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This document summarizes a series of guidance notes and it reflects the general consensus of discussions with market professionals. The document takes the form of answers to frequently asked questions, primarily in respect of the role and activity of a depositary, applicable to Luxembourg Real Estate Investment Funds (REIFs) in the format of UCIs governed by Part II of the Law of 17 December 2010, SIFs governed by the law of 13 February 2007 and SICARs governed by the law of 15 June 2004. It should be read in conjunction with the Luxembourg Real Estate Investment Vehicles brochure, which is prepared jointly by ALFI and Luxembourg For Finance (LFF) and gives general background information on the legal and taxation aspects of unregulated and regulated real estate vehicles domiciled in the Grand Duchy of Luxembourg.

The answers to the frequently asked questions do not constitute regulation and should be considered as guidance on common practice. In addition, answers are directed at regulated Luxembourg REIFs. Readers should seek the advice of qualified professionals before making any decision as to the most appropriate Luxembourg real estate vehicle for their needs, and the selection of their accounting framework and accounting policies.

This document includes some references to the Alternative Investment Fund Managers Directive (AIFMD) but it does not cover all future requirements or implications of the AIFMD. A revision of this document is planned in order to include the AIFMD's impact on Luxembourg REIFs.

This document is published by ALFI as a general guideline and while reasonable care has been taken in compiling the information, ALFI does not accept any liability for the guidelines and does not guarantee in any way that they will be appropriate to specific circumstances. Readers should seek appropriate professional advice in order to decide how to apply best practice to individual REIFs.

This document reflects the legal situation as at 1st January 2012.

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1 Introduction

1.1 What is a depositary of real estate funds?

In Luxembourg, a depositary of real estate funds is a credit institution that plays a role in:

- Safekeeping cash
- Holding certain financial instruments deposited with them in custody
- Supervising ownership and economic benefits of ownership of other financial instruments, indirectly held assets and properties

A Luxembourg depositary of a non-UCITS fund in Luxembourg must be either a Luxembourg-registered credit institution or the Luxembourg branch of a credit institution with its registered office in a non-Member State of the EU (Chapter E of IML Circular 91/75).

In all cases, the depositary is subject to the supervision of the Luxembourg regulator, the Commission de Surveillance du Secteur Financier (CSSF).

1.2 How is the depositary appointed and removed?

A depositary is appointed and removed by the governing body of a fund, subject to the approval of the CSSF.

1.3 What is the legal framework covering their engagement?

The Laws of 17 December 2010 (UCI Law), 15 June 2004 (SICAR Law) and 13 February 2007 (SIF Law) require the appointment of a depositary. The key provisions in such laws in relation to the role and responsibility of the depositary state that:

- The depositary's liability shall not be affected by the fact that it has entrusted all or some of the assets in its custody to third parties.
- In carrying out its duties, the depositary must act independently and solely in the interest of the investors.
- The depositary shall be liable in accordance with Luxembourg laws to the investors for any loss suffered by them as a result of its wrongful failure to perform its obligations or its wrongful improper performance thereof.

In addition, Chapter E of IML (now CSSF) Circular 91/75 of 21 January 1991 states that "the general mission of the depositary should be understood not in the sense of "safekeeping", but in the sense of "supervision", which implies that the depositary must have knowledge at any time of how the assets of the UCI have been invested and where and how these assets are available." By analogy this description applies to all funds established under the aforementioned laws, and it clearly establishes the supervisory role of the depositary in relation to directly and indirectly held real estate fund assets, which are typically, in their nature, not eligible for custody. As a consequence, a real estate fund depositary needs to make sure that its internal processes are adapted to the specific nature of real estate assets held directly by real estate funds or through special purpose vehicles (SPV) subsidiaries.

AIFMD comments

AIFMD provides separate requirements as to who can be a depositary. These include:

- EU credit institutions
- Investment firms
- Other categories of institutions

All of them have strict requirements/conditions to be complied with to be adopted as a depositary

Separate requirements for 3d country depositaries

AIFMD together with the future level 2 guidance will need to be transposed to national laws.

As regards the depositary's liability, the performance of the depositary's supervisory functions is in principle subject to an obligation of means ("wrongful failure"), with the exception of an obligation of result established by the civil code and the law of 5 August 2005 on Financial Collateral Arrangements in relation to the return of assets held in custody in the strict sense.

Furthermore, Circular 91/75 recognizes that not all of the assets eligible for safekeeping need necessarily be held with the depositary itself; this may be of particular importance to real estate funds where credit and operating constraints may require the real estate fund to open cash and/or securities accounts with local credit institutions. However, the Circular establishes that such external deposits are also subject to the depositary's supervisory duties.

1.4 What are the typical activities of a depositary?

A depositary shall:

1.4.1 Safekeep cash deposited with them, in accordance with Luxembourg banking law

1.4.2 Hold in custody financial instruments which are deposited with them

Normally, assets are only considered to be deposited with the depositary when:

- a) Physically delivered to the depositary
- b) Registered in the name of the depositary (or its sub-depositaries/agents) in the books of a national or international central securities depository

1.4.3 Understand and supervise how other assets of the fund are owned, either directly or through intermediate entities

This includes: understanding how economic benefits of ownership flow through to the investors in the fund. Assets included in this category may include:

- a) Financial instruments that are registered in the name of the fund and/or the depositary in the books of an issuer, or where equivalent contractual controls (e.g. subscription under nominee arrangements) are in place, e.g. private (non-listed) equity or debt securities, controlled subsidiaries, investments into target funds, bank loans, derivatives, etc.
- b) Real assets, including properties, land, infrastructure
- c) Commodities
- d) Contracts

In this respect, a depositary represents and acts in the best interests of the investors as a whole.

Where assets are deposited with the depositary, a duty of safekeeping applies; otherwise, the duty of supervision applies.

AIFMD comments

AIFMD sets out the rules on the liability of a depositary in safe keeping of assets/supervising and eventual compensation.

Similar rules under AIFMD which require proper monitoring of cash, custody of transferable financial instruments held in central settlement systems, or physically; and verification of the ownership and recordkeeping for other assets.

1.4.4 Other supervisory duties

Under the UCI Law (Part II funds) there are other monitoring duties which vary depending on the legal form of the real estate fund.

These obligations are greatest in the case of FCPs:

	FCP	SICAV
<p>a) To ensure that the sale, issue, redemption, cancellation of units (shares) effected on behalf of the fund are carried out in accordance with the applicable national law and the constitutive documents</p> <p>This requires supervision of transfer agency operations. There is no fundamental difference between real estate funds and other traditional securities funds, except that units/ shares may be issued as a result of capital calls made as per the prospectus/private placement memorandum (PPM), the constitutive documents and in accordance with the subscription agreements.</p>	YES	YES
<p>b) To ensure that in transactions involving the assets of the fund, the consideration is remitted to it within the usual time limits</p> <p>This is related to the duty to monitor the timely settlement of investment transactions and is reviewed in a later section related to real estate acquisitions.</p>	YES	YES
<p>c) To ensure that the income of the fund is applied in accordance with the constitutive documents of the fund</p> <p>These documents generally stipulate how income should be distributed amongst share/unit classes once declared distributable at fund level and may require that part of the property revenues (generally rents) are recognized as income and distributed to the investors on a predefined basis. This is not a requirement to monitor operational cash flows at the level of the assets, e.g. receipt of rents.</p>	YES	YES
<p>d) To carry out the instructions of the management company, unless they conflict with the law or the management regulations</p> <p>This duty is primarily related to investment guidelines and restrictions monitoring, as the depositary may not accept instructions which conflict with the rules laid down in the fund documentation or the law.</p>	YES	NO

AIFMD comments

AIFMD introduced the requirements to verify the valuation of the shares/units (basically NAV)

Similar AIFMD requirements

These duties do not apply under the 2004 (SICAR) and 2007 (SIF) laws.

1.5 How should a depositary monitor investment guidelines for FCPs?

For FCPs governed by the UCI law, art. 18 (2) c) provides that the depositary shall “carry out the instructions of the management company unless they conflict with the law or the management regulations”. How does this translate into real estate funds specifically?

The overall responsibility does not fundamentally differ from those applicable to traditional securities funds, i.e. the depositary will have to monitor the compliance of transactions involving the assets of the fund with the set of investment restrictions laid down in the fund documentation. The specifics of real estate funds will generate particular behaviours and processes in circumstances such as property acquisitions, developments or disposals.

According to IML Circular 91/75, and subject to any other requirements in the fund documentation, a real estate fund will normally have up to 4 years after the end of the initial subscription period to comply with the investment restrictions/guidelines.

The specifics of the fund, notably through the prospectus or PPM, may require particular procedures to be established in certain circumstances (e.g. creation, intervention and interaction of internal bodies, such as an Investment Committee and/or Unitholders Advisory Committee).

Monitoring of fund operations requires frequent and ongoing communication between the depositary and the fund’s management.

Controls have to be carried out in a timely manner, in order to allow for adjustments to planned operations and/or transactions to be made if necessary.

Upon provision of the relevant data, sufficient time must be allowed for the depositary to perform its controls.

The depositary cannot play a passive role and should proactively pursue this dialogue, asking pertinent questions and requesting relevant documents as circumstances require.

Additional courses of action may be necessary, as detailed hereafter in the sections related to acquisition and disposal of properties.

1.5.1 Is there an investment guidelines monitoring obligation under the SIF Law?

Although under SIF law there is a requirement to appoint a depositary for FCP, SICAV and other forms, the depositary of such funds is not bound by any investment guidelines monitoring obligation.

The fund’s management may enter into an agreement with the depositary or central administrator on a case-by-case basis, by which the service provider may perform the monitoring obligations on a contractual basis, in order to comply with certain particular requirements (e.g. investor’s regulatory restrictions).

1.6 What is meant by “an obligation of means”?

In general, supervisory responsibilities of a depositary are an “obligation of means”. A depositary needs to implement appropriate control measures in a timely manner in accordance with its professional judgment. The control measures should be adapted to the specific characteristics of each real estate fund. To meet these obligations, a depositary may collect various forms of evidence and make inquiries of the fund manager, other service providers and third parties connected with the fund. The depositary should also ensure that its understanding is materially correct on an ongoing basis.

1.7 What are the limitations of the depositary’s work (force majeure, serious fraud, etc.)?

The obligations and level of reliance that can be attributed to a depositary which is safekeeping cash and securities held directly on deposit, or through sub-depositary arrangements, are not different to the normal obligations of a Luxembourg depositary acting in respect of a traditional UCI. This will not be expanded upon in this document.

As mentioned above, a depositary has a supervisory role over assets which are not held on deposit or which cannot be held in custody (and in particular real estate assets held directly or indirectly through legal entities).

More specifically, ownership of real estate is a complex legal matter and varies significantly depending on jurisdiction. The depositary is not a legal expert and can only verify that the fund manager and the governing body have taken reasonable steps to secure and protect ownership of properties and controlled subsidiaries.

In addition, there are many environmental and operating risks involved in the business of alternative funds which are outside the capacity of the depositary’s to control. For instance the depositary cannot control if the value of a property decreases due to physical or general economic circumstances, or if the ownership of the asset is compromised by political or legal developments which are inherent in the operating environment of the fund. Furthermore the depositary is not responsible for assessing counterparty risk, the adequacy of the investment policies of the fund or the wisdom of any particular investment or financing decision.

The sufficiency of the extent of the depositary’s work is therefore a highly judgmental matter. There are circumstances of force majeure or serious fraud or insolvency which would be judged outside the responsibility and control of a depositary acting in good faith and with due care.

1.8 What are the responsibilities and rights of a depositary in conducting its supervisory function?

1.8.1 The knowledge of the depositary

According to Circular IML 91/75, the depositary:

“[...] needs to have knowledge at any time on how the assets of the UCI have been invested and where and how these assets are available”.

AIFMD comments

Strict liability for assets under safe-keeping arrangements. For assets supervised, liability is established by professional negligence with the exception of “extraordinary events”.

AIFMD provides detailed guidance on delegation/sub-delegation to another 3d party, including in the 3d countries.

What does this mean for a real estate fund?

In a general sense the depositary should understand the fund product, its legal form and structure, which assets are held in the fund and the processes through which they are acquired, held and sold. This should include an understanding of the risks related to the availability of assets and how the asset manager and its delegates manage such risks.

In a practical sense, the depositary will generally build a file documenting the fund product (prospectus/private placement memorandum, regulations, investment strategy and restrictions) as well as make inquiries and collect evidence as to how assets are acquired, held and sold by the fund, the controls over such processes and details of how economic benefits of transactions flow back to investors during the holding period and on exit.

More specifically, in relation to the underlying assets of the fund, the depositary should have knowledge of:

- a) The nature of underlying property assets (land, buildings, joint ventures, associate companies, etc.) of the fund, and reasonable evidence that these assets are beneficially owned by the fund or through controlled legal vehicles.
- b) The nature of any material mortgages and pledges over assets of the fund and reasonable evidence that these are within the scope of the funds permissible financing activities as described in the fund documentation.
- c) The chain of ownership via intermediary legal structures through which the underlying real assets in the fund are held.

1.8.2 The depositary's assessment of the availability of assets

In general, the depositary needs to verify that, and in which manner, the underlying assets are beneficially owned by the fund and that, and in which manner, the economic benefits of fund transactions (acquisitions, disposals, and repatriation of income) flows through to investors in accordance with the fund documentation.

Real estate funds can be complex. Assets are often held through multi-level holding structures. Funds can own beneficial interests in land, development projects, stable income generating properties, joint ventures or real estate securities or positions in other real estate related businesses. Sometimes assets are not fully owned and controlled by the fund. Assets are often subject to pledges and mortgages which may legitimately compromise the ownership of assets by the fund in certain circumstances.

There are many different approaches to the frequency and the method by which income and capital gains are repatriated to investors through the fund structure. In addition, the real estate title is sometimes, depending on its jurisdiction, imperfect but is judged by the fund to be adequate for their purposes. The depositary may also have different strategies depending on its assessment of the

strength of internal processes and controls performed under the supervision of the management of the fund, in preventing or detecting errors or irregularities.

All these factors impact the work of the depositary in how they execute their supervision. The nature and frequency of their procedures will depend on their assessment of the risks related to the availability of the assets. This will vary from fund to fund and from one jurisdiction to another, and the approach of the depositary needs to be tailored to ensure effective and practical supervision is applied in each case.

1.8.3 The means of a depositary

What rights and means does the depositary have to exercise its obligations?

The depositary is required to use all means it deems necessary to fulfil its responsibilities, including access to information held by third parties. Such access should be facilitated by the governing body of the fund, and therefore should be considered when any third parties are engaged for services or contracts and agreed with counterparties. The governing body of the fund should ensure that the depositary is able to execute its work efficiently, in a timely manner and without hindrance.

Generally the depositary will develop a plan, including the means through which it will meet its obligations and the evidence it will collect to document its work. This may include:

- Information about the fund
- Independent confirmations
- Fund, advisor or third party service provider records
- Reliance on the work of others (e.g. legal opinions on property ownership)
- Details of policies and procedures relating to fund operations
- Use of publically available information, such as land and company registers
- Other alternative procedures

Given the wide range of fund products, structures and underlying assets, the depositary may use a variety of means to carry out its supervision.

1.8.4 The independence of a depositary

The independence of the depositary derives principally from its role of safe keeper of the assets on behalf of the investors.

The first reference in a Luxembourg law text goes back to the first UCITS Directive that incorporates the principle of separation and ethical independence between the fund manager and the depositary stating that both “the management company and the depositary must act independently and solely in the interest of the unitholders”.

This means that the management and depositary functions cannot be exercised by the same legal entity, thus guaranteeing independence and the mitigation of conflicts of interests.

AIFMD comments

AIFMD specifically mentions that for other assets (incl. real estate) the verification of ownership may be based on information or documents provided by the fund, or manager; or external evidence.

AIFMD:

AIFM cannot act as depositary and prime broker cannot act as depositary unless functionally and hierarchically separated,

AIFMD also provides for guidance on dealing with conflict of interests, if any.

2 What should a depositary do in practice?

2.1 Introduction

The practical role of a depositary has been subject to frequent debate and different interpretations. This was particularly evident in relation to alternative investments, such as real estate, where the depositary is entrusted with a supervision role, rather than custody. The practical meaning of the depositary's supervision role is discussed below.

2.2 Planning

The depositary should plan its work so that it performs its role in an effective manner, ensuring that appropriate attention is devoted to important areas of supervision, and that any potential problems are identified and resolved. The nature and extent of planning activities will vary according to the size and complexity of the fund, the depositary's prior experience, recent market developments and changes in the business activity of the fund.

At the planning stage, a depositary develops a strategy of its supervision role and a detailed plan of work.

The strategy should set the scope of the depositary's involvement. It will include the determination of characteristics of the fund (e.g. the investment profile, type and location of assets, etc.), its stage of development (fundraising, investment, stabilisation), arrangements for investment management and group structure, etc. The depositary should assess the nature of corporate governance, process and controls over operations of the fund and take this into account.

The overall strategy (and the detailed plan) should be risk-based. The depositary should perform an analysis of the risk that it will not achieve the objectives of safekeeping or supervising the assets, i.e. various events/circumstances which may give rise to risk of loss of an asset, including fraud, unauthorised use of cash, etc.

Once the overall approach has been established, the depositary is able to develop a more detailed work plan, including specific procedures to be performed to verify asset ownership. Execution of such a work plan could also serve as a record of the proper performance of the depositary role.

The depositary should ensure that it has sufficient resources (people, knowledge, depositary network, etc.) to perform the assigned tasks.

2.3 Understanding the structure of ownership

The depositary should be able to demonstrate its understanding of the chain of ownership of properties via various SPVs by reconciling the latest fund organisation chart and/or fund documentation received from the fund's management with its own records. The fund organisation chart may usefully include ownership percentages including minority holdings, and should be updated with further acquisitions, disposals or SPV changes as the case may be.

Throughout the life of the fund, on a regular basis, the depositary should reassess or seek reconfirmation of the ownership structure of the fund, either from the fund's management or via external evidence.

The depositary should be informed by the fund's management prior to any planned incorporation of a subsidiary to be established for any purpose, such as acquiring, structuring or developing any property or investment.

The depositary should be able to verify, as circumstances require, any interruption of the chain of ownership between property and fund through all subsidiary SPVs. Verification should be possible through a combination of confirmations provided by the fund's management, the fund's legal advisors or other advisors and its own independent research or advice.

The chain of ownership may be demonstrated through control or review of the updated registers of shareholders, partnership agreements etc. of the various SPVs and intermediary structures. Access to shareholder registers may vary on a case-by-case basis. Ideally, the depositary, or its local agents would monitor any issuance and transfer of shares and ensure that they are effectively recorded. To enable monitoring on a real time basis the depositary may be given direct electronic access to the register, if available.

In foreign countries, in the absence of local partners with knowledge of local legislation in force, the depositary may have to find alternative paths. For instance, it may rely on legal opinions issued by a reputable local lawyer, may review copies of relevant documentation, or request confirmations from public sources such as government or commercial shareholder registries and/or notaries. Consideration should be given to the qualification and experience of any agents used for confirmation of ownership or registration.

The depositary should use best efforts to be kept updated by the fund's management and to be provided with the relevant documentation and board resolutions related to any events in the corporate life of the fund, any intermediary structure or the SPVs that may affect the legal structure or the ownership structure of the fund, such as change of registered office, name, shareholding, mergers, liquidations etc.

The depositary should be made aware of and receive regular access to information regarding any third-party banks and/or cash accounts opened and owned by the fund or SPVs, for their own specific needs or held in the context of the management of the properties.

Relevant determination of control principles (e.g. accounting principles) should be used to decide whether an SPV should be treated as (i) a portfolio investment or (ii) a subsidiary subject to direct control or joint control. The latter case normally requires a look-through to the underlying assets of such SPVs as the ultimate assets of the fund. In contrast, "portfolio investments" constitute investment into operating entities which are not directly managed on a day-to-day basis by the fund, for example private equity investments and/or joint ventures.

2.4 What are the typical steps involving the depositary in a real estate acquisition?

Acquisitions are key transactions where the depositary should execute its supervisory obligation and verify asset ownership.

Ideally the depositary should be informed of the details of a transaction with sufficient time to act, to allow smooth processing and the resolution of enquiries, thus avoiding delays to completion of the transaction and/or negative consequences for the fund.

The various steps in the depositary's acquisition review process could be summarized as follows:

- a) Receipt of information and draft documentation on transaction and constitution of transaction file

- b) Review of transaction and contact with management to resolve issues, if any
- c) Review of compliance of transaction with law, fund documentation and management regulations/articles of incorporation
- d) Receipt of valid payment instructions for acquisition
- e) Receipt of relevant board and/or management approvals
- f) Follow up on completion of transaction until receipt of finalised and executed documentation, such as copies of sales agreements and title deeds

The duty of the depositary is to obtain reasonable comfort that:

- a) The acquisition has been duly authorised by management, having regard to due diligence reports or other means to ensure that ownership of the target property assets can be held by a fund and that title ownership risks have been considered by management.
- b) The proposed documentation and payment instructions are coherent with the contemplated transaction.
- c) For FCPs under the UCI law, that the transaction complies with the law and the management regulations (i.e. investment restrictions compliance)
- d) Where there is a significant difference between the purchase price and the independent valuation (i.e. the purchase price is significantly higher than the valuation), such material differences have been explained by management in writing. The valuation must not be older than 6 months preceding the transaction date.

There are often working protocols established between the depositary and the fund to specify the nature and timing of procedures required to be performed and related documentation to be obtained by the depositary in pursuit of its responsibilities.

2.5 What are the types of evidence typically requested by a depositary related to an acquisition?

Although this list is not exhaustive and may depend upon specifics of a particular transaction, types of relevant evidence could include the following items:

- a) Acquisition recommendation from the fund manager/advisor to the fund and the Investment Committee/Investor's Advisory Committee (if applicable)
- b) "Independent Valuer" property valuation, with any significant difference between purchase price and valuation explained in writing by management
- c) Details of proposed external financing (lender and mortgage structure)
- d) Draft copies of transactional documentation such as property purchase agreements and/or share purchase agreements
- e) Copies of corporate formation documents of all SPVs involved in the transaction
- f) Legal, financial and tax due diligence reports on property title and relevant SPVs (including legal and/or AML opinions regarding counterparties)
- g) Investment Committee/Investor's Advisory Committee resolutions related to the proposed transaction (if applicable)

- h) Details of projected cash movements related to the transaction showing parties involved financially in the transaction
- i) Details of any banks and bank account numbers that will be used for the transaction
- j) Copies of any related collateral agreements such as escrow agreements
- k) Confirmation of insurance arrangements
- l) Copies of any title insurance arrangements (if applicable)
- m) Translation of relevant documents (if applicable)

2.6 How should the depositary process the payment required for an acquisition?

The following actions should be performed by the depositary:

- a) Check that valid payment instructions have been issued for the proposed transaction.
- b) Check that settlement details provided are consistent with the specifics of the transaction, in particular in the case of settlement through an escrow agent, legal advisors or notaries.
- c) Perform or seek confirmation of proper execution of payments for the acquisition.

2.7 What action is required after payment of the acquisition price?

The depositary should obtain copies of all relevant executed documentation evidencing the ownership of the assets acquired by the fund, such as:

- a) Property title deeds
- b) Share purchase agreements
- c) Updated SPV shareholder registers
- d) Third party financing and security agreements

The records of the depositary should be updated to reflect the acquisition and any change in liabilities of the fund.

2.8 What are the typical steps involving the depositary in a real estate disposal?

Disposals represent another major transaction type where the depositary will update its knowledge of what assets are ultimately held by the fund.

Ideally, the depositary should be informed of the details of the transaction with sufficient time to review, to allow smooth processing and the resolution of legitimate enquiries, thus avoiding delays to completion of the transaction and/or negative consequence to the fund.

Depending on the specifics of the fund, various bodies may be involved in the sale, including notably various levels of the fund's management.

2.9 What are the recommended transaction checks for a disposal?

Although this list is not exhaustive and may depend upon specifics of a specific transaction, types of relevant evidence could include the following items:

- a) Sale recommendation from the fund manager/advisor to the fund and the Investment Committee / Investor's Advisory Committee (if applicable)
- b) "Independent Valuer" property valuation, with any significant difference between sales price and valuation explained in writing by management. Such valuations are only required if the disposal takes place more than 6 months after the last regular valuation or if any major event took place in that period that could significantly affect the value of the property.
- c) Information related to the purchaser, including legal and/or AML opinions
- d) For FCPs under the UCI law, that the transaction complies with the law and the management regulations (i.e. investment restrictions compliance)
- e) Draft copies of transactional documentation such as property sale agreements, share sale agreements and any relevant documentation
- f) Investment Committee/Investor's Advisory Committee resolutions related to the proposed transaction (if applicable)
- g) Details of projected cash movements related to the transaction showing parties involved financially in the transaction, including potential mortgage reimbursements to lenders
- h) Details of any banks and bank account numbers that will be used for the transaction
- i) Copies of any collateral agreements necessary for the transaction such as escrow agreements
- j) Translation of relevant documents (if applicable)

2.10 How does the depositary supervise the disposal?

The documentation regarding the sale and the related board resolutions at the level of both the fund and the relevant SPVs should detail the exact process that has to be followed for the settlement of the transaction:

- a) How and when the property titles and sale/purchase contracts will be exchanged
- b) How the payment will actually take place
- c) When the monies are expected to be received

The depositary should require confirmation from the fund's management of cash received and the completion of all necessary post-transaction formalities, e.g. via receipt of a closing legal "bible".

2.11 What actions are required after the completion of the disposal?

- a) The depositary should receive copies of all relevant transaction documentation, including resolutions and decisions adopted by boards of directors of any relevant SPVs.
- b) The depositary should also receive confirmation of mergers or liquidation of "empty" SPVs, and closure of bank accounts, (if applicable).

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- c) The records of the depositary should be updated to reflect the sale and any change in liabilities of the fund.

2.12 Ongoing supervision

Asset Type	Means of Supervision
a) Investor commitments, i.e. claims of the real estate fund against the investors pursuant to the subscription agreements, which provide for a mechanism of capital calls in order to draw down money.	Verify with the fund's management that reasonable precautions have been taken in order to ensure the validity of outstanding commitments; the depositary should receive on a regular basis a statement of commitments and any pledges or other agreements affecting these rights, paid and unpaid, from the transfer agent.
b) Portfolio investments such as non-listed interests in real estate joint-ventures or operating companies, where the fund does not have 'control'.	Record portfolio investments in real estate joint-ventures or operating companies. In some cases, 'controlled' subsidiaries that are significant operating companies, or companies essential to understand in more detail pursuant to the depositary's responsibilities, in their own right may be treated as portfolio investments and thus not dealt with on a 'look-through' basis; this would be determined on a case-by-case basis, often after consultations with the auditor of the fund.
c) Cash or securities (equity or debt) at the level of the fund, deposited with third party banks and/or prime brokers, outside the network of the depositary.	Receive prior notification of the third party institution(s) with which the fund makes deposits of cash or securities, and the relevant account numbers. The depositary should reserve its rights to information on these assets and should receive regular reporting on these assets, either in hardcopy or electronic form.
d) Cash or securities (equity or debt) at the level of the controlled subsidiaries deposited with third party banks and/or prime brokers, outside the network of the depositary.	Receive prior notification of the third party institution(s) and the relevant account numbers of deposits of cash or securities assets. The depositary may object to these arrangements on a case-by-case basis, either on establishment or at any time thereafter, and may require the fund's management to move the deposits to a different institution. The depositary should have access to regular statements of these assets, either in hardcopy or electronic form.

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| e) | Non-listed securities or other similar investments which are not deposited with a third party and are held directly in the records of the issuer in the name of the fund and/or its subsidiaries. | Maintain records or statements of any non-listed securities or assets that are not deposited with a third party; seek assurance that any significant transactions relating to these securities or assets will be subject to prior notification to the depositary with sufficient time to review, with any related cash movements being directed from and/or to accounts at the depositary. |
| f) | Real estate interests such as land, buildings, leasehold interests and other rights in rem | Verify that the fund, or its subsidiaries, owns the properties and/or other assets. In this context, the depositary shall hold copies of title deeds, and any other relevant documentation proving ownership of the properties (including where relevant, legal opinions issued by law firms), or related documents held by local parties. The depositary should record the location of and the identity of the entity holding the originals of any title documentation. |

In addition, the depositary should develop its knowledge of significant liabilities that may affect the assets of the fund, such as:

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| g) | Liabilities related to internal and external financing of the fund | Receive reporting on significant liabilities or encumbrances that may be attached to the fund, its subsidiaries and/or properties (e.g. mortgages), for example by keeping records of all loans outstanding, (internal or external), together with copies of the relevant loan and/or securities documentation. |
| h) | Other investment activities such as pledges, escrow arrangements, derivatives, etc. | Receive reporting on significant liabilities or encumbrances that may be attached to the SPVs and/or properties (e.g. pledge agreements, escrow agreements and accounts, statements of derivative positions and exposure etc). |

The depositary should establish an ongoing risk-based process to periodically update and confirm their understanding of the assets of the fund. The frequency and nature of this process should be determined by considering the risk profile of the fund, the nature and location of assets held, knowledge of internal controls etc. Such procedures commonly include but are not limited to:

- Confirmations from asset managers and third parties (notaries, law firms, state land and/or corporate registries, auditors, etc.)
- Review of audited financial statements
- Review of updated fund documentation
- Review of Board, or other governance bodies' minutes
- Confirmation of bank and securities' accounts held with third parties

Translation of the above-mentioned documents may be required (if applicable).

2.13 Confirmation and reports

The depositary should be in a position at any time to provide up-to-date confirmation of the assets subject to safekeeping.

They should also be in a position to provide a list of assets not held in custody, but subject to their monitoring procedures.

The list of assets can include, amongst others, details of properties, shares in corporations, joint ventures, etc. and other financial and non-financial assets. The depositary should also be able to provide up-to-date details of how their assets are held (i.e. the fund structure).