

# INREV Guidelines: Custom Build



Professional Standards



# 0. INREV GUIDELINES

## 0.1. INTRODUCTION TO INREV GUIDELINES

GL01 INREV aims to improve the transparency of and promote best practice and professionalism in the sector. INREV members have encouraged and strongly supported the establishment of industry guidelines over the past few years and developed an integrated set of principles and recommendations including tools and examples for governance and information provision for investors and investment managers and investors of non-listed real estate vehicles. The objectives of the INREV Guidelines are:

- to ensure that investors in non-listed real estate vehicles obtain consistent, understandable, easily accessible and reliable information that can be compared across investments and between different periods;
- to establish requirements and best practices within the industry and to help investment managers implement them in practice.

The INREV Guidelines are presented in an online format, allowing visitors to easily navigate and search through and view tailored guidelines for example for open end funds.

It is possible to download a full version of the Guidelines or to create a custom version module by module in a PDF format in our Guidelines section.

The INREV Guidelines are organised into nine modules.



The Guidelines are embedded in an Adoption and Compliance Framework which allows investment managers and investors to evaluate their implementation of the INREV Guidelines, module by module. To determine ways of implementation and add a hierarchy to the guidelines' requirements and best practices it is important to understand the underlying terminology:

### Principles

Principles serve as a basis for the requirements and best practices.

### Best practices

Best practices have been developed by INREV to enable investors and investment managers to design vehicle products with an effective corporate governance framework aligned with industry best practices and at the same time relevant to specific needs. Investment managers should evaluate themselves against such best practice frameworks and disclose their level of adoption.

### Tools and Examples

Tools and examples are meant to assist in the application of the INREV Guidelines. Tools support market participants in assessing specific situations and in complying efficiently with INREV Guidelines and standards. Examples serve as a pattern to be followed by market participants to illustrate a certain standard.

### Definitions

INREV definitions ('Global Definitions') were developed to achieve consistency of meaning and terminology within the non-listed real estate industry. Global definitions are being created via the collaboration with the NCREIF

PREA Reporting Standards. They are gradually replacing the INREV Definitions.

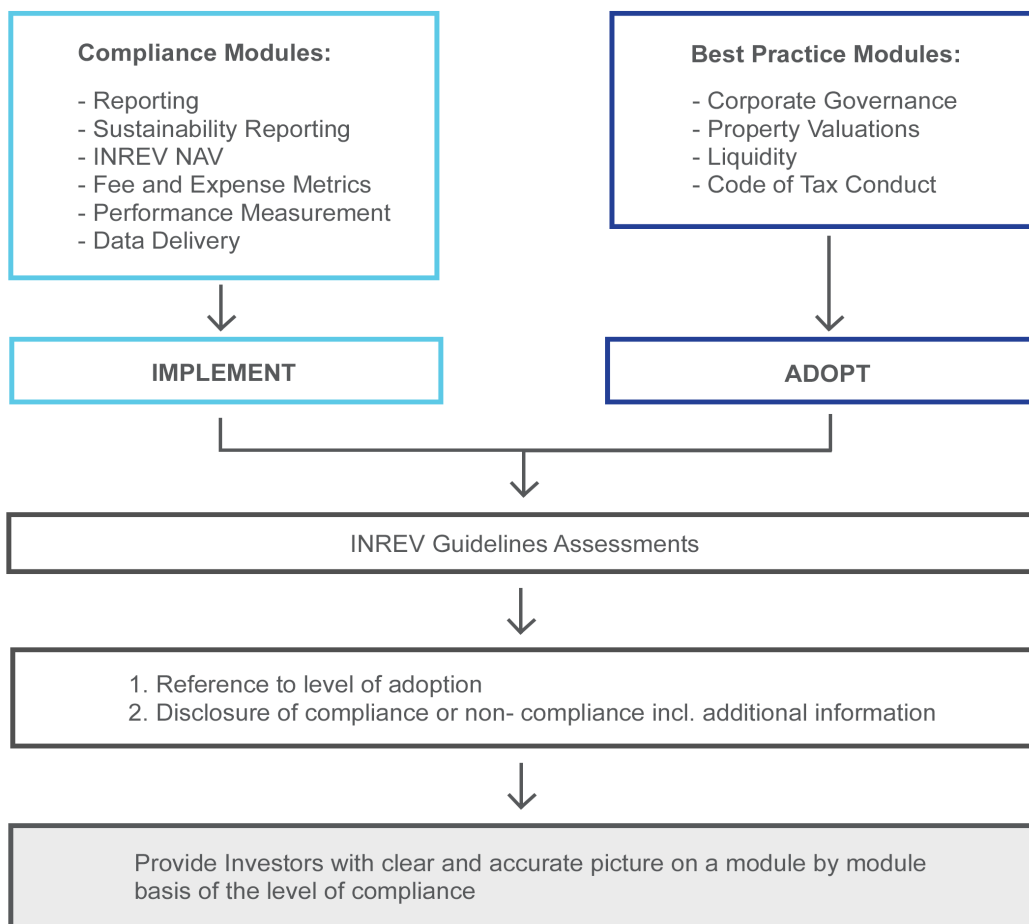
## 0.2. ADOPTION AND COMPLIANCE FRAMEWORK

GL02 The INREV Guidelines are designed for non-listed real estate vehicles for institutional investors. Since non-listed vehicles can differ considerably, INREV provides a modular approach to guide investors and managers in agreeing on an appropriate level of adoption of INREV best practices and in deciding on the level of compliance with INREV requirements for individual modules.

INREV's best practice frameworks developed for the modules of corporate governance, liquidity, property valuation and tax conduct, are qualitative in nature and individual vehicles will adopt them in different ways. INREV's objective is to ensure that investors are provided with a clear and accurate description of the corporate governance, liquidity, property valuation and tax conduct frameworks of a given non-listed vehicle. The INREV Guidelines Assessments have been developed to assess the compliance with some of these modules for managers as well as for investors. The assessment for the tax conduct module is being considered.

In contrast to best practices, INREV's requirements in the modules covering reporting, including sustainability reporting, performance measurement, INREV NAV, fee and expense metrics and INREV data delivery, are more technical in nature. These requirements leave no room for different interpretation: the requirements are either followed, or not. In addition, in the Reporting module, Performance Measurement module and Fee and expense module, some of the INREV Guidelines are recommendations rather than requirements. Although INREV would encourage members to follow such recommendations, they are not required to be followed in order to claim full compliance with the INREV reporting module. The INREV Guidelines Assessments include questionnaires to measure compliance with the Reporting module, the Sustainability reporting module, INREV NAV module and Fees and expense metrics module. The assessment for the Performance measurement module will be added soon.

The level of compliance can be assessed with the help of the INREV Guidelines Assessments. The online assessments include all the requirements that need to be followed to be in compliance with the guidelines, as well as providing an overview of the applicable recommendations. If all of the requirements for an individual module are fully implemented, the manager can disclose full compliance with the relevant module. If the requirements of a module are not fully met, the manager should disclose that the vehicle does not fully comply with that module of the INREV Guidelines and state the reasons for deviation including any additional information relevant to investors.



In all cases, investment managers should present investors with a clear and accurate picture of the level of compliance with the INREV Guidelines. The vehicle documentation should describe, on a module by module basis, the extent to which the vehicle aims to be in compliance with INREV Guidelines.

The level of adoption and compliance with the INREV Guidelines is a matter to be discussed during the launch process of the vehicle. INREV does not provide any assurance on the degree of adoption of best practices or on the level of compliance with requirements for individual vehicles.

The legal framework applicable to individual vehicles may require third party assurance on elements of compliance with INREV Guidelines, for instance where the legal NAV of the vehicle is the INREV NAV. We recommend that investors and managers discuss and agree the nature of such assurance as part of the launch process.

The INREV adoption and compliance framework is summarised below. The framework includes references to tools which can be used to assist in the application of the guidelines.

**0.2.1. BEST PRACTICE MODULES**

GL03	<b>COMPLIANCE OBJECTIVE</b>	<b>SELF-ASSESSMENT PROCESS</b>	<b>DISCLOSURE</b>	<b>OVERSIGHT AND ASSURANCE</b>
<b>1. Corporate governance</b>				

Managers should evaluate the level of adoption of INREV best practices using the Corporate Governance INREV Guidelines Assessment Tool.	Managers and investors should refer to and consider adopting INREV corporate governance best practices when designing and implementing an oversight framework for a specific vehicle.	Managers should describe in their annual report and vehicle documentation their corporate governance practices and the degree to which they adopt INREV best practices.	Management and non-executive officers should review the adequacy of the description of the corporate governance framework.
<b>3. Property valuation</b>			
Managers should follow the valuation best practices when determining the fair value of the property portfolio and prepare required disclosures to investors.	Managers should evaluate the level of adoption of INREV property valuation best practices.	Managers should describe their property valuation policies and the degree to which they have adopted INREV valuation best practices in their annual report and vehicle documentation.	Management and non-executive officers should review the basis and adequacy of disclosure to investors summarising the level of adoption with the property valuation best practices.
<b>7. Liquidity</b>			
Managers and investors should refer to and consider adopting INREV liquidity best practices when designing non-listed vehicle products.	Managers should evaluate, using the Liquidity Guidelines Assessment, the level of adoption of INREV liquidity best practices.	Managers should describe their liquidity policies and the degree to which they have adopted INREV best practices in their annual report and vehicle documentation.	Management and non-executive officers should review the basis and adequacy of disclosure to investors summarising the level of adoption with the liquidity best practices.
<b>9. Code of Tax Conduct</b>			

Managers should evaluate their level of adoption of Code of Tax Conduct best practices when examining their own tax policies and practices.	Managers and investors should refer to and consider adopting Code of Tax Conduct best practices when designing and implementing an oversight framework for a specific vehicle.	Managers should describe in their annual report and vehicle documentation their practices referred to in the Code of Tax Conduct and the degree to which they adopt INREV best practices starting with reporting periods ending on or after 31 December 2021.	Management and non-executive officers should review the adequacy of the description of the Code of Tax Conduct framework.
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## 0.2.2. COMPLIANCE FRAMEWORK

GL04	<b>COMPLIANCE OBJECTIVE</b>	<b>SELF-ASSESSMENT PROCESS</b>	<b>DISCLOSURE</b>	<b>OVERSIGHT AND ASSURANCE</b>
	<b>2.1 Reporting</b>			
	Managers should make disclosure corresponding to all relevant INREV reporting requirements and recommendations as a component of their annual or interim reports to investors.	Managers should evaluate the level of compliance with INREV requirements and recommendations, using the Reporting Guidelines Assessment.	Managers should include all information corresponding to applicable INREV reporting requirements and recommendations in their annual and interim reports.	Management and non-executive officers should review the adequacy of the compliance disclosure to investors summarising the level of compliance with reporting requirements. Auditors could give negative assurance on the degree to which INREV reporting requirements and recommendations are complied with.
<b>2.2 Sustainability Reporting</b>				



Managers should make disclosure corresponding to all relevant INREV sustainability reporting requirements and recommendations as a component of their annual or interim reports to investors.	Managers should evaluate the level of compliance with INREV requirements and recommendations, using the Sustainability Reporting Guidelines Assessment.	Managers should include all information corresponding to applicable INREV sustainability reporting requirements and recommendations in their annual and interim reports.	Management and non-executive officers should review the adequacy of the compliance disclosure to investors summarising the level of compliance with sustainability reporting requirements. Auditors could give negative assurance on the degree to which INREV sustainability reporting requirements and recommendations are complied with.
<b>4. Performance Measurement</b>			
Managers should disclose all relevant INREV performance measures in accordance with performance measurement requirements.	Managers should evaluate the level of compliance with INREV requirements and recommendations.	Managers should include all information corresponding to applicable INREV performance measurement requirements and recommendations in their annual and interim reports.	Management and non-executive officers should review the adequacy of the compliance disclosure to investors summarising the level of compliance with performance measurement requirements. Auditors could give negative assurance on the degree to which INREV performance measurement requirements and recommendations are complied with.
<b>5. INREV NAV</b>			
Managers should calculate and disclose an INREV NAV in accordance with INREV requirements.	Managers should evaluate the level of compliance with INREV NAV requirements, using the INREV NAV Guidelines Assessment.	Managers should include the INREV NAV in their annual and interim reports along with required disclosures. Vehicle documentation should include the required information.	Management and non-executive officers should review the basis and adequacy of disclosure to investors summarising the level of compliance with INREV NAV requirements. Depending on circumstances, auditors can give assurance or negative assurance on the INREV NAV and level of compliance with related disclosure requirements.

<b>6. Fee and expense metrics</b>			
Managers should calculate and disclose fee and expense metrics in accordance with fee and expense metrics requirements.	Managers should evaluate the level of compliance with INREV fee and expense metrics requirements using the INREV Fee and Expense Metrics Guidelines Assessment.	Managers should include information corresponding to INREV fee and expense metrics requirements in their annual reports and in the vehicle documentation.	Management and non-executive officers should review the basis and adequacy of disclosure to investors summarising the level of compliance with fee and expense metrics requirements. Auditors could give negative assurance on the level of compliance with fee and expense metrics requirements.
<b>8. INREV data delivery</b>			
Managers should provide information to INREV in accordance with INREV data delivery requirements.	Managers should evaluate the level of compliance with INREV data delivery requirements.	Managers should provide INREV with all relevant information corresponding to INREV data delivery requirements.	Management and non-executive officers should review the basis and appropriateness of the compliance with INREV data delivery requirement disclosure to INREV.

### 0.3. REVISION AND CHANGE PROCEDURE

GL05 Since the launch of the revised Guidelines in April 2014, INREV received a growing number of questions and comments from members and non-members regarding the interpretation, adoption and implementation of the Guidelines. A document below describes the change procedure for updates to the INREV Guidelines.

- [Download the INREV Guidelines Revision and Change Procedure](#)

GL06 The last major revision of the INREV Guidelines was done in 2014. Since then the following modules were updated:

**Corporate Governance:** AIFMD Manager's Guidance published in July 2015. Executive summary published in June 2016. Assessment tool update in December 2018

**Performance Measurement:** New module launched in November 2015

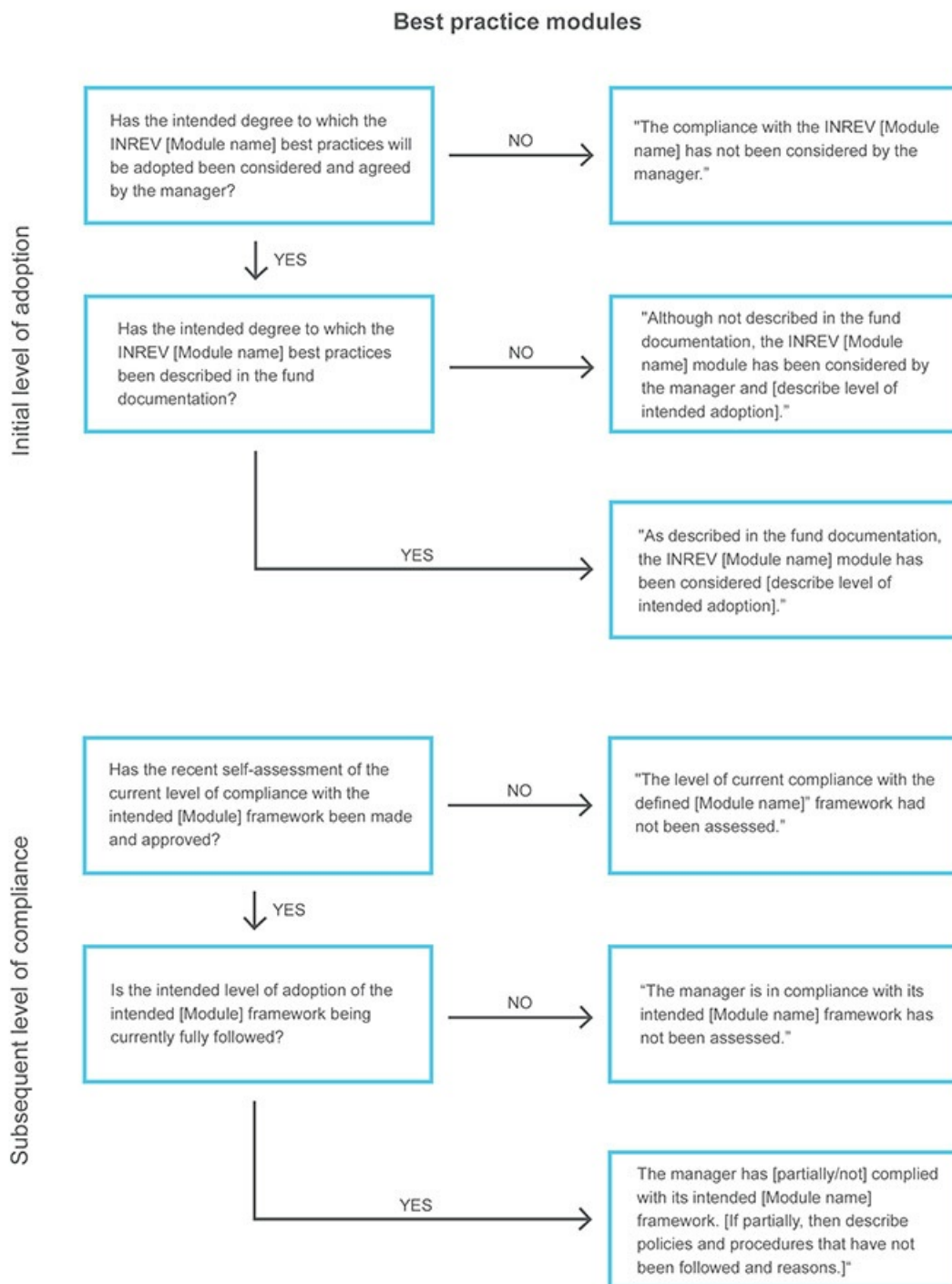
**Fee and Expense Metrics:** Update done in March 2020 to replace TER by the TGER

**Liquidity:** Update done in November 2018 to reflect End of Fund Life Report 2017

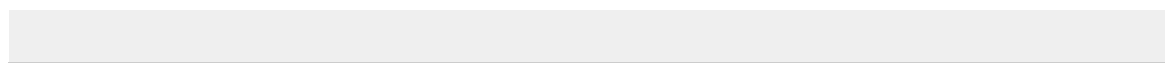
**Code of Tax Conduct:** Added in January 2021

### 0.4. TOOLS AND EXAMPLES

GL07 **Example - Statement of level of adoption of INREV Guidelines**



Management has assessed the degree to which the best practices of INREV’s corporate governance, property valuation, liquidity and tax conduct frameworks have been adopted and followed by the vehicle. In addition, Management has assessed the level of compliance with INREV’s reporting, sustainability reporting, performance measurement, INREV NAV and fee and expense metrics frameworks. The results of such assessment are summarised below:



MODULE	GUIDELINES	LEVEL OF ADOPTION OR COMPLIANCE
1	Corporate governance	Although not described in the vehicle documentation, the INREV corporate governance module has been considered by the manager. The intended framework partially complies with the INREV corporate governance best practices. All best practices have been adopted except for the fact that investors are not able to terminate the contract of the manager without cause. The vehicle formally assessed at the end of the financial year that it is currently following its intended corporate governance framework.
2.1	Reporting	Although not detailed in the vehicle documentation, the INREV reporting module has been considered by the manager. The manager has complied with all the requirements of the INREV reporting module.
2.2	Sustainability Reporting	Although not detailed in the vehicle documentation, the INREV sustainability reporting requirements have been considered by the manager. The results of the INREV Guidelines assessment show that the manager has complied with all the requirements of the INREV sustainability reporting module.
3	Property valuation	As described in the vehicle documentation, the INREV property valuation framework module has been considered. The manager has defined a valuation framework which fully adopts INREV valuation best practices. The level of current compliance with the defined valuation framework was last formally assessed during the financial year when it was determined that the vehicle was in compliance with all elements of the intended valuation framework.
4	Performance Measurement	The manager has disclosed all relevant INREV performance measures in accordance with the requirements of the INREV Performance Measurement module.
5	INREV NAV	The manager has complied with all the requirements of the INREV NAV module, except for the fact that assumptions used to determine the fair value of deferred taxes are not fully disclosed for confidentiality reasons.
6	Fee and expense metrics	As described in the vehicle documentation, the INREV fee and expense metrics framework module has been considered. The manager has fully complied with the requirements and recommendations of the INREV fee and expense metrics module.

7	Liquidity	As described in the vehicle documentation, the INREV liquidity framework module has been considered. The manager has defined a liquidity framework which fully adopts INREV liquidity best practices. The manager formally assessed in at the end of the financial year that it currently follows the defined liquidity framework.
8	INREV data delivery	The manager is in compliance with the INREV data delivery module.
9	Code of Tax Conduct	(Starting with reporting periods ending on or after 31 December 2021) Although not described in the vehicle documentation, the INREV Code of Tax Conduct module has been considered by the manager. The intended framework complies with the INREV Code of Tax Conduct best practices. All best practices have been adopted. The vehicle formally assessed at the end of the financial year that it is currently following its intended Code of Tax Conduct framework.

As described in the vehicle documentation the results of the INREV Guidelines Assessments should be disclosed in investor reporting.

Extract from results page of the INREV Guidelines Assessments:

[Copy + paste the following statement into your annual and interim reports](#)

#### **INREV Guidelines Compliance Statement**

The European Association for Investors in Non-Listed Real Estate Vehicles (INREV) published the revised INREV Guidelines in 2014 incorporating industry standards in the fields of Corporate Governance, Reporting, Property Valuation, Performance Measurement, INREV NAV, Fees and Expense Metrics, Liquidity and Sustainability Reporting. The Assessments follow these guidelines

INREV provides an Assessment Tool to determine a vehicles compliance rate with the INREV Guidelines as a whole and its modules in particular.

THE OVERALL INREV GUIDELINES COMPLIANCE RATE OF THE ANNE IS 90.8%, BASED ON 12 OUT OF 6 ASSESSMENTS

The compliance rate for each completed module is:

CORPORATE GOVERNANCE GUIDELINES IS 92.86%, BASED ON 49 / 49 QUESTIONS APPLICABLE.

REPORTING GUIDELINES IS 83.53%, BASED ON 249 / 268 QUESTIONS APPLICABLE.

INREV NAV GUIDELINES IS 95.12%, BASED ON 41 / 42 QUESTIONS APPLICABLE.

FEE AND EXPENSE METRICS GUIDELINES IS 94.12%, BASED ON 17 / 17 QUESTIONS APPLICABLE.

SUSTAINABILITY REPORTING GUIDELINES IS 90%, BASED ON 50 / 55 QUESTIONS APPLICABLE.

LIQUIDITY GUIDELINES IS 89.19%, BASED ON 37 / 39 QUESTIONS APPLICABLE.

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# 1. CORPORATE GOVERNANCE

## 1.1. INTRODUCTION CORPORATE GOVERNANCE

CG-I01 Good corporate governance is a cornerstone for the success of non-listed real estate investment vehicles and refers to the structure, processes, policies and laws that determine how an investment vehicle is managed and controlled. There are a number of different frameworks, some driven by local or EU regulation, which support this objective and there are many common themes which run through them.

For non-listed real estate investment vehicles that target institutional capital, the level of regulation can be lower than for other investment classes such as retail funds or listed structures. This is mainly due to the nature of non-listed real estate funds, which have typically low liquidity as well as entrepreneurial investment managers. In such cases, a robust corporate governance model is essential. Both INREV Guidelines and the Alternative Investment Fund Managers Directive (the “AIFMD”), which regulates fund managers in Europe, tackle the key principles that are central to a robust corporate governance approach, which:

- Aligns interests between investors and the fund manager;
- Manages conflicts of interest;
- Ensures the accountability of the fund manager; and
- Promotes transparency.

The constitutional terms of each investment vehicle, stated as fully and completely as possible, should address how principles and best practices should be applied by those involved in the management of the vehicle, thus creating binding contractual obligations for compliance by the vehicle and its investors. This module describes INREV’s best practice principles and sets out guidance on how to apply these in practice.

The INREV Guidelines focus on the vehicle itself, whereas AIFMD focuses on the manager. The INREV Corporate Governance Guidelines are principle based, expecting that people apply the principles in their behavior, whereas the AIFMD is primarily describing what the legal obligations and responsibilities of the manager are. In addition to the Guidelines the AIFMD Manager Guidance report provides a practical guide for managers who fall under the EU regulation. The report explains key functions based upon the specific governance requirements of the AIFMD and the more principle-based governance best practices of INREV.

Local and EU legislation in different jurisdictions will always override principles that do not have the force of law. INREV’s principles and best practices of corporate governance represent a generic framework and can be applied across a wide range of real estate vehicles. In order that a non-listed property vehicle or an investment manager is compliant, careful consideration should be given to both local and EU legislation applicable in the domicile of these entities.

## 1.2. EXECUTIVE SUMMARY

### 1.2.1. THE 7 PRINCIPLES OF INREV CORPORATE GOVERNANCE

CG-S01 Corporate governance is a cornerstone of success of non-listed real estate investment vehicles. It refers to the structure, processes, policies and laws that determine how an investment vehicle is managed and controlled. The INREV Guidelines Corporate Governance module designs a framework in line with industry best practices to establish and promote common and workable standards for non-listed real estate vehicles built on the following seven principles.

- Compliance with the law;
- Compliance with constitutional terms;
- Skill, care diligence and integrity;
- Accountability;
- Transparency;
- Acting in investors interests, including alignment of interests and conflict of interests;
- Confidentiality.

### 1.2.2. 1. COMPLIANCE WITH THE LAW

CG-S02 Compliance with the law is the foundation of every corporate governance framework. Being primarily responsible for this, the manager has to have appropriate systems in place to monitor, confirm and disclose compliance to the investors and non-executive officers. The non-executive officers should oversee the manager in all these respects, and should be able to seek external advice on these matters. The investors should make any and all necessary information available to the manager and are expected to immediately highlight any doubts they may have about the vehicle's legal compliance.

### 1.2.3. 2. COMPLIANCE WITH CONSTITUTIONAL TERMS

CG-S03 The vehicle's constitutional terms are the legal basis for investors to exercise their rights. To control and monitor adherence to the terms the manager should implement appropriate processes and systems and fully disclose the vehicle's compliance to all involved parties. The role of the non-executive officers (the terms non-executive officers, independent directors and investor representatives are used interchangeably in the corporate governance guidelines and in this summary) is to oversee the manager in this respect. The constitutional terms need to be unambiguous to enable all parties to accept and adhere to these.

**Vehicle decision-making:** When investing in a vehicle, investors provide a real estate investment mandate to a manager who consequently has the fiduciary obligation to execute on such mandate in a professional way within the parameters of that mandate. Investors should however retain control over the fundamental parameters underlying the investment mandate, such as changes to investment and financing strategy or remuneration of the manager. The threshold of investors required to make material changes should be defined. Approval thresholds need to be feasible, too low hurdles as well as unrealistically high hurdles should therefore be avoided (blocking votes).

### 1.2.4. 3. SKILL, CARE, DILIGENCE AND INTEGRITY

CG-S04 In addition to the constitutional terms the manager is responsible to establish a code of ethics whose adherence has to be overseen by the non-executive officers and the investors. The code of ethics relates amongst others to appropriately skilled, trained and controlled staff of all parties involved in the vehicle. While the non-executive officers have to ensure that the manager has related internal controls in place the investors equally oversee the non-executive officers in this regard.

**Investor default:** The vehicle documentation should contain a clause determining provisions in the case that investors default on their capital calls. Included penalties and suggested remedies should address automatic

default, notification of the non-executive officers or the other investors, forced sale and voting rights.

**Investment committee:** An investment committee should be installed to assess material changes to the investment strategy and the business plan of individual assets. The composition should be embedded in the vehicle's governance principles.

**Use of third parties:** The vehicle documentation should set out any use of third party service providers including assigned responsibilities and accountabilities. A system of checks and balances between the manager, the custodian and the paying agent as well as any approval requirements from the investors with respect to appointment or replacement should be disclosed.

**Risk control processes:** The vehicle documentation should clearly describe the related risk control processes and how the manager monitors, measures and reports these.

#### 1.2.5. 4. ACCOUNTABILITY

CG-S05 The fourth principle of the Corporate Governance module outlines the manager's primary accountability for the vehicle, its investors and its profitable operations within legal frameworks. The non-executive officers are responsible to the investors while they themselves are accountable to their own relevant bodies. To assess the manager's abilities and trustworthiness and to communicate any related concern, access to necessary information needs to be granted for the involved parties of the vehicle.

**Indemnification:** The vehicle should contain an indemnification and/or exculpation clause which, under specific circumstances, may reduce the accountability of the manager to the vehicle. The constitutional documents should explain if there are restrictions on losses to the vehicle arising from indirect or consequential loss.

**Removal of manager at will:** The vehicle framework should contain a removal at will or "no fault removal" clause, whereby the manager's mandate can be terminated due to request of a majority of the investors. The documentation should clearly disclose the manager's rights regarding outstanding fees and interest payments in such situations.

**Removal of manager for cause:** Vehicles should have a "removal for cause" clause in place that gives investors, dependent on a defined threshold, the right to call at any time for a vote to remove the manager. The vehicle documentation should clearly describe how cause can be established.

**Non-executive board:** If the vehicle has a non-executive board in place the selection criteria of the independent directors should be clearly defined in the vehicle documentation and focus on the depth and breadth of relevant experience. Procedures should be in place to ensure that material decisions are recommended by the manager for consideration and approval rather than just consultation by the committee. The non-executive officers may retain an external counsel at the expense of the vehicle and have access to appropriate insurance.

#### 1.2.6. 5. TRANSPARENCY

CG-S06 As one of the underlying principles of the overall INREV Guidelines, transparency is the fifth principle of the corporate governance framework. Transparent and comprehensive reporting is essential for every vehicle to



be assessable and easily understood by its involved parties. Consequently the manager is obliged to disclose reports in a timely, proper and comprehensive manner, so as to inform on matters such as strategy, progress of targets and the performance of the vehicle. The reporting format should enable investors and non-executive officers to understand the vehicle's performance and related risks, and the extent to which the manager undertakes his responsibilities.

**Rights of investors to obtain information:** To provide investors with a forum to ask questions and to be heard the manager shall hold frequent investor meetings. Investors should always have the ability to convene such a meeting themselves to discuss any potential issue that needs to be heard. The same applies to the right to inspect the books and records of the vehicle and the manager or have a third party auditor conduct an audit.

**Reporting in line with the INREV Guidelines:** The manager should clearly state how it intends to comply, where relevant, with the INREV Guidelines and provide explanation on where it departs from the guidelines.

**Side letters:** The vehicle should not enter into any side letter agreements unless these are disclosed in the vehicle documents irrespective of the level of commitment or the commitment date, while the side letters' terms should be made available on request. Investors may rely on all side letters between the vehicle and the other investors. The manager shall not accept changes to side letters with investors that may have an adverse effect on the other investors or the economics of the vehicle without the investors' consent.

#### 1.2.7. 6. ACTING IN INVESTORS' INTERESTS, INCLUDING ALIGNMENT OF INTERESTS AND CONFLICTS OF INTEREST

CG-S07 The manager is expected to act in the investors' interests and to create structures in the vehicle in such a way that the alignment of interests is enhanced and potential conflicts of interest are dealt with in a transparent way. It is essential not to encourage risk-taking inconsistent with the risk profile of the vehicle. A written protocol how to handle conflicts of interest within the vehicle has to be implemented which outlines how investors will be treated on new issues, redemptions and transfers of equity (or debt investments) in the vehicle and co-investment opportunities. The investors on the one hand should advise the vehicle and non-executive officers in a timely manner if they consider that the vehicle is not being run in their best interests and on the other hand should inform the vehicle about any conflicts of interest originating in their own bodies. In this case investors should make available any necessary information in a timely and proper manner to enable the manager to take appropriate measures.

**Co-investment:** The co-investment arrangements should run for the life of the vehicle and provide that key personnel and other individuals running the vehicle co-invest a meaningful amount in the vehicle.

**Key personnel:** A small group of individuals should be designated as key men whose departure would trigger a key man event possibly implying a suspension of the investment period. If a replacement has not been identified within a defined time period the vehicle can be terminated for fault.

**Fee and carry structures:** Fees should be designed to enhance the alignment of the manager's interest with that of the investors. Best practice is that the manager receives a management fee that is sufficient to manage the vehicle and a carry structure that rewards the manager for adding value above the expected return in the base case.

Conflicts of interest: A clearly defined protocol to manage conflicts of interest should be in place and overseen by

the non-executive officers or investors. The protocol should define the extent to which the manager has to offer investment options exclusively to the vehicle.

### 1.2.8. 7. CONFIDENTIALITY

CG-S08 The manager, the non-executive officers and the investors should all have access to sensitive information about the investment vehicle and its involved parties. This information must be treated according to the agreements in the constitutional terms. In general the need to maintain confidentiality has to be balanced against the need to ensure transparency and if there is a conflict, the need for transparency should prevail. However, information which, when disclosed, would create a competitive disadvantage to the vehicle, is expected to be treated as confidential and not to be disclosed widely. Confidentiality provisions should indenture all investors with the same restrictions and may not effectively prohibit investors exercising their rights under the constitutional documents.

## 1.3. PRINCIPLES

CG-P01 **Compliance with the law** - The investment vehicle and its manager should always comply with the relevant legislation and regulations applicable in the jurisdiction in which it is established.

CG-P02 **Compliance with constitutional terms** - The vehicle's constitutional terms should clearly articulate the key corporate governance principles which should always be applied.

CG-P03 **Skill, care, diligence and integrity** - Investors, investor representatives, non-executive officers and managers should manage the protection of investors' interests and their investments, with due skill, care, diligence and integrity, and should ensure adequate levels of human, financial and operational resources.

CG-P04 **Accountability** - Managers, non-executive officers, investor representatives and investors, and those they have delegated to, should always be accountable for their actions.

CG-P05 **Transparency** - All relevant information relating to the vehicle should be communicated in a way which is clear, fair, complete, timely and not misleading.

CG-P06 **Acting in investors' interests, including alignment of interests and conflicts of interest** - Vehicles should be run in the interests of all investors. Where they arise, conflicts of interest should be managed fairly between investors, vehicles and managers; the alignment of interests between investors and managers can reduce the risk of such conflicts.

CG-P07 **Confidentiality** - Information regarding vehicles and investors' interests in vehicles which is not publicly available should always be treated confidentially.

## 1.4. GUIDELINES

### 1.4.1. REPORTING

CG01	<b>Describe the vehicle governance framework and the organisation of management and administration. For example, identify the AIFM, administrators, trustees, depositories, general partners, risk managers, investment advisors, portfolio managers, asset and property managers, valuers and other key functions as appropriate. Identify and discuss vehicle governance and oversight frameworks such as the use of independent directors and investor or other special committees, and how they operate.</b>	Annual	Interim Describe material changes
CG02	<b>Describe the structure and governance principles within the manager organisation (rather than vehicle) for instance on potential areas of conflict between alternative capital sources under management, conflicts management processes, Investment Committee composition and processes, alignment through promote distribution etc.</b>	Annual	Interim Describe material changes
CG03	<b>Describe the level of adoption of INREV corporate governance best practices.</b>	Annual	Interim Describe material changes
CG04	<b>Annual and interim reports should describe any material changes to the level of compliance with the corporate governance framework defined in the fund documentation.</b>	Annual	Interim

#### 1.4.2. G-P01 ACT LAWFULLY AND ETHICALLY

#### 1.4.3. COMPLIANCE WITH THE LAW

### Guidelines of conduct as a manager

**CG05 Vehicles must comply with all laws and regulations applicable in the jurisdiction in which they are established.**

The manager should ensure that the vehicle complies with all laws and regulations.

**CG06 The manager should confirm to the vehicle, the non-executive officers and investors that the vehicle is compliant with applicable laws and regulations.**

The manager has primary responsibility for compliance by the vehicle with applicable laws and regulations, including AIFMD, anti-money laundering regulations and tax legislation.

**CG07 The manager should have in place appropriate systems and processes to monitor compliance and should hold regular meetings with the vehicle, non-executive officers, investor representatives and, if**

**appropriate, investors.**

The manager should ensure that it has the necessary systems to monitor compliance, that the vehicle is compliant with the laws applicable in the jurisdiction in which it has been established, and that it can continue to operate without risk of breach of law. The manager should also consider the structure of the vehicle, and illustrate that it has been structured in such a way as to be tax efficient. The manager is normally expected to meet with the vehicle and non-executive officers or investor representatives, and, if the issue is sufficiently material, with investors, to brief them on relevant changes in law, including tax legislation, where these are likely to affect the vehicle.

### **Guidelines of conduct as a non-executive officer or investor representative**

**CG08 Non-executive officers or investor representatives should ensure that the manager has in place adequate systems to monitor compliance with applicable laws and regulations.**

Non-executive officers or investor representatives have a role in monitoring compliance, by, for example, receiving regular reports from, and having regular meetings with, the manager. Non-executive officers may themselves incur liability in certain jurisdictions through holding their office. They should have the ability to seek separate legal advice paid for by the vehicle, if they consider this advisable or necessary. The vehicle should also provide insurance cover for non-executive officers if it is not otherwise available.

### **Guidelines of conduct as an investor**

**CG09 The investor should support the manager in ensuring that the vehicle is compliant with applicable laws and regulations.**

The manager on behalf of the board of the vehicle has primary responsibility for compliance with applicable laws and regulations. Investors may be required to provide information legitimately required by the manager (such as for tax purposes) and in such circumstances should do so promptly.

Investors always need to consider carefully all information supplied by the vehicle, the manager and non-executive officers, take due note of any identified potential risks and raise questions with the manager or non-executive officers whenever appropriate, including any concerns regarding compliance, or failure to comply, with applicable laws and regulations.

## **1.4.4. ACT IN THE BEST INTERESTS OF INVESTORS AND CONSIDER OTHER STAKEHOLDERS**

## **1.4.5. COMPLIANCE WITH CONSTITUTIONAL TERMS**

### **Guidelines of conduct as a manager**

**CG10 The manager should establish systems and processes to ensure that the constitutional terms are monitored and adhered to, and should confirm to the vehicle, non-executive officers, investor representatives and investors that the vehicle is compliant with its constitutional terms.**

The contractual obligations of the manager will normally include the obligation to ensure compliance by the vehicle with its constitutional terms. These will usually be disclosed to investors and potential investors through a prospectus or information memorandum, which would include the investment strategy for the vehicle and the initial business plan.

The manager needs to be fully aware of the constitutional terms, and therefore able to confirm to the vehicle, non-executive officers, investor representatives and investors that the vehicle is compliant with its constitutional terms. The constitutional documents of the vehicle should also set out the remedies that are available to investors and others if there is a breach.

The constitutional terms should contain a clear investment policy setting well-defined restrictions and address how these principles and best practices should be applied in practice by those involved in the vehicle. They should be stated as fully and completely as possible, thus creating binding contractual obligations for compliance by the vehicle and its investors.

The manager should adopt the corporate governance best practices as a matter of policy from the outset of the vehicle. Thereafter the manager should assess the extent to which the vehicle complies with these best practices, and should report on compliance in the vehicle's annual report or elsewhere, explaining the reasons for any departures from the best practices. Investors will then be able to form their own opinions on the corporate governance of the vehicle.

**CG11 The constitutional terms should set out the role of the non-executive officer, investor representatives and investors in relation to decision-making on reserved issues.**

At the inception of a vehicle investors should agree to certain key parameters of the vehicle. Any changes in or breaches of such parameters would be decisions reserved for investors such as:

- the vehicle's constitutional terms;
- the vehicle's investment strategy;
- the timing of the vehicle and mechanisms for termination;
- the debt restrictions for the vehicle;
- the vehicle's liquidity mechanism;
- the removal or replacement of the manager; and
- the manager's fee structure.

Examples of reserved matters for non-executive officers or investor representatives may include:

- annual business plan;
- resolving conflicts of interest;
- changes to the external valuer and significant changes to the valuation methodology;
- changes to the external auditor, or to accounting principles or practices, where these are likely to have a significant impact on accounting treatment;
- matters considered by the permanent risk management function;
- appointment of external advisers to represent investors on specific issues, such as those relating to risk identification and management;
- changes in key personnel including appointment of replacements;
- any circumstances where there is the risk of investor liability;

- matters of confidentiality, in cases where the nature of the investment and the relative market are particularly sensitive.

For such reserved issues, investors would expect the manager to provide them, or non-executive officers or investor representatives, with appropriate information on which to base their decision, including any professional advice. Where there is to be prior consultation between non-executive officers and investors, investors would expect such consultation and subsequent reporting to be conducted on a timely basis.

As the number of investors in a vehicle grows, so a lesser threshold for key decisions is likely to be more appropriate. Open end vehicles with established liquidity mechanisms enabling investors to exit may offer less opportunity for influence or control by investors than closed end vehicles, where the investors' ability to exit the vehicle may be very limited.

While approval of the annual business plan may not be a matter reserved for the decision of non-executive officers or investor representatives, it is best practice for the manager to present the annual business plan to investors each year and establish a mechanism by which they can take feedback. In this way investors can make their views on the annual business plan known to the manager.

See section 2 of the [Corporate Governance Assessment tool](#).

#### **CG12 The constitutional terms should set out the way equity (or debt investments) is issued and redeemed in a vehicle.**

The manager should clearly articulate how equity (or debt investment) is to be issued and redeemed. In the case of closed end vehicles, the issue of equity (or debt investment) is likely to be through one or more initial closings where a number of investors subscribe at the same time, with redemption being towards the end of the life of the vehicle. In the case of open end vehicles, the process of issue and redemption of equity (or debt investment) would be on a periodic basis. This may be annually, quarterly, monthly or even daily. The method of valuation of the equity (or debt investment) should be clearly set out, including the underlying valuation and accounting principles applied. In some jurisdictions and vehicle structures, the mechanism is prescribed by legislation or government regulations.

#### **CG13 Vehicle extensions provide an opportunity for the manager to review the corporate governance with investors.**

Where the manager presents proposals for an extension of the life of the vehicle or a short run-off period to allow properties to be sold (which is not a fixed extension specified in the constitutional terms), this is in effect a new vehicle and provides an opportunity to review the constitutional terms of the vehicle.

### **Guidelines of conduct as a non-executive officer or investor representative**

#### **CG14 Non-executive officers or investor representatives should ensure that the manager has in place adequate systems to monitor the extent of compliance with the vehicle's constitutional terms.**

Since the manager is obliged to ensure that the vehicle complies with its constitutional terms, the role of the non-executive officer or investor representative is to monitor compliance through receiving reports and having regular meetings with the manager. The non-executive officer or investor representative should have the ability to engage

advisors (at the cost of the vehicle) to assist with legal or technical matters.

**CG15 In circumstances where the termination of the manager’s mandate is activated, the non-executive officers or investor representatives should oversee the process to ensure stability during the transitional period.**

Non-executive officers (where independent of investors) are expected to act as mediators between investors and managers and to review with investors the consequences and costs associated with the process of manager change.

## **Guidelines of conduct as an investor**

**CG16 Investors should fully understand the constitutional terms before investing. Acceptance of the constitutional terms is demonstrated by signing the subscription agreement.**

In order to allow an investor to fully understand the investment, the constitutional terms should state the vehicle strategy and vehicle operation, the relationship and obligations between investors and the vehicle (including investor decisions, meetings and votes), and the liquidity opportunities for investors, including the eventual exit procedures upon winding-up, if appropriate. Investors are expected to comply with these obligations. The constitutional terms should be clear and unambiguous, and include the appropriate jurisdiction in which meetings to decide on important issues which are reserved to investors are to be held.

### **1.4.6. ACT WITH SKILL, CARE AND DILIGENCE**

### **1.4.7. SKILL, CARE, DILIGENCE AND INTEGRITY**

## **Guidelines of conduct as a manager**

**CG17 The manager should implement a code of ethics to demonstrate integrity.**

The manager operates under a duty of care to the vehicle which has appointed it, and, through the vehicle, to investors. Investors, when deciding to invest, have usually relied upon the manager’s track record, and its acknowledged standing, integrity and reputation. The manager needs to be able to satisfy both the vehicle and investors that it has performed its duties with the required degree of integrity, and that it has behaved ethically in its dealings with the vehicle, non-executive officers, investor representatives, the vehicle’s external advisers and investors.

**CG18 The manager should exercise the necessary control over its staff, external advisers and third party service providers to ensure that it can operate in the best interests of the vehicle and its investors.**

The manager has to demonstrate to investors that it has the required skill to meet its obligations as a manager. This may include using third party service providers. See section 3 of the [Corporate Governance Assessment tool](#). The manager is expected to have the required level and quality of expertise in terms of staffing, external

advisers and third party service providers, as well as the necessary resources, in particular:

- adequate number of properly trained staff with the required level of experience, qualifications and skills;
- access to competent external advisers and expert service providers in the relevant jurisdictions, each of whom has an adequate system of internal controls and reports regularly to the manager on the effectiveness of such a control framework.

**CG19 The manager should follow INREV guidance.**

The manager, in order to show that it has acted and is acting diligently, both upon the establishment of the vehicle and during its life, is expected to be able to demonstrate to investors that it conducted the necessary due diligence (in line with the INREV due diligence protocol) upon the establishment of the vehicle, and that the vehicle is legally able to adopt its strategy to achieve its anticipated returns.

**CG20 The manager should implement an agreed policy on risk identification and management for the vehicle, and establish and maintain a permanent risk management function.**

The manager should identify risks early and manage them in a timely and proper manner. The manager needs to be able to show that potential risks are identified, monitored and managed quickly and diligently. This can only be achieved if the manager has competent staff, external advisers and service providers with the requisite expertise. The manager should also implement an adequate system of internal controls and ensure that information on the effectiveness of such a control framework is provided regularly to investors. See section 3 of the [Corporate Governance Assessment tool](#).

## **Guidelines of conduct as a non-executive officer**

**CG21 Non-executive officers should have the appropriate level of skill, training and access to external advisers and service providers to ensure that the interests of investors are protected.**

Non-executive officers should be appropriately trained so as to be up-to-date on relevant issues, and to have access to the vehicle's external advisers and service providers. In particular, non-executive officers need to have the opportunity to discuss with the vehicle's external valuers matters regarding property valuations.

**CG22 Non-executive officers should ensure the monitoring of internal controls, risk management and reporting.**

Non-executive officers should satisfy themselves that the manager has in place secure systems which monitor the vehicle's activities, that adequate internal controls are established by the manager to identify and manage risks on a timely basis and in a proper manner, and that the manager complies with its reporting obligations in a regular and timely manner.

**CG23 Non-executive officers should have regular meetings with the manager and other external advisers and service providers, and with investors (if appropriate, with the manager absent), when considered necessary.**



Non-executive officers are expected to attend meetings with the manager, other external advisers and service providers, and with investors when circumstances require, and to refer to investors' matters of concern. See section 3 of the [Corporate Governance Assessment tool](#). They may also need to call upon independent professional advice. To ensure that non-executive officers are able to act free from influence by vehicles or managers, it is necessary that they have the opportunity to discuss freely and openly with investors (without the manager being present) matters of a particularly sensitive nature.

## Guidelines of conduct as an investor

**CG24 Investors should employ staff or other resources with the requisite market experience, skills, expertise and knowledge.**

Investors need to ensure that they and their representatives have had the appropriate training and are up-to-date with relevant developments, so as to be in a position to seek the appropriate information from the vehicle or the manager in understanding the performance and development of the vehicle. Investors should act diligently when requested to consent to proposals made by the manager, and should respond in a timely and proper manner.

The constitutional terms of the vehicle should contain provisions dealing with circumstances in which investors fail to meet their obligations to the vehicle. See section 3 of the [Corporate Governance Assessment tool](#).

**CG25 Investors should act diligently to assess and monitor the identification and management of risks.**

Investors should obtain from the manager, before investing, information they consider necessary to satisfy themselves that the vehicle strategy is appropriate, that the risks are appropriate relative to the rewards, and that the manager has the requisite experience and resources (human, financial and information) to be able to deliver the expected returns. INREV has published a recommended questionnaire for investment evaluation to assist investors in their due diligence investigations.

**CG26 Investors should regularly review the performance of non-executive officers, and should periodically ratify their reappointment.**

Investors will need to be satisfied that non-executive officers are properly performing their role to protect the interests of investors and so should assess their performance annually.

## 1.4.8. DESIGN AND OPERATE AN ADEQUATE OVERSIGHT AND CONTROL FRAMEWORK

### 1.4.9. ACCOUNTABILITY

**CG27 The manager should demonstrate how it is accountable to investors.**

The manager is accountable to the vehicle and the investors as a whole. Investors will rely on the manager to ensure that the objectives established at the outset and investment plans are achieved and that the vehicle operates in accordance with its constitutional terms and all applicable laws and regulations. The manager can demonstrate this accountability, for example, by being available, upon reasonable notice, to meet with non-

executive officers, investor representatives and investors to review and discuss matters relating to the vehicle. The manager would also normally be expected to exercise control over, and maintain close relations with, the external advisers and service providers, including external auditors, valuers, portfolio and property managers and risk managers.

**CG28 The manager should be indemnified by the vehicle, except where the manager is negligent.**

The manager should be willing to accept a certain level of liability for its actions but would generally expect to be indemnified by the vehicle for losses where the manager has not been negligent or in breach. See section 4 of the [Corporate Governance Assessment tool](#).

**CG29 The manager should be able to be terminated with or without cause.**

The ability of the investors to terminate the contract of the manager, both for cause and without cause, is an indication of the extent to which the manager is accountable. Greatest accountability is achieved with a no-fault termination mechanism, after a special resolution of investors. Reasonable compensation may be due to the manager depending on the circumstances of the termination. See section 4 of the [Corporate Governance Assessment tool](#).

Investors will expect protection against circumstances where the performance of the manager (whether measured quantitatively or qualitatively) is sub-standard. In such circumstances it may be appropriate to establish a process of dialogue with a timetable between the manager and the investors (through the non-executive officers or investor representatives) to address such underperformance. In circumstances where the plan agreed from such a process is not followed by the manager then the investors may consider suspension of the investment period or even termination of the manager after a special resolution.

## **Guidelines of conduct as a non-executive officer or investor representative**

**CG30 Non-executive officers and investor representatives should be accountable to investors.**

Non-executive officers and investor representatives are accountable to investors in their role as monitors of the performance and compliance of the vehicle. This may be by participation on a non-executive board or advisory committee. Such accountability should, however, not be coupled with liability to other investors other than in the case of wilful misconduct or bad faith on the part of the non-executive officer or investor representative.

See section 4 of the [Corporate Governance Assessment tool](#).

## **Guidelines of conduct as an investor**

**CG31 Investors should ensure that the manager and, where appropriate, non-executive officers are held accountable for the performance of the vehicle.**

Investors are accountable to their own relevant bodies, but not to the vehicle, non-executive officers or the manager. They are, however, responsible for holding the manager and non-executive officers accountable. For

example, they are expected to attend relevant investor meetings and consider carefully and diligently all information and reports supplied by non-executive officers, the manager and external advisers. They are expected to conduct themselves in such a way as not to be open to criticism that they have acted in an unethical manner.

#### 1.4.10. BE TRANSPARENT WHILE RESPECTING CONFIDENTIALITY CONSIDERATIONS

#### 1.4.11. TRANSPARENCY

**CG32 The manager should make available to the vehicle, non-executive officers, investor representatives and investors, in a timely manner, all relevant information and reports.**

During the life of a vehicle the manager provides information (including reports) relevant to the vehicle, in order to enable investors to understand the performance of the vehicle and its compliance with the vehicle strategy, and to be satisfied that it meets the objectives established in the business plan. See section 5 of the [Corporate Governance Assessment tool](#). Investors and non-executive officers need to be in a position to, for example:

- assess the performance of the vehicle against given targets, such as industry peer groups;
- understand the progress compared to the business plan and forecasts;
- understand the risks in a vehicle and how they are being managed;
- satisfy themselves as to compliance with the vehicle's constitutional terms and applicable laws and regulations without imposing any obligation on investors themselves to monitor compliance);
- understand the extent and nature of investments and divestments and the consequent funding of transactions;
- understand the fees payable to the manager and the vehicle expenses charged directly.

The manager should respond in a timely and transparent manner to all reasonable questions and enquiries raised by non-executive officers, investor representatives and investors. Material events, such as a change in key personnel, should be reported to investors immediately.

**CG33 The manager should have regard to INREV Guidelines on property valuations.**

During the life of the vehicle the manager will provide investors, investor representatives and non-executive officers with property valuations. Investors would expect external property valuers to be independent. In order to ensure that valuations are adequately monitored, and that the interests of investors are protected, the rotation of external valuers upon the expiry of their mandates is encouraged, and the fees paid to external valuers should be structured in such a way as not to compromise the independence of valuations. See section 5 of the [Corporate Governance Assessment tool](#).

The manager should report to investors on the extent of compliance with INREV corporate governance principles and guidelines including any circumstances in which best practice is not followed and the explanation as to why this is so.

**CG34 The constitutional terms of a vehicle should set out the use of side letters, which should be disclosed to all investors.**

We recognise that there may be circumstances in which different investors will have different arrangements with a vehicle. For example, larger investors may receive a discount on fees payable to the manager. The manager should set out how side letters and similar individual investor agreements will be dealt with. The manager should disclose the terms of such side letters, while recognising that certain investors may request anonymity in such matters. See section 5 of the [Corporate Governance Assessment tool](#).

**CG35 AIFMD specific requirement:** *In case of an externally managed AIF, the AIFM is responsible for compliance with the transparency requirements of the AIFMD.*

## **Guidelines of conduct as a non-executive officer or investor representative**

**CG36 Non-executive officers or investor representatives should be satisfied that procedures are in place to ensure that investors are in receipt of information prepared by the manager.**

Throughout the life of the vehicle, the manager is under an obligation to ensure that all relevant information and reports are made available to investors, investor representatives and non-executive officers, in a timely, proper and comprehensive manner, so as to inform investors, investor representatives and non-executive officers on matters such as strategy, achievement of targets and the progress and performance of the vehicle. Non-executive officers and investor representatives have a role in seeing that the manager meets these obligations.

## **Guidelines of conduct as an investor**

**CG37 Investors should feed back to the manager their precise information requirements, and whether they are being satisfied by the vehicle.**

This should help ensure that the vehicle's reporting is managed as efficiently as possible.

### **1.4.12. BE ACCOUNTABLE**

### **1.4.13. ACTING IN INVESTORS' INTERESTS, INCLUDING ALIGNMENT OF INTERESTS AND CONFLICT OF INTERESTS**

**CG38 The manager should demonstrate that its interests are truly aligned with those of investors through vehicle structures.**

The vehicle is established to deliver investment performance to investors. The manager is expected to act in the interests of investors. As far as possible, this can be assured by creating structures in the vehicle to ensure the alignment of the manager's interests with those of the investors.

Alignment of interest may be achieved by the manager investing a meaningful amount in the vehicle. See section 6 of the [Corporate Governance Assessment tool](#). INREV recognises that there may be circumstances in which co-investment by the manager may not be appropriate, however.

Alignment of interest may also be achieved through the fee structure, including payment of performance fees to the manager based on vehicle performance. This may not fully align the manager to downside risks, however. Any performance fee structure should incentivise the manager to behave in a manner consistent with the risk profile of the vehicle and should reflect the added value that the manager is expected to provide. For example, the element of manager remuneration related to performance is typically less for a core vehicle than for an opportunistic vehicle. See section 6 of the [Corporate Governance Assessment tool](#).

Remuneration policies are required for those employees of the manager whose professional activities have a material impact on the investment strategy or the risk profile of the vehicle they manage. The remuneration policies should promote sound and effective risk management and not encourage risk-taking which is inconsistent with the risk profile of the vehicle.

**CG39 The constitutional terms should set out the provisions to be applied in the event that key personnel leave the manager.**

Where certain employees of the manager have been identified in the documentation as key men or personnel, the constitutional terms will often contain specific provisions to cover the situation where these personnel leave the manager. The provisions may extend to the manager being prohibited from making further investments, or even face losing its mandate. See section 6 of the [Corporate Governance Assessment tool](#).

**CG40 The manager and the vehicle should implement a written protocol documenting how to handle conflicts of interest within the vehicle.**

Conflicts of interest between the manager and the vehicle may arise in a number of circumstances, such as where:

- the manager (or another vehicle controlled by the manager, or a related party to the manager) competes with the vehicle to acquire assets;
- the manager (or another vehicle managed by the manager, or a related party to the manager) buys or sells assets from the vehicle;
- changes are proposed to the fee structure or other arrangements between the manager and the vehicle;
- the manager seeks to sell its interest in the vehicle;
- investors are in conflict over a decision that is required to be made by them.

Conflicts of interest may also arise with third party service providers. For example, the external valuer may make an offer to provide additional property services to a vehicle. This could potentially compromise the independence of its valuations.

When potential conflicts of interest arise, the manager should bring them immediately to the attention of the vehicle and the non-executive officers or investor representatives, and implement the agreed conflict procedure. The manager should always ensure that dealings in related-party transactions are on an arm's-length terms basis. For example, if the manager (or another vehicle managed by the manager) wants to compete with the vehicle to acquire assets, the manager should disclose this to the vehicle, together with a policy for ensuring fair treatment for all its clients. See section 6 of the [Corporate Governance Assessment tool](#).

**CG41 The vehicle should set out how all investors will be treated on new issues, redemptions and**

**transfers of equity (or debt investments) in the vehicle.**

Conflicts of interest can arise whenever investors vary their holdings in a vehicle. The manager should ensure that the rules governing new issues, redemptions and transfers are clearly and transparently set out for all investors. Such rules should be in accordance with guidance provided in the INREV liquidity guidelines and should be fairly and consistently applied. Conflicts of interest can also arise for the manager in providing a service for secondary transfers between investors, and its role in raising new capital, if applicable. At the outset the manager should clearly articulate the role that it provides in respect of secondary transfers, including any fees charged or interaction with third party trading platforms or placement agents.

**Guidelines of conduct as a non-executive officer or investor representative****CG42 Non-executive officers or investor representatives should ensure that the manager demonstrates that its interests are aligned with investors' interests.**

During the life of the vehicle, the role of the non-executive officer or the investor representative is to protect investors' interests. One way in which the non-executive officer or investor representative can do this is by ensuring that the manager's interests are aligned with those of the investors.

**CG43 Non-executive officers should ensure that the manager has a written protocol documenting how conflicts of interest should be managed.**

If conflicts are identified, non-executive officers should ensure that the manager implements the agreed conflict procedure. Non-executive officers may have to make decisions on behalf of the vehicle if the manager is conflicted. If non-executive officers are not satisfied that a conflict has been fairly and properly resolved, they would be expected to refer the matter to investors. Non-executive officers are expected to be actively involved in overseeing transactions between the manager and the vehicle, such as changes in the fee structure, and to be satisfied that the terms of such transactions are at arm's length and are reported to investors.

**Guidelines of conduct as an investor****CG44 The vehicle should be run in the interests of investors to deliver anticipated returns.**

Investors should advise the vehicle and non-executive officers in a timely manner if they consider that the vehicle is not being run in their best interests.

**CG45 Investors should disclose conflicts of interests to other participants in the vehicle and act appropriately.**

Conflicts of interest between an investor and the vehicle may arise in a number of circumstances, such as where an investor competes with the vehicle to acquire assets or an investor buys assets from, or sells assets to, the vehicle. Investors need to act with integrity, and to disclose appropriate information to the particular vehicle, the manager and other investors, in a timely and proper manner. For example, if an investor competes with the vehicle, or buys an asset from, or sells an asset to, the vehicle, the investor would normally excuse itself from the

relevant discussions in the vehicle or from receiving any information. In such circumstances, an investor may have to create 'Chinese Walls' so that different individuals or teams of people are able to act for the different parties.

#### 1.4.14. BE SUSTAINABLE: EVALUATE AND MANAGE SUSTAINABILITY IMPACTS

#### 1.4.15. FURTHER GUIDANCE AND INTERPRETATION

#### 1.4.16. CONFIDENTIALITY

**CG46 The constitutional terms should set out the obligations of confidentiality assumed by the vehicle and its investors.**

The manager will be aware of information relating to the vehicle, some of which may become publicly available, and some of which may be disclosed in order to be transparent. Information which is commercially sensitive to the vehicle, however, is expected to be treated as confidential and not to be disclosed widely. The constitutional terms may contain confidentiality undertakings, so that the vehicle passes on to its investors the duty to keep certain information confidential, and to refrain from acting on it.

The need to maintain confidentiality has to be balanced by the need to ensure transparency; if there is a conflict, the need for transparency should prevail. The constitutional terms should set out the rights of non-investors, such as potential investors and their advisors, to receive information without entering into a confidentiality agreement. Confidentiality provisions should not effectively prohibit investors exercising their rights under the constitutional documents, such as when engaging third party advisors. See section 7 of the [Corporate Governance Assessment tool](#).

### **Guidelines of conduct as a non-executive officer or investor representative**

**CG47 Non-executive officers and investor representatives should comply with confidentiality provisions in the constitutional documents.**

Non-executive officers or investor representatives may be aware of confidential information relating to the vehicle, which is neither publicly available nor known to investors. If non-executive officers or investor representatives have received information relating to the vehicle which is commercially sensitive, they should observe the confidentiality provisions contained in its constitutional terms. If appropriate, non-executive officers should assist the manager in the disclosure of the information to investors.

### **Guidelines of conduct as an investor**

**CG48 Investors should comply with the confidentiality provisions, particularly when seeking to dispose of their investment, and should not use confidential information for their own benefit.**

Investors may be in possession of information which is not publicly available, and which has been communicated to them by the vehicle or the manager and which may be commercially sensitive. Investors intending to disclose potentially confidential information to third parties who are potential investors are expected to seek confidentiality

undertakings satisfactory to and in favour of the vehicle from the relevant third parties. Investors may also involve the manager in discussions with these parties, and request that the manager delivers to potential purchasers such information as may reasonably be required.

#### 1.4.17. FURTHER GUIDANCE FOR CLUB DEALS AND JOINT VENTURES

##### CG49 Control over investments

Investors participating in club deals and joint ventures are usually seeking greater control over the strategy and activities of the vehicle in order to set focused investment strategies and to control the destiny of their investment. Investors are therefore more likely to want greater involvement in the decision-making of the vehicle than would normally be the case for a multi-investor vehicle. In addition to the matters set out in CG10 of the guidelines normally reserved for investors, investors are likely to want to control the other matters set out in CG10 that may be reserved for non-executive officers. In particular, investors are likely to want to have control over the timing of acquisition and disposal of individual property assets, so that their investment behaves more like a direct property investment. Under the AIFMD, however, investment activities should be carried out by the manager, and investors should ensure that their desire to control investments does not conflict with the requirements of the AIFMD.

##### CG50 Non-executive officers

In circumstances where a small number of investors are actively involved in the running of a vehicle, it would be expected that investors who participate in club deals and joint ventures would have the personnel resources to engage fully in the activities of the vehicle, without creating any management inefficiencies, such as delay in ratifying decisions. In these circumstances the role of the non-executive officer might not be relevant.

##### CG51 Role of the manager and fees

In club deals and joint ventures, the role of the manager may be that of asset manager, sourcing the assets and managing the day-to-day leasing and operational activities of the portfolio of properties. Fees may be less than for a multi-investor vehicle, given the reduced needs for vehicle management, as opposed to asset management. In addition, consideration should be given as to whether a performance fee to the manager would be appropriate, since the manager may not fully control the investment strategy, if the vehicle arrangements require approval of individual decisions by investors.

#### 1.4.18. FURTHER GUIDANCE FOR OPEN END AND CLOSED END VEHICLES

**CG52 In this section we deal with variations in the application of the corporate governance guidelines to open end and closed end vehicles. In practice there is not a clear division between these two categories as vehicles may have characteristics of both. Nonetheless we set out how the governance for a pure open end vehicle may be expected to vary from a pure closed end vehicle.**

##### Liquidity mechanism for investors

Closed end vehicles would typically have a fixed life, and investors would normally expect to invest at the start of



the life of the vehicle, and redeem their investment towards the end of the life, as the vehicle sells its assets and winds down. Investors may have the ability to sell their investment on the secondary market, but would not normally expect to do so.

Open end vehicles, in contrast, typically last for an indefinite period, and provide clear mechanisms for new investors to subscribe for equity (or debt), and for existing investors to exit from their equity (or debt) position. Consequently, the constitutional terms governing subscription, valuation and redemption of equity (or debt investments) in the vehicle must be clearly set out for all investors and prospective investors, along with the anticipated liquidity for investors. Such terms are likely to be more developed in open end vehicles than in closed end vehicles.

### **Valuation guidelines**

Given the importance of the mechanism for subscribing for and redeeming equity (or debt investments) in an open end vehicle, particular attention should be paid to the valuation and accounting principles applied. These valuation and accounting principles should be clearly set out in the constitutional terms and disclosed to any potential investors, including the frequency of such valuations. The vehicle should also follow INREV's methodology for calculating and disclosing the INREV NAV. The constitutional terms should describe how the price for equity (or debt) subscription (bid price) and equity (or debt) redemption (offer price) are related to the INREV NAV.

### **Control or influence in decision-making**

The constitutional terms will set out the extent of control or influence delegated to non-executive officers and investors in the running of a vehicle. In closed end vehicles, where investors are likely to be committed to the vehicle for its entire life, investors may seek some control or influence over certain decisions, as set out in CG10 of the guidelines. The degree of control or influence offered to investors can be less in open end vehicles, however, based on the assumption that investors should have the opportunity to exit the vehicle if the investment strategy of the vehicle no longer meets their investment objectives. Since the liquidity of open-ended vehicles cannot be guaranteed, it constitutes good governance to also provide for key investor rights in open end vehicles.

### **No-fault termination clauses**

One indication of accountability of the manager is the existence in the constitutional terms of a clause providing for no-fault termination of the manager. A no-fault termination clause is less common in open end vehicles than in closed end vehicles, since investors who no longer wish the manager to run the vehicle, and who would vote for a termination of the manager if such a mechanism were available, may exit the vehicle through redemption. As the liquidity in open end vehicles may not be fully available it constitutes good governance to also provide for no-fault removal provisions in open end vehicles.

### **Co-investment by the manager**

One indication of alignment of interests with investors is the manager having a meaningful co-investment in the vehicle as an incentive for the manager to perform. Co-investment by the manager is likely to be less important to investors in an open end vehicle than in a closed end vehicle, if a proven exit mechanism is available to investors who may be concerned about the commitment of the manager to run the vehicle.

### **Performance feeterms**

Another indication of alignment of interests with investors is a performance fee structure that incentivises the manager to act in a way that is in the interest of the investors. Performance fee structures should be designed to suit the risk profile of the vehicle. Open end vehicles are typically core, not opportunistic, and so it would be

expected that the balance of fees to the manager will be more weighted to base fees than for a closed end vehicle. In addition, the bid/offer price mechanism should take account of any accrued but unpaid performance fee.

### Conflicts of interest

**AIFMD specific requirements:** *The AIFM that manages an open-ended AIF shall identify, manage and monitor conflicts of interest arising between investors wanting to redeem their investments and investors wishing to maintain their investment in the AIF, and any conflicts between the AIFM's incentive to invest in illiquid assets and the AIF's redemption policy.*

## 1.5. TOOLS AND EXAMPLES

### CG-T01 Related Tools & Examples

- [Corporate Governance Assessment](#)

### 1.6. Q&A

#### 1.6.1. COMPLIANCE OF AIFM

#### CG-Q01 To what extent should the Board of an AIF monitor the activities and level of compliance of its appointed AIFM?

This scenario may typically occur where an AIF within the scope of the AIFMD appoints an external AIFM as its manager. In this case there are a number of important activities which the Board of the AIF delegates to the manager, but which it must monitor in order to ensure that the AIFM is performing such tasks reasonably and in compliance with legal and regulatory requirements.

Important tasks delegated to the AIFM must include portfolio management and risk management, and will often also include administration and marketing. The AIFM may also, for example, provide support to the Board of the AIF in the performance of its duties. In addition, the AIFM commonly identifies and manages key service provider relationships on behalf of the AIF, such as depositories and auditors, and under the AIFMD has a responsibility to manage the valuation of the AIF's assets and liabilities on behalf of the AIF to which it has been appointed. Clearly, the Board of the AIF has to be comfortable with the competencies and performance of the AIFM and will normally perform a degree of due diligence on the AIFM pursuant to this goal.

There are two key elements to this due diligence role:

- Initial due diligence
- Ongoing due diligence

Both initial and ongoing due diligence should be documented.

#### Initial due diligence

Before appointing an AIFM, the Board of the AIF should perform initial due diligence. The initial due diligence should, among other things, assess the ability of the proposed AIFM to perform the tasks to be delegated to it, and its ability to comply with the requirements of the AIFMD.

One of the key indicators for the Board of the AIF will be authorisation and supervision by the relevant supervisory

authorities. Other typical factors which the Board of the AIF may consider may include:

- Scope of activities and experience of the AIFM;
- Knowledge, skills, experience and reputation of the Board, senior management and key staff, including the portfolio manager and risk manager;
- Organisation of the AIFM, including human and technical infrastructure, and the control arrangements of the risk management, compliance and internal audit functions;
- Delegation arrangements, and ability of the AIFM to perform adequate due diligence and ongoing monitoring;
- The identity and nature of the shareholders of the AIFM;
- Values statement or code of conduct, and how they are implemented in practice;
- Segregation of risk and portfolio management functions;
- Independence of the internal/external valuer.

From a practical perspective, the AIFM could provide the Board of the AIF with part or all of its application for authorisation to the supervisory authorities, and/or its handbook describing its organisational structure, policies and procedures, to assist the Board of the AIF in its assessment of the ability of the AIFM to comply with the requirements of the AIFMD.

### **Ongoing due diligence**

The Board of the AIF should perform ongoing due diligence to assess whether the AIFM continues to have the ability to perform the tasks which have been delegated to it and to comply with AIFMD requirements. From an ongoing compliance perspective, the AIFM should provide the Board of the AIF with one or more reports covering:

- Risk management, including, among other items, KPIs on compliance with the risk limits and the risk profile of the AIF as disclosed to investors;
- Compliance with the regulatory requirements, including in particular KPIs on the compliance of the AIF;
- Internal audit reports, providing, among other items, an evaluation on whether risk management, control, and governance systems are functioning as intended.

Typically, each of these reports would be AIF-specific. In each case, the report should also cover remedial action to correct any deficiencies identified in the current or previous reports. The Board of the AIF should receive these reports at a frequency which is appropriate to the activities of the AIF, and at least annually.

In addition, when the AIF is appointing key service providers such as auditors and depositories, or providing representations to them, and when approving reports and accounts of the AIF, they are relying on the output of many of the key functions of the AIFM. Such reliance may be formally constituted in the form of reports and representations from the AIFM to the AIF.

## **1.6.2. CONFIDENTIALITY**

**CG-Q02 How is confidentiality treated according to the INREV Corporate Governance Guidelines and how do you deal with the conflict between protecting sensitive information about your investors and being fully transparent?**

The INREV industry standards are touching upon confidentiality in different areas:

- The Corporate Governance Module: principle number 7 refers to confidentiality and principle number 5 to

transparency.

- The INREV Due Diligence Questionnaires (DDQs) touch on confidentiality in the assessment process.
- INREV provides a standard non-disclosure agreement (NDA) with the purpose to replace the wide variety of NDAs currently being used in the industry.

Looking at these three sources, the question needs to be raised as to the position the INREV standards represent in order to solve the dilemma between confidentiality and transparency in non-listed real estate investment vehicles.

The Corporate Governance Module is built upon seven principles. **Principle 5 refers to Transparency** and promotes free information flow between all involved parties in an investment vehicle in order to enable investors to understand the performance of the vehicle and its compliance with the vehicle strategy. The best practices in the module go as far as to disclose the terms of individual side letter agreements to all investors to create full transparency among all investors.

**Principle 7 refers to Confidentiality** and mainly addresses the confidential treatment of commercially sensitive information. This information should be kept confidential and not to be made publically available.

Obviously these two principles partially contradict each other. The Corporate Governance Module solves this conflict by stating that the two positions always need to be balanced out by each other and that in case of a conflict the requirement for transparency should always prevail.

Besides this clear prioritisation INREV however recognises the need for confidentiality agreements in certain circumstances and therefore provides a standard non-disclosure agreement. Increased standardisation by using a template will lead to better balance between confidentiality and transparency.

The INREV DDQs are asking to disclose any confidentiality restrictions of the manager regarding disclosure of information about potential client due diligence towards current investors in the vehicle.

The most practical description of how the principles should be interpreted might be found in the best practices described in the Corporate Governance Assessment tool. Good governance is presented by binding all investors under the same confidentiality clause and to additionally disclose this clause in a very clear manner to ensure all investors know of the conditions under which investors subscribe in the vehicle. It is important that the terms are disclosed in the vehicle marketing documents so that investors are informed by the time they make their final investment decisions. Unequal treatment of confidentiality agreements is seen as merely acceptable and having no confidentiality agreements at all as only acceptable in exceptional circumstances.

With regards to the manager it is best practice to have confidentiality restrictions with third parties in place, which are set out in the constitutional terms. The terms should enable potential investors to receive information without the need of entering into confidentiality agreements beforehand. A governance framework which doesn't respect the latter is only acceptable if the manager has exceptional reasons for that. Having no restrictions regarding confidentiality in place is also rated only as acceptable corporate governance.

## Summary

Under the Corporate Governance Guidelines, the leading principle is that information regarding vehicles and investors' (clients') interests in vehicles which is not publicly available should always be treated confidentially.

However, the need to maintain confidentiality will conflict from time to time with the need of transparency; if there is a conflict, the need for transparency should prevail. In practice, this may work as follows:

- There should be free flow of information between existing investors and the fund. The fund documentation should prescribe a mutually binding confidentiality undertaking.
- If there is a business need to provide information outside of the investor group – for example, to a potential new investor looking to buy a secondary position – then the manager should be able to refer to the fund's documentation, which should state clearly under which conditions and circumstances such information should be provided.
- The condition could be to ensure that the investor would be qualified for admission to the investment vehicle (e.g. minimum net worth tests, tax position et cetera).
- The manager should then provide confidential information provided that the outside party has signed an appropriate NDA.

### 1.6.3. CORPORATE GOVERNANCE ASSESSMENT - WHY, WHO, WHEN?

#### 1.6.3.1. WHY?

##### CG-Q03 What are the advantages of the Corporate Governance Assessment?

The tool provides a practical way to measure the strength of a vehicle's governance regime, by quantifying the level of compliance with the INREV Corporate Governance Guidelines. Compliance levels for different vehicles can be compared in a consistent way, and in future this can be set against the market as a whole – once a critical mass of funds have used the tool and agreed that their results can be aggregated for comparison purposes. It will also be possible to link a fund's level of governance with other relevant INREV data, for example on the fund's compliance with other Guidelines, or with its investment performance.

#### 1.6.3.2. WHO?

##### CG-Q04 Why should a fund manager use the tool?

Managers can show the vehicle's compliance with industry guidelines to existing and new investors. It forms a base reference for further improving the vehicle terms and reporting of vehicle.

##### Why should an investor use the tool?

Investors will be able to use the assessments during their due diligence process to facilitate a dialogue with managers about corporate governance and reporting issues. The results will help to compare the governance of existing and potential investments in vehicles.

#### 1.6.3.3. WHEN?

##### CG-Q05 In which phases of the life cycle of a vehicle should the assessment be used?

The tool is intended to be used right through the vehicle's life cycle, but especially during the set-up phase and at times when new investors can enter. It will help managers to provide a statement of compliance that can be used

in the vehicle's annual corporate governance report to investors, allowing them to show the vehicle's level of compliance with industry guidelines. It provides a base reference point for improving the vehicle terms and its reporting framework.

#### 1.6.3.4. HOW OFTEN?

##### **CG-Q06 How often should the assessment be updated?**

The Corporate Governance Assessment should be updated on an annual basis. If there is a significant restructuring of the vehicle, amendments in the side letters, or changes in the fund documents the assessment should be updated immediately.

#### 1.6.3.5. HOW LONG DOES IT TAKE?

##### **CG-Q07 How long does it take to fill in the questionnaires?**

The time you need to fill in the questionnaire depends on your familiarity with the vehicle documents. Being properly prepared, the questions can be answered easily and additional information can be added easily by using the tool's comment function. Going through the Corporate Governance Questionnaire is expected to take 15-20 minutes.