

Guidelines for real estate funds

Please note: The German and French versions of these guidelines are binding. The English translation is provided for information purposes only.

2 April 2008

(Version dated 5 August 2021)

I Basic principles, aims, and binding force

The following Guidelines provide detailed information in respect of specific matters pertaining to the duties of loyalty, due diligence, and disclosure of real estate fund management companies and real estate SICAVs as well as representatives of foreign real estate funds, the objective being to ensure the high quality of real estate funds in Switzerland. The Guidelines contain basic principles on uniform valuation and information for investors. By establishing standards, the Guidelines are also aimed at ensuring the greatest possible transparency in the offering of these products. 1

The guidelines are part of the self-regulation regime of the Swiss fund and asset management industry. They are based on Section II of the Code of Conduct issued by the Asset Management Association Switzerland, which applies to all fund management companies and SICAVs as well as representatives of foreign collective investment schemes. 2

The Guidelines apply to 3

- Swiss fund management companies of real estate funds (pursuant to Art. 32 et seqq. of the Financial Institutions Act (FinIA)) and real estate SICAVs (pursuant to Art. 58 et seqq. of the Collective Investment Schemes Act (CISA)); 4
- representatives of foreign real estate funds (pursuant to Art. 119 et seqq. CISA) in respect of section D of the present Guidelines. 5

Exceptions approved by the supervisory authority for real estate funds reserved exclusively for qualified investors pursuant to Art. 10 paras. 3 and 3^{ter} CISA apply notwithstanding. 6

II Guidelines

A Duty of the fund management company/SICAV in respect of due diligence

1. Ensuring a proper organizational structure

The fund management company/SICAV must implement the necessary organizational measures pursuant to the Code of Conduct (including an internal control system (ICS)) to enable it to manage its real estate fund business in a proper manner. At the least, it must observe adequate separation of functions with regard to the following activities: 7

- decision-making (in particular in respect of acquisitions, sales, and the maintenance of properties) and **8**
- controlling (e.g. of valuations, execution of delegated tasks, and real estate companies). **9**

It will delegate executive functions in respect of the management of real estate funds exclusively to persons with many years of suitable experience in the real estate business and – depending on the task – also in the collective investment business. **10**

2. Real estate companies belonging to real estate funds

The fund management company/SICAV must ensure that the same basic principles and standards apply to real estate companies belonging to the real estate fund as apply to the fund management company/SICAV. In particular, with regard to the structure of the Board of Directors and the Executive Board, the same requirements must apply as for the governing and executive bodies of the fund management company/SICAV. **11**

3. Delegation of tasks

Where tasks are delegated pursuant to Art. 14 para. 1 and Art. 35 para. 1 FinIA, the fund management company/SICAV must conclude an agreement with the agent(s) with specific regulations governing the delegated task, the performance of that task while avoiding potential conflicts of interest, areas of responsibility, powers of authority, scope of liability, and fees. This agreement may be concluded in writing or another form that allows for proof by means of text. Barring any provisions to the contrary in the fund regulations, the agents' fees are borne by the fund management company or the shareholder's assets in the case of a SICAV. **12**

The fund management company/SICAV must ensure that the agents are aware of the provisions of the present guidelines and other pertinent guidelines, and it must ensure that the agents are contractually obliged to comply in full with such provisions. **13**

4. Relationship with the custodian bank

The fund management company/SICAV must conclude an agreement with the custodian bank governing the parties' respective areas of responsibility, settlement procedures, and interfaces. **14**

5. Relationship with the independent valuation experts

For each real estate fund, the fund management company/SICAV must appoint at least two natural persons or one legal entity familiar with the pertinent real estate markets as independent valuation experts. The appointment may be made in writing or another form that allows for proof by means of text and requires the approval of the supervisory authority. If a legal entity is appointed as valuation expert, two individuals with the necessary specialist qualifications must be additionally named as being responsible for the appointment. Their names must appear in the prospectus. **15**

If a legal entity is appointed as valuation expert, the fund management company/SICAV must verify in its initial check that the valuation expert meets the following criteria: **16**

- legal form of joint-stock corporation (AG), limited-liability company (GmbH), partnership limited by shares, general or limited partnership (Commercial Register extract as proof) **17**
- active in the real estate business and specifically in valuations and estimates (e.g. included in the purpose stated in the Commercial Register extract or on the valuation expert's website) **18**
- sufficient staff (at least three full-time equivalents with appropriate specialist qualifications) **19**
- no more than 10% of revenues derived from the appointment **20**
- professional liability insurance with a sum insured of at least CHF 5 million per year or case that covers valuation activities, with cover not disproportionately limited (e.g. to the amount of the annual fee; current cover note as proof) **21**
- adequate organizational measures (i.e. organization of valuation business, ICS [processes, quality management, code of conduct, data retention and] IT [security measures, and valuation systems]). **22**

The adequate organizational measures required under margin no. 22 are verified by asking the valuation expert questions and/or receiving confirmations from the valuation expert and/or viewing the valuation expert's documentation on the following: **23**

- the use of double-checking and **24**
- compliance with recognized valuation principles **25**

The fund management company/SICAV will periodically review the requirements under margin nos. 16-22. **26**

In the event of material changes in the circumstances underlying the appointment, the appointed valuation expert must inform the fund management company/SICAV in advance for the appointment to continue. The fund management company/SICAV must review compliance with the requirements set out in margin nos. 16-22. **27**

The details in respect of the appointment, specifically with regard to settlement procedures, areas of responsibility, and fees, are to be covered in a written agreement. **28**

While safeguarding the independence of the valuation experts, the agreement must also stipulate the valuation method that the valuation experts will as a rule use in conducting their valuations. **29**

B Principles for determining the market value of the properties and other investments

6. Market value

The market value of a property corresponds to the price that would probably be obtained in a diligent sale at the time of valuation. **30**

7. Determining the market value

The market value of the properties is to be determined using a discounted income value approach. The market value is to be determined on the basis of the result of the valuation method applied, taking due consideration of the market environment. **31**

Subject to the exceptions listed below, all properties of a real estate fund must be valued using the same discounted income value approach (standard valuation method). **32**

In the case of those properties that can only be valued using a different valuation method (e.g. undeveloped building land or properties for demolition), the valuation report must give the reasons for selecting the different valuation method and a description of the method in question (cf. Section 16). **33**

8. Discounted income value approaches

The cash value method, the discounted cash flow (DCF) method, and other recognized discounted income value methods are recognized as discounted income value approaches. **34**

9. Individual (property-specific) valuation

In every case, the income value of a property requires an individual valuation. Such valuations must take into account all of the factors that experience shows to have an impact on the selling price at the time of the valuation, such as specifically the market environment and the quality of the property concerned. **35**

10. Market environment

The current and expected market environments are decisive factors. The market environment is determined by all of the significant circumstances influencing supply and demand in the regular conduct of commercial activity at the time of the valuation, such as specifically the prevailing economic situation, the capital market, and developments, which are to be taken in the context of their impact on the specific property. In this regard, unusual or speculative scenarios may only be taken into account if they are of a lasting nature and their impact on the valuation can be quantified. **36**

The market environment that could result if all of the properties of one or all real estate funds were to be offered on the market at the same time is not to be taken into account. **37**

11. Quality

The quality of a property is determined in particular by the characteristics of the location, the size and design of the property, utility, rights or liabilities under private or public law, encumbrance of the land or building, interior works, construction materials, age, condition, rental status, rental potential, rental income, rental income reserves, etc. **38**

Characteristics of a property's location include in particular transport links, neighborhood, and attractiveness as a place of residence/business. **39**

12. Conducting the valuations

The fund management company/SICAV must compile all the relevant documents for the valuation of the property that the valuation experts will need for their valuation activities, and must provide these documents to the valuation experts. **40**

In respect of reviewing the market values pursuant to Art. 93 and Art. 97 para. 3 of the Collective Investment Schemes Ordinance (CISO), the fund management company/SICAV must deliver all the necessary data that have changed since the last valuation. It is responsible for controlling and verifying the valuation results. **41**

13. Valuation report

The fund management company/SICAV must ensure that each valuation is documented in a valuation report in such a manner that it can be readily understood by a professional. The valuation report must be signed by the valuation expert in question. **42**

Reasons must be given for the amounts of the discount rates and other parameters used in the DCF valuation practice, as well as any changes compared with the previous year, and these must be verified. **43**

14. Changing the valuation method

The investors must be notified in advance of the change in the valuation method, with reference to the fact that this may result in a higher or a lower valuation. The supervisory authority must also be informed in advance. The change must be disclosed in the annual report. **44**

15. Valuation of other investments

The fund management company/SICAV must value securities, liquid assets, and other investments in accordance with the Asset Management Association Switzerland's Guidelines on the valuation of the assets of collective investment schemes and the handling of valuation errors in the case of open-end collective investment schemes. **45**

16. Internal directive on valuation and the calculation of the net asset value

The fund management company/SICAV must set down in an internal directive the basic principles, processes, and responsibilities applicable in respect of the valuation of the fund's assets. This directive must at least cover the following: **46**

- the description of the valuation method used as standard; **47**
- the description of cases in which methods other than the standard valuation method are used together with a description of the methods (cf. section 7); **48**
- the interfaces, processes, and responsibilities in respect of the valuation experts; **49**
- measures to verify the valuation figures provided by the valuation experts, and procedure to be followed if the fund management company/SICAV does not intend to use these figures; **50**
- responsibility for verifying the determined net asset value within the fund management company/SICAV; **51**
- the internal flow of information (avoidance of conflicts of interest). **52**

17. Issuing units (Art. 66 CISA in conjunction with Art. 97 CISO)

In issuing units, the fund management company/SICAV must take into account the pertinent Asset Management Association Switzerland specialist information factsheet. **53**

C Duty of the fund management company/SICAV in respect of loyalty

Avoidance of conflicts of interest

18. Transactions with closely related persons/entities

The fund management company/SICAV must ensure that it buys/sells real estate assets for the account of the real estate fund only from/to persons/entities who do not qualify as closely related persons pursuant to Art. 91a CISO. It will conclude transactions pursuant to Art. 63 paras. 2 and 3 CISA with related persons only if an exemption has been granted by the supervisory authority (Art. 32a CISO). **54**

The fund management company/SICAV will conclude rental contracts (including side agreements) with closely related persons/entities at standard market terms. It will have this confirmed annually by the valuation expert responsible. **55**

The fund management company/SICAV will also conduct all other dealings with closely related persons/entities at standard market terms (at arm's length). **56**

19. Management of multiple real estate funds

If a fund management company/SICAV manages multiple real estate funds, it must ensure equal treatment in transactions with multiple real estate funds and that none is given preferential treatment to the detriment of the others (e.g. with regard to the allocation of newly acquired properties). **57**

The principle of relative equal treatment applies, i.e. differentiation is permissible where it is justified by the facts. In particular, it is permissible to treat real estate funds differently according to their investor groups, subfunds, and/or unit classes, provided this is justified by the facts (cf. Code of Conduct section III letter B point 3). **58**

20. Personal account dealing by employees

The fund management company/SICAV will issue suitable regulations pursuant to the Code of Conduct governing personal account dealing by its employees. **59**

Investment of fund assets

21. Basic principle

The fund management company/SICAV manages the real estate funds it establishes in accordance with the investment policy and requirements defined for the individual real estate funds. It will not give certain real estate funds and/or investor groups preferential treatment to the detriment of others (e.g. when allocating newly acquired properties). **60**

22. Maintenance and renovations

The fund management company/SICAV must ensure that the properties are properly and regularly maintained. It will award contracts independently and only to carefully selected counterparties that offer the best execution overall in terms of price, time, and quality. It will use retrocessions and rebates received exclusively for the benefit of the real estate fund. If more than one real estate fund is involved, they will benefit on a pro rata basis. **61**

23. Joint construction projects

If the fund management company/SICAV realizes a construction project for the account of the real estate fund jointly with the custodian bank or a closely related person/entity, it must ensure that any ensuing benefits (e.g. favorable terms in the case of a major contract) accrue to the real estate fund in proportion to its stake in the project. **62**

24. Commissions from real estate transactions

Any commissions accruing to the fund management company/SICAV for brokering the services of closely related persons/entities in connection with real estate transactions will be credited against the remuneration due to it in accordance with the fund regulations. **63**

25. Other investments

If the fund management company/SICAV takes up a loan from the custodian bank for the account of the real estate fund or if it invests liquid assets with the custodian bank, it must make regular comparisons with competitors to ensure that the interest rate is in line with the standard market conditions. **64**

D Duty of the fund management company/SICAV in respect of the disclosure of information

26. Investment character and suitability of the real estate fund

The fund management company/SICAV must explain in an appropriate manner (e.g. in the sales documentation) the investment character (i.e. portfolio strategies and performance) and suitability of the fund as well as the characteristics of free trading in the fund's units (premium/discount) in a form and language readily accessible to investors. It must refrain from making binding statements on the future performance of the real estate fund. Sales documentation is deemed as being in particular issuing prospectuses and marketing documents that provide detailed information on the fund as promotional material. **65**

In the annual and semi-annual reports, the fund management company/SICAV must disclose any tenants that account for more than 5% of the total rental income of the real estate fund on the pertinent reference date. If no tenant reaches this 5% threshold, it must disclose this fact. **66**

27. Disclosure of the valuation method

In the annual and semi-annual reports, the fund management company/SICAV must provide information on the method used to value the properties. It must disclose in the annual report the average discount factor applied and must explain the key characteristics of the method selected. **67**

In the event of a change in the valuation method, the duty of disclosure is as covered in section 14. **68**

28. Standardized key data

The fund management company/SICAV must publish at least the following key data in the annual and semi-annual reports: **69**

- | | | |
|--|----------------------|-----------|
| • Rent default rate | • Dividend yield | 70 |
| • Borrowing ratio | • Payout ratio | 71 |
| • Operating profit margin (EBIT margin) | • Premium / discount | 72 |
| • Fund operating expense ratio (TER _{REF}) | • Performance | 73 |
| • Return on equity (ROE) | • Investment return | 74 |
| • Return on invested capital (ROIC) | | 75 |

In addition to these, the fund management company/SICAV is free to publish the following key data, among others: **76**

- | | | |
|---|------------------------------|-----------|
| • Net return on completed buildings | • Price/earnings ratio (P/E) | 77 |
| • Weighted average unexpired lease term (WAULT) | • Price/cash flow ratio | 78 |
| • Gearing | • Market capitalization | 79 |
| • Weighted average term of debt | • Interest on debt capital | 80 |

The above terms may only be used for key data that correspond exactly to the definitions listed in the Asset Management Association Switzerland specialist information factsheet “Key Data for Real Estate Funds” and that are also calculated in accordance with the said factsheet. It is not permitted to use these terms for other key data or key data calculated in a different manner. **81**

To ensure the continuity of information for investors, the fund management company/SICAV will publish the same key data in other publications (e.g. factsheets, quarterly reports). In so doing, it may restrict itself to the most important key data, but once these have been selected they must be maintained over a prolonged period. **82**

29. Announcing price-sensitive changes

The fund management company/SICAV must openly inform investors about changes that could have a significant influence on the pricing of units on the free market. It must take the necessary precautions to prevent insider trading. **83**

The fund management company/SICAV must ensure that price-sensitive information is only passed on to the custodian bank’s trading units if it is also published for the attention of investors at the same time. **84**

For the purposes of the present section, price-sensitive changes are deemed to include the following: **85**

- changes of more than 5% in the net asset value of units compared with the most recently published figure; **86**
- unexpected events having a significant impact on the income statement (e.g. in the case of an important tenant defaulting or the need for major, unscheduled refurbishment); **87**
- decisions by the responsible bodies to restructure, merge or liquidate the real estate fund; **88**
- notice having been served on units corresponding to more than 20% of the net fund assets. **89**

In the case of listed real estate funds, the fund management company/SICAV must comply with the exchange regulations in accordance with Art. 26 letter b of the Financial Market Infrastructure Act on the disclosure of price-sensitive facts (ad-hoc publicity pursuant to the applicable listing rules) and on the suspension of trading. **90**

In the case of unlisted real estate funds, the fund management company/SICAV will disclose in the prospectus / annex the procedure for notifying investors of price-sensitive changes. **91**

III Other provisions

A Minimum standard

The Swiss Financial Market Supervisory Authority (FINMA) recognized this self-regulation in the version dated 5 August 2021 as a minimum standard on 25 August 2021. **92**

B Entry into force

The present amended Guidelines have been approved by the Board of Directors of the Asset Management Association Switzerland on 5 August 2021 and enter into force on 1 January 2022. **93**

The amended Guidelines also apply from the date on which they enter into force to real estate funds and SICAVs that had already been approved by FINMA before that date. **94**

C Transitional provision

Real estate funds and SICAVs approved by FINMA before these Guidelines enter into force must implement the provisions of margin nos. 15-29 within one year after these Guidelines enter into force. **95**

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