

# Real Estate Investment Funds Act – ImmoInvFG

**Long title:** Federal Act on Real Estate Funds (Real Estate Investment Funds Act)

**Short title:** Real Estate Investment Funds Act

**Source:** Federal Law Gazette I No. 62/2019

## § 1. Real estate fund

(1) A real estate fund is a portfolio of assets mainly consisting of assets as per § 21 which is divided into equal units evidenced by securities.

(1a) § 2 to § 39 shall apply to portfolios of assets pursuant to para. 1 whose units are intended to be marketed to retail clients pursuant to § 2 para. 1 item 36 of the Alternative Investment Fund Managers Act, Federal Law Gazette I No. 135/2013.

(1b) § 40 to § 42 shall apply to portfolios of assets pursuant to para. 1, to AIF in real estate within the meaning of the Alternative Investment Fund Managers Act and to any collective investment in real estate that is subject to the laws of a foreign country and has been established under the law, under instruments of incorporation or in actual practice in accordance with the principles of risk spreading.

(2) The fund assets of a real estate fund are owned by the real estate investment management company which in a fiduciary capacity holds and manages these for the unit holders.

(3) As per para. 1, a special real estate fund is a portfolio of assets whose unit certificates are held, in accordance with the fund rules, by no more than twenty unit holders who shall be known to the real estate investment management company and who shall not be natural persons. A group of unit holders shall be deemed to be a single unit holder if all rights of these unit holders in relation to the real estate investment management company are exercised uniformly by a joint representative. The fund rules shall contain a provision to the effect that a transfer of the unit holders' unit certificates shall require the consent of the real estate investment management company. The fund rules may contain a provision regarding the requirement of a valuation at least twice a month (§ 8 para. 4) notwithstanding the provisions of this federal act. In the event of special real estate funds, real estate investment management companies may fulfill their publication duties by demonstrably informing all unit holders either in writing or in any other manner agreed upon with the individual unit holders. In the case of special real estate funds, the real estate investment management company's notice concerning the suspension of the repurchase of unit certificates shall be given only to unit holders in an appropriate manner; the unit holders shall also be given notice about the continuance of the repurchase. In the case of special real estate funds, the Financial Market Authority need not receive such a notice.

## § 2. Real estate investment management company

(1) An AIFM (§ 2 para. 1 item 2 of the Alternative Investment Fund Managers Act) that is entitled to manage real estate funds (§ 1 para. 1 item 13a of the Banking Act) is a real estate investment management company and is subject to the provisions of this federal act.

(2) Apart from transactions required for the investment of their own assets, real estate investment management companies may only conduct real estate fund business and transactions associated with real estate fund business and transactions which they are entitled to pursuant to the Alternative Investment Fund Managers Act. They may manage several real estate funds with a variety of designations.

(3) Real estate fund business may only be conducted by stock corporations (Aktiengesellschaft) or companies with limited liability (Gesellschaft mit beschränkter Haftung).

(4) The equities in a real estate investment management company shall be registered. The transfer of equities in a real estate investment management company shall require the consent of the company's supervisory board.

(5) For real estate investment management companies organized in the form of a company with limited liability (Gesellschaft mit beschränkter Haftung) a supervisory board shall be appointed.

(6) In the case of a real estate investment management company organized in the form of a company with limited liability (Gesellschaft mit beschränkter Haftung), the premium shall be allocated to a special reserve which may only be used to compensate for diminutions in value and to cover any other losses.

- (7) At least half the paid-up capital stock (share capital) shall be invested in trustee securities.
- (8) The real estate investment management company shall be established for an indefinite period. A real estate investment management company may not resolve to wind itself up before its right to manage all real estate funds has expired as per § 15.
- (9) No manager of the custodian bank and no member of the custodian bank's supervisory board (§ 35) may be a member of the supervisory board of the real estate investment management company. No manager or authorized signatory (Prokurist) of the custodian bank and no member of the custodian bank's supervisory board may be a manager or authorized signatory (Prokurist) of the real estate investment management company.
- (10) For each real estate investment management company the Federal Minister of Finance shall appoint a state commissioner and a deputy for a maximum functional period of five years; reappointments shall be permissible. The state commissioners and their deputies shall act as organs of the Financial Market Authority and shall in this capacity be subject solely to its instructions. § 76 paras. 2 to 9 of the Banking Act shall apply.
- (11) The statistical reporting duties which the European Central Bank may impose on real estate investment management companies in accordance with Article 2 of the (EC) Council Directive 2533/98 of 23 November 1998 concerning the collection of statistical data by the European Central Bank shall remain unaffected by this federal act.
- (12) The costs of the FMA from the securities supervision accounting group (§ 19 para. 1 item 3 and para. 4 of the Financial Market Authority Act) shall be borne by real estate investment management companies pursuant to para. 1. For that purpose, the FMA shall form an additional joint accounting subgroup for real estate investment management companies, management companies (Investment Funds Act 2011), corporate staff and self-employment provision funds (Corporate Staff and Self-Employment Provision Act), and AIFM (Alternative Investment Fund Managers Act) in the securities supervision accounting group in addition to the accounting subgroups provided for in § 89 para. 1 of the Securities Supervision Act 2018, Federal Law Gazette I No. 107/2017.
- (13) The FMA shall demand payment of the amounts payable by the entities liable to pay pursuant to para. 12 by official notice; determining flat amounts shall be permissible. The FMA shall specify, by way of regulation, more detailed rules regarding the allocation of costs and the demands for payment. In particular, the following shall be regulated:

1. the assessment bases of the individual types of demands for payment;
2. the dates of the official notices concerning the costs and the deadlines for payments by the entities liable to pay.

The real estate investment management companies shall provide the FMA with all necessary information concerning the bases of the assessment of the costs.

### **§ 3. Power of disposal vested in the investment management company**

- (1) Only the real estate investment management company shall be authorized to dispose of assets belonging to a real estate fund managed by it and to exercise the rights resulting from such assets; in doing so, the real estate investment management company shall act in its own name for account of the unit holders. In these activities the real estate investment management company shall safeguard the unit holders' interests, use the care and diligence of a prudent and conscientious manager within the meaning of § 84 para.1 of the Stock Corporation Act and observe the provisions of this federal act as well as the fund rules.
- (2) Subject to the consent of the supervisory board and the custodian bank and after obtaining approval from the Financial Market Authority, real estate investment management companies may, through transfer or new establishment, combine fund assets of real estate funds managed by them and they may, from the effective date of such combination, manage the fund assets resulting from such combination as a real estate fund under this federal act if the effective date of such combination is published subject to at least three months' notice. Such notice shall specify the real estate funds to be combined, the official notice of approval from the Financial Market Authority, details of the exchange of certificates, details of the real estate investment management company managing the combined or newly established real estate fund, any change in the custodian bank and the fund rules applicable from the effective date of the combination. Fractions shall be redeemed in cash. Approval shall be granted by the Financial Market Authority if the interests of all unit holders are adequately safeguarded. A combination of a special real estate fund and another real estate fund which is not a special real estate fund shall not be permissible. A combination of a special real estate fund with another special real estate fund shall not require the approval of the FMA.

1. The FMA shall be immediately given notice of said delegation.
2. The delegation shall not, in any way, impair the effectiveness of the supervision over the real estate investment management company. In particular, the delegation shall not prevent the real estate investment management company from acting on behalf of the unit holders, or the funds from being managed in the interest of the unit holders.
3. No mandate with regard to the key function of real estate management and the termination of such mandate shall be given to the custodian bank or to any other companies whose interests may conflict with those of the real estate investment management company or the unit holders.
4. It shall be ensured that the real estate investment management company is able, at any time, to effectively monitor the activities of the companies to which tasks have been delegated.
5. It shall be ensured that the real estate investment management company is able, at any time, to give further instructions to the companies to which tasks have been delegated and that such mandates may be withdrawn with immediate effect if this is in the interest of the unit holders.
6. Taking into account the nature of the tasks to be delegated, the company to which these tasks are delegated must be qualified and capable of undertaking these tasks.
7. The tasks to be delegated shall be listed in the fund prospectuses.
8. The real estate investment management company shall not delegate tasks to the extent that it becomes a letter box entity. A letter box entity shall be assumed to exist if the real estate investment management company delegates most of its business activities to third parties.
9. The duties of the real estate investment management company as per para.1 second sentence as well as the duties of the custodian bank in accordance with this federal act shall not be affected by such a delegation. The real estate investment management company shall be liable for third parties' actions as for its own actions.

Unless the delegation concerns the purchase, the sale or the encumbrance of assets as per § 21 or the investment in assets as per § 32 or § 33, item 1 may be omitted. In the case of special real estate funds, item 7 shall not apply. In the event of special real estate funds, item 3 may be disregarded if a written mandate has been received from the investor.

## § 4. Limitations of power of disposal

- (1) Notwithstanding § 24, the real estate investment management company shall not grant loans or enter into any liabilities under a surety or guarantee agreement for account of a real estate fund.
- (2) Assets forming part of a real estate investment fund shall not be pledged or otherwise encumbered or given in security or assigned, except in the cases expressly provided in this federal act, as in § 5 in particular. A disposal contradicting this provision shall be ineffective vis-à-vis the unit holders.
- (3) The real estate investment management company may for account of a real estate fund raise short-term loans of up to 20 per cent of the fund assets, in the case of special real estate funds of up to 40 per cent, if this is provided for in the fund rules. This percentage rate shall not apply for loans borrowed within the framework of § 11 para. 2.
  - (3a) If expressly provided for in the fund rules, the real estate investment management company shall be authorized, within the investment limits, to purchase assets for account of the real estate fund as per § 32, subject to the seller's commitment to repurchase such assets at a specified price on a given date (repurchase agreements).
  - (3b) If expressly provided for in the fund rules, the real estate investment management company shall be authorized to transfer to third parties for a specific period securities up to 30 per cent of the real estate fund under a recognized securities lending system, provided that said third party shall be obligated to retransfer the securities upon expiry of the predetermined lending period. This securities lending system shall ensure that the rights of the unit holders are adequately safeguarded (securities lending). Under this authorization, the real estate investment management company may grant an authorization for account of a real estate fund as per § 8 of the Safe Custody of Securities Act.
- (4) The real estate investment management company shall require the consent of the custodian bank in order to purchase, sell or encumber properties, building rights (Baurecht), superstructures (Superädifikate) or shares in real estate companies which belong or are due to belong to one of the real estate funds managed by it. A disposal without the consent of the custodian bank shall be ineffective. The provisions concerning persons who derive rights from non-entitled persons shall apply mutatis mutandis. The custodian bank shall

consent to a disposal which is compatible with the provisions set out in this federal act and the fund rules. If the custodian bank provides its consent even though this is not the case, this shall not affect the validity of the disposal.

(5) The cash holdings/securities forming part of the assets of a real estate fund shall be entered on one or more accounts/deposit accounts established exclusively for account of the real estate fund. The accounts/deposit accounts shall be managed by the custodian bank.

(6) From the accounts managed as per para. 5, the custodian bank shall upon instruction from the real estate investment management company pay the purchase price for assets for the real estate fund, pay the repurchase price at the repurchase of units, distribute the profit shares to the unit holders and settle other obligations arising through the management of the real estate fund. From the deposit accounts managed as per para. 5, the custodian bank shall upon instruction from the real estate investment management company provide it with securities for procurement of cash or for other purposes pertaining to orderly management.

## **§ 5. Sale and encumbrance of assets**

(1) Notwithstanding § 11, the sale of assets as per § 21 shall only be permissible if this is stipulated in the fund rules and the consideration is not less or is only slightly less than the value determined as per § 29.

(2) Notwithstanding § 11, the borrowing and the encumbrance of assets as per § 21 as well as the assignment and the encumbrance of claims arising from legal relations referring to assets as per § 21 shall be permissible if this is stipulated in the fund rules and offered within the scope of proper economic management and if the custodian bank consents to the borrowing and the encumbrance because it considers the conditions under which the borrowing and the encumbrance were effected customary in the market. This borrowing and encumbrance shall not exceed 50 per cent of the current market value of the assets as per § 21. As per § 4 para. 3, credits that were taken out shall be accredited to the calculation in accordance with this paragraph and shall reduce the permissibility of the borrowing and the encumbrance accordingly.

(3) The effectiveness of a disposal shall not be affected by a violation of the provisions set out in paras. 1 and 2.

## **§ 6. Unit certificates**

(1) The unit certificates are securities; they evidence the rights of the unit holders in relation to the real estate investment management company and the custodian bank which result from the investment and from the management of the money invested by the unit holder with the real estate investment management company and from the provisions of this federal act and from the fund rules. They document a contractual participating interest in the assets of the real estate fund held as trust property by the real estate investment management company. The unit certificates may be in bearer or registered form. If they are registered certificates, they shall be subject, mutatis mutandis, to the provisions of § 61 to § 63 of the Stock Corporation Act.

(2) The unit certificates shall be signed by the real estate investment management company. § 13 of the Stock Corporation Act shall apply mutatis mutandis. The unit certificates shall bear the handwritten signature of a manager or specifically authorized officer of the custodian bank.

(3) The unit certificates may be issued to evidence one or more units or fractions.

(4) Every interested investor shall be expressly offered free of charge a copy of the fund rules prior to his purchase of unit certificates. At the request of the unit holder he shall be provided with a copy of the fund rules at any time free of charge.

(5) The unit certificates may be represented by global certificates (§ 24 of the Safe Custody of Securities Act). Provisions contained in this federal act which refer to the physical issuance of unit certificates shall apply mutatis mutandis.

(6) In compliance with the fund rules (§ 34 para. 2 item 8), several classes of unit certificates may be issued for a real estate fund, in particular with regard to the distribution policy, the sales charge, the repurchase charge, the minimum investment, the currency of the unit value, the remuneration for management, or a combination of the mentioned criteria. For classes of unit certificates which require a minimum investment of 750,000 euros, it may be stipulated that units shall be repurchased within the redemption periods specified in the fund rules, which may not exceed six months. The costs of introducing new classes of units for existing portfolios of assets shall be charged to the unit prices of the new classes of units. The value of a unit shall be calculated separately for each class of units.

(7) Unit certificates of real estate funds shall be eligible for the investment of money held in trusts, if, under the fund rules, they may invest, directly and exclusively in securities which are eligible for the investment of money held in trusts pursuant to § 217 of the General Civil Code as well as directly or by means of shares in

real estate companies within the meaning of § 23, exclusively in properties the purchase of which is eligible for the investment of money held in trusts. Transactions in derivative products within the meaning of § 33 shall only be effected to hedge the fund assets. Securities lending transactions as per § 4 para. 3 shall be permissible.

## **§ 7. Issuance of unit certificates**

(1) In Austria unit certificates may only be offered if both a simplified and a full prospectus were published, at the latest, one weekday beforehand; both prospectuses shall contain all information necessary for the investors to be able to make a well-founded assessment of the investment offered and the risks involved. The full prospectus shall include at least the information provided for in Annex A Schedule A (unless it is included in the fund rules of the real estate funds) as well as the fund rules approved by the Financial Market Authority. In addition, both the simplified and the full prospectus shall contain a general note on the type of investment as well as on the risks involved. In order to provide investors with reliable information, the Financial Market Authority may define a minimum content for these notes by way of regulation. The FMA may specify the information referred to in Annex C Schedule C in more detail by way of regulation and may supplement it with other information having the same informational purpose. The simplified prospectus shall contain in summary form the key information provided for in Annex C Schedule C. The prospectus shall be structured and drawn up in such a way that the average investor can easily understand it. The simplified prospectus may be attached to the full prospectus as a removable part of it. Both the simplified and the full prospectus may be drawn up in a written document or saved on a durable medium having equivalent legal status approved by the Financial Market Authority through a regulation. Upon the request of the investor, the investor shall be provided with a paper version free of charge. If unit certificates are offered without prior publication of the prospectuses, § 21 paras. 1 and 3 to 6 of the Capital Market Act 2019, Federal Law Gazette 62/2019, shall apply mutatis mutandis.

(2) Significant changes to the relationships defined in para. 1 such as are liable to influence a valuation of the unit certificates shall be published immediately.

(3) Both the simplified and the full prospectus signed by the real estate investment management company as well as any amendments of and modifications to the same shall be sent to the notification office early enough that they will be received by it no later than on the day of publication. § 23 of the Capital Market Act 2019 shall apply mutatis mutandis.

(4) The simplified prospectus as amended shall be offered to the investor free of charge prior to the conclusion of the contract. Furthermore, interested investors shall be provided with the full prospectus as amended, the most recent annual report and the subsequent half-yearly report (if published) free of charge prior to the conclusion of the contract. The annual reports and the half-yearly reports shall be available to the public at the addresses given in the simplified and the full prospectus or in any other way approved by the Financial Market Authority by way of regulation.

(4a) Instead of the simplified prospectus, a client information document pursuant to § 134 and § 135 of the Investment Funds Act 2011, Federal Law Gazette I No. 77/2011, shall be prepared for real estate funds that were reported to the FMA as being marketed to retail clients pursuant to § 48 para. 10 of the Alternative Investment Fund Managers Act. Paras. 2 to 4 shall apply mutatis mutandis to the client information document.

(5) The unit certificates may be issued only against full payment of the issue price. The contribution of assets as per § 21 shall not be permissible. Securities may be contributed only if there is a market price for such securities. They shall be contributed at their market price prevailing on the issue date of the unit certificates in accordance with the fund rules.

(6) Before being issued, the unit certificates shall be placed in safe custody with the custodian bank. The custodian bank may only issue them if the consideration as per para. 5 above has been made available to it without any restrictions. The custodian bank shall add the consideration received to the fund assets immediately.

(7) Paras. 1 to 4 and 5 shall not apply for special real estate funds.

## **§ 8. Calculation of the value of units; issue price**

(1) The value of a unit shall be calculated by dividing the total value of the real estate fund, including income, by the number of units. The custodian bank shall calculate the total value of the real estate fund in accordance with the fund rules on the basis of a valuation made not more than one year ago as per § 29 and the current (market) prices of the fund's securities, cash holdings, credit balances, receivables and other rights minus liabilities.

(2) The real estate investment fund shall be obliged to provide the custodian bank with a current valuation as per § 29 if it may be assumed that the value of the assets as per § 21 deviates from the most recent valuation by more than 10 per cent. For assets as per § 21 held by a real estate company (§§ 23 ff) the percentage shall be reduced to 5 per cent. From this moment onwards, the custodian bank's calculation shall be based on the current valuation.

(3) The issue price of a unit shall correspond to its calculated value. A sales charge specified in the fund rules may be added to the calculated value to cover the issuing costs incurred by the real estate investment management company.

(4) The custodian bank shall publish the issue price and the repurchase price for the units whenever units are issued or repurchased, but at least twice a month.

## **§ 9. Entries in the land register**

(1) The real estate investment management company shall ensure that the ownership of the domestic properties and building rights of the real estate fund and the limitations of power of disposal as per § 4 para. 4 are entered in the land register and, in case of superstructures (Superädifikate), included in the relevant deposit of registered documents (Urkundensammlung). The custodian bank shall monitor compliance with this provision. In consequence, entries/inclusions in the land register which require the consent of the custodian bank may only be made on the basis of a declaration of consent issued by the custodian bank. The land register court shall notify the custodian bank of all entries/inclusions concerning the property, the building right or the superstructure (Superädifikat) for which its consent is required.

(2) Foreign real estate may only be purchased with the consent of the custodian bank. If, in the case of foreign assets, the entry of the limitations of power of disposal in the land register or a comparable register is not legally provided for, the validity of the limitation of power of disposal shall be safeguarded in another appropriate manner.

(3) The provisions set out in paras. 1 and 2 shall not apply for special real estate funds.

## **§ 10. Liability**

(1) To secure or recover claims against unit holders, execution may be levied on their unit certificates, but not on the assets of the real estate fund.

(2) To secure or recover claims under liabilities which have effectively been created by the real estate investment management company for a real estate fund in accordance with the provisions of this federal act, execution may only be levied on the assets of the real estate fund.

## **§ 11. Redemption of units**

(1) At the request of a unit holder, his unit shall be redeemed out of the real estate fund against surrender of the unit certificate, the coupons and the renewal certificate. The conditions of redemption shall be specified in the fund rules. The payment of the redemption price may be temporarily suspended, subject to notice being given to the Financial Market Authority at the same time, and made dependent on the sale of assets of the real estate fund and on the receipt of the sale proceeds if there are extraordinary circumstances which make this appear necessary, whilst considering legitimate interests of the unit holders. In the case of special real estate funds, the Financial Market Authority need not receive such a notice.

(2) Extraordinary circumstances as per para.1 shall in particular apply if the bank balances and the proceeds from securities are not sufficient or not immediately available for payment of the repurchase price and in order to ensure orderly management. If, upon expiry of a period specified in the fund rules not to exceed one year, the funds are not sufficient, assets of the real estate fund shall be sold. The real estate investment management company may refuse a repurchase for up to one year following the surrender of the unit certificate for its repurchase until these assets are sold on appropriate conditions. The fund rules may extend this one-year period to two years. Once this period has expired, the real estate investment management company may lend on assets of the real estate fund, should this be necessary in order to procure funds for the repurchase of the unit certificates. Once this is possible on appropriate conditions, the management company shall be obliged to remove these encumbrances by selling assets of the real estate fund or by other means. The Financial Market Authority shall be notified immediately of encumbrances and their removal.

(3) The prospectus as per § 7 shall contain a special indication in respect of the repayment modalities in accordance with this provision.

(4) The real estate investment management company shall inform the investors, by way of publication, of the suspension of the repurchase of unit certificates and of the continuance of the repurchase of unit

certificates. The FMA shall be notified immediately of the continuance of the repurchase of units.

## § 12. Financial year of real estate funds

The financial year of real estate funds shall be the calendar year unless otherwise provided in the fund rules.

## § 13. Accounting and publication

(1) The real estate investment management company shall prepare an annual report for each financial year and each real estate fund as well as a half-yearly report for the first six months of each financial year.

(2) The annual report shall include a profit and loss account, a statement of assets and liabilities and the fund rules; the annual report shall also include a statement of changes in the fund assets and indicate the number of units at the beginning and end of the period under review. The annual report shall also contain a report on the activities in the past financial year and all other data provided for in Annex B, as well as any essential information enabling investors to make a fully informed assessment of the development of activities and results of the real estate fund. The half-yearly report shall contain at least the information provided for in items 1 to 3 and 5 to 7 of Annex B; if the real estate fund has paid or proposes to pay an interim dividend, the figures shall show the result after taxes for the half-yearly period concerned and the interim dividend paid or proposed. The half-yearly data shall be supplemented with estimated projected data up to the end of the financial year. The assets of the real estate fund shall be stated at the values as per § 29. The annual report shall be published within four months and the half-yearly report within two months of the end of the period under review.

(2a) If a real estate investment management company enters into repurchase agreements for account of a real estate fund (§ 4 para. 3a) or conducts securities lending transactions (§ 4 para. 3b), these agreements and transactions shall be shown as separate items in the half-yearly reports and annual reports, together with notes hereto.

(3) The annual report shall be audited by the bank auditor of the real estate investment management company; this audit shall be subject, mutatis mutandis, to the provisions of § 268 to § 276 of the Business Code. The audit shall also extend to compliance with this federal act and with the fund rules. The audited annual report shall be submitted to the Financial Market Authority by the bank auditor within four months of the end of the financial year. The half-yearly report shall be submitted to the Financial Market Authority within two months of the end of the period under review.

(4) The audited annual report and the half-yearly report shall be submitted immediately to the supervisory board of the real estate investment management company.

(5) The audited annual report and the half-yearly report shall be made available for inspection at the offices of the real estate investment management company and the custodian bank and be made available to the unit holders free of charge upon request.

(6) The real estate funds managed for the unit holders by the real estate investment management company and the total assets of these funds shall be published together with the annual financial statements of the real estate investment management company.

(7) For special real estate funds, the fund rules may be omitted from the annual report. In the case of special real estate funds, annual reports and half-yearly reports need not be made available in the custodian bank; the audit report on the annual report shall be sent to all holders of special real estate funds. Half-yearly reports of special real estate funds and the audit report on the annual report shall only be submitted to the Financial Market Authority upon request.

## § 14. Profits and appropriation of profits

(1) The annual profits of a real estate fund shall be paid to the unit holders in the amount stipulated in the fund rules. Where no distribution is made, an amount corresponding to the applicable rate of investment income tax, including the amount paid voluntarily as per § 124b item 186 of the Personal Income Tax Act 1988, shall be paid out of the annual profits not distributed. Income shall include any amounts contributed by new unit holders to income as shown at the date of issue as per para. 2 items 1 and 3 (income adjustment). For investment funds or certain types of unit certificates, payment need not be effected if the real estate investment management company managing the fund provides clear evidence either that the distributed income and the income equivalent to distributions of all holders of the unit certificates issued is not subject to national personal income tax (Einkommensteuer) or corporate income tax (Körperschaftsteuer) or that the prerequisites for an exemption as defined by § 94 of the Personal Income Tax Act 1988 have been fulfilled. The accumulated statements provided by both the custodian bank and the real estate investment management company to the effect that they are not aware of any sale to such persons, as well as fund rules

which provide for the exclusive distribution of certain types abroad, shall be deemed such evidence.

(2) A real estate fund's annual profits are composed of its

1. profits from asset management
2. profits from appreciation and
3. profits from securities and liquid funds.

Distributions of domestic real estate companies (§§ 23 ff) shall also be deemed profits unless these are not sales gains from real estate. Profits of foreign real estate companies (§§ 23 ff) shall be directly accredited to the real estate fund. Compensation for losses shall initially occur on a priority basis within the individual profit types. Thereafter compensation shall occur between the individual profits as per items 1 to 3. A loss carryover shall not be permitted in any circumstances.

(3) The profits from asset management shall be calculated on the basis of the income received in connection with the remunerable use of the relevant real estate (assets as per § 21) plus other income from ongoing management – where this is not to be accredited to the profits as per para. 2 items 2 and 3 – minus associated expenditure. Depreciation as per § 204 of the Business Code for a loss in the value of buildings shall not be permissible. For costs arising from the prevention or the elimination of structural damages due to wear, deterioration and climatic conditions, an accrual in the amount of one tenth to one fifth of the net rental charge shall be deducted as expenditure (provision for repairs). Implementation of such measures shall not constitute profit-reducing expenditure.

(4) Profits from appreciation are 80% of the valuation differences on the basis of correct valuations as per § 29 minus associated expenditure. Expenditure shall be reduced by 20% and may only be deducted where this need not be taken into consideration in respect of profits from management or profits from securities and liquid funds. This shall also apply for shares in real estate companies (§§ 23 ff) whose profits are, as per para. 2, not to be directly accredited to the real estate fund, insofar as the fluctuations in value arise from valuation differences within the meaning of the aforementioned sentences.

(5) Profits from securities and liquid funds are profits from interest on assets as per § 32 and § 33.

## **§ 15. Termination of management by the investment management company**

(1) By way of publication (§ 19) subject to at least six months' notice, the real estate investment management company may terminate its management of a real estate fund subject to the approval of the Financial Market Authority. Approval shall be granted if the interests of investors are adequately safeguarded.

(2) If the fund assets are less than 30 million euros, the real estate investment management company may terminate its management as at the date of publication without observing a period of notice, while at the same time informing the Financial Market Authority of such termination. Termination because of the fund assets' being less than the above amount is not permissible during termination of the management of the investment fund referred to in para. 1.

(3) The right of the real estate investment management company to manage a real estate fund shall expire when the company's license to conduct real estate fund business ceases to be valid or when it is resolved that the real estate investment management company be wound up.

(4) Subject to the approval of the Financial Market Authority, the real estate investment management company may terminate its management of a real estate fund without giving notice as per para. 1 by transferring the assets of the fund to a different real estate fund managed by the same or another real estate investment management company, or by combining these assets with another fund so as to establish a new real estate fund. The provisions set out in § 3 para. 2 shall apply. No costs shall be charged to the unit holders as a result of this procedure.

(5) Subject to the approval of the Financial Market Authority, without giving notice as per para. 1 the real estate investment management company may assign the management of a real estate fund to a different real estate investment management company. The provisions set out in § 3 para. 2 shall apply mutatis mutandis. No costs shall be charged to the unit holders as a result of this procedure.

## **§ 16. Management by the custodian bank or another real estate investment management company**

(1) If the right of a real estate investment management company to manage a real estate fund expires, management shall pass to the custodian bank in accordance with the fund rules.

(2) In case of notice of termination being given as per § 15 para. 1, and subject to the approval of the Financial Market Authority, the custodian bank may assign the management of the real estate fund to another real estate investment management company within six months of termination of management by the real estate investment management company. Such approval shall be granted if the legitimate interests of the unit holders are adequately safeguarded. The assignment of management to the other real estate investment management company shall be published by that other company. The assignment of a special real estate fund to another real estate investment management company shall not require the approval of the Financial Market Authority.

## **§ 17. Winding-up of a real estate fund**

(1) If the custodian bank fails to assign management to another real estate investment management company as per § 16 para. 2, it shall wind up the real estate fund. The commencement of the winding-up procedure shall be published. From the date of this publication, no units may be redeemed.

(2) Real estate fund assets shall be turned into cash as rapidly as possible whilst safeguarding the interests of the unit holders. The assets shall be distributed to the unit holders only after the liabilities of the real estate fund have been met and after the payments to the real estate investment management company and the custodian bank permissible under the fund rules have been made.

## **§ 18. Prohibition of purchase and sale for executive and supervisory bodies of the real estate investment management company and the custodian bank**

Members of the management and supervisory boards of a real estate investment management company shall not purchase assets from the holdings of real estate funds managed by that real estate investment management company, and they shall not sell assets to such a fund. This does not apply to unit certificates of a fund managed by the real estate investment management company. The same shall apply for the custodian bank and the members of its management and supervisory boards and for experts appointed as per § 29 where such persons have, as per § 29 para. 2 valued the asset which is due to be purchased or sold.

## **§ 19. Publications**

(1) For publications required under this federal act or under the fund rules, § 8 para. 3 of the Capital Market Act 2019 shall apply. In any event, the issuer shall publish a notification indicating how the prospectus has been published otherwise pursuant to para. 3 and where it may be obtained. If the prospectus is published in an electronic format, then upon request a paper copy must nonetheless be made available to the investor by the investment management company or by the financial intermediaries selling the units.

(2) If, in accordance with this federal act, the unit holders have to be informed of certain facts or events, this information shall, unless otherwise explicitly provided in this federal act, be made available to unit holders on paper or in another durable medium, whereas, in the case of a durable medium other than paper, the following prerequisites shall be met:

1. The information shall be provided in a form appropriate to the context in which the business between the unit holder and the real estate fund or, where relevant, the respective real estate investment management company is, or is to be, carried on; and

2. the unit holder to whom the information is to be provided, when offered the choice between information on paper or in another durable medium, has specifically chosen the latter.

(3) For the purposes of para. 2, the provision of information by means of electronic communications shall be treated as appropriate to the context in which the business between the real estate fund or the real estate investment management company and the unit holder is, or is to be, carried on if there is evidence that the unit holder has regular access to the Internet. The provision by the unit holder of an e-mail address for the purposes of the carrying on of that business shall be treated as such evidence. If this is not the case, the information shall be sent to an address provided by the unit holder when acquiring the units.

(4) Where unit certificates are not held in safe custody by the real estate investment management company or the real estate investment management company cannot itself carry out the transmission of information, it shall make available the information to the unit holders' custodians in a form appropriate for transmitting it to the unit holders. Upon availability of the information to custodians, they shall transmit it to the unit holders without delay.

## § 20. Protection of designations

The designations “Immobilien-Kapitalanlagefonds” (“real estate capital investment fund”), “Kapitalanlagefonds für Immobilien” (“capital investment fund for real estate”), “Immobilienfonds” (“real estate fund”), “Immobilieninvestmentfonds” (“real estate investment fund”), “Immobilieninvestmentanteilschein” (“real estate investment unit certificate”) or equivalent designations or abbreviations of such designations may only be used for real estate funds and their unit certificates and only be included in the firm names of real estate investment management companies. The addendum “mündelsicher” (“eligible for trusts”) or equivalent designations or abbreviations associated with real estate funds may only be used for real estate funds as per § 6 para. 7.

## § 21. Rules concerning investments

(1) In compliance with the fund rules, the following assets situated in a Member State of the European Union or in a Contracting Party to the Agreement on the European Economic Area may be purchased for a real estate fund; the principle of risk spreading shall thereby be taken into account:

1. developed real estate;
2. real estate in a state of development if circumstances are such that it may be assumed that this development will be completed within a reasonable period of time and that, together with the value of the real estate which already forms part of the real estate fund and is in a state of development in accordance with this item, the expenditure associated with the real estate does not overall exceed 40 per cent of the value of the real estate fund;
3. undeveloped real estate which is suitable and intended for imminent development by the real estate fund if, at the time of purchase, its value together with the value of the undeveloped real estate which already forms part of the real estate fund does not overall exceed 30 per cent of the value of the real estate fund;
4. building rights and superstructures (Superädifikate) within the meaning of § 435 of the General Civil Code, co-owned land and condominium property in accordance with the provisions set out in items 1 to 3.

(2) If so stipulated in the fund rules and it may be expected that they will generate long-term income, the following assets may also be purchased for a real estate fund:

1. other real estate, building rights and rights in the form of co-owned land, condominium property and a building right situated in Member States of the European Union or in Contracting Parties to the Agreement on the European Economic Area and
2. real estate of the type indicated in para. 1 items 1 to 3 situated outside the Member States of the European Union or outside the Contracting Parties to the Agreement on the European Economic Area.

The real estate and rights as per item 1 may only be purchased if, at the time of purchase, their value together with the value of the real estate and the rights of the type indicated in item 1 already forming part of the real estate fund does not exceed 10 per cent of the value of the real estate fund. The real estate as per item 2 may only be purchased if, at the time of purchase, its value together with the value of the real estate of the kind indicated in item 2 already forming part of the real estate fund does not exceed 20 per cent of the value of the real estate fund. For real estate as per item 2, the limitations set out in para. 1 items 2 and 3 shall also apply, with the proviso that the value of the real estate fund shall be replaced by the value of the real estate as per item 2.

(3) An asset as per paras. 1 and 2 may only be purchased if it has previously been valued by at least two experts (§ 29 paras. 1 and 2) independently of one another and the consideration to be provided from the real estate fund does not exceed or only slightly exceeds the calculated value.

(4) The principles for the asset selection as per paras. 1 and 2 and the investment limits shall be regulated in the fund rules.

(5) Assets may also be purchased for a real estate fund which are necessary in order to manage the assets of the fund.

(6) Non-compliance with the above provisions shall not affect the validity of the legal transaction.

## § 22. Minimum dispersion

(1) A real estate fund shall consist of at least ten assets as per § 21 paras. 1 and 2.

(2) None of the assets as per § 21 paras. 1 and 2 may at the time of purchase amount to more than 20 per cent of the value of the real estate fund.

(3) An object consisting of several pieces of real estate shall also be deemed an asset within the meaning of para. 1.

(4) The limitations set out in paras. 1 and 2, § 4 para. 3b, § 21, § 23 para. 5 item 3 and para. 6 and § 32 para. 1 items 1 to 4 shall only become binding for the real estate fund if a period of four years has passed since the date of its formation. A combination as per § 3 para. 2 shall not be deemed a formation.

(5) Notwithstanding para. 1, a special real estate fund shall consist of at least five assets as per § 21 paras. 1 and 2 and, notwithstanding para. 2, at the time of their acquisition none of the assets as per § 21 paras. 1 and 2 may exceed a value of 40 per cent of the value of the special real estate fund. Paras. 3 and 4 shall apply.

## § 23. Real estate companies

(1) The real estate investment management company may only purchase and maintain shares in real estate companies for account of the real estate fund as per paras. 2 to 6 if this is provided for in the fund rules, if a long-term income may be expected from the shares, and if the powers of the custodian bank as per § 4 para. 4 are ensured in an appropriate form by means of an agreement between the real estate investment management company and the real estate company. Real estate companies are companies

1. whose purpose of business is limited in their instrument of incorporation (*Gesellschaftsvertrag* or *Satzung*) to activities which the real estate investment management company may undertake for the real estate fund, and

2. which according to their instrument of incorporation are only permitted to purchase assets as per § 21 which in accordance with the fund rules may be directly purchased for the real estate fund.

(2) Prior to the purchase of shares in a real estate company, its value shall be determined by an auditor as per §§ 268 ff of the Business Code. This valuation shall be based on the most recent annual financial statements of the real estate company for which an auditor's report has been issued or – if more than three months have elapsed between the date of these statements and the valuation date – the assets and the liabilities of the real estate company which are shown in an up-to-date statement of assets and liabilities which has been audited by an auditor. § 25 para. 2 shall apply in respect of the valuation.

(3) The real estate investment management company may only purchase and maintain shares in a real estate company for account of the real estate fund if it has the required majority of votes in the real estate company that is necessary for amending the instrument of incorporation and if external liability is restricted to the invested capital by the legal form of the real estate company. This notwithstanding, the real estate investment management company may still purchase and maintain shares in a real estate company for account of the real estate fund within the scope of the investment limits as per para. 6 second sentence if it does not have the required majority of votes and capital for amending the instrument of incorporation (minority participation).

(3a) By way of derogation from para. 3, the real estate investment management company, for account of the real estate fund, may purchase and hold shares in a company that exclusively holds the position of a shareholder with unlimited liability in a real estate company if it has the required majority of votes in the company that is necessary for amending the instrument of incorporation and if external liability is restricted to the invested capital by the legal form of the company. Para. 6 shall apply with regard to the shares in this company.

(4) The contributions of the shareholders in the real estate company in which the real estate investment management company maintains a stake for account of the real estate fund shall be fully paid in.

(5) The instrument of incorporation of the real estate company shall ensure that

1. the real estate company is not entitled to hold more than three assets as per § 21,

2. (abrogated, Federal Law Gazette I 2006/134),

3. the real estate company may only purchase an asset if its value together with the value of the assets already held by the real estate company does not exceed 20 per cent of the value of the real estate fund for whose account shares are maintained in the real estate company.

An object consisting of several pieces of real estate shall be deemed a single asset. In the event that the real estate company's instrument of incorporation fails to comply with these provisions, the real estate investment management company may only purchase its shares in the real estate company if it is ensured that a corresponding amendment will be made to the instrument of incorporation immediately after the purchase of the shares.

(6) The value of all shares (including any loan receivables) in real estate companies in which the real estate investment management company maintains a stake for account of the real estate fund may not exceed 49 per cent of the value of the real estate fund. Notwithstanding the investment limit as per the first sentence, the value of assets, as per § 21, which belong to the assets of real estate companies in which the real estate investment management company does not maintain a capital majority for account of the real estate fund may not exceed 20 per cent of the value of the real estate fund.

(7) If, after the purchase of shares in a real estate company, the preconditions for the purchase and maintenance of the share are no longer fulfilled, the real estate investment management company shall conduct its sale, while safeguarding the interests of the investors.

(8) If the purpose of business of the real estate company has been limited to the scope set out in para. 1 item 1 only within the last three years prior to being purchased for the real estate fund, its purchase for the real estate fund is only permissible if either the sellers of the real estate company or the real estate investment management company assumes the liability for obligations of the real estate company for the benefit of the real estate fund for account of which the purchase is made, as long as these obligations do not concern the purpose of business as per para. 1 item 1 and as long as they were not known when the real estate company was valued at the time of purchase.

## § 24.

(1) The real estate investment management company may only grant a loan to a real estate company for account of the real estate fund if it maintains a stake in the real estate company for account of the real estate fund, the loan conditions are fair market ones, the loan is sufficiently collateralized and it has been agreed that, in case of a sale of the shares, the loan will be repaid within six months of the sale. The real estate investment management company shall ensure that the total loans granted to a real estate company for account of the real estate fund do not exceed 50 per cent of the value of the real estate held by the real estate company. The real estate investment management company shall ensure that the total loans granted to real estate companies for account of the real estate fund do not exceed 25 per cent of the value of the real estate fund.

(2) A loan grant as per para. 1 shall also apply if on behalf of the real estate investment management company a third party grants the real estate company a loan in his own name for account of the real estate fund.

## § 25.

(1) The real estate investment management company shall contractually oblige the real estate company in which it maintains a stake for account of the real estate fund to submit monthly statements of assets and liabilities to the real estate investment management company and the custodian bank and to have these audited once a year by the real estate investment management company's bank auditor on the basis of the real estate company's annual financial statements for which an auditor's report has been issued. The valuations undertaken in order to calculate current prices shall be based on these statements of assets and liabilities.

(2) The real estate items shown in the real estate company's annual financial statements or statement of assets and liabilities shall be reported at the value determined by at least two experts as per § 29 para. 1. § 29 para. 2 second sentence shall apply. The experts shall carry out valuations of the real estate prior to the purchase of shares in the real estate company and thereafter at least once a year. They shall carry out valuations of newly purchased real estate prior to its purchase. The other assets of the real estate company shall be valued in the same way as the other assets of the real estate fund. Loans and other liabilities shall be deducted from these valuations.

(3) The resulting value of the real estate company shall be contributed to the real estate fund in accordance with the amount of the shares, whilst taking into consideration other value-influencing factors.

## § 26.

The real estate investment management company shall agree with the real estate company that the payments due to the real estate investment management company for account of the real estate fund, the proceeds of liquidation and other amounts due to the real estate investment management company for account of the real estate fund shall be immediately paid in to a bank account of the real estate fund held by the custodian bank. The custodian bank shall ensure that this agreement is made.

## § 27.

A violation of the provisions set out in § 23 to § 26 shall not affect the validity of a legal transaction.

## § 28.

(1) The custodian bank shall monitor the portfolio of interest in real estate companies on an ongoing basis. It shall also ensure that the provisions set out in § 23 are complied with when shares are purchased.

(2) Dispositions in respect of shares in real estate companies or of items as per § 21 forming part of the assets of these companies shall require the consent of the custodian bank, as shall amendments to the instrument of incorporation (*Gesellschaftsvertrag* or *Satzung*). The powers of the custodian bank as per the first sentence shall be ensured by means of an agreement between the real estate investment management company and the real estate company. The custodian bank shall agree to a disposition or amendment as per the first sentence if this is compatible with the provisions of this act and the fund rules and the interests of the unit holders are safeguarded. If the custodian bank provides its consent even though these conditions do not apply, this shall not affect the validity of the disposal or amendment.

## § 29. Valuation of the assets

(1) In the fund rules the real estate investment management company shall regulate the valuation of the assets as per § 21. For the valuation, the real estate investment management company shall consult at least two experts professionally suitable for the field of real estate appraisal and valuation. These experts shall be independent of the real estate investment management company and the custodian bank. The experts shall be appointed by the management of the real estate investment management company in agreement with the custodian bank and with the consent of the supervisory board of the real estate investment management company. The grounds for exemption set out in § 62 of the Banking Act – excluding § 62 item 6a of the Banking Act – shall apply mutatis mutandis for the independent experts. For misconduct of the experts, apart from the experts themselves the real estate investment management company and the custodian bank shall also be jointly liable as vicarious agents as per § 1313a of the General Civil Code.

(2) Valuation of the assets as per § 21 shall occur in accordance with the generally recognized valuation principles and at least once per year, and whenever such assets are purchased, sold or encumbered, the custodian bank orders such a valuation for a specific reason or in other cases stipulated by the fund rules. The calculations involved in determining the value of the real estate fund and its units shall be based on the arithmetical average of the valuations made on the same cut-off date by two or more experts as per para. 1.

(3) In case of a share holding as per § 23, in its statements of assets and liabilities (annual reports/half-yearly reports) the real estate investment management company shall provide the details for the individual real estate items and other assets of the real estate company as though this were a direct investment by the fund; it shall also designate them specifically. It shall also indicate:

1. the firm name, legal form and registered office of the real estate company,
2. the share capital,
3. the amount of the shares and the date of their purchase by the real estate investment management company, and
4. the number and amounts of the loans granted by the real estate investment management company or by third parties as per § 24.

(4) The bank auditor of the real estate investment management company shall at its establishment and thereafter at every annual report audit issue a statement as to whether the experts as per para. 1 have been properly appointed and the other conditions as per paras. 1 to 3 apply. If these conditions do not apply or cease to apply, the bank auditor shall notify the custodian bank and the Financial Market Authority immediately of this circumstance. The Financial Market Authority shall not bear any liability in respect of the selection and suitability of the experts.

## § 30. Risk spreading

The fund rules shall specify the minimum number of assets as per § 21 to be purchased for the real estate fund and the highest possible value of one such individual asset in relation to the overall fund assets.

## § 31. Start-up phase

The fund rules shall specify the period available in which to reach the minimum number as per § 30.

## § 32. Liquidity provisions

The real estate investment management company may maintain or purchase for a real estate fund, up to a value of 49 per cent of the fund's assets, the following assets:

1. bank balances;
2. money market instruments;
3. units in UCITS as defined in § 2 of the Investment Funds Act 2011, Federal Law Gazette I No. 77/2011, or in special funds as defined in § 163 of the Investment Funds Act 2011, which as per the fund rules may exclusively invest directly or indirectly in assets in accordance with items 1, 2 and 4;
4. bonds, cash deposit certificates (*Kassenobligationen*), convertible bonds, mortgage bonds, municipal bonds and Austrian federal treasury bills with respective residual maturities of a maximum of five years provided that the weighted average residual maturity until the time of capital repayment of these assets held in the fund is a maximum of three years;
5. securities which are admitted to trading on a stock exchange in a Member State of the European Union or in a state that is a Contracting Party to the Agreement on the European Economic Area, insofar as the total value of said securities does not exceed 5 per cent of the fund assets.

The real estate investment management company shall maintain an amount that corresponds to at least 10 per cent of the fund assets (without income), or, in the case of special real estate funds, at least 5 per cent of the fund assets (without income), in the form of assets as per items 1 to 4.

(1a) Para. 1 last sentence shall also be deemed complied with if the real estate investment management company has concluded a written agreement for the real estate fund with a credit institution or an insurance company having its respective registered office in a Member State of the European Union or in a state that is a Contracting Party to the Agreement on the European Economic Area, which obligates the contracting partner, at the request of the real estate investment management company, to purchase shares in the real estate fund amounting to a maximum countervalue of the minimum liquidity stipulated in the fund rules, in order to provide the real estate fund with the necessary liquidity.

(2) In accordance with the fund rules, in addition to income, bank balances up to a maximum amount of 20 per cent of the fund assets may be maintained with the same group of credit institutions (§ 30 of the Banking Act). By way of derogation from the first sentence, in the case of special real estate funds, bank balances up to a maximum amount of 40 per cent of the fund assets may be maintained with the same group of credit institutions for a maximum of three months. For investments as per para. 1 items 2, 4 and 5, § 72 in connection with § 74 paras. 1 and 3 of the Investment Funds Act 1993 shall apply *mutatis mutandis*. For investments as per para. 1 item 3, § 71 in connection with § 77 paras. 1 and 2 of the Investment Funds Act 2011 shall apply *mutatis mutandis*.

(3) Units in near-money market investment funds shall be treated as bank balances as per paras. 1 and 2.

(4) The legal validity of purchases of securities and investments in bank balances shall not be affected by any violation of the provisions set out in paras. 1 to 3.

## § 33. Derivative products

(1) For a real estate fund, derivative financial instruments, including equivalent instruments settled for cash which are quoted or traded on a regulated market as per Art. 4 para. 1 number 92 of Regulation (EU) No. 575/2013, or traded on another recognized, regulated and properly functioning public securities market of the European Union or of a state that is a Contracting Party to the Agreement on the European Economic Area, or are officially listed on a stock exchange of a third country (§ 2 item 8 of the Banking Act) or on a recognized, regulated, and properly functioning public securities market of a third country, as long as the choice of this stock exchange or this market is explicitly provided for in the fund rules, or derivative financial instruments which are not traded on a stock exchange or a regulated market (OTC derivatives), such as, for example, interest rate swaps and foreign exchange swaps, may be used for the hedging of the assets and for the protection of claims arising from the management of the assets as per § 21 which are to become due in the following 24 months, insofar as:

1. the underlying instruments are securities, money market instrument, assets as per § 21 paras. 1 and 2, or shares as per § 23, or financial indices, interest rates, exchange rates or currencies in which the real estate fund may invest as per the investment objectives stipulated in its fund rules,
2. the counterparties in transactions with OTC derivatives are institutions subject to supervision in categories officially authorized by way of regulation by the Financial Market Authority, and

3. the OTC derivatives are subject to a reliable and verifiable valuation on a daily basis and may at any time, on the initiative of the real estate investment management company, be sold, liquidated or closed out by means of an offsetting transaction at an adequate market value.

(2) The real estate investment management company shall employ a procedure which permits a precise and independent valuation of the respective OTC derivatives.

(3) The risk of default for transactions of a real estate fund with OTC derivatives shall not exceed the following rates:

1. if the counterparty is a credit institution within the meaning of § 72 of the Investment Funds Act 2011, 10 per cent of the fund assets,

2. otherwise, 5 per cent of the fund assets.

## § 34. Fund rules

(1) The management of the real estate investment management company shall specify fund rules regulating the legal relationship between the unit holders and the real estate investment management company as well as the custodian bank. The fund rules shall be submitted to the custodian bank for its consent and shall be brought to the attention of the supervisory board in the next meeting. The fund rules shall require the approval of the Financial Market Authority, unless the fund is a special real estate fund (§ 1 para. 3). Such approval shall be granted if the fund rules do not contradict the legitimate interests of the unit holders.

(2) Apart from such other information as is required to be provided under this federal act, the fund rules shall specify:

1. if the unit certificates are bearer or registered certificates;

2. the principles according to which the real estate items purchased for the fund are selected;

3. the maximum proportion of the fund assets permitted to be held in the form of bank balances or debt securities;

4. the minimum proportion of the fund assets which is to be maintained as bank balances or debt securities; income from the real estate fund may be not paid out if it is required for future repair of items belonging to the fund assets;

5. the principles for estimated projections of the development and maintenance of the fund assets;

6. the remuneration payable to the real estate investment fund for managing the fund and the expenses for which it is to be reimbursed;

7. if, and to what amount, a sales charge may be added to the calculated value of the units to cover the issuing costs incurred by the real estate investment fund at the issue of the unit certificates;

8. to what extent the annual income is to be distributed to the unit holders. In this connection it may be provided that several classes of unit certificates may be issued for a real estate fund in accordance with § 6 para. 6;

9. the times at which the value of the units is to be calculated;

10. if, and to what amount, a remuneration for the real estate investment management company may be deducted from the repurchase price when unit certificates are repurchased;

11. the remuneration payable to the custodian bank upon the winding-up of the real estate fund.

(3) The real estate investment management company may change the fund rules subject to the consent of the custodian bank; any change shall require the approval of the Financial Market Authority, unless the fund is a special real estate fund (§ 1 para. 3). Such approval shall be granted if the change in the fund rules does not contradict the legitimate interests of the unit holders. The change shall be published. It shall come into force on the date indicated in the publication, but not earlier than three months since publication. Publication shall not be required if the change in the fund rules is communicated to all unit holders in accordance with § 19; in that event, the interests of unit holders shall be deemed adequately safeguarded, and the change shall come into force on the date indicated in the publication, but not earlier than thirty days after having been communicated to the unit holders. The change of the fund rules shall be brought to the attention of the supervisory board in the next meeting.

(4) If their fund rules have been approved as per para. 1, real estate funds as per § 1 para. 1 may only be converted into special real estate funds (§ 1 para. 3) with the consent of all unit holders.

## § 35. Custodian bank

(1) With the consent of the supervisory board the management of the real estate investment management company shall appoint a custodian bank. Only a credit institution authorized to carry out custody business (§ 1 para. 1 item 5 of the Banking Act) or a domestic branch of a CRR credit institution as defined in § 1a para. 1 item 1 of the Banking Act established under § 9 para. 4 of the Banking Act may be appointed as custodian bank. Permission shall be required from the Financial Market Authority in order to appoint or change the custodian bank. Such permission may only be granted if it may be assumed that the credit institution guarantees fulfillment of the tasks of a custodian bank. The appointment and the replacement of the custodian bank shall be published; the publication shall contain a reference to the official notice of approval. Subject to a request by the real estate investment management company, the selection of the custodian bank for special real estate funds may be generally authorized by the Financial Market Authority.

(1a) If a government commissioner pursuant to § 70 para. 2 item 2 of the Banking Act or a supervisor pursuant to § 84 of the Banking Act has been appointed for a custodian bank and the custodian bank is replaced, the consent of the custodian bank to this change of the fund rules required pursuant to § 34 para. 3 shall be required to be given only by the custodian bank to be newly appointed, and the replacement of the custodian bank, but not any additional changes of the fund rules, shall come into force on the date indicated in the publication, irrespective of the deferral referred to in § 34 para. 3.

(2) The custodian bank shall implement issuance and repurchasing of the unit certificates and keep the securities belonging to a real estate fund in safe custody and manage the bank accounts belonging to the fund. For all transactions concluded for a real estate fund, valuable consideration shall be made available immediately to the custodian bank for the securities accounts and cash accounts kept by it for the fund. This applies in particular to the issue of the unit certificates and their repurchase. The custodian bank shall pay out the income payable on the units to the unit holders. The custodian bank shall monitor on an ongoing basis the portfolio of assets as per § 21 and the portfolio of cash holdings, securities and other assets forming part of the fund assets. It shall be authorized to inspect the books and papers of the real estate investment management company at any time where these refer to assets of the real estate funds. A court shall rule on disputes between the custodian bank and the real estate investment management company in connection with this federal act in non-contentious proceedings (*Ausserstreitverfahren*), unless these disputes relate to civil litigation which has been assigned to a trial court.

(3) The remuneration payable to the real estate investment management company under the fund rules for its management and the reimbursement of the expenditure associated with its management shall be paid by the custodian bank out of the accounts held for the fund. The custodian bank may charge the fund the remuneration payable to it for its activity. However, the custodian bank may only implement these measures on the basis of instructions from the real estate investment management company.

(4) The custodian bank shall be authorized and obliged to raise an objection in its own name as per § 37 of the Enforcement Code by bringing an action if execution is levied on an asset belonging to a real estate fund, unless the claim against the fund is legally justified by this federal act.

(5) In performing its duties, the custodian bank shall observe the provisions of this federal act and the fund rules and the interests of the unit holders. The custodian bank shall be liable to the real estate investment management company and the unit holders for any loss caused by culpable neglect of its duties.

## § 36. Restriction on advertising of unit certificates

(1) Unit certificates may only be advertised with a simultaneous reference to the published prospectus, any amendments thereto, the publishing body, the date of publication, the date of the notification as per § 19 para. 1 and to any offices where the prospectus may be obtained. § 4 of the Capital Market Act shall apply mutatis mutandis. Furthermore, § 4 paras. 2 to 4 of the Capital Market Act 2019 shall apply with regard to the contents and design of advertisements.

(2) Advertising for units of real estate funds in which reference is made to the past performance of the fund shall contain a note to the effect that past performance does not permit reliable inferences as to the future performance of a fund.

## § 37. Penal provisions

(1) Any person who, in a published prospectus of a real estate fund or in a statement modifying or supplementing such a prospectus or in an annual report or a half-yearly report of a real estate fund, makes incorrect favorable statements on material facts or conceals unfavorable facts, shall be punished by a court with imprisonment for a term not exceeding one year or with a fine not exceeding 360 daily rates, unless the offence is punishable with higher penalties under other provisions.

(2) Any person who voluntarily prevents the purchase of units of a fund before the payment required for such purchase has been made shall not be punished as per para. 1. Nor shall the perpetrator be punished if, without any action on the part of the perpetrator, the payment is not made and yet the perpetrator, being unaware of this, makes voluntary and serious efforts to prevent payment from being made.

(3) An offence shall not be punishable as per para. 1 if the effects of the offence are averted by a voluntary act under the conditions of § 167 of the Criminal Code if the compensation covers the entire payment required for the purchase including any incidental costs.

## § 38.

(1) Any person who advertises in contravention of the provision set out in § 36 commits an administrative offence for which the person shall be punished by the Financial Market Authority with a fine not exceeding 60,000 euros. The same punishment shall be imposed on any person who, as a responsible person (§ 9 of the Administrative Penal Act) of a real estate investment management company, violates the filing obligation as per § 7 para. 3, the notification obligations as per § 11 para. 1 or 4 or § 15 para. 2 or the submission period as per § 13 para. 3.

(2) Any person who, without being authorized to do so, operates under the designations “Immobilien-Kapitalanlagefonds” (“real estate capital investment fund”), “Kapitalanlagefonds für Immobilien” (“capital investment fund for real estate”), “Immobilienfonds” (“real estate fund”), “Immobilieninvestmentfonds” (“real estate investment fund”), “Immobilieninvestmentanteilschein” (“real estate investment unit certificate”) or equivalent designations or abbreviations of such designations or the addendum “mündelsicher” (“eligible for trusts”) or equivalent designations or abbreviations in contravention of § 20, commits an administrative offence and shall be punished by the Financial Market Authority with a fine not exceeding 60,000 euros.

## § 39. Coercive penalty

If a custodian bank contravenes any provisions of this federal act or an order or notice issued on the basis of this federal act, § 70 para. 4 and § 96 of the Banking Act shall apply subject to the proviso that the revocation of the license as per § 70 para. 4 item 3 of the Banking Act shall be replaced by the revocation of the approval granted as per § 35.

## § 40. Taxes

(1) 1. In accordance with item 2,

a) any profits in accordance with § 14 para. 2 items 1 to 2 and

b) profits, determined in accordance with § 14 para. 2 items 1 to 2, of AIF in real estate within the meaning of the Alternative Investment Fund Managers Act, including special real estate funds as defined in § 1 para. 3, whose home Member State is Austria and which do not fall under § 7 para. 3 of the Corporate Income Tax Act 1988

shall be deemed to have been distributed to the unit holders in proportion to the relevant units (income equivalent to distributions). Income equivalent to distributions shall be taxable income and, in the case of units which are not held as part of the assets of a business, shall be deemed investment income. Profits from foreign real estate shall not be taxable income if income from such real estate is exempt from taxation by virtue of a double tax treaty or a measure taken as per § 48 of the Federal Fiscal Code. Otherwise, in the case of a set-off of losses both within and between the individual profit types as per § 14 para. 2 items 1 and 2, profits shall initially be offset on a priority basis against losses from real estate from the same country, and after that against real estate from a different country where this does not relate to losses from real estate situated in a country in which income from this real estate is exempt by virtue of a double tax treaty or a measure taken as per § 48 of the Federal Fiscal Code. A set-off of losses from foreign real estate against profits from domestic real estate shall not be permitted in any circumstances. A set-off of income as referred to in (a) and (b) against other income shall not be permitted. Actual distributions and the payment of investment income tax (§ 14 second sentence) shall not result in income.

2. Irrespective of the manner in which earnings are determined, income equivalent to distributions shall constitute taxable income for the unit holders as of the following times:

a) if investment income tax is paid (§ 14 second sentence), as of the date of payment;

a) otherwise, as of the time of publication of the data relevant for investment income tax treatment by the notification office on the basis of a notification made within the set period;

b) in all other cases, as of the time referred to in para. 2 item 2.

(2)

1 .a) The breakdown of the composition of income equivalent to distributions as referred to in para. 1 and the required data relevant for tax purposes to determine the amount of investment income tax and the adjustments of the acquisition cost pursuant to para. 3 shall be submitted to the notification office referred to in § 23 of the Capital Market Act 2019 by a tax representative. On the basis of these data, the notification office shall determine tax treatment in accordance with the statutory provisions and publish the values for tax purposes thus determined in an appropriate form. § 23 para. 1 last sentence of the Capital Market Act 2019 shall be applied mutatis mutandis to this activity of the notification office.

b) Only an Austrian independent certified public accountant or a person with comparable professional qualifications may be appointed as tax representative. If the notification office rejects a tax representative due to doubts about the comparability of the qualification, the Federal Minister of Finance shall decide.

c) The Federal Minister of Finance is authorized to regulate in greater detail, by way of regulation,

aa) the period for submission to the notification office, taking into account the periods relevant for annual reports,

bb) the requirements for submission to the notification office,

cc) the content and structure of the submitted data,

dd) the determination of the values for tax purposes on the basis of the submitted data by the notification office in accordance with the statutory provisions,

ee) any corrections of the submitted data, and

ff) the manner of publication of the determined values for tax purposes by the notification office.

d) The federal government shall be liable for damage culpably caused to any person whatsoever by the notification office or other persons on behalf of the notification office in performing its tasks pursuant to § 40 para. 2 item 1 in accordance with the provisions of the Liability of Public Bodies Act, Federal Law Gazette No. 20/1949. The notification office and its functionaries or executive bodies and employees shall not be liable to the injured party. If the federal government has reimbursed the injured party for the damage, the federal government can claim reimbursement from the notification office if the damage was caused intentionally or by gross negligence.

2. If no communication is made in accordance with para. 1, the entire distribution shall be taxable. Income equivalent to distributions within the meaning of para. 1 shall be estimated to be 90% of the difference between the first and last repurchase price established in the preceding calendar year, in any case at least 10% of the repurchase price established at the end of the preceding calendar year. The unit holders may furnish proof of the amount of income equivalent to distributions or the non-taxability of the actual distribution by submitting the required documents.

3. If investment income tax has been deducted, the proof according to item 2 shall be furnished to the party subject to the deduction obligation. If a realization within the meaning of para. 3 has not yet occurred, such party shall either refund or subsequently deduct investment income tax and correct the acquisition cost in accordance with para. 3. If an attestation as referred to in § 96 para. 4 item 2 of the Personal Income Tax Act 1988 has already been issued, investment income tax may be refunded and the acquisition cost may be corrected only if the unit holder instructs the party subject to the deduction obligation to submit a corrected attestation to the competent tax office.

(3) Any increases in value realized upon the sale of unit certificates or units in an AIF in real estate shall be subject to taxation as per § 27 para. 3 of the Personal Income Tax Act 1988. Income equivalent to distributions shall increase, and non-taxable distributions, distributions which do not constitute income within the meaning of the Personal Income Tax Act 1988 and the payment of investment income tax (§ 14 second sentence) shall reduce, a unit holder's acquisition cost of the unit certificate or the unit in an AIF in real estate in accordance with § 27a para. 3 item 2 of the Personal Income Tax Act 1988. The redemption of unit certificates in accordance with § 11 para. 1 shall also be deemed a sale. The exchange of units in a real estate fund based on the combination of fund assets as per § 3 para. 2 or on a purchase of units as per § 15 para. 4 shall not be deemed a realization, and the previous acquisition cost shall be stated at amortized cost.

(4) If unit certificates or units in an AIF in real estate are not offered in legal and in material terms to an indefinite group of persons and an investment is made, the dividend payments or the profits deemed to have been distributed as per § 14 para. 4 shall be increased by one quarter.

(5) When paras. 1 to 4 are applied for the first time to existing undertakings, the acquisition cost of the real estate calculated for tax purposes shall be taken as the basis for determining profits from appreciation in accordance with § 14 para. 4, and § 30 para. 3 second and third sentences of the Personal Income Tax Act 1988 shall be applied mutatis mutandis. Profits from appreciation accumulated until paras. 1 to 4 are applied for the first time can be equally distributed over the year when the provisions were first applied and the following four financial years.

(6) The following shall apply to income that does not fall under para. 1 item 1 (a) or (b):

1. § 186 paras. 1 to 4 and paras. 6 and § 58 para. 2 second sentence of the Investment Funds Act 2011 shall apply mutatis mutandis to income as referred to in § 27 of the Personal Income Tax Act 1988,
2. § 186 paras. 5 items 2 to 3 and para. 6 of the Investment Funds Act 2011 shall apply mutatis mutandis to other income.

## **§ 41.**

(1) The provisions set out in § 15 to § 85 of the Valuation Act 1955 shall not apply in respect of the valuation of unit certificates or units in an AIF in real estate.

(2) Purchases as per § 1 of the Real Estate Transfer Tax Act 1987 which occur through the issue, repurchase or transfer of units in a real estate fund or units in an AIF in real estate, if these have no legal personality, shall be exempted from real estate transfer tax.

(3) If through a transfer or combination as per § 3 para. 2 or § 15 para. 4 purchases occur as per § 1 of the Real Estate Transfer Tax Act 1987, the real estate transfer tax shall be calculated pursuant to § 4 para. 1 second sentence in connection with § 7 para. 1 item 2 (c) of the Real Estate Transfer Tax Act 1987.

(4) If – through a contribution of assets as per § 21 from a portfolio of assets which has its own accounting unit and is from stock corporations (Aktiengesellschaft) for which profit participation rights have been issued as per § 174 of the Stock Corporation Act or from stock corporations (Aktiengesellschaft) whose purpose of business is almost exclusively to manage real estate assets - purchases occur as per § 1 of the Real Estate Transfer Tax Act 1987 in return for the purchase of unit certificates in a real estate fund, the real estate transfer tax shall be calculated pursuant to § 4 para. 1 second sentence in connection with § 7 para. 1 item 2 (c) of the Real Estate Transfer Tax Act 1987.

## **§ 42.**

The provisions set out in § 40 shall also apply for foreign real estate funds. The following shall be deemed foreign real estate funds:

1. AIF in real estate within the meaning of the Alternative Investment Fund Managers Act whose home State is not Austria, with the exception of corporations comparable to an Austrian corporation falling under § 7 para. 3 of the Corporate Income Tax Act.

2. Any collective investment in real estate that is subject to the laws of a foreign country whose assets are invested under the law, under instruments of incorporation or in actual practice in accordance with the principles of risk spreading, irrespective of its legal form, if it does not fall under item 1 and meets one of the following requirements:

a) The collective investment is not, in fact, directly or indirectly subject to a tax in a foreign country that is comparable to Austrian corporation tax.

b) The profits of the collective investment are subject to a tax in a foreign country that is comparable to Austrian corporate income tax, the applicable rate of which is more than 10 percentage points lower than Austrian corporate income tax pursuant to § 22 para. 1 of the Corporate Income Tax Act 1988.

c) The collective investment is subject to comprehensive personal or subject-based exemption in a foreign country.

In the case of AIF in real estate within the meaning of the Alternative Investment Fund Managers Act, assets shall always be deemed invested in accordance with the principles of risk spreading.

## **§ 43. Enforcement clause**

The Federal Minister of Justice shall be entrusted with the enforcement of this federal act with regard to § 37, and the Federal Minister of Finance shall be entrusted with the enforcement of all other provisions.

## **§ 43a. Transitional provisions**

**§ 43a.** Real estate investment management companies that perform activities pursuant to this federal act before 22 July 2013 shall take all necessary measures to comply with the provisions adopted on the basis of the Alternative Investment Fund Managers Act and shall file an application for a license as an AIFM within one year of expiry of that date. If no such application is filed, the authorization to manage real estate funds shall expire.

## **§ 44. Coming into force**

(1) This federal act shall come into force on 1 September 2003.

- (2) § 1 para. 3, § 13 para. 3 and § 29 para. 4, as amended by the federal act promulgated in Federal Law Gazette I No. 37/2005, shall come into force as of 1 July 2005.
- (3) § 15 para. 2, as amended by the federal act promulgated in Federal Law Gazette I No. 134/2006, shall come into force as of 1 July 2007. Annex C, as amended by the federal act promulgated in Federal Law Gazette I No. 134/2006, shall come into force as of 1 January 2007.
- (4) § 7 para. 1, § 13 para. 3, § 14 para. 3, § 15 para. 2, § 19, § 22 para. 4, § 23 para. 3, § 36 para. 1, § 38 para. 1, as amended by the federal act promulgated in Federal Law Gazette I No. 69/2008, shall come into force as of the day following promulgation.
- (5) § 34 para. 5, as amended by the federal act promulgated in Federal Law Gazette I No. 152/2009, shall come into force on 1 January 2010. Until 30 June 2010, notifications in accordance with § 34 para. 5, as amended by the federal act promulgated in Federal Law Gazette I No. 152/2009, shall also be deemed submitted in a legally valid manner if they are in accordance with the Real Estate Investment Funds Act as amended by the federal act promulgated in Federal Law Gazette I No. 69/2008.
- (6) § 40 and § 42, as amended by the Budget Accompanying Act 2011, Federal Law Gazette I No. 111/2010, shall come into force on 1 April 2012. Notwithstanding this, § 40 para. 3, as amended by the Budget Accompanying Act 2011, Federal Law Gazette I No. 111/2010, shall apply for the first time to unit certificates purchased after 31 December 2010; § 40 para. 3 in the version in force before the Budget Accompanying Act 2011, Federal Law Gazette I No. 111/2010, shall continue to apply to unit certificates purchased by 31 December 2010. § 42 para. 2 in the version in force before the Budget Accompanying Act 2011, Federal Law Gazette I No. 111/2010, shall be applied for the last time in tax assessments for 2012 to the extent that distributions are, or income equivalent to distributions is, received or deemed received before 1 April 2012. By way of derogation from § 40 para. 2 item 2 in the version in force before the Budget Accompanying Act 2011, Federal Law Gazette I No. 111/2010, from 1 January 2012 proof of income equivalent to distributions may be provided exclusively by a tax representative. Only an Austrian independent certified public accountant or person with comparable professional qualifications may be appointed as tax representative.
- (7) § 3 paras. 2 and 3 item 1, § 6 para. 6, § 11 para. 4, § 32 para. 1 item 3 and para. 2, § 33 para. 3 item 1, § 34 para. 2 item 8 and para. 5, and § 38 paras. 1 and 3 as amended by the federal act promulgated in Federal Law Gazette I No. 77/2011 shall come into force as of 1 September 2011.
- (8) § 38 para. 1 and 2 as amended by the 2nd Stability Act 2012, Federal Law Gazette I No. 35/2012, shall come into force on 1 May 2012.
- (9) § 35 para. 1a as amended by the federal act promulgated in Federal Law Gazette I No. 83/2012 shall come into force on 1 July 2012.
- (10) § 38 para. 3 as amended by the federal act promulgated in Federal Law Gazette I No. 70/2013 shall come into force on 1 January 2014.
- (11) § 1 paras. 1, 1a and 1b, § 2 paras. 1 and 2 and § 43a including the heading as amended by the federal act promulgated in Federal Law Gazette I No. 135/2013 shall come into force on 22 July 2013. § 2 paras. 12 and 13 as amended by the federal act promulgated in Federal Law Gazette I No. 135/2013 shall come into force on 1 January 2014.
- (12) § 40 to § 42 as amended by the federal act promulgated in Federal Law Gazette I No. 135/2013 shall apply for the first time to financial years of real estate funds and AIF in real estate within the meaning of the Alternative Investment Fund Managers Act starting after 21 July 2013. AIF of the closed-ended type that do not make any additional investments (§ 67 para. 5 of the Alternative Investment Fund Managers Act) and do not issue new units after 22 July 2013 shall not constitute AIF in real estate for the purposes of § 40 para. 1 item 2 and § 42 item 1. This shall only apply in cases where § 40 or § 42 in the version in force before the federal act promulgated in Federal Law Gazette I No. 135/2013 did not already apply to the undertaking during the last financial year beginning before 22 July 2013.
- § 124b item 185 (c) of the Personal Income Tax Act 1988 and § 6b of the Corporation Tax Act 1988 shall take precedence over the application of § 40 or § 42.
- (13) § 33 para. 1 and § 35 para. 1 as amended by the federal act promulgated in Federal Law Gazette I No. 184/2013 shall come into force on 1 January 2014.
- (14) § 40 para. 1 as amended by the federal act promulgated in Federal Law Gazette I No. 115/2015 shall apply to financial years of entities subject to § 186 or 188 of the Investment Funds Act 2011 ending after 30 September 2015. Notwithstanding this, § 40 para. 1 second sentence as amended by the federal act promulgated in Federal Law Gazette I No. 115/2015 shall apply for the first time to financial years of real estate funds starting after 21 July 2013.

(15) § 41 as amended by the federal act promulgated in Federal Law Gazette I No. 115/2015 shall be applied for the first time to purchases occurring after 31 December 2015.

(16) § 7 para. 4a as amended by the federal act promulgated in Federal Law Gazette I No. 107/2017 shall come into force on 1 January 2018. § 2 para. 12 and § 38 paras. 1 and 2 as amended by the federal act promulgated in Federal Law Gazette I No. 107/2017 shall come into force on 3 January 2018. § 38 para. 3 shall cease to have effect after the end of 2 January 2018.

(17) § 40 para. 6 as amended by the federal act promulgated in Federal Law Gazette I No. 67/2018 shall apply to financial years of entities subject to § 40 or § 42 of the Real Estate Investment Funds Act starting after 31 December 2018. If income as referred to in § 40 para. 6 includes increases in value, such income shall be included only insofar as it accrued in financial years starting after 31 December 2018.

(18) § 40 para. 1 and para. 6 as amended by the federal act promulgated in Federal Law Gazette I No. 76/2018 shall apply to financial years of entities subject to § 40 or § 42 of the Real Estate Investment Funds Act starting after 31 December 2018.

(19) § 34 paras. 1 and 3 as amended by the federal act promulgated in Federal Law Gazette I No. 46/2019 shall come into force on 1 July 2019.

(20) § 7 paras. 1 and 3, § 19 para. 1, § 36 para. 1 and § 40 para. 2 item 1 (a) as amended by the federal act promulgated in Federal Law Gazette I No. 62/2019 shall come into force on 21 July 2019.

## Annex A - Schedule A

Schedule for the prospectus for the real estate investment management company and the real estate fund

### Section I - Information on the real estate investment management company

1. Name and registered office; legal form; date of establishment; head office if different from the registered office; information on the register and the register entry; applicable law
2. Information on all real estate funds managed by the company
3. Names and functions of the members of the management and supervisory boards
4. Share capital of the company; unpaid portions of subscribed capital
5. Financial year
6. Stakeholders who exercise or may exercise, directly or indirectly, a controlling influence on the company

### Section II - Information on the real estate fund

1. Name of the fund
2. Date of the establishment of the fund
3. Information on the office where the fund rules and the reports required under ImmoInvFG may be obtained
4. Tax treatment of the unit certificate
5. Date of the annual accounts and information on the frequency and form of distributions
6. Name of the bank auditor
7. Conditions on which management of the fund may be terminated; period of notice
8. Information on the type and principal characteristics of the units, in particular:
  - Original instruments or certificates representing such instruments, entry in a register or in an account
  - Characteristics of the units: registered or bearer certificates; information on denominations, where applicable
  - Rights of the unit holders, in particular in case of termination
  - For each real estate item: acquisition costs, lettable area, year of construction, total costs for implemented maintenance, repair, preservation and improvement work, total costs for planned maintenance, repair, preservation and improvement work, type of service charge allocation
  - Encumbrances registered in the land register and other encumbrances where these are of major significance for the valuation, for each real estate item
  - Presentation of the purchase price of the proposed investments including all incidental costs
  - Type and extent of the securing of the investment in the land register
  - Projected profitability and method of calculation of profitability
9. Information on the stock exchanges or markets on which the units are officially listed or traded
10. Methods and terms of issue and sale of units
11. Methods and terms of the repurchase or redemption of units and the circumstances under which repurchasing or redemption may be suspended
12. Description of the rules for the determination and appropriation of income, and description of the unit holders' claims to income
13. Description of the investment objectives of the real estate fund, including the financial objectives (e.g. capital growth or income growth), the investment policy (e.g. real estate specialization in terms of geographical areas or economic sectors), any restrictions on such investment policy, as well as an indication of the borrowing powers which may be exercised in managing the real estate fund
14. Valuation principles
15. Determination of the selling or issue prices and the redemption or repurchase prices of the units, in

particular:

- Method and frequency of the calculation of such prices
- Information on the costs associated with the sale, issue, repurchase or redemption of the units
- Information on the type, place and frequency of the publication of such prices

16. Information on the method, level and calculation of the remuneration payable to the real estate investment management company, the custodian bank or third parties and charged to the real estate fund, and on the reimbursement of costs to the real estate investment management company, the custodian bank or third parties by the investment fund.

17. If services of external consultancy firms or investment consultants are used and the remuneration for such services is charged to the real estate fund, information on:

- the name of the firm or the consultant
- details of the agreement with the management company or the investment company which are of interest to the unit holders
- other significant activities

### **Section III – Information on the custodian bank**

1. Name, legal form; registered office and head office if this is different from the registered office
2. Information on the agreement between the custodian bank and the real estate investment management company
3. Principal activity of the custodian bank

## **Annex B - Schedule B**

Schedule for information on the real estate fund to be included in the periodical reports

1. Statement of assets and liabilities

- Securities
- Real estate and rights equivalent to real estate
- a) Location and regional distribution
- b) Size
- c) Year of construction
- d) Year of purchase
- e) Acquisition costs, with a breakdown of the purchase price and the incidental expenses, or the manufacturing costs
- f) Lettable area
- g) Type of service charge allocation
- h) Total costs for implemented maintenance, repair, preservation, improvement and extension work
- i) Total costs for planned maintenance, repair, preservation, improvement and extension work
- j) Management costs, where not charged within the service charges
- k) Building authority requirements where significant for the valuation
- l) Encumbrances registered in the land register and other encumbrances where these are of major significance for the valuation
- m) Fire insurance, the insured sum and the level of coverage
- n) Selected valuation methods
- Bank balances
- Other assets

- Total assets
  - Liabilities
  - Net asset value
2. Number of units in circulation
  3. Net asset value per unit
  4. Securities holdings, broken down by
    - a) securities admitted to official listing on a securities exchange
    - b) securities traded on another regulated market with the following additional details:
      - a breakdown by appropriate criteria for the real estate fund (e.g. by economic or geographical criteria, foreign currencies, etc.) shall be given to show the respective percentage share of net assets; for each of the assets referred to above, its share of the fund's total assets and the currency of issue, the nominal interest rate (if any), the price of the securities and the exchange rate shall be indicated.
      - information on the changes in the composition of the fund assets during the period under review.
  5. Information on movements in the assets of the real estate fund during the period under review, including the following:
    - income from investments
    - other income
    - expenses for management
    - expenses for the custodian bank
    - other expenses and taxes/fees
    - net income
    - distributions and reinvested income
    - increase or decrease in assets resulting from sale or repurchase of units
    - increase or decrease in value of investments
    - any other changes concerning the assets and liabilities of the real estate fund
  6. Comparative overview of the past five financial years, including the following information as at the end of each financial year:
    - fund assets
    - net asset value per unit
    - performance in per cent
    - income shown so far
  7. Information on the amount of existing liabilities arising from transactions effected by the real estate investment management company for the real estate fund during the period under review, broken down by category.
  8. Distribution per unit
  9. Tax treatment of the unit certificate, on the assumption that the unit holder has held his unit throughout the fund's financial year.

## **Annex C – Schedule C**

### **Schedule for the simplified prospectus**

1. Brief presentation of the real estate investment fund
  - when it was created;

- real estate investment management company;
- details of external consultancy firms (where applicable);
- details of companies to which tasks were delegated (where applicable);
- custodian bank;
- auditors;
- the financial group (e.g. a credit institution) promoting the real estate fund

## 2. Investment information

- short definition of the investment objective(s) of the real estate fund (e.g. specialization in real estate according to geographic criteria and/or type of real estate)
- the investment policy of the real estate fund and a brief assessment of the risk profile of the real estate fund
- historical performance of the real estate fund and a warning that this is not an indicator of future performance – such information may be either included in or attached to the prospectus
- profile of the typical investor the real estate investment fund is designed for

## 3. Economic information

- tax regime
- entry and exit commission
- other possible commissions or fees, distinguishing between those to be paid by the unit holder and those to be paid out of the portfolio of assets of the real estate investment fund

## 4. Commercial information

- how to buy the units
- how to sell the units
- frequency as well as where/how prices are published or made available

## 5. Additional information

- statement that, on request, the full prospectus, the annual reports and the half-yearly reports may be obtained free of charge before the conclusion of the contract and afterwards
- competent authority
- indication of a contact place (person/department; time etc.), where other information can be obtained
- publication date of the prospectus

## Glossary

Administrative Penal Act	Verwaltungsstrafgesetz, VStG
Banking Act	Bankwesengesetz, BWG
Budget Accompanying Act 2011	Budgetbegleitgesetz 2011
Business Code	Unternehmensgesetzbuch, UGB
Capital Market Act	Kapitalmarktgesetz, KMG
Criminal Code	Strafgesetzbuch, StGB
Enforcement Code	Exekutionsordnung, EO
Federal Fiscal Code	Bundesabgabenordnung, BAO
General Civil Code	Allgemeines Bürgerliches Gesetzbuch, ABGB
Investment Funds Act 2011	Investmentfondsgesetz 2011, InvFG 2011
Personal Income Tax Act 1988	Einkommensteuergesetz 1988, EStG 1988
Real Estate Transfer Tax Act	Grunderwerbsteuergesetz
Safe Custody of Securities Act	Depotgesetz, DepG
Stock Corporation Act	Aktiengesetz, AktG
Valuation Act	Bewertungsgesetz

Federal Law Gazette	Bundesgesetzblatt, BGBl.
FMA, Financial Market Authority	FMA, Finanzmarktaufsichtsbehörde

