

Real Estate Investment Fund Act – ImmoInvFG

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

Short title: Real Estate Investment Fund Act

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Section 1 Real estate funds

(1) A real estate fund is a portfolio of assets mainly consisting of assets referred to in Section 21 which is divided into equal units evidenced by securities.

(1a) Sections 2 to 39 shall apply to portfolios of assets in accordance with subsection (1) whose units are intended to be marketed to retail clients in accordance with Section 2 (1) no. 36 of the Alternative Investment Fund Managers Act – AIFMG, Federal Law Gazette I No. 135/2013.

(1b) Sections 40 to 42 shall apply to portfolios of assets in accordance with subsection (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 whose assets are invested pursuant to the law, the instrument of incorporation or 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 as a trustee holds and manages these for the unit-holders.

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(3) In accordance with subsection (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 must be identified to the management company and who shall not be natural persons. A group of unit-holders shall also be deemed such a unit-holder provided that all rights of these unit-holders are exercised homogeneously vis-à-vis the real estate investment management company by one joint representative. The fund rules shall stipulate that the transfer of unit certificates of the unit-holders requires the authorisation of the real estate investment management company. By way of derogation from this Federal Act, the fund rules may contain a provision regarding the requirement of a valuation at least twice a month (Section 8 (4)). In the case of special real estate funds, real estate investment management companies shall be deemed to have fulfilled their disclosure requirements when there is evidence that all unit-holders were informed 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 resumption of repurchase. In the case of special real estate funds, the Financial Market Authority need not receive such a notice. The fund rules may contain provisions for the redemption period other than those set forth in Section 11 (1) if this is in conformity with the liquidity profile of the special real estate fund.

Section 2 Real estate investment management company

(1) An AIFM (Section 2 (1) no. 2 of the Alternative Investment Fund Managers Act) that is authorised to manage real estate funds (Section 1 (1) no. 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 which they are authorised to conduct in accordance with 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 or limited liability companies.

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

(5) For real estate investment management companies organised in the form of a limited liability company, a supervisory board shall be appointed.

(6) In the case of a real estate investment management company organised in the form of a limited liability company, 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 of the paid-up share capital shall be invested in trustee securities.

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(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 in accordance with Section 15.

(9) No director of the custodian bank and no member of the custodian bank's supervisory board (Section 35) may be a member of the supervisory board of the real estate investment management company. No director or authorised officer of the custodian bank and no member of the custodian bank's supervisory board may be a director or authorised officer of the real estate investment management company.

(10) The Federal Minister of Finance shall appoint a state commissioner and a deputy state commissioner for each real estate investment management company for a maximum term of five years; reappointments shall be permissible. The state commissioners and their deputies shall act as functionaries of the FMA and, in this capacity, shall exclusively be subject to the instructions of the FMA. Section 76 (2) to (9) of the Banking Act shall be applied.

(11) The statistical reporting obligations which the European Central Bank may impose on real estate investment management companies in accordance with Article 2 of Council Regulation (EC) 2533/98 of 23 November 1998 concerning the collection of statistical information by the European Central Bank shall remain unaffected by this Federal Act.

(12) The costs of the FMA arising from the securities supervision accounting group (Section 19 (1) no. 3 and (4) of the Financial Market Authority Act) shall be borne by real estate investment management companies in accordance with subsection (1). For that purpose, the FMA shall form an additional joint accounting subgroup for real estate investment management companies, management companies (Investment Fund 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 Section 89 (1) of the Securities Supervision Act 2018 – WAG 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 subsection (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 its 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.

Section 3 Power of disposal vested in the investment fund management company

(1) Only the real estate investment management company shall be authorised to dispose over assets belonging to a real estate fund managed by it and to exercise the rights in such assets; in doing so, the real estate investment management company acts in its own name for the 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 director within the meaning of Section 84 (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 authorisation from the Financial Market Authority, real estate investment management companies may, through transfer or formation of a new fund, combine fund assets of real estate funds managed by them and they may, from the effective date of such merger, 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 publicly announced subject to at least three months' notice. Such notice shall specify the real estate funds to be merged, the official notice of authorisation by the Financial Market Authority, details of the exchange of units, details of the real estate investment management company managing the merged or newly formed real estate fund, any change in the custodian bank and the fund rules applicable from the effective date of the merger. Fractions shall be redeemed in cash. Authorisation shall be granted by the Financial Market Authority if the interests of all unit-holders are adequately safeguarded. Combining a special real estate fund and another real estate fund which is not a special real estate fund shall not be permissible. Combining a special real estate fund with another special real estate fund shall not require the authorisation of the FMA.

1. The delegation shall be notified to the FMA without delay.
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 in the interest of the unit-holders, or the real estate funds from being managed in the interest of the unit-holders.

3. No mandate with regard to the core function of real estate management and the termination of such mandate shall be given to the custodian bank or to any other undertakings 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 functions have been delegated.

5. It must be ensured that the real estate investment management company can give further instructions to the undertaking to which functions have been delegated at any time or to withdraw the mandate with immediate effect when this is in the interest of the unit-holders;

6. Having regard to the nature of the functions to be delegated, the undertaking to which functions will be delegated must be qualified and capable of undertaking the functions in question;

7. The fund prospectuses must list the functions delegated;

8. The real estate investment management company shall not delegate its functions to the extent that it becomes a letter-box entity; a letter-box entity shall be assumed to exist if the investment management company delegates most of its business activity to third parties.

9. The obligations of the real estate investment management company in accordance with subsection (1) second sentence and the obligations of the custodian bank in accordance with this Federal Act shall not be affected by such delegation. The real estate investment management company shall be liable for third parties' actions as for its own actions.

If the delegation does not concern the purchase, the sale or the encumbrance of assets referred to in Section 21 or investment in assets referred to in Section 32 or Section 33, no. 1 may be disregarded. In the case of special real estate funds, no. 7 shall not apply. In the case of special real estate funds, no. 3 may be disregarded if a written mandate to this effect has been received from the investors.

Section 4 Limitations on the power of disposal

(1) Without prejudice to Section 24, the real estate investment management company shall not grant loans or enter into any liabilities under a surety or guarantee agreement for the account of a real estate fund.

(2) Assets forming part of a real estate fund shall not be pledged or otherwise encumbered or given in security or assigned, except in the cases expressly provided for in this Federal Act, in particular as in Section 5. Any transaction violating this provision shall be ineffective in relation to the unit-holders.

(3) The real estate investment management company may, for the account of a real estate fund, raise short-term loans of up to 20% of the fund assets, in the case of special real estate funds of up to 40% of the fund assets, if this is provided for in the fund rules. Loans accepted within the meaning of Section 11 (2) shall not be included in this percentage.

(3a) If expressly provided for in the fund rules, the real estate investment management company shall be authorised, within the investment limits, to purchase assets for the account of the real estate fund in accordance with Section 32, subject to the seller's commitment to repurchase such assets at a predetermined time and at a predetermined price (repurchase agreements).

(3b) If expressly provided for in the fund rules, the real estate investment management company shall be authorised to transfer to third parties for a specific period securities up to 30% of the fund assets under a recognised securities lending system, provided that such third party shall be obligated to retransfer the securities upon expiry of the predetermined lending period. The securities lending system shall ensure that the rights of the unit-holders are adequately safeguarded (securities lending). Under this authorisation, the real estate investment management company may grant an authorisation for the account of a real estate fund in accordance with Section 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, structures on third-party land, or shares in property companies which belong to or are intended to belong to one of the real estate funds managed by it. Disposal over such assets 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 disposal over assets which conforms 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 in one or

more accounts/securities accounts opened exclusively for the account of the real estate fund. The accounts/securities accounts shall be managed by the custodian bank.

(6) From the accounts managed in accordance with subsection (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 upon the repurchase of units, distribute the earnings shares to the unit-holders and settle other obligations arising from the management of the real estate fund. From the securities accounts managed in accordance with subsection (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.

Section 5 Sale and encumbrance of assets

(1) Without prejudice to Section 11, the sale of assets referred to in Section 21 shall only be permissible if this is provided for in the fund rules and the consideration is not less or is only marginally less than the value determined in accordance with Section 29.

(2) Without prejudice to Section 11, borrowing and the encumbrance of assets referred to in Section 21 as well as the assignment and the encumbrance of claims arising from legal relations in respect of assets referred to in Section 21 shall be permissible if this is provided for in the fund rules and prudent within the scope of proper 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 are to be effected customary in the market. This borrowing and encumbrance shall not exceed 50% of the market value of the assets referred to in Section 21. Loans taken out in accordance with Section 4 (3) shall be included in the calculation in accordance with this subsection and shall reduce the permissibility of borrowing and encumbrances accordingly.

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

Section 6 Unit certificates

(1) The unit certificates are securities; they evidence the rights of the unit-holders vis-à-vis the real estate investment management company and the custodian bank which result from the investment and from the management of the capital 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 in trust by the real estate investment management company. The unit certificates may be in bearer form or in registered form. If they are registered, the provisions of Sections 61 to 63 of the Stock Corporation Act shall apply mutatis mutandis.

(2) The unit certificates shall be signed by the real estate investment management company. Section 13 of the Stock Corporation Act shall apply mutatis mutandis. The unit certificates shall bear the handwritten signature of a director or specifically authorised 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 a copy of the fund rules free of charge prior to his purchase of unit certificates. The unit-holder shall be provided with a copy of the fund rules upon request at any time free of charge.

(5) The unit certificates may be represented by global certificates (Section 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) If provided for in the fund rules (Section 34 (2) no. 8), several classes of unit certificates may be issued for a real estate fund, in particular with regard to the distribution policy, the issue charge, the repurchase charge, any minimum investment, the currency of the unit value, the remuneration for management, or a combination of the mentioned criteria. 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 trust for wards, if, according to the fund rules, they may invest directly and exclusively in securities which are eligible for the investment of money held in trust in accordance with Section 217 of the General Civil Code, as well as directly or indirectly by means of holdings in property companies within the meaning of Section 23 exclusively in properties the purchase of which is eligible for the investment of money held in trust. Transactions with derivative products within the meaning of Section 33 may only be conducted to hedge the fund assets. Securities lending transactions in accordance with Section 4 (3b) shall be permissible.

Section 7 Issuance of unit certificates

(1) Unit certificates may only be offered in Austria if both a simplified and a full prospectus were published, at the latest, one working day beforehand; both prospectuses shall contain all information necessary for the investors to be able to make an informed judgement 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 fund) as well as the fund rules authorised by the Financial Market Authority. In addition, the simplified and the full prospectus shall contain a general notice on the character of investment as well as on the risks involved. In the interests of providing investors with reliable information, the Financial Market Authority may by way of regulation define minimum content for this notice. 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 particulars having the same informational purpose. The simplified prospectus shall contain in summary form the key information provided for in Annex C Schedule C. It 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 prepared as a written document or stored in a durable medium with equivalent legal status that has been approved by the Financial Market Authority by way of regulation. Upon the request of the investor, the investor shall be provided with a paper version free of charge in any case. If unit certificates are offered without prior publication of the prospectuses, Section 21 (1) and (3) to (6) of the Capital Market Act 2019 – KMG 2019, Federal Law Gazette I No. 62/2019, shall apply mutatis mutandis.

(2) Significant changes to the circumstances defined in subsection (1) that are capable of influencing the assessment of the unit certificates shall be publicly announced without delay.

(3) Both the simplified and the full prospectus signed by the real estate investment management company as well as any changes to the same shall be submitted to the notification office early enough that they will be received by it no later than on the day of publication. Section 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 half-yearly reports shall be accessible to the public in the places indicated in the simplified and full prospectus or in any other form to be approved by the Financial Market Authority by way of regulation.

(4a) For real estate funds notified to the FMA in accordance with Section 48 (10) AIFMG for marketing to retail clients, a key information document within the meaning of Regulation (EU) No. 1286/2014 on key information documents for packaged retail and insurance-based investment products, OJ No. L 352 of 9 December 2014 p. 1, shall be prepared in place of the simplified prospectus.

(5) The unit certificates may be issued only against full payment of the issue price. The contribution of assets referred to in Section 21 shall not be permissible. Securities may be contributed only if a market price is available for them, and they shall be contributed in accordance with the fund rules at their market price on the day the units are issued.

(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 in accordance with subsection (5) above has been made available to it without any restrictions. The custodian bank shall add the consideration received to the fund assets without delay.

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

Section 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 in accordance with Section 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 provide the custodian bank with a current valuation in accordance with Section 29 if it can be assumed that the value of the assets referred to in Section 21 deviates from the most recent prior valuation by more than 10%. For assets referred to in Section 21 held by a property company (Sections 23 ff), the percentage shall be reduced to 5%. 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 net asset value. A sales charge specified in the fund rules may be added to the net asset 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.

Section 9 Entries in the land register

(1) The real estate investment management company shall ensure that the ownership of domestic properties and building rights of the real estate fund and the limitation on the power of disposal in accordance with Section 4 (4) are entered in the land register and, in the case of structures on third-party land, included in the deposit of registered documents. 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 court having jurisdiction over the land register shall notify the custodian bank of all entries/inclusions concerning the property, the building right or the structure on third-party land for which the custodian bank's 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 referred to in Section 21, the entry of the limitation on the power of disposal (Section 4 (4)) in a land register or a comparable register is not provided for by law, the validity of the limitation on the power of disposal shall be safeguarded in another appropriate manner.

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

Section 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.

Section 11 Redemption of units

(1) For the redemption of units in a real estate fund, the unit-holder shall submit to the real estate investment management company an irrevocable written redemption declaration. In this, the unit-holder shall furnish proof that the number of units to which the submitted redemption declaration refers have been held continuously by the unit-holder for at least twelve months. The unit-holder's unit shall be redeemed out of the real estate fund against timely surrender of the unit certificate, the coupons and the renewal certificate subject to a redemption notice period of twelve months at specified redemption dates. The real estate investment management company shall set at least quarterly redemption dates. The conditions of redemption, in particular the redemption dates, shall be laid down in the fund rules. The payment of the redemption price may be temporarily suspended, subject to notice being given to the FMA at the same time, and may be 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 in consideration of legitimate interests of the unit-holders. In the case of special real estate funds, the notification to the FMA shall not be required.

(2) Extraordinary circumstances within the meaning of subsection (1) shall in particular apply if the bank balances and the proceeds from held securities are not sufficient or not immediately available for payment of the repurchase price and in order to ensure proper 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 pledge assets of the real estate fund as security should this be necessary in order to procure funds for the repurchase of the unit certificates. The management company shall remove these encumbrances by selling assets of the real estate fund or by other means as soon as this is possible on appropriate conditions. The Financial Market Authority shall be notified immediately of encumbrances and their removal.

(3) The prospectus in accordance with Section 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 public announcement, of the suspension of the repurchase of unit certificates and of the resumption of the repurchase of unit certificates. The FMA shall be notified immediately of the resumption of the repurchase of units.

Section 12 Accounting year of real estate funds

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

Section 13 Accounting and publication

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

(2) The annual report shall include a statement of income, a statement of assets and liabilities as well as 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 at the end of the reporting period. Furthermore, the annual report shall contain a report on the activities in the past accounting year and all other data provided for in Annex B, as well as any essential information enabling investors to make an 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 nos. 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 a forecast statement up to the end of the accounting year. The assets of the real estate fund shall be stated at the values in accordance with Section 29. The annual report shall be published within four months and the half-yearly report within two months of the end of the reporting period.

(2a) If a real estate investment management company enters into repurchase agreements for the account of a real estate fund (Section 4 (3a)) or conducts securities lending transactions (Section 4 (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 auditor of the real estate investment management company; the provisions of Sections 268 to 276 of the Business Code shall apply to this audit mutatis mutandis. 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 auditor by no later than four months of the end of the accounting year. The half-yearly report shall be submitted to the Financial Market Authority within two months of the end of the reporting period.

(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 accounts 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 shall not be required to 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 in any case. 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.

Section 14 Income and appropriation of income

(1) The annual income of a real estate fund shall be paid to the unit-holders in the amount provided for in the fund rules. Where no distribution is made, an amount corresponding to the applicable rate of investment income tax in accordance with Section 40, including the amount paid voluntarily in accordance with Section 124b no. 186 of the Personal Income Tax Act 1988, shall be paid out of the annual income not distributed. Income shall include any amounts contributed by new unit-holders to income as shown at the date of issue in accordance with subsection (2), nos. 1 and 3 (income adjustment). For real estate funds or certain classes of unit certificates of a real estate fund, payment shall not be required to be made if the real estate investment management company managing the fund provides clear evidence either that income distributed and income equivalent to distributions of all holders of the unit certificates issued are not subject to domestic personal income tax or corporation tax, or that the prerequisites for an exemption in accordance with Section 94 of the Personal Income Tax Act 1988 have been fulfilled. This shall be deemed proved if declarations by both the custodian bank and the real estate investment management company are available, stating that they do not know of any sales to such persons, and by fund rules that provide that certain classes may only be sold abroad.

(2) A real estate fund's annual income is composed of its

1. income from asset management
2. revaluation gains, and
3. income from securities and liquidity gains.

Distributions of domestic property companies (Sections 23 ff) shall also be deemed income unless these do not stem from sales gains from real estate disposals. Profits of foreign property companies (Sections 23 ff) shall be directly accredited to the real estate fund. Priority shall be assigned to the offsetting of losses within the individual income types. After this, offsetting shall be conducted among the individual income types referred to in nos. 1 to 3. A loss carry-forward shall not be permitted in any circumstances.

(3) The income from asset management shall be calculated on the basis of the income received in connection with the use against payment of the relevant properties (assets referred to in Section 21) plus other income from ongoing management where this is not to be accredited to the income in accordance with subsection (2) nos. 2 and 3, minus any associated expenditures. Depreciation in accordance with Section 204 of the Business Code for diminutions in the value of buildings shall not be permissible. For costs arising from the prevention or the remedying of structural damage due to wear, deterioration and climatic conditions, an accrual in the amount of one tenth to one fifth of the net rental revenue shall be deducted as expenditures (reserve for repairs). Implementation of such measures shall not constitute income-reducing expenditures.

(4) Revaluation gains equate to 80% of the valuation differences on the basis of correct valuations in accordance with Section 29 minus associated expenditures. Expenditures shall be reduced by 20% and may only be deducted where this need not be taken into consideration in respect of income from asset management or income from securities and liquidity gains. This shall also apply to holdings in property companies (Sections 23 ff) whose profits are, in accordance with subsection (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 above sentences.

(5) Income from securities and liquidity gains refers to income from interest on assets in accordance with Sections 32 and 33.

Section 15 Termination of management by the investment fund management company

(1) The real estate investment management company may, by way of public announcement (Section 19) subject to at least six months' notice, terminate the management of a real estate fund subject to authorisation by the Financial Market Authority. Authorisation shall be given if the interests of investors are adequately safeguarded.

(2) If the fund assets are less than EUR 30 million, the real estate investment management company may terminate the management as of the date of the public announcement 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 shall not be permissible during the process of terminating the management of the fund assets in accordance with subsection (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 authorisation by the Financial Market Authority, the real estate investment management company may terminate the management of a real estate fund without giving notice in accordance with subsection (1) by transferring the assets of the fund to a different real estate fund managed by the same or another management company, or by combining these assets with another fund to establish a new fund. The provisions set out in Section 3 (2) shall apply. No costs shall be charged to the unit-holders as a result of this procedure.

(5) Subject to authorisation by the Financial Market Authority, the real estate investment management company may terminate the management of a real estate fund without giving notice in accordance with subsection (1) by transferring the assets of the fund to a different real estate investment management company. The provisions set out in Section 3 (2) shall apply mutatis mutandis. No costs shall be charged to the unit-holders as a result of this procedure.

Section 16 Temporary management by the custodian bank

(1) If the right of a real estate investment management company to manage a real estate fund ends pursuant to Section 15 (3), the right to manage the fund assets shall pass to the custodian bank.

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(2) Subject to authorisation by the FMA, the custodian bank may transfer the management of the real estate fund in accordance with subsection (1) to another real estate investment management company within six months of the termination of management by the real estate investment management company. Such authorisation shall be given if proper account is taken of the legitimate interests of the unit-holders. The transfer of management to the other real estate investment management company shall be publicly announced by that other company. The transfer of a special real estate fund to another real estate investment management company shall not require the authorisation of the FMA.

(3) If the custodian bank does not transfer the management to another real estate investment management company within six months after termination of management by the real estate investment management company, the custodian bank shall wind up the real estate fund. Section 17 (2) to (4) shall apply.

Section 17 Winding-up of a real estate fund

(1) If the right of a real estate investment management company to manage a real estate fund ends pursuant to Section 15 (1) or (2), the real estate investment management company shall wind up the real estate fund. The commencement of the winding-up procedure shall be publicly announced and communicated to the notification office (Section 23 of the Capital Market Act 2019). From the date of this announcement, the redemption of units shall not be permissible.

(2) The assets in the real estate fund shall be turned into cash as rapidly as possible while 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.

(3) Taking into consideration subsection (2), advance payments may also be made on the distribution of securities already converted into cash.

(4) If a real estate fund ceases to exist due to the complete redemption of all units (without notice of termination), the real estate investment management company shall immediately inform the FMA thereof.

Section 18 Prohibition of purchase for functionaries and executive bodies of the real estate investment management company and the custodian bank

Directors and members of the supervisory board 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 shall not apply to unit certificates of a fund managed by the real estate investment management company. The same shall apply to the custodian bank and its directors and supervisory board members and to experts appointed in accordance with Section 29 where such persons have, in accordance with Section 29 (2), valued the asset which is due to be purchased or sold.

Section 19 Publications

Section 8 (3) of the Capital Market Act 2019 shall apply to public announcements required by this Federal Act or the fund rules. In any event, the issuer shall publish a notification indicating how the prospectus has been published otherwise in accordance with subsection (3) and where it may be obtained. If the prospectus is published in electronic form, a paper copy must be made available to the investor by the investment fund management company or by the financial intermediaries selling the units upon request in any case.

(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 for 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 subsection (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 its respective 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 investment fund management company or the 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.

Section 20 Protection of designations

The designations "Immobilien-Kapitalanlagefonds", "Kapitalanlagefonds für Immobilien", "Immobilienfonds", "Immobilieninvestmentfonds", "Immobilieninvestmentanteilschein" 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 company names of real estate investment management companies. The addition "mündelsicher" or equivalent designations or abbreviations associated with real estate funds may only be used for real estate funds in accordance with Section 6 (7).

Section 21 Investment rules

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

1. developed properties;
2. properties 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 properties which already form part of the real estate fund's portfolio and are in a state of development in accordance with this no. 2, the aggregate expenditures associated with the properties do not exceed 40% of the value of the real estate fund;
3. undeveloped properties which are suitable and intended for imminent development by the real estate fund if, at the time of purchase, their value together with the value of the undeveloped properties which already form part of the real estate fund's portfolio do not exceed 30% of the value of the real estate fund in aggregate;
4. building rights and structures on third-party land within the meaning of Section 435 of the General Civil Code, co-owned property and condominium property in accordance with the provisions set out in nos. 1 to 3.

(2) If provided for 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 properties, 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 signatories to the Agreement on the European Economic Area and
2. properties of the type indicated in subsection (1) nos. 1 to 3 situated outside the Member States of the European Union or outside the signatories to the Agreement on the European Economic Area.

The properties and rights in accordance with no. 1 may only be purchased if, at the time of purchase, their value together with the value of the properties and the rights of the type indicated in no. 1 already forming part of the real estate fund's portfolio do not exceed 10% of the value of the real estate fund. The properties in accordance with no. 2 may only be purchased if, at the time of purchase, their value together with the value of the properties of the kind indicated in no. 2 already forming part of the real estate fund's portfolio do not exceed 20% of the value of the real estate fund. For real estate in accordance with no. 2, the limitations set out in subsection (1) nos. 2 and 3 shall also apply, subject to the proviso that the value of the real estate fund shall be replaced by the value of the properties in accordance with no. 2.

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

(4) The principles for asset selection in accordance with subsections (1) and (2) and the investment limits shall be set forth in the fund rules.

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

(6) The infringement of the above provisions shall not affect the validity of the legal transaction.

Section 22 Minimum diversification

- (1) A real estate fund shall consist of at least ten assets as referred to in Section 21 (1) and (2).
- (2) None of the individual assets referred to in Section 21 (1) and (2) may at the time of purchase amount to more than 20% of the value of the real estate fund.
- (3) An accounting unit consisting of several pieces of property shall also be deemed an asset within the meaning of subsection (1).
- (4) The limitations set out in subsections (1) and (2), Section 4 (3b), Section 21, Section 23 (5) no. 3 and (6) and Section 32 (1) nos. 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 constitution. A combination within the meaning of Section 3 (2) shall not be deemed a constitution.
- (5) By way of derogation from subsection (1), a special real estate fund shall consist of at least five assets referred to in Section 21 (1) and (2) and, notwithstanding (2), at the time of their acquisition none of the individual assets referred to in Section 21 (1) and (2) may exceed a value of 40% of the value of the special real estate fund. Subsections (3) and (4) shall apply.

Section 23 Property companies

(1) The real estate investment management company may only acquire and maintain holdings in property companies for the account of the real estate fund in accordance with subsections (2) to (6) if this is provided for in the fund rules, if long-term income may be expected from the holdings, and if the powers of the custodian bank in accordance with Section 4 (4) are ensured in an appropriate form by means of an agreement between the real estate investment management company and the property company. Property companies are companies

1. whose object is limited in their instrument of incorporation 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 referred to in Section 21, which in accordance with the fund rules may be directly purchased for the real estate fund.

(2) Prior to the acquisition of a holding in a property company, its value shall be determined by an auditor in accordance with Sections 268 ff of the Business Code. This valuation shall be based on the most recent annual accounts of the property company for which an auditor's report has been issued or – if more than three months have elapsed between the date of these accounts and the valuation date – the assets and the liabilities of the property company which are shown in an up-to-date statement of assets and liabilities which has been audited by an auditor. Section 25 (2) shall apply in respect of the valuation.

(3) The real estate investment management company may only acquire and maintain a holding in a property company for the account of the real estate fund if it has the required majority of votes in the property company that is necessary for amending the instrument of incorporation and if liability is limited to the invested capital by the legal form of the property company. By way of derogation from this, the real estate investment management company may still acquire and maintain a holding in a property company for the account of the real estate fund within the scope of the investment limits in accordance with subsection (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 subsection (3), the real estate investment management company, for the account of the real estate fund, may acquire and maintain a holding in a company that exclusively holds the position of a shareholder with unlimited liability in a property company if it has the required majority of votes in the company that is necessary for amending the instrument of incorporation and if liability is limited to the invested capital by the legal form of the company. Subsection 6 shall apply with regard to the holding in this company.

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

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

1. the property company is not entitled to hold more than three assets as referred to in Section 21,

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

3. the property company may only purchase an asset if its value together with the value of the assets already held by the property company does not exceed 20% of the value of the real estate fund for whose account a

holding is maintained in the real estate company.

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

(6) The value of all holdings (including any loan receivables) in property companies in which the real estate investment management company maintains a stake for the account of the real estate fund may not exceed 49% of the value of the real estate fund. Notwithstanding the investment limit in accordance with the first sentence, the value of assets referred to in Section 21 which are among the assets of property companies in which the real estate investment management company does not hold a capital majority for the account of the real estate fund may not exceed 20% of the value of the real estate fund.

(7) If, after the acquisition of a holding in a property company, the preconditions for the acquisition and maintenance of the holding are no longer fulfilled, the real estate investment management company shall effect its disposal while safeguarding the interests of the investors.

(8) If the object of the property company has been limited to the scope set out in subsection (1) no. 1 only within the last three years prior to being acquired for the real estate fund, its acquisition for the real estate fund is only permissible if either the sellers of the property company or the real estate investment management company assume liability for obligations of the property company for the benefit of the real estate fund for the account of which the acquisition is made, as long as these obligations do not concern the object referred to in subsection (1) no. 1 and as long as they were not known when the property company was valued at the time of acquisition.

Section 24

(1) The real estate investment management company may only grant a loan to a property company for the account of the real estate fund if it maintains a stake in the property company for the account of the real estate fund, the loan is extended on arm's length terms, the loan is sufficiently collateralized and it has been agreed that, in the case of the sale of the holding, 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 property company for the account of the real estate fund do not exceed 50% of the value of the real estate held by the property company. The real estate investment management company shall ensure that the total loans granted to the property companies for the account of the real estate fund do not exceed 25% of the value of the real estate fund.

(2) In the event that a third party grants the property company a loan in his own name for the account of the real estate fund under mandate from the real estate investment management company, this shall also constitute a loan granted within the meaning of subsection (1).

Section 25

(1) The real estate investment management company shall contractually oblige the property company in which it maintains a holding for the 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 have this company audited once a year by the real estate investment management company's auditor on the basis of the property company's annual accounts 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 property assets shown in the property company's annual accounts or statement of assets and liabilities shall be stated at the value determined by at least two experts in accordance with Section 29 (1). Section 29 (2) second sentence shall apply. The experts shall carry out valuations of the properties prior to the acquisition of shares in the property company and thereafter at least once a year. They shall carry out valuations of properties that are intended to be purchased before their purchase. The other assets of the property company shall be valued in the same way as the other assets of the real estate fund. Accepted loans and other liabilities shall be deducted from these valuations.

(3) The resulting value of the property company shall be accredited to the real estate fund in accordance with the proportionate holding, taking into consideration any other factors influencing the value.

Section 26

The real estate investment management company shall agree with the property company that the payments due to the real estate investment management company for the account of the real estate fund, the liquidation proceeds and other amounts due to the real estate investment management company for the account of the real estate fund shall be immediately paid into a bank account of the real estate fund at the

custodian bank. The custodian bank shall ensure that this agreement is entered into.

Section 27

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

Section 28

(1) The custodian bank shall continuously monitor the portfolio of holdings in property companies. It shall also ensure that the provisions set out in Section 23 are complied with when a holding is acquired.

(2) Disposals in respect of holdings in property companies or of items in accordance with Section 21 forming part of the assets of these companies, as well as amendments to the instrument of incorporation, shall require the consent of the custodian bank. The powers of the custodian bank in accordance with the first sentence shall be ensured by means of an agreement between the real estate investment management company and the property company. The custodian bank shall agree to a disposal or amendment in accordance with the first sentence if this is consistent with the provisions of this Act and the fund rules, and if the interests of the unit-holders are safeguarded. If the custodian bank provides its consent even though these preconditions are not met, this shall not affect the validity of the disposal or amendment.

Section 29 Valuation of the assets

(1) The real estate investment management company shall define provisions in the fund rules for the valuation of the assets as referred to in Section 21. For the valuation, the real estate investment management company shall consult at least two experts professionally qualified in the field of real estate appraisal and valuation and who are independent of the real estate investment management company and the custodian bank. The experts shall be appointed by the senior 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 reasons for exclusion set out in Section 62 of the Banking Act, excluding Section 62 no. 6a of the Banking Act, shall apply to the independent experts mutatis mutandis. Apart from the experts themselves, the real estate investment management company and the custodian bank shall also be jointly liable for misconduct of the experts in the same manner as for vicarious agents in accordance with Section 1313a of the General Civil Code.

(2) Valuation of the assets referred to in Section 21 shall occur in accordance with the generally recognised valuation principles and at least once per year, in any case whenever such assets are purchased, sold or encumbered, the custodian bank orders such a valuation for a specific reason or in other cases provided for in the fund rules. The calculations involved in determining the value of the real estate fund and its units shall be based on the arithmetic average of the valuations made on the same accounting date by two or more experts in accordance with subsection (1).

(3) In case of a holding in accordance with Section 23, in its statements of assets and liabilities (annual reports/half-yearly reports) the real estate investment management company shall provide the details of the individual properties and other assets of the property company as though this were a direct investment by the fund; it shall also assign to them unique designations. It shall also indicate:

1. the name, legal form and registered office of the property company,
2. the share capital,
3. the amount of the holding and the date of its acquisition 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 in accordance with Section 24.

(4) The auditor of the real estate investment management company shall at its establishment and thereafter for every annual report audit issue a statement as to whether the experts in accordance with subsection (1) have been properly appointed and the other preconditions in accordance with subsections (1) to (3) are met. If these preconditions are not met or are no longer met, the 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.

Section 30 Risk spreading

The fund rules shall specify the minimum number of assets as referred to in Section 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.

Section 31 Start-up phase

The fund rules shall specify the period during which the minimum number in accordance with Section 30 shall be reached.

Section 32 Liquidity provisions

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

1. bank balances;
2. money market instruments;
3. units in UCITS in accordance with Section 2 of the Investment Fund Act 2011 – InvfG 2011, Federal Law Gazette I No. 77/2011, or in special funds in accordance with Section 163 of the Investment Fund Act 2011, which may according to their fund rules exclusively invest directly or indirectly in assets referred to in nos. 1, 2 and 4;
4. bonds, cash deposit certificates, 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 redemption date of these assets held by 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 signatory to the Agreement on the European Economic Area, insofar as the total value of said securities does not exceed 5% of the fund assets.

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

(1a) Subsection (1) last sentence shall also be deemed to have been 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 undertaking having its registered office in a Member State of the European Union or in a state that is a signatory 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 units in the real estate fund with a value of up to the minimum liquidity provided for 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 the income, bank balances up to a maximum amount of 20% of the fund assets may be maintained with the same group of credit institutions (Section 30 of the Banking Act). By way of derogation from this provision, in the case of special real estate funds, bank balances up to a maximum amount of 40% of the fund assets may be maintained with the same group of credit institutions for a maximum of three months. For investments in accordance with subsection (1) nos. 2, 4 and 5, Section 72 in conjunction with Section 74 (1) and (3) of the Investment Fund Act 2011 shall apply mutatis mutandis. For investments in accordance with subsection (1) no. 3, Section 71 in conjunction with Section 77 (1) and (2) of the Investment Fund Act 2011 shall apply mutatis mutandis.

(3) Units in near-money market investment funds shall be treated as bank balances in accordance with subsections (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 subsections (1) to (3).

Section 33 Derivative products

(1) For a real estate fund, financial derivative instruments (derivatives), including equivalent cash-settled instruments which are listed or dealt in on a regulated market in accordance with Art. 4 (1) number 92 of Regulation (EU) No. 575/2013, or traded on another regulated market which operates regularly and is recognised and open to the public in a Member State of the European Union or in a state that is a signatory to the Agreement on the European Economic Area, or are officially listed on a stock exchange of a third country (Section 2 no. 8 of the Banking Act) or another regulated market which operates regularly and is recognised and open to the public in a third country, provided that the choice of stock exchange or market is provided for in the fund rules, or financial derivative instruments dealt in over-the-counter (OTC derivatives), 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 referred to in Section 21 which are to become due in the following 24 months, insofar as:

1. the underlying assets are securities, money market instruments, assets referred to in Section 21 subsections (1) and (2), or holdings as referred to in Section 23, or financial indices, interest rates, exchange rates or currencies in which the real estate fund may invest in accordance with the investment objectives set forth in its fund rules,
2. the counterparties to OTC derivative transactions are institutions subject to prudential supervision and

belonging to the categories that the Financial Market Authority has authorised by way of regulation, and

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

(2) The real estate investment management company shall employ a procedure which permits the accurate and independent valuation of each OTC derivative.

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

1. 10% of the fund assets, when the counterparty is a credit institution within the meaning of Section 72 of the Investment Fund Act 2011,

2. 5% of the fund assets in other cases.

Section 34 Fund rules

(1) The senior management of the real estate investment management company shall specify fund rules governing 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 authorisation of the Financial Market Authority, unless the fund is a special real estate fund (Section 1 (3)). Such authorisation shall be given if the fund rules are not in contradiction with 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 assets 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 not be distributed to the extent this income is required for future repair of items belonging to the fund assets;

5. the principles for forecast statements 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 in what amount, a sales charge may be added to the net asset value of the units to cover the issuing costs incurred by the real estate investment fund upon 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 also be provided for that several classes of unit certificates may be issued for a real estate fund in accordance with Section 6 (6);

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

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

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 authorisation of the Financial Market Authority, unless the fund is a special real estate fund (Section 1 (3)). Such authorisation shall be given if the change in the fund rules is not in contradiction with the legitimate interests of the unit-holders. The change shall be publicly announced. It shall enter into force on the date indicated in the public announcement, but no earlier than three months after the public announcement. A public announcement shall not be required to be made if the change in the fund rules is communicated to all unit-holders in accordance with Section 19; in that event, the interests of unit-holders shall be deemed adequately safeguarded, and the change shall enter into force on the date indicated in the public announcement, but no 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 the fund rules have been approved in accordance with subsection (1), real estate funds in accordance with Section 1 (1) may only be converted into special real estate funds (Section 1 (3)) with the consent of all

unit-holders.

Section 35 Custodian bank

(1) With the consent of the supervisory board, the senior management of the real estate investment management company shall appoint a custodian bank. Only a credit institution authorised to carry on custody business (Section 1 (1) no. 5 of the Banking Act) or a domestic branch of a CRR credit institution as defined in Section 1a (1) no. 1 of the Banking Act established under Section 9 (4) of the Banking Act may be appointed as custodian bank. Authorisation shall be required from the Financial Market Authority in order to appoint or replace the custodian bank. Such authorisation may be given only if the credit institution may be expected to ensure the fulfilment of the duties of a custodian bank. The appointment and replacement of the custodian bank shall be published; the public announcement shall contain a reference to the official notice of authorisation. The selection of the custodian bank for special real estate funds may generally be authorised by the Financial Market Authority upon request by the real estate investment management company.

(1a) If a government commissioner in accordance with Section 70 (2) no. 2 of the Banking Act or a supervisor in accordance with Section 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 in accordance with Section 34 (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 enter into force on the date indicated in the public announcement, irrespective of the deferral referred to in Section 34 (3).

(2) The custodian bank shall conduct the 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, the corresponding value 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 referred to in Section 21 and the portfolio of cash holdings, securities and other assets forming part of the fund assets. It shall be authorised 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, 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 expenditures 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 activities. In doing so, the custodian bank may act only on the basis of instructions given by the real estate investment management company.

(4) The custodian bank shall be authorised and obligated to raise an objection in its own name in accordance with Section 37 of the Execution Code by way of 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 carrying out its functions, 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.

Section 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 in accordance with Section 19 (1) and to any offices where the prospectus may be obtained. Section 4 of the Capital Market Act shall apply mutatis mutandis. Furthermore, Section 4 (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 where the fund's historical performance is referred to shall contain an indication that makes clear that the performance record of a fund does not provide any reliable indication as to its future performance.

(3) Subsection (1) shall not be applied by natural and legal persons falling under the scope of Art. 2 of Regulation (EU) 2019/1156.

Section 37 Penal provisions

(1) Any person who, in a published prospectus of a real estate fund or in a statement modifying or amending such a prospectus or in an annual report or a half-yearly report of a real estate fund, makes incorrect favourable statements on material facts or conceals unfavourable 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 acquisition of fund units before the payment required for such acquisition has been made shall not be punished in accordance with subsection (1). The perpetrator shall also not be punished if the payment is not made without any action on the part of the perpetrator and if the perpetrator, unaware of this, makes voluntary and serious efforts to prevent payment from being made.

(3) An offence shall not be punishable in accordance with subsection (1) if the effects of the offence are averted by active repentance under the conditions of Section 167 of the Criminal Code provided that the compensation paid covers the entire payment required for the acquisition including any associated charges.

Section 38

(1) Any person who advertises in contravention of the provision set out in Section 36 commits an administrative offence and shall be punished by the FMA with a fine not exceeding EUR 60,000.

(2) Any person who, without being authorised to do so, operates under the designations “Immobilien-Kapitalanlagefonds”, “Kapitalanlagefonds für Immobilien”, “Immobilienfonds”, “Immobilieninvestmentfonds”, “Immobilieninvestmentanteilschein” or equivalent designations or abbreviations of such designations or the addition “mündelsicher” or equivalent designations or abbreviations in contravention of Section 20 commits an administrative offence and shall be punished by the Financial Market Authority with a fine not exceeding EUR 60,000.

(3) Any person who as a responsible person (Section 9 of the Administrative Penal Act) of a real estate investment management company and

1. violates the filing obligation set forth in Section 7 (3),
2. the notification obligations set forth in Section 11 (1) or (4) or Section 15 (2),
3. the submission period set forth in Section 13 (3) or
4. the requirements for marketing communications in accordance with Art. 4 of Regulation (EU) 2019/1156 on facilitating cross-border distribution of collective investment undertakings and amending Regulations (EU) No. 345/2013, (EU) No. 346/2013 and (EU) No. 1286/2014, OJ No. L 188 of 12 July 2019 p. 55

commits an administrative offence and shall be punished by the FMA with a fine not exceeding EUR 60,000.

Section 39 Coercive penalty

If a custodian bank infringes any provisions of this Federal Act or a regulation or official notice issued on the basis of this Federal Act, Sections 70 (4) and 96 of the Banking Act shall apply subject to the proviso that the revocation of the licence in accordance with Section 70 (4) no. 3 of the Banking Act shall be replaced by the revocation of the authorisation given in accordance with Section 35.

Section 40 Taxes

(1) 1. In accordance with no. 2,

a) any income in accordance with Section 14 (2) nos. 1 to 2 and

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

shall be deemed to have been distributed to the unit-holders in proportion to the units held (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. Income from foreign real estate shall not be taxable income if income from such real estate is exempt from taxation by virtue of a convention for the avoidance of double taxation or a measure taken in accordance with Section 48 of the Federal Fiscal Code. Otherwise, in the case of the offsetting of losses both within and between the individual income types referred to in Section 14 (2), nos. 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 convention for the avoidance of double taxation or a measure taken in accordance with Section 48 of the Federal Fiscal Code. The offsetting of losses from foreign real estate against profits from domestic real estate shall not be permitted in any circumstances. Income offsetting as referred to in (a) and (b) against other income shall not be permitted. Actual distributions and the payment of investment income tax (Section 14 second sentence) shall not result in income.

2. Irrespective of the manner in which income is 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;
- b) 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;
- c) in all other cases, as of the time referred to in subsection (2) no. 2.

(2)

1. a) The breakdown of the composition of the income equivalent to distributions as referred to in subsection (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 subsection (3) shall be submitted to the notification office referred to in Section 23 of the Capital Market Act 2019 by a tax representative. On the basis of these data, the notification office shall determine the tax treatment in accordance with the statutory provisions and publish the values for tax purposes thus determined in an appropriate form. Section 23 (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 authorised 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 Section 40 (2) no. 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 notification is made in accordance with no. 1, the entire distribution shall be taxable. Income equivalent to distributions within the meaning of subsection (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 exemption from tax of the actual distribution by submitting the required documents.

3. If investment income tax has been deducted, proof as referred to in no. 2 shall be furnished to the party subject to the deduction obligation. If no realisation within the meaning of subsection (3) has yet occurred, such party shall either refund or subsequently charge investment income tax and correct the acquisition cost in accordance with subsection (3). If an attestation as referred to in Section 96 (4) no. 2 of the Personal Income Tax Act 1988 has already been issued, investment income tax may be refunded and the acquisition cost 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 realised upon the sale of unit certificates or units in an AIF in real estate shall be subject to taxation in accordance with Section 27 (3) of the Personal Income Tax Act 1988. Income equivalent to distributions shall increase, while tax exempt distributions, distributions which do not constitute income within the meaning of the Personal Income Tax Act 1988 and the payment of investment income tax (Section 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 Section 27a (3) no. 2 of the Personal Income Tax Act 1988. The redemption of unit certificates in accordance with Section 11 (1) shall also be deemed a sale. The exchange of units in a real estate fund based on the combination of fund assets in accordance with Section 3 (2) or on a purchase of units in accordance with Section 15 (4) shall not be deemed a realisation, and the previous acquisition cost shall be stated.

(4) If unit certificates or units in an AIF in real estate are not offered in legal and in material terms to an indeterminate group of persons and an investment is made, the distributions or the income deemed to have been distributed in accordance with Section 14 (4) shall be increased by one quarter.

(5) When subsections (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 revaluation gains in accordance with Section 14 (4), and Section 30 (3) second and third sentences of the Personal Income Tax Act 1988 shall be applied mutatis mutandis. Revaluation gains accumulated until subsections (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 subsection (1) no. 1 (a) or (b):

1. Section 186 (1) to (4) and (6) and Section 58 (2) second sentence of the Investment Fund Act 2011 shall apply mutatis mutandis to income as referred to in Section 27 of the Personal Income Tax Act 1988,

2. Section 186 (5) nos. 2 to 3 and (6) of the Investment Fund Act 2011 shall apply mutatis mutandis to other income.

Section 41

(1) The provisions set out in Sections 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) Acquisition transactions in accordance with Section 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 exempt from real estate transfer tax.

(3) If through a transfer or combination in accordance with Section 3 (2), or Section 15 (4) acquisition transactions occur in accordance with Section 1 of the Real Estate Transfer Tax Act 1987, the real estate transfer tax shall be calculated in accordance with Section 4 (1) second sentence in conjunction with Section 7 (1) no. 2 (c) of the Real Estate Transfer Tax Act 1987.

(4) If, through a contribution of assets referred to in Section 21 from a portfolio of assets which has its own accounting unit and which is held by a stock corporation for which profit participation rights have been issued in accordance with Section 174 of the Stock Corporation Act or by a stock corporation whose object of business is almost exclusively to manage real estate assets, acquisition transactions occur in accordance with Section 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 in accordance with Section 4 (1) second sentence in conjunction with Section 7 (1) no. 2 (c) of the Real Estate Transfer Tax Act 1987.

Section 42

The provisions set out in Section 40 shall also apply to 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 that are comparable to a domestic corporation falling under Section 7 (3) of the Corporation Tax Act.

2. Any collective investment in real estate that is subject to foreign law, irrespective of its legal form, whose assets are invested pursuant to the law, the instrument of incorporation or actual practice in accordance with the principles of risk spreading, if it does not fall under no. 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 gains of the collective investment are subject to a tax in a foreign country that is comparable to Austrian corporation tax, the applicable rate of which is more than 10 percentage points lower than the Austrian corporation tax pursuant to Section 22 (1) of the Corporation Tax Act 1988.

c) The collective investment is subject to a 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.

Section 43 Enforcement clause

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

Transitional provisions

Section 43a (1) 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 authorisation to manage real estate funds shall expire.

(2) Section 11 (1) as amended by the federal act promulgated in Federal Law Gazette I No. 198/2021 shall

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be applied to real estate funds that are managed by a real estate investment management company on 1 January 2022 starting on 1 January 2027. The fund rules may set forth an irrevocable earlier application date that may in no case be earlier than 1 January 2023. By way of derogation from Section 34 (3), the relevant change of the fund rules shall enter into force no earlier than one year after the date of the public announcement.

(3) Unit-holders shall be informed without delay of changes of the fund rules within the meaning of subsection (2) or Section 11 (1) in accordance with Section 19 (2) to (4).

Transposition notice

Section 43b (1) The federal act promulgated in Federal Law Gazette I No. 69/2008 on Sections 7, 15, 19, 22, 36 and 38 and the federal act promulgated in Federal Law Gazette I No. 80/2003 serve the transposition of Directive 2007/16/EC implementing Council Directive 85/611/EC, OJ No. L 375 of 31 December 1985 p. 3 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as amended by Directive 2005/1/EC, OJ No. L 79 of 24 March 2005 p. 9 as regards the clarification of certain definitions, OJ No. L 79 of 20 March 2007 p. 11.

(2) The Federal Act promulgated in Federal Law Gazette I No. 77/2011 on Sections 3, 6, 11, 32, 33, 34 and 38 and the Federal Act promulgated in Federal Law Gazette I No. 80/2003 serve the transposition of Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS), OJ No. L 302 of 17 November 2009 p. 32 and Directive 2010/43/EU implementing Directive 2009/65/EC of the European Parliament and of the Council as regards organisational requirements, conflicts of interest, conduct of business, risk management and content of the agreement between a depositary and a management company, OJ No. L 176 of 10 July 2010 p. 42 and Directive 2010/42/EU implementing Directive 2009/65/EC of the European Parliament and of the Council as regards certain provisions concerning fund mergers, master-feeder structures and notification procedure, OJ No. L 176 of 10 July 2010 p. 28 and Directive 2010/78/EU amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority), OJ No. L 331 of 15 December 2010 p. 120. Directive 2007/16/EC as already transposed by Federal Law Gazette I No. 69/2008 was also already taken into account in the amendment of the Investment Fund Act (Article 2).

(3) The federal act promulgated in Federal Law Gazette I No. 107/2017 on Sections 2, 7 and 38 and the federal act promulgated in Federal Law Gazette I No. 80/2003 serve the transposition of Directive 2014/65/EU on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, OJ No. L 173 of 12 June 2014 p. 349, most recently amended by Directive (EU) 2016/1034, OJ No. L 175 of 23 June 2016 p. 8 as amended by the corrigendum, OJ No. L 64 of 10 March 2017 p. 116 and Commission Delegated Directive (EU) 2017/593 supplementing Directive 2014/65/EU of the European Parliament and of the Council with regard to safeguarding of financial instruments and funds belonging to clients, product governance obligations and the rules applicable to the provision or reception of fees, commissions or any monetary or non-monetary benefits, OJ No. L 87 S. 500. This federal act also serves the effective enforcement of Regulation (EU) No. 600/2014 on markets in financial instruments and amending Regulation (EU) No. 648/2012, OJ No. L 173 of 12 June 2014 p. 84, most recently amended by Regulation (EU) 2016/1033, OJ No. L 175 of 23 June 2016 p. 1, Commission Delegated Regulation (EU) 2017/565 supplementing Directive 2014/65/EU of the European Parliament and of the Council as regards organisational requirements and operating conditions for investment firms and defined terms for the purposes of that Directive, OJ No. L 87 p. 1, and Commission Delegated Regulation (EU) 2017/567 supplementing Regulation (EU) No. 600/2014 of the European Parliament and of the Council with regard to definitions, transparency, portfolio compression and supervisory measures on product intervention and positions, OJ No. L 87 p. 90.

(4) The federal act promulgated in Federal Law Gazette I No. 135/2013 on Sections 1, 2, 40, 41, 42 and 43a and the federal act promulgated in Federal Law Gazette I No. 80/2003 transpose Directive 2011/61/EU on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No. 1060/2009 and (EU) No. 1095/2010, OJ No. L 174 of 01 July 2011 p. 1, as amended by the corrigendum OJ No. L 155 of 27 April 2012 p. 35 and sets forth the preconditions for the entry into effect of Regulation (EU) No. 345/2013 on European venture capital funds, OJ No. L 115 of 25 April 2013, p. 1 and Regulation (EU) No. 346/2013 on European social entrepreneurship funds, OJ No. L 115 of 25 April 2013, p. 18.

(5) The federal act promulgated in Federal Law Gazette I No. 184/2013 on Sections 33 and 35 and the federal act promulgated in Federal Law Gazette I No. 80/2003 serve the transposition of Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ No. L 176 of 27 June 2013 p. 338, the adaptation of supervisory law to Regulation (EU) No. 575/2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No. 648/2012, OJ No. L 176 of 27 June 2013 p. 1, and the transposition of Directive 2011/89/EU amending Directives 98/78/EC,

2002/87/EC, 2006/48/EC and 2009/138/EC as regards the supplementary supervision of financial entities in a financial conglomerate, OJ No. L 326 of 8 December 2011 p. 113.

(6) The federal act promulgated in Federal Law Gazette I No. 70/2014, on Sections 40, 42 and 44 and the federal act promulgated in Federal Law Gazette I No. 80/2003 transposes Directive 2013/14/EU amending Directive 2003/41/EC on the activities and supervision of institutions for occupational retirement provision, Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) and Directive 2011/61/EU on alternative investment funds managers in respect of over-reliance on credit ratings, OJ No. L 145 of 31 May 2013 p. 1.

(7) The federal act promulgated in Federal Law Gazette I No. 115/2015 on Sections 19, 34, 40 and 41 and the federal act promulgated in Federal Law Gazette I No. 80/2003 transpose Directive 2014/91/EU amending Directive 2009/65/EC on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) as regards depositary functions, remuneration policies and sanctions, OJ No. L 257 of 28 August 2014 p. 186.

(8) Federal Law Gazette I No. 112/2022 serves the entry into effect of Directive (EU) 2021/2261 amending Directive 2009/65/EC as regards the use of key information documents by management companies of undertakings for collective investment in transferable securities (UCITS), OJ No. L 455 of 20 December 2021 p. 15.

Section 44 Entry into force

- (1) This Federal Act shall enter into force on 1 September 2003.
- (2) Section 1 (3), Section 13 (3) and Section 29 (4) as amended by the federal act promulgated in Federal Law Gazette I No. 37/2005 shall enter into force on 1 July 2005.
- (3) Section 15 (2) as amended by the federal act promulgated in Federal Law Gazette I No. 134/2006 shall enter into force on 1 July 2007. Annex C, as amended by the federal act promulgated in Federal Law Gazette I No. 134/2006, shall enter into force on 1 January 2007.
- (4) Section 7 (1), Section 13 (3), Section 14 (3), Section 15 (2), Section 19, Section 22 (4), Section 23 (3), Section 36 (1), Section 38 (1) as amended by the federal act promulgated in Federal Law Gazette I No. 69/2008 shall enter into force on the day following promulgation.
- (5) Section 34 (5) as amended by the federal act promulgated in Federal Law Gazette I No. 152/2009 shall enter into force on 1 January 2010. The notifications referred to in Section 34 (5) as amended by the federal act promulgated in Federal Law Gazette I No. 152/2009 can also be submitted in a legally valid manner up to 30 June 2010 in accordance with the Real Estate Investment Fund Act as amended by the federal act promulgated in Federal Law Gazette I No. 69/2008.
- (6) Section 40 and Section 42, as amended by the Budget Accompanying Act 2011, Federal Law Gazette I No. 111/2010, shall enter into force on 1 April 2012. By way of derogation from this, Section 40 (3) in the version of the Budget Accompanying Act 2011, Federal Law Gazette I No. 111/2010, shall apply to unit certificates purchased for the first time after 31 December 2010; Section 40 (3) in the version before the Budget Accompanying Act 2011, Federal Law Gazette I No. 111/2010 shall continue to apply to unit certificates purchased on or before 31 December 2010. Section 42 (2) in the version before the Budget Accompanying Act 2011, Federal Law Gazette I No. 111/2010, shall be applied for the last time to the tax assessment for 2012 provided that distributions or income equivalent to distributions are received or are deemed received before 1 April 2012. By way of derogation from Section 40 (2) no. 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) Section 3 (2) and (3) no. 1, Section 6 (6), Section 11 (4), Section 32 (1) no. 3 and (2), Section 33 (3) no. 1, Section 34 (2) no. 8 and (5) and Section 38 (1) and (3) as amended by the federal act promulgated in Federal Law Gazette I No. 77/2011 shall enter into force on 1 September 2011.
- (8) Section 38 (1) and (2) as amended by the Second Stability Act 2012, Federal Law Gazette I No. 35/2012, shall enter into force on 1 May 2012.
- (9) Section 35 (1a) as amended by the federal act promulgated in Federal Law Gazette I No. 83/2012 shall enter into force on 1 July 2012.
- (10) Section 38 (3) as amended by the federal act promulgated in Federal Law Gazette I No. 70/2013 shall enter into force on 1 January 2014.
- (11) Section 1 (1), (1a) and (1b), Section 2 (1) and (2) and Section 43a including the heading as amended by

the federal act promulgated in Federal Law Gazette I No. 135/2013 shall enter into force on 22 July 2013. Section 2 (12) and (13) as amended by the federal act promulgated in Federal Law Gazette I No. 135/2013 shall enter into force on 1 January 2014.

(12) Section 40 to Section 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 beginning after 21 July 2013. AIF of the closed-ended type that do not make any additional investments (Section 67 (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 Sections 40 (1) no. 2 and 42 no. 1. This shall only apply in cases where Section 40 or Section 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.

Section 124b no. 185 (c) of the Personal Income Tax Act 1988 and Section 6b of the Corporation Tax Act 1988 shall take precedence over the application of Sections 40 and 42.

(13) Section 33 (1) and Section 35 (1) as amended by the federal act promulgated in Federal Law Gazette I No. 184/2013 shall enter into force on 1 January 2014.

(14) Section 40 (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 Section 186 or 188 of the Investment Fund Act 2011 ending after 30 September 2015. By way of derogation from this, Section 40 (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 beginning after 21 July 2013.

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

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

(17) Section 40 (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 Section 40 or Section 42 of the Real Estate Investment Fund Act beginning after 31 December 2018. If income as referred to in Section 40 (6) includes increases in value, such income shall be included only insofar as it accrued in financial years beginning after 31 December 2018.

(18) Section 40 (1) and (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 Section 40 or 42 of the Real Estate Investment Fund Act beginning after 31 December 2018.

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

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

(21) Section 16 including the heading, Section 17 (1), (3) and (4), Section 36 (3), Section 38 (1) and (3) and Section 43a as amended by the federal act promulgated in Federal Law Gazette I No. 198/2021 shall enter into force on the day following promulgation. Section 11 (1) as amended by the federal act promulgated in Federal Law Gazette I No. 198/2021 shall enter into force on 1 January 2022. Section 1 (3) and Section 6 (6) as amended by the federal act promulgated in Federal Law Gazette I No. 198/2021 shall enter into force on 1 January 2023.

(22) Section 7 (4a) shall enter into force on 1 January 2023.

Annex A – Schedule A

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

Section I Information concerning 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 senior management and supervisory board members
4. Share capital of the company; unpaid portions of subscribed capital

5. Financial year
6. Shareholders who exercise or may exercise, directly or indirectly, a controlling influence on the company

Section II Information concerning the real estate fund

1. Name of the fund
2. Date of the constitution of the fund
3. Information on the office where the fund rules and the reports required under the 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 auditor
7. Conditions on which management of the fund may be terminated; period of notice
8. Details of the types and main characteristics of the units, in particular:
 - original securities or certificates providing evidence of title; entry in a register or in an account
 - characteristics of the units: registered or bearer, indication of any denominations which may be provided for
 - 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 and improvement work, total costs for planned maintenance, repair 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 investment including all associated charges
 - 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 admitted to official listing or dealt in
10. Procedures and conditions of issue and sale of units
11. Procedures and conditions for repurchase or redemption of units, and circumstances in which repurchase or redemption may be suspended
12. Description of rules for determining and applying 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), the investment policy (e.g. real estate specialisation in terms of geographical areas or industrial sectors), any limitations on that 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 sale or issue price and the repurchase or redemption price of units, in particular:
 - the method and frequency of the calculation of those prices
 - information concerning the charges relating to the sale, issue, repurchase or redemption of units
 - the means, places and frequency of the publication of those prices
16. Information concerning the manner, amount and calculation of remuneration payable by the real estate fund to the real estate investment management company, the depositary or third parties, and reimbursement of costs by the real estate fund to the real estate investment management company, to the depositary or to third parties.
17. If the services of external advisory firms or investment advisers are employed and their remuneration is paid by the real estate fund, information concerning:
 - the name of the firm or adviser
 - details of the agreement with the management company or the investment company which may be relevant

to the unit-holders

- other significant activities

Section III Information concerning 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. Main 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:

- transferable securities

- real estate and rights equivalent to real estate

a) Location and regional distribution

b) Size

c) Year of construction

d) Year of acquisition

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, improvement and extension work

i) Total costs for planned maintenance, repair, 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. Portfolio, distinguishing between

a) transferable securities admitted to official stock exchange listing

b) transferable securities dealt in 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 security and the exchange rate shall be indicated.

- information on the changes in the composition of the fund assets during the reporting period.
5. Statement of the developments concerning the assets of the real estate fund during the reporting period including the following:
- income from investments
 - other income
 - management charges
 - custodian bank charges
 - other expenses and taxes/fees
 - net income
 - distributions and income reinvested
 - changes in capital account
 - appreciation or depreciation of investments
 - any other changes affecting the assets and liabilities of the real estate fund
6. Comparative overview of the past five accounting years, including the following information as at the end of each accounting 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 reporting period, broken down by category.
8. Distribution per unit
9. Tax treatment of the unit certificate, assuming that the unit-holder has held his unit for the fund's entire financial year.

Annex C – Schedule C

Schedule for the simplified prospectus

1. Brief presentation of the real estate fund
 - date of constitution
 - managing real estate investment management company
 - details of external advisory firms (where applicable)
 - details of companies to which functions were delegated (where applicable)
 - custodian bank
 - auditor
 - the financial group (e.g. a credit institution) offering the real estate fund
2. Investment information
 - concise definition of the investment objective(s) of the real estate fund (e.g. specialisation in real estate according to geographic criteria and/or type of property)
 - 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 for whom the real estate investment fund is designed
3. Economic information

- tax regime
- entry and exit commissions
- other possible commissions or charges, 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. Dealing information

- how to buy the units
- how to sell the units
- frequency and manner of the publication or provision of prices

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 supervisory authority
- indication of a contact point (person/department; times etc.), where further information can be obtained, if necessary
- 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