germany	As already stated above, German Investment Act does not provide for the establishment of closed-ended real estate investment funds. However, closed-ended structures investing in real estate property are permissible under German Law and do exist in Germany. These cannot be qualified as investment funds though, since they lack any kind of regulation with respect to diversification of assets ("principle of risk-spreading") and exit mechanisms for the investors. Closed-ended funds are in Germany historically mainly structured as limited Partnerships and can – amongst other assets – also invest in real estate property but seldom hold more than one real estate property. Shares in limited partnerships do not constitute transferable securities and are therefore not listed on stock exchanges. German REITs under the most recently enacted German REIT Act are considered regular listed stock companies that are merely governed by law for taxation purposes to acquire tax exempt status. No provisions are in place in order to warrant any kind of protective investment regime for

	the investors of German REITs that go beyond the regular capital markets legislation which all listed stock companies are subject to.
Hong Kong	Unitholders are able to dispose of their units in the REIT through a sale of such units in the secondary market of stock exchange. In the case of termination of the REIT, the proceeds of the realisation of the real estate of the REIT, after paying all outstanding liabilities and providing adequate provisions for liabilities, will be distributed to the unitholders proportionately to their respective interests in the REIT at the date of termination of the REIT.
Ireland	The real estate fund must have a finite closed-ended period, the duration of which must be provided for in the fund rules and prospectus. Accordingly, the disclosure must provide that on a specified future date the real estate fund will undertake one of the following actions: i) wind-up and apply for a revocation of authorisation; ii) redeem all outstanding units and apply for a revocation of authorisation; iii) convert into an open-ended investment fund, the relevant details of which must be disclosed in the prospectus, or iv) obtain unitholder approval to extend the closed-ended period for a further finite period.
Italy	As for all closed-end funds, in case of public offerings whose minimum subscription amount is lower than €25.000, real estate funds must file for listing by a stock exchange.
Japan	No, there is no specific regulation
Jersey	If closed ended fund is listed but generally time horizon or at discretion of manager
Luxembourg	The Luxembourg jurisdiction provides for the authorisation of closed end real estate funds. The regulations do not provide investors with any specific exit mechanism but in practice exit mechanisms often occur. The prospectus may provide the investors with different kinds of exit mechanisms. Investors will achieve liquidity through one of the following forms of exit among others: A listing on a stock exchange; The board of directors has the option to offer to all unitholders the possibility to ask for the redemption of their units at NAV; An orderly disposal of the portfolio (liquidation).
Mexico	No specific secondary regulation has been issued.
Netherlands	Closed ended real estate funds are allowed. If the prospectus does not introduce an exit possibility, then the investor has to wait until the pre-defined end period of the investment. Some closed end real estate funds are listed on the stock exchange, thus making possible an early exit (at a questionable price...)
Ontario	No
Portugal	Closed-ended investment funds may have a determinate or indeterminate duration. For closed-ended investment funds with a fixed duration, this must not exceed 10 years. However, the duration may be extended once or twice, for periods not greater than the initial duration, provided that authorisation is granted by CMVM and that the assembly of shareholders votes in favour of this, and the management rules and regulations permits the redemption of investment units by unit-holders who declare themselves, in writing, to be opposed to such an extension. Closed-ended investment funds with an indeterminate duration shall only be authorised if the management rules and regulations provides for the admission to trading on a regulated market of the fund's investment units.
Quebec	There are no rules or regulations providing investors with an exit mechanism. The investor should refer to the offering document.
Spain	No, there are no special rules.
Switzerland	There are no special rules containing an exit mechanism for closed-ended real estate funds.
UK	Closed-end funds as such are not authorized by the FSA.
US SEC	NA.

Conflicts of interest

14. Does the law in your jurisdiction provide for a code of conduct for management companies? Is there a corporate governance code or similar?

Member/ Jurisdiction	
Australia	<p>The Australian jurisdiction does not provide for a code in relation to the governance of managed investment schemes. The approach is rather to impose general obligations.</p> <p>The Act imposes duties on the responsible entity for any kind of scheme that apply to any aspect of carrying out its duties or exercising its powers. These include to act honestly and to act in the best interests of members of the scheme.</p> <p>It is a condition on all Australian Financial Services Licences, including those licences authorising a responsible entity to operate a managed investment scheme, that the licensee have in place adequate arrangements to manage conflicts of interest.</p>
Brazil	<p>CVM Instructions expressly determines a number of rules concerning obligations, responsibilities, and prohibitions applicable to funds' administrator.</p>
France	<p>Yes. The general rules under French law which are applicable to the management companies of collective investment schemes will likewise apply.</p> <p>It is noteworthy that French law provides for specific rules on conflicts of interest which are applicable to collective investment schemes, whether traditional ones or OEREFs. Pursuant to such rules, the management company is required to establish and maintain an effective conflict of interest policy which shall be set out in writing. This policy shall also be appropriate according to its size and organisation and to the nature, scale and complexity of its business.</p> <p>The detailed conditions for such conflicts of interests rules are provided in the AMF's General Regulation.</p>
Germany	<p>General rules of conduct for management companies as well as their duties with respect to their organisational structure are established. Inter alia management companies are legally obliged to a conduct of business in the exclusive interest of their investors and market integrity while conflicts of interest have to be reduced to a minimum and where unavoidable solved with due respect for the interest of their investors. The organisational structure of a management company has to be as such that the risk of potential conflicts of interest arising between management company and investors, between investors, between investors and funds or between funds is kept as low as possible.</p> <p>The representative association for the German investment management industry (BVI Bundesverband Deutscher Investment-Gesellschaften e.V.) has come up with a corporate governance code for its members transferring the general legal obligations in more detailed and specific guidelines.</p>
Hong Kong	<p>REIT managers have to be licensed by the SFC. As such, they have to observe the applicable codes of conduct applicable to licensed corporations issued by the SFC from time to time including the Fund Manager Code of Conduct.</p> <p>REIT managers are also required to observe the REIT Code. The REIT Code contains a number of safeguards to deal with possible conflicts of interest between the REIT manager (being a "connected person" of the REIT within the meaning of the REIT Code) and unitholders.</p> <p>The trustee of a REIT has the obligation to, among other things, take all reasonable care to ensure that all transactions carried out by or on behalf of a REIT are conducted at arms length and that connected party transactions are carried out in accordance with the relevant requirements under the REIT Code.</p> <p>Connected party transactions are subject to announcement, reporting and independent unitholders' approval unless they are exempted under the REIT Code or a waiver is granted.</p>

	The REIT manager is also required to include measures in its Compliance Manual to avoid and manage potential and actual conflict of interest relating to the REIT.
Ireland	There is no specific code of conduct.
Italy	
Japan	Yes, there are regulations on the conduct of financial instruments businesses as asset management company.
Jersey	Fund Services Businesses Codes of Practice
Luxembourg	No the Luxembourg jurisdiction does not provide for such a code of conduct. The general rules deriving from company law with respect to the responsibility of the board of directors apply.
Mexico	
Netherlands	There is no specific code of conduct, although the basic principle “to act in the best interest of the investors” helps the regulator. Funds should disclose structural situations with a possible conflict of interests in their prospectus and/or annual report. Recently the representative association of the Dutch fund industry (DUFAS) has launched a set of fund governance principles that give funds some more guidance on this.
Ontario	Every CIS manager is subject to a statutory fiduciary duty to the funds it manages. Management companies, that are not advisors, are considered market participants who are subject to regulatory standards, including compliance audits. There is a proposed rule to register all fund management companies. There is also a rule requiring each CIS to have an independent review committee to oversee conflict of interest issues relating to the conduct of the CIS management company.
Portugal	There is a Corporate Governance Code, which entails CMVM non binding recommendatory rules about the corporate governance of listed companies, that only applies to listed management companies. The Investment Management Companies Association has a Code of Conduct which applies to the associated management companies. Conflicts of interest are regulated by art. 25 of DL 60/2002, which states that management companies must act in the sole interest of unit-holders, when representing the management company itself or companies which it controls or is in a group relationship with. It’s also stated that whenever a management company manages more than one investment fund, it shall consider each one as a client, with a view to preventing conflicts of interests, and, if these are inevitable, they shall be resolved in accordance with principles of equity and non-discrimination. Moreover, the acquisition from and disposal of property to a large range of entities which are somehow related to the management company depend on authorisation by CMVM of the petition made by the management company.
Quebec	For all CIS, the Regulation respecting the Independent Review Committee applies (“IRC”). The role of the IRC is to review all situations of conflict of interest with the management companies. Depending on the situation, they have to approve or give a recommendation on the conflict of interest situation and report to unitholders and to the AMF-Quebec. <i>Article 109 of the Quebec Securities Act states that : An investment fund manager shall, in the interest of the fund and its beneficiaries or the fulfilment of its purpose, exercise prudence, diligence and skill, and discharge its functions with honesty and loyalty and in good faith</i>
Spain	All the asset management companies must have a Code of conduct. INVERCO (the Industry Association) has elaborated a model and the majority of asset management companies have adhered to it. There must be an independent committee made up either by members of the Board or by an internal department of the asset management company. This independent committee must check that those trades creating a conflict of interest comply with the internal procedure included in the code of conduct. Also in the CIS RD there are the following provisions in order to prevent conflicts of interest: The partners, unit holders or the fund are allowed to rent the assets or any other right derived of those asset of the fund, only if the situation do not generate a conflict of interest and transactions are done at market prices. Information must be provided to investors in these cases, in the rules of the fund and also at the annual report. The fund may acquire properties from other company belonging to the same group or to the

	management company group, if those properties are new constructions, and under certain requirements, and with the limit of 25% of the NAV of the fund. The real estate funds are not allowed to sell or rent its assets to related persons or companies belonging to the same group or its management company group.
Switzerland	The holders of an authorization and their delegates have to satisfy in particular the duty of loyalty, the duty of diligence and the duty of information. The supervisory authority may determine codes of conduct of representative industry associations as minimum standard. The supervisory authority determined the code of conduct of the Swiss Funds Association SFA as minimum standard in the year 2000. Due to the new legislation this code is currently under review.
UK	Yes. The rules set out expected standards.
US SEC	No.

15. Is the management company allowed to sell its own property to the fund?

Member/ Jurisdiction	
Australia	There are no regulations that deal directly with the sale of property of the responsible entity for a managed investment scheme into the scheme's assets. However, the Act imposes general requirements in relation to related party transactions and the giving of a financial benefit out of the assets of a managed investment scheme to the responsible entity of a scheme, or to related parties of the responsible entity. Generally, such benefits will only be possible after member approval, unless the benefit falls within specific exceptions. One such exception is that member approval is not required to give a financial benefit on terms where the parties are dealing at arm's length or where the terms are more favourable to the scheme than the related party.
Brazil	No, according to the CVM rules that is forbidden, because of its inherent conflict of interest.
France	Yes. However, in this case, conflict of interest rules applicable to collective investment will apply (please see answer to question 14).
Germany	Generally speaking the sale of property already belonging to the investment management company to a real estate investment fund is not permitted.
Hong Kong	A REIT manager may sell its own property to the fund provided that the requirements in the REIT Code in relation to connected party transactions are satisfied. Please refer to the answer to Q.14.
Ireland	In principal yes, but such related party transactions are subject to certain conditions: The transaction must be carried out as if effected on normal commercial terms negotiated at arms length; transactions must be in the best interest of unit holders. Transactions permitted are subject to: (i) certified valuation by a person approved by the trustee as independent and competent; or (ii) execution on best terms on organised investment exchanges under their rules; or (iii) where (i) and (ii) are not practical, execution on terms which the trustee is satisfied conform with the principle outlined in paragraph 1. Where such transactions are envisaged there must be full disclosure in the prospectus.
Italy	Yes, real estate funds are allowed to invest in assets purchased, or received in payment for new shares, by the management companies or by their group members and shareholders. Similarly, real estate funds are also allowed to sell their assets to the same entities. In any case, the aforementioned transactions can be executed only under the following conditions: each individual asset acquired or sold by the fund cannot be worth more than 10% of the fund's net asset value. The total of such deals must not exceed 40% of fund's net asset value as long as only management company's shareholders are concerned, and 60% of the net asset value including transactions with the management company's group members; if the transactions take place after the initial offering is concluded, these must not exceed, on the overall, 10% of fund's net asset value per year; the assets sold or purchased by the funds must be subject to valuation from independent advisers;

	<p>this requirements holds to a greater extent - as the estimates become binding – for the assets which are delivered to the funds as payment for new shares (check answer to question n.1);</p> <p>at least 30% of the shares acquired in return of the delivery real assets to the funds must be kept by the aforementioned investors for a minimum of 2 years (lock-in period);</p> <p>the financial intermediary in charge of checking the consistency of the fund’s investment strategy with the real estate assets received in payment of new shares must not be part of the same group of the company which originate the assets;</p> <p>the board of the management company must release an statement which clarifies about the interest of the existing (incumbent) shareholders in the transaction; the statement must be agreed upon by the management company auditors.</p> <p>In any case, no such operations are allowed if carried out with managers, directors or auditors of the fund management companies. Moreover, as all other types of funds, real estate funds cannot invest in the securities issued from their management companies.</p>
Japan	Regarding investment trusts and investment corporations based on the Investment Trusts Law, the asset management companies are not allowed to sell their own property to the fund.
Jersey	Arm’s length /best execution
Luxembourg	Yes, the management company is in principle allowed to sell its own property to the fund. Properties may not be acquired or sold unless they have been valued by the property valuer(s). Moreover, acquisition prices may not be noticeably higher, nor sales prices noticeably lower, that the relevant valuation except in exceptional circumstances which are duly justified. In such case, the managers must justify their decision in the next financial report.
Mexico	No specific secondary regulation has been issued.
Netherlands	Related party transactions are allowed, but must be fully disclosed along with evidence that ensures the acting in the best interest of the investors.
Ontario	Generally, related party transactions between a fund and its manager are prohibited.
Portugal	Yes, provided the CMVM gives previous authorisation for the acquisition and that doesn’t configure any conflict of interest.
Quebec	Generally, related party transactions between a fund and its manager are prohibited.
Spain	See Q & A 14.
Switzerland	<p>No. As a general rule the holders of an authorization and their delegates may acquire investments from the collective investment schemes for their own account only at market price and sell their investments from own portfolios only at market price (art. 31 CISO). Further art. 63 CISA stipulates for real estate funds only: The fund management company, custodian bank and their delegates, as well as closely connected natural and legal persons, may not acquire real estate assets from real estate funds or assign any such assets to them. A SICAV may not acquire any real estate assets from the company shareholders, their delegates or closely connected natural and legal persons, nor may it assign such assets to them.</p> <p>Due to the fact that for property there only exist market valuations but no strict market prices the mentioned prohibition is justified. There is no other way to deal with this inherent conflict of interest.</p>
UK	<p>NURS and PAIFs</p> <p>Yes, provided it meets best execution on exchange, it is independently valued or meets arm's length requirements.</p> <p>REITs</p> <p>Yes, but this does not count towards the minimum holding of three properties.</p>
US SEC	<p>Yes. Publicly-offered real estate funds must, however, describe any transaction since the beginning of the fiscal year that the real estate fund was, or is a participant in, that exceeds \$120,000 and in which a related person had or will have a direct or indirect material interest. Certain information about such transactions must be disclosed, including:</p> <p>the names of the related persons and the basis on which the person is related; the related persons interest in the transaction (including the related person’s position or relationship within an entity that is a party to the transaction); the approximate dollar value of the amount involved in the transaction; the approximate dollar value of the amount of the related person’s interest in the transaction; in the case of indebtedness - the largest aggregate amount of principal outstanding during the period for which disclosure is provided; the amount outstanding as of the latest</p>

	<p>practicable date; the amount of principal paid during the periods for which disclosure is provided, the amount of interest paid during the period for which disclosure is provided; and the rate or amount of the interest; any other material information.</p>
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	<p>In addition, any policies with respect to the review, approval and ratification of such related party transactions should be disclosed.</p>
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Independent Oversight Entity

16. Is there an independent entity involved to manage inter alia possible conflicts of interest between management company and investor?

Member/ Jurisdiction	
Australia	<p>There is no independent entity involved to manage conflicts of interest at the primary decision making or operational level of a scheme, although one may become involved as a result of complaints by members of the scheme.</p> <p>The responsible entity for a scheme is solely responsible for all aspects of the operation of the scheme. The Act expressly requires that the general duties of the responsible entity to the scheme's members and in relation to the scheme overrides any conflicting duty of an officer or employee of the responsible entity. The Australian financial services licence required to be held by the responsible entity for a scheme requires that it have an internal dispute resolution system to properly consider complaints by the members of the scheme against the responsible entity.</p> <p>The Australian financial services licence required to be held by the responsible entity for a scheme also requires that it be a member of an external dispute resolution body, to which members of the scheme can complain about the decisions made by the responsible entity.</p>
Brazil	No. The supervision is made by CVM that, according to Federal Law number 8.668, has administrative powers to check that conflicts of interest are mitigated and to punish those involved in transactions under these circumstances.
France	<p>Yes, usually the OEREF's supervisory board will be involved.</p> <p>Moreover, each OEREF must appoint a depositary which is responsible for overseeing the management of the OEREF in the same way as for traditional collective investment schemes.</p>
Germany	<p>The investment management company has to appoint an independent custodian (Depotbank – depositary bank) that acts as a safe-keeper for the assets of an investment fund. The custodian issues and redeems the units on behalf of the investment management company and is involved in the calculation of the unit prices on a daily basis, either directly or solely in the role of custodian (see above).</p> <p>Bank accounts and securities portfolios of the fund are generally kept by the custodian; transactions of amounts on accounts at other credit institutions are subject to the approval of the custodian. According to the German Investment Act the custodian exercises control over the conduct of the investment management company with respect to the investment fund; many transactions are subject to prior approval of the custodian.</p> <p>The custodian is also obliged to claim for possible damages on behalf of the investors directed at the investment management company based on misconduct or to initiate court procedures in relation to third party with reference to claims concerning the property of the investment fund.</p>
Hong Kong	Please refer to the answer to Q.14.
Ireland	Yes - real estate funds must appoint a trustee / custodian who is responsible for overseeing the management of the real estate fund in the same way as other collective investment schemes. There is no specific requirement in relation to conflicts of interest. The prospectus of each real estate fund should contain a description of the potential conflicts of interest which could arise between the management company, general partner and investment adviser and the fund, with details, where applicable, of how these are going to be resolved. All conflicts of interest should be resolved fairly.
Italy	<p>The regulation does not predict that any third independent entity should be involved in the management of conflicts of interests. On the contrary, the general rules of business conduct concerning investment funds require that the management companies adopt themselves specific procedures, whose major features are disclosed to investors, in order to prevent, identify and manage conflicts of interests.</p> <p>However, having regard to the practices that tend to prevail in the market, it must be noted that: management companies from medium to large size are generally inclined to hire independent managers (which fulfill the “independence” requirements referred to in the overview section) that</p>

	are assigned responsibility for monitoring potential conflicts of interest which may affect investments or other business operations. The presence of such officers within the companies' boards is envisaged by the code of business conduct issued from the industry association, in addition of being highly recommended by supervisory Authorities; funds bylaws often include provisions that require the specific and expressed consensus of the fund's shareholders assembly before the management company can execute transactions in a situation of potential conflict of interests.
Japan	No, there is no such entity.
Jersey	Independent Valuation process as above Independent roles of depositary for Recognized Funds and custodian/trustee for OCIF funds
Luxembourg	Yes, the offering documents of many funds provide for a unitholder advisory committee comprised of independent members and members of the promoter/initiator. Generally the offering document provides for the appointment and term of the independent members. In case the offering documents of the real estate fund provide for a unitholder advisory committee, this unitholder advisory committee is in principle required to approve the proposed decisions of the managers of the fund prior to such decisions being finally adopted by the management company or for resolutions tabled by independent members at meetings of the unitholder advisory committee. The offering documents provide for a series of proposals of the management company where the approval of the unitholder advisory committee is required, i.e. any decision to terminate the investment management agreement, other than automatic termination and any decision with respect to all related party transactions, including, without limitation, any distribution of distribution facilities of the fund in connection with the winding-up of the fund to the promoter/initiator or a promoter/initiator related party.
Mexico	No specific secondary regulation has been issued.
Netherlands	No. Although the recently introduced Fund Governance principles of the Dutch fund industry ask for some sort of independent oversight function. Most larger fund companies have already established this oversight function themselves.
Ontario	Every public CIS is required to have an independent review committee to oversee conflicts of interest.
Portugal	The CMVM has supervisory attributions over the management company, and may suspend its activity, prohibit any actions involving conflicts of interest or even remove its license to operate as a manco whenever the manco's action may be considered as a breach of fiduciary or legal duties.
Quebec	For all CIS, the Regulation respecting the Independent Review Committee applies ("IRC"). The role of the IRC is to review all situations of conflict of interest with the management companies. Depending on the situation, they have to approve or give a recommendation on the conflict of interest situation and report to unitholders and to the AMF-Quebec.
Spain	Yes. Real estate funds must have a depositary entity, which's functions are similar to regular CIS: vigilance and supervision of the management company and custody of the assets and cash of the fund. Particularly, and among others, in relation with: Supervision of acquisitions and sales of the assets of the fund; Supervision of the NAV calculation; Supervision of the compliance of the rules affecting the investments and financing of these funds. Also see Q & A 14.
Switzerland	No. According to the Swiss legislation the checks and balances are realized trough a "teamwork" of the management company or the SICAV, the custodian bank, the auditor and the supervisory authority (supervisory authority) and - in the case of real estate funds - the valuation experts.
UK	NURS have a trustee or depositary who provides independent oversight of the investment manager. REITs are required to have a Board of Directors who are able to act independently of the investment manager.
US SEC	Exchange-traded real estate funds are often required to have a majority of directors be independent of management as required by the national securities exchange upon which it is traded. The New York Stock Exchange and NASDAQ exchange rules also require fully independent audit, nominating and compensation board committees.

17. If applicable: What legal and regulatory status does the independent entity have in your jurisdiction?

Member/ Jurisdiction	
Australia	The external dispute resolution bodies to which the responsible entity for a scheme must belong are established as private concerns and operate under a general ASIC approval. The responsible entity for a managed investment scheme must continue to satisfy the requirement that it be a member of an external dispute resolution body to be able to legally operate the scheme.
Brazil	Not applicable.
France	<p>As regards contractual funds, the AMF's General Regulation provides for specific provisions in this respect and in particular:</p> <ul style="list-style-type: none"> - Members of the supervisory board shall be elected by and among the unitholders; - Board membership shall be incompatible with the performance of any other function likely to give rise to a conflict of interest; - Unitholders shall elect the members of the supervisory board in accordance with the procedures specified in the fund's rules; - Elections of the members of the supervisory board shall be held at least once every three years. <p>More detailed rules are provided by the AMF's General Regulation.</p> <p>As regards investment companies with variable capital, the corporate legal regime pertaining to supervisory boards will apply.</p> <p>As regards the funds' depositaries, they must comply with the criteria set out in the French Financial and Monetary Code and the AMF's General Regulation. Depositaries generally are banks or subsidiaries of banks and are governed by the rules found in the French Financial and Monetary Code.</p>
Germany	The custodian has to have the status of a credit institution. The custodian is thus also subject to supervision by the Regulator (BaFin).
Hong Kong	Trustees of REITs in Hong Kong have to be either a licensed bank, a trust company which is a subsidiary of such a bank or a banking institution or trust company incorporated outside Hong Kong which is acceptable to the SFC. Although these trustees do not have to be licensed by the SFC, they must be acceptable to the SFC and satisfy the criteria for their acceptability set out in the REIT Code.
Ireland	A trustee /custodian must meet with criteria set down by the Financial Regulator. They are generally banks or subsidiaries of banks and are subject to regulation under the Irish collective investment scheme legislation referred to in question 1 above.
Italy	
Japan	N/A
Jersey	
Luxembourg	Not applicable.
Mexico	
Netherlands	Not applicable
Ontario	Every investment fund is legally required to have an independent review committee (IRC) which meets certain requirements. An IRC considers and makes recommendations about conflict of interest issues. Its recommendations and the management company's decision may be publicly disclosed.
Portugal	The CMVM is an independent and autonomous regulatory and supervisory entity for the capital market.
Quebec	The IRC is an entity that is required pursuant to Regulation 81-107. All mutual funds being reporting issuers in Canada must have an IRC with procedure and policies as prescribed by this Regulation. An IRC considers and makes recommendations about conflict of interest issues. Its recommendations and the management company's decision may be publicly disclosed.
Spain	Functions developed by the depositary of the CIS are regulatory established.
Switzerland	-

UK	NURS and PAIFs – trustee / depositary – authorised by the FSA
US SEC	REITs – independent Board of Directors, elected by the shareholders. The independent entity will typically be constituted as a board of directors or a board of trustees. Directors and trustees have fiduciary duties pursuant to state laws to always act in the best interests of the real estate fund and its shareholders.

Title / legal ownership structure with respect to the real estate property

18. How and in what name are the assets of the real estate funds held and registered?

Member/ Jurisdiction	
Australia	<p>Generally, the assets of any kind of managed investment scheme, including a scheme that invest in real estate, may be held by: the responsible entity; a custodian under a formal arrangement; or members of the scheme.</p> <p>Scheme property arrangements sets out minimum standards for the responsible entity or custodian for holding scheme assets. Conditions imposed on the Australian financial services licence held by the responsible entity for a scheme also set minimum requirements for arrangements entered into by the responsible entity with any other person in relation to custody of scheme assets.</p> <p>There is no requirement that scheme assets, including assets of a scheme that invests in real estate, must be registered in the name of the responsible entity for the scheme.</p>
Brazil	According to Federal Law 8.668, the assets are acquired by the institution that administer the real estate funds, and kept under the fiduciary ownership of this institution (trustee).
France	The assets of an OEREF are normally registered in the name of its management company. Having said that, the register must expressly indicate that the assets are held by the management company in the name of the OEREF which is the effective owner.
Germany	The real estate property of a real estate investment fund is held by the investment management company as legal property and registered under its name in the land register.
Hong Kong	The assets of a REIT are held by its trustee and the trustee has the fiduciary duty to hold the assets of the REIT in trust for the benefit of the unitholders.
Ireland	<p>The assets of Irish investment funds are generally registered in the name of the trustee / custodian or a sub-custodian. However, the Financial Regulator accepts that there are difficulties in applying this principle to real estate assets (e.g. trustee liability issues). The assets may be registered in the name of the investment fund, or in the name of its wholly owned subsidiary, subject to the following conditions:</p> <p>A restriction is placed on the registered title of the real estate asset to the effect that title cannot be disposed of without the prior consent of the trustee; Where this is not possible, a caution is registered on the title to put prospective purchasers on notice that the prior consent of the trustee is required for sale of the asset; Where neither of the above is possible, the real estate fund will undertake, through a provision in the custodian contract, that it will not invest in real estate assets unless the trustee is satisfied that that the asset cannot be disposed of without its prior consent or that arrangements equivalent to those set out in (i) and (ii) are in place.</p>
Italy	According to the Italian legislation fund management companies carry out transactions on behalf of their funds acting with powers of attorney. However, assets, and to a greater extent real estate assets, are always held and registered in the funds' name (segregation principle).
Japan	<p>As for actual real estates, it is registered by the name of the fund.</p> <p>As for securities on trusts, it is registered by the name of the trustee.</p>
Jersey	Recognized Fund the depositary or its delegate OCIF fund custodian/trustee or delegate
Luxembourg	<p>The assets of the real estate funds are registered in the name of the UCI.</p> <p>A custodian bank assures the safekeeping in due form of the documents of title of the real estate the UCI is investing in.</p>
Mexico	
Netherlands	The assets of a real estate fund are held and registered in the name of the fund.
Ontario	Real properties are held and registered in the name of the fund.
Portugal	The fund's assets are held and registered in the name of the fund.
Quebec	As for mutual funds, the real estate fund's assets must be registered with a custodian in the name of the trustees if the fund is a trust... If the fund is a corporation, the assets are held under the

	name of the fund.
Spain	The financial assets of the real estate funds are held in the Depositary and non financial assets are registered in the Property Register under the name of the real estate fund
Switzerland	In the case of contractual investment funds the assets of the real estate fund normally are registered in the name of the management company with the note that the assets belong to the real estate fund. Assets of real estate funds in the form of a SICAV shall be registered in the SICAV's name.
UK	The assets of the real estate funds are held and registered in the name of the real estate fund itself.
US SEC	In general, real estate funds own their assets directly. Some real estate funds use a partnership to hold their assets indirectly. Typically, these funds act as general partner and majority owner of the partnership.

19. If the assets are not held and registered in the name of the real estate fund what legal safeguards are in place to protect the investor (with respect to a land register or similar if applicable in your jurisdiction)?

Member/ Jurisdiction	
Australia	If the assets are not held and registered in the name of the responsible entity of the managed investment scheme the responsible entity may seek to protect its position through lodging a record of its interest in the property with the relevant land registration authority.
Brazil	The Law determines that the assets kept under fiduciary ownership do not communicate with the assets of the administrator of the fund, ie, there must be a clear and formal segregation of the assets. The property's official records must mention that it belongs to the real estate fund.
France	Please see answer to question 18.
Germany	By entry in the German land register indicating a restraint of disposal for the investment management company – relevant German real estate property can only be disposed of subject to approval of the custodian of the investment fund – it is thus obvious to the parties involved in the transaction intended that the real estate property is held on behalf of an investment fund respectively its investors. Where foreign jurisdictions do not provide for a land register or such a mechanism, for the purpose of safeguarding foreign real estate property of a German real estate investment fund, the German Investment Act demands for a restraint to the same effect by other means in line with the foreign jurisdiction.
Hong Kong	Assets of a REIT are held and registered in the name of the trustee or the special purpose vehicle controlled (directly or indirectly) by the trustee in trust for the benefit of the unitholders.
Ireland	See response to question 18
Italy	
Japan	N/A
Jersey	
Luxembourg	Not applicable.
Mexico	
Netherlands	Not applicable
Ontario	N/A
Portugal	Not applicable.
Quebec	As mentioned in the preceding answer, the fund assets must be registered with a custodian in the name of the trustees if the fund is a trust... If the fund is a corporation, the assets are held under the name of the fund.. Consequently, there is no safeguard of this type in the securities regulations. Furthermore, all applicable provisions of the Civil Code of Quebec apply to Trusts and Corporations holding assets on behalf of investors.
Spain	N/A
Switzerland	See above 18.
UK	N/A
US SEC	State land recording statutes provide such protections.

20. Are real estate funds permitted to establish and hold shares in corporate vehicles for custody purposes or for the purpose of holding and acquiring real estate property indirectly and if so how are these structures organised?

Member/ Jurisdiction	
Australia	<p>A managed investment scheme is free to either invest in real estate by directly acquiring and selling real estate, or by investing in other schemes that invest directly in real estate.</p> <p>However, if a managed investment scheme invests in another scheme that itself invests directly in real property, the assets of the first scheme are the securities of the second scheme. That is, the first scheme is not investing in direct real property. Generally, this will change the conditions on the Australian financial services licence required by the responsible entity to operate the first scheme to reflect the nature of those types of assets.</p>
Brazil	<p>According to the current rules, that kind of investment is not allowed. In the proposed rules the indirect ownership of real property is to be admitted by acquisition of securities issued by public companies, of quotas of FIP (Private Equity funds regulated by CVM), and quotas of other real estate funds.</p>
France	<p>Please see answers to questions 3.a and 3.g.</p>
Germany	<p>In order to facilitate investments inter alia in foreign real estate property indirect investments by means of holdings of shares in corporate vehicles is allowed.</p>
Hong Kong	<p>A REIT may hold real estate through special purpose vehicles if the spv's are legally and beneficially owned by the REIT; the REIT having majority ownership and control of the special purpose vehicles; the special purpose vehicles are incorporated in jurisdictions with established law and corporate governance standards commensurable with those observed by companies incorporated in Hong Kong; the board of directors of such special purpose vehicles shall be appointed by the trustee of the REIT; and the REIT and the special purpose vehicles shall appoint the same auditor and adopt the same accounting principles and policies.</p>
Ireland	<p>Special Purpose Vehicles ("SPV") may be established by real estate funds through which the underlying real estate assets may be registered and held. In the case of retail funds only one 'layer' of SPV is permitted. In the case of professional and qualifying investor funds multi layers are permitted but under strict conditions, comparable to those in Hong Kong.</p>
Italy	
Japan	<p>In regards to the regulations, it is possible, but rarely seen.</p>
Jersey	<p>Yes, Funds targeted at sophisticated/expert investors</p>
Luxembourg	<p>Real estate funds are not permitted to establish and hold shares in corporate vehicles for custody purposes but it is allowed for the purpose of holding and acquiring real estate property indirectly. These structures are organised as subsidiaries under the general law applicable to companies.</p>
Mexico	<p>No specific secondary regulation has been issued.</p>
Netherlands	<p>There is no regulation that prohibits a real estate fund to invest in other funds or companies, as long as the current investment policy is in line with what is set out in the prospectus.</p>
Ontario	<p>Yes. The real estate fund is permitted to establish and hold shares in corporate vehicles for indirect investment in real estate. There is no particular rule as to how these structures are organized. The real estate fund generally ensures that it can exit the investment in the corporate vehicles as and when necessary.</p>
Portugal	<p>Real estate funds are allowed to hold shares in real estate companies.</p>
Quebec	<p>Yes, the real estate fund is permitted to establish and hold shares in corporate vehicles for indirect investment in real estate. No particular rules as to how these structures are organized.</p>
Spain	<p>This can only be done through a company traded in a secondary market for that part not invested in real estate assets</p>
Switzerland	<p>See above 3.a.</p>
UK	<p>Yes. NURS are permitted to hold interests in non-UK real estate via a corporate vehicle. These schemes invest in property, which is held by an intermediate holding company (otherwise known as a special purpose vehicle or SPV) or indirectly by a local holding company which may be based in the country of the property. These holding companies, when included at both levels of</p>

	<p>the structure, are themselves wholly owned by the scheme and merely act as a channel for transferring capital and income.</p> <p>The FSA has provided additional guidance for managers explaining the requirements when making use of this structure. This includes control over the decision making process of all SPVs involved in the structure, and the ability of the SPV to issue debt within the scheme for the purpose of transferring capital and repatriating income. In particular, the authorised fund manager should ‘look through’ to the immovables themselves for the purpose of complying with investment limits. A statement must be included in the instrument constituting the scheme which describes any use of intermediate holding companies that may be established solely to help with the holding of the immovables.</p>
US SEC	See response to Question 18.

Problems

21. Have real estate funds in your jurisdiction given rise to any regulatory concerns or required specific regulatory actions? If so can you (a) describe the problem(s); and (b) outline how this was addressed?

Member/ Jurisdiction	
Australia	<p>There are some developments in property schemes in Australia that remain ongoing regulatory challenges.</p> <p>Infrastructure schemes that are also property schemes are raising interesting regulatory issues, challenging the assumption that it is best for investors that the entity that sets up the scheme should be controlling the scheme.</p> <p>For example, some infrastructure investments are set up by an entity or entities, and then controlled by a consortium of five. There is an argument that it may not be in the best interests of investors for the responsible entity to be one in a consortium of five, however, there is a counter argument that this is potentially a good performing investment for investors, and appropriate for them whether or not the responsible entity has full control.</p> <p>Issues may also arise around pricing where the assets of the scheme are mixed. Some assets may be direct property, which is inherently an illiquid investment and difficult to value, some assets are unlisted property securities, which may also be difficult to value, and other assets may be listed property securities, which are generally liquid and easier to value. Depending on the proportions of the different types of assets it may be appropriate to consider whether the fund can value and hence price frequently on a reasonable basis. If not, the fund may be better structured as a closed fund.</p>
Brazil	<p>A while ago quotas of real estate funds were being sold by real estate brokers, as they were in direct contact with investors prone to invest in real estate. CVM has then acted, through on-site inspections in the points of sale and accusation of the brokers for acting illegally in the securities market. After these events, some brokers registered with CVM to act as securities agents, linked to a financial institution, to be able to participate of public offerings of the real estate funds' quotas.</p> <p>Other cases, less relevant, have happened and led to enforcement action by CVM because of operations made under conflicts of interest, such as operations made between the fund and its administrator, lack of disclosure of required information, offerings of unauthorised funds, etc. The penalties varied from warnings and fines up to temporary suspension of the institutions or professionals from the market.</p>
France	No.
Germany	No. Most recent amendments to the German Investment Act give the investment management companies more flexibility with respect to permissible investments (such as indirect investments in real estate property) while demanding for a sophisticated risk management system facilitating inter alia the liquidity management of the funds.
Hong Kong	No, but keep a close watch
Ireland	Issues remain under review. These include, for example, the extent to which these funds should be permitted to invest in development assets and the valuation issue outlined in question 6 above.
Italy	<p>Yes, the issues focus on two areas:</p> <p>the valuation process of real estate assets</p> <p>Here the variability of the hypothesis underlying the estimation methods, which is often observed not only in the overall market but also at the level of single fund (the issue of time inconsistency of the valuation assumptions), risks to undermine the reliability of the entire valuation process, adding instead of solving uncertainty</p> <p>the governance of asset management companies</p> <p>The issues concerning governance become particularly crucial when some market events stress the lack of independence throughout the industry. This could for instance be the case of the launch of takeover bids on listed funds, when the relationship between the governance of the management companies and the influence that is exerted by the shareholders appears particularly crucial for the</p>

	outcome of the offers.
Japan	No, there are no special concerns.
Jersey	
Luxembourg	<p>(a) The regulatory concern is about open ended real estate funds, as there may occur a lack of liquidity in the sense that open ended real estate funds risk to not hold sufficient liquid assets to be able to settle redemption requests.</p> <p>(b) The regulatory practice is that the open-ended real estate funds have either to manage the liquidity of the real estate segments the fund is investing in, or to decide that the real estate fund is investing a certain amount of its assets in cash, in money market instruments and/or listed transferable securities. The funds have to provide information to the CSSF in this respect.</p>
Mexico	No
Netherlands	In general the real estate business in the Netherlands has seen a more than average number of scandals and integrity problems. Until now the effect of that on regulated real estate funds is minimal.
Ontario	In the past, there have been other real estate funds in Canada, but these have all terminated except for one. Direct investment in real estate was prohibited when the market conditions for these types of funds were unfavourable (for example, following a general “crash” of the real estate market), making the liquidity of these types of funds a key regulatory concern.
Portugal	<p>The most relevant concerns raised by the real estate funds’ regulation are related with the valuation issue, as described above under (7). The supervisory body (CMVM) has been becoming more aware of the risks entailed and is trying to act informally over those mancos which clearly manipulate the valuation prices between the gap allowed by the law, recommending them not to set up the price far from the experts’ valuations and requiring them to explain thevaluations prices when any abnormal deviation from the experts’ valuations is noted..</p> <p>Due to the awareness of the problems risen by the legal valuation criteria, an amendment process is being launched.</p>
Quebec	<p>The Canadian Securities Administrators have had much discussion on the subject of real estate investment funds and they came to the conclusion that this type of fund was not compatible with traditional CIS. Quebec repealed its regulation on real estate investment funds in February 2008.</p> <p>Due to the nature of real estate investment funds, there is a risk of liquidity problems and a potential inability to meet massive or substantial redemption requests.</p> <p>There is also a problem with the appraisal of the properties in the portfolios of such a fund. Given that in Canada, Regulation 81-106 Respecting Continuous Disclosure of Investment Funds requires the calculation of the net asset value of investment funds at least once a week, it is problematic to calculate the net asset value at any given point for these funds.</p> <p>In the past, there was also a problem of conflict of interest with this type of fund. For example, an investment fund carrying out property transactions with the promoter of the fund.</p>
Spain	There have not been problems or specific actions in this regard.
Switzerland	Yes, some minor violations of legal provisions as well as of fund regulations.
UK	<p>Many UK retail investors have been attracted to property funds in light of poorer stock market returns and there is a risk that they do not fully understand the nature of the investment that they have made.</p> <p>Recent market turmoil has resulted in significant outflows from property based collective investment schemes. Regulatory concerns have arisen with regards to suspensions and redemption provisions.</p> <p>The FSA is also consulting on allowing a 'fair value' valuations for immovables. This flexibility may be desirable for daily dealing funds which only receive a valuation for the underlying property on a monthly basis.</p>
US SEC	No. The SEC has not experienced any systemic problems with real estate funds.