

# Guide to UK RETTS

November 2018

[macfarlanes.com](http://macfarlanes.com)

Since the UK Real Estate Investment Trust regime (the REIT regime) was liberalised in 2012, Real Estate Investment Trusts (REITs) have become an increasingly attractive wrapper for UK real estate. This guide summarises, in question-and-answer form, some of the key considerations for organisations considering launching a REIT or converting an existing real estate company into a REIT.

## 1. What is a REIT?

A REIT is a company which has a special HMRC approved tax status. It is not a trust.

## 2. What is the benefit of holding property through a REIT?

**Tax efficient structure:** the REIT and its group (the REIT Group) are not charged UK corporation tax on profits and gains derived from their property rental business. See question 7 below for further details.

**No conversion charge:** there is no conversion charge payable on the conversion of an existing real estate company into a REIT.

**Permanent capital:** REITs are closed ended vehicles and, as such (and unlike in open-ended real estate funds), investors have no right to have their capital returned to them.

**Access to capital markets:** as publicly traded vehicles, REITs have the ability to access wider and deeper pools of capital than in the private markets alone.

**Daily liquidity:** as REITs are publicly traded vehicles, shareholders in REITs can buy and sell shares on a daily basis, with publicly available, transparent pricing.

## 3. How does a company become a REIT?

A company becomes a REIT by giving notice in writing to HMRC (there is no prescribed form) of the future date on which the REIT intends to become a REIT. The notice must contain a statement that certain qualifying conditions are reasonably expected to be met in relation to the REIT in its first accounting period after becoming a REIT.

## Contents

1. What is a REIT?
2. What is the benefit of holding property through a REIT?
3. How does a company become a REIT?
4. What are the principal qualifying conditions for a REIT?
5. Are there any other key tax consequences of being a REIT?
6. Who can be included in the REIT Group?
7. What are the key tax consequences of being a REIT?
8. What are the tax consequences for shareholders in the REIT?
9. Is a REIT required to withhold tax on payments of PIDs?
10. Can the REIT be an overseas entity or have overseas subsidiaries?
11. Can a REIT hold overseas property or non-real estate assets?
12. Can a REIT be externally managed?
13. Can a REIT be a "blind pool" fund?
14. Can a REIT invest substantially all of its assets in another fund?
15. What is a private REIT?
16. What regulatory permissions do a REIT / its promoters need to consider?
17. To what market should a REIT's shares be admitted?
18. What are the principal workstreams for admission to trading?
19. What are the principal contents requirements of a prospectus for a REIT?
20. What principal third party service providers and advisers does a REIT need in connection with admission?
21. What corporate governance standards apply to a REIT?
22. How long does it take to launch a REIT?

#### 4. What are the principal qualifying conditions for a REIT?

A number of conditions need to be met before a company can become a REIT and further conditions must be complied with on an on-going basis if the company is to be treated as a REIT and enjoy the full benefits of the REIT regime. Breaches of the conditions attract tax penalties and/or consequences (which differ according to the condition which is breached and the severity of the breach, but which can include removal from the REIT regime). The main conditions are summarised below:

##### (A) Company conditions

- **Tax residence:** a REIT must be resident in the UK and not resident anywhere else for tax purposes.
- **Not an OEIC:** a REIT must not be an open-ended investment company.
- **Admitted to trading on a recognised stock exchange:** the shares forming the REIT's ordinary share capital must be admitted to trading on a recognised stock exchange. This condition allows a REIT to be admitted to a wide variety of markets. The most obvious markets in the UK are the Main Market, the Specialist Fund Segment and AIM (each markets of the London Stock Exchange). A technical listing on the International Stock Exchange is also possible if liquidity is not a concern.
- **Not a close company:** except in the first three years following entry into the REIT regime, a REIT must not be a close company other than by virtue of having a participator who is an institutional investor. A close company is, broadly, a company under the control of five or fewer participators or of participators who are directors. An institutional investor includes the trustee or manager of an authorised unit trust (or overseas equivalent) or a pension scheme, an insurance company, a charity, a limited partnership which is a collective investment scheme, a registered social landlord, an open-ended investment company, a person with sovereign immunity, a UK REIT and the non-UK equivalent of a UK REIT.
- **Single class of ordinary shares:** all the REITs shares must either be ordinary shares or non-voting restricted preference shares (broadly, fixed rate preference shares which are either not convertible or only convertible into shares in the REIT). There must not be more than one class of ordinary share issued by the REIT.

##### (B) Property rental business conditions

- **At least three properties:** Throughout each accounting period, the property rental business of the REIT Group must involve at least three properties.
- **Concentration cap:** throughout each accounting period, no one property may represent more than 40 per cent of the total value of all properties involved in the property rental business.
- **Property rental business income profits:** the income profits arising from the property rental business must represent at least 75 per cent of the REIT Group's total income profits for each accounting period.
- **Property rental business assets:** at the beginning of each accounting period, the value of the assets in the property rental business must represent at least 75 per cent of the total value of the assets of the REIT Group.
- **Owner occupied property excluded:** the letting of property that would fall to be treated as "owner-occupied" in accordance with generally accepted accounting practice (GAAP) does not generally qualify as a property rental business. "Owner-occupied" is defined for GAAP purposes as property held by the owner for use in the production or supply (by the owner or a member of its group, in relation to consolidated accounts) of goods or services or for administrative purposes.
- **Disposals within three years of substantial development:** the REIT exemption will not apply to profits realised on a disposal of a property by a company where (i) the property has been developed since it was acquired by the company; (ii) the cost of development exceeds 30 per cent of the fair value of the property (determined in accordance with International Accounting Standards) at the later of acquisition and entry into the REIT regime, and (iii) disposal takes place within three years of completion of the development.
- **Other excluded classes:** there are certain classes of income that are excluded from the REIT regime including (among others) income from the operation of a caravan site and rent in respect of the siting of pipelines for oil or gas, mobile phone masts or wind turbines.

**(C) Distribution condition**

A REIT must, to the extent permitted by law, distribute to shareholders on or before the filing date for the REIT's tax return for the relevant accounting period, at least 90 per cent of the income profits of the UK property rental business of the REIT Group (a Property Income Distribution or PID).

**(D) Borrowing restrictions conditions**

A REIT must not be party to any loan in respect of which the lender is entitled to interest that exceeds a reasonable commercial return on the consideration lent or where the interest depends to any extent on the results of any of its business or on the value of any of its assets.

If the ratio of the REIT Group's income profits (before capital allowances) in respect of its UK property rental business to the financing costs incurred in respect of its UK property rental business is less than 1.25:1 for an accounting period, then a tax charge will arise.

**(E) Breach of REIT conditions**

HMRC may require the REIT Group to exit the REIT regime if:

- it regards a breach of the conditions relating to the REIT regime (including in relation to the UK property rental business), or an attempt to obtain a tax advantage, as sufficiently serious;
- the REIT Group has committed a certain number of breaches in a specified period; or
- HMRC has given members of the REIT Group two or more notices in relation to the obtaining of a tax advantage within a ten-year period.

REIT status is also lost automatically if:

- the conditions for REIT status relating to the share capital of the REIT and the prohibition on entering into loans with non-commercial returns are breached;
- the REIT ceases to be UK resident for tax purposes (or becomes dual-resident);
- the REIT becomes an open-ended investment company; or
- in certain circumstances, the REIT ceases to fulfil the close company conditions.

**5. Are there any other key tax consequences of being a REIT?**

A REIT will become subject to an additional tax charge if it pays a dividend to, or in respect of a holder of excessive rights. A holder of excessive rights is, broadly, any shareholder with a 10 per cent or greater holding which is a body corporate (or which is deemed to be a body corporate).

The additional tax charge will be calculated by reference to the whole dividend paid to a holder of excessive rights, and not just by reference to the proportion that exceeds the 10 per cent threshold. The tax charge will not be incurred if the REIT has taken reasonable steps to avoid paying dividends to such a shareholder. To demonstrate that it has taken such reasonable steps a REIT typically includes in its articles of association provisions allowing it to identify holders of excessive rights, withhold dividends from them, disenfranchise them and, ultimately, arrange for their shares to be sold.

**6. Who can be included in the REIT Group?**

All members of a group of companies (including non-UK tax resident companies) can be members of a REIT Group. A REIT Group consists of the parent company (which must be a UK tax resident company) and companies in which (directly or indirectly) the parent company owns 75 per cent of the ordinary share capital. The subsidiaries must also be "effective 51 per cent subsidiaries" (broadly speaking, the parent is beneficially entitled to more than 50 per cent of the company's distributable profits and will be entitled to more than 50 per cent of its assets on winding up). In broad terms, when looking at a REIT Group, the "property rental business conditions" need to be met by the group as a whole and "company conditions" need to be met by the holding company only.

**7. What is the key tax consequences of being a REIT?**

The core tax benefit of being a REIT is a UK tax exemption for the REIT Group on the profits of the property rental business.

---

## 8. What are the tax consequences for shareholders in the REIT?

### *PIDs*

UK tax resident shareholders will be taxed on PIDs paid by the REIT to satisfy the 90 per cent distribution test (see above) as if those dividends were rental income. An individual shareholder who is subject to income tax at the basic rate will be liable to pay income tax on the PIDs at a rate of 20 per cent, higher rate taxpayers at a rate of 40 per cent and additional rate taxpayers at a rate of 45 per cent.

If the REIT has other sources of profit, it may pay dividends out of those (non-property business) profits and they will be taxed as dividends in the normal way (i.e. at up to 38.1 per cent) for UK tax resident individuals.

Non-UK tax resident shareholders who receive a PID will generally be chargeable to UK income tax on the PID as profit of a UK property business and this tax will generally be collected by way of a 20 per cent withholding tax (see further below).

### *Disposal of REIT Shares*

Taxable UK tax resident shareholders will generally be subject to UK CGT in respect of any gain arising on the disposal of their REIT shares.

From April 2019, under the proposed rules to extend UK CGT to non-residents, taxable non-UK shareholders will also generally be subject to UK CGT on gains arising on the disposal of REIT shares. In common with the approach to investors in offshore collective property funds, shareholders will be within this non-resident CGT charge regardless of the size of their shareholding. The rules are due to provide for a “rebasement” to April 2019, so that only gains accruing after that date are taxed.

## 9. Is a REIT required to withhold tax on payments of PIDs?

Subject to certain exceptions summarised below, the REIT is required to withhold income tax at 20 per cent from its PIDs.

Individual UK resident shareholders may, depending on their circumstances, either be liable to further tax on the PID at the applicable marginal rate or be entitled to claim repayment of some or all of the tax withheld on the PID.

The REIT is not required to withhold income tax at source from a PID where the REIT reasonably believes that the person beneficially entitled to the PID is a company resident for tax purposes in the UK. The REIT is also not required to withhold income tax at source from a PID where the REIT reasonably believes that the PID is paid to the scheme administrator of a registered pension scheme, or the sub-scheme administrator of certain sub-schemes or the account manager of an ISA, provided the REIT reasonably believes that the PID will be applied for the purposes of the relevant scheme or account.

For non-UK tax resident shareholders, it is not possible to rely on a double tax treaty to pay PIDs free of withholding tax, but such shareholders may be able claim repayment of the tax withheld (depending on the terms of the relevant double tax treaty).

## 10. Can the REIT be an overseas entity or have overseas subsidiaries?

A REIT can be an overseas entity (e.g. a Jersey or Guernsey company) as long as it is solely UK tax resident. A REIT is not prohibited from having overseas subsidiaries but the tax consequences of doing so needs to be considered carefully.

## 11. Can a REIT hold overseas property or non-real estate assets?

A REIT can hold overseas property. A REIT can also hold non-real estate assets, provided that investing in such assets is within the scope of the REIT’s published investment policy. Such assets will not be treated as forming part of the property rental business.

## 12. Can a REIT be externally managed?

Yes, a REIT can either be internally or externally managed. If a REIT is externally managed, a REIT will enter into a management contract with its investment manager, which, among other things, provides for a management fee, a performance fee (if any) and termination rights. There are two primary consequences of external management under the Listing Rules:

### **Independence**

The board of directors of the REIT must be able to act independently of its investment manager. Both the chairman of the board and a majority of the board (which may include the chairman) must be independent. The Listing Rules set out in detail who is not independent (which is broadly persons with a substantive connection to the investment manager).

### **Related party transactions**

The investment manager and its group will be 'related parties' of the REIT, which means that, among other things, (subject to certain exceptions and unless the REIT is admitted to trading on AIM) transactions between the REIT group and the investment manager which exceed 5 per cent in the class tests set out in the Annex to Chapter 10 of the Listing Rules (which broadly compare the size of the REIT group against the size of the transaction using various metrics) require shareholder approval.

VAT is generally chargeable on the fee paid to an external adviser but with careful structuring it is possible to minimise any net VAT leakage to the REIT group.

### **13. Can a REIT be a 'blind pool' fund?**

Yes, REITs can be (and frequently are) established as a blind-pool funds (i.e. with no real estate assets held or contracted). However, the "REIT" will not be able to formally become a REIT (and obtain the tax benefits of so doing) until it meets the REIT qualifying conditions (including holding at least three qualifying properties, none of which represents more than 40 per cent of the total value of its properties).

The REIT's promoters will need to consider the effect on marketing that having no properties has. Investors may be more willing to invest if the REIT either has existing assets or has contracted to acquire properties – in effect to demonstrate a track record. If the REIT either already holds or has contracted to acquire properties, it will need to include a valuation report on those properties in the disclosure document (see question 19 below).

If the REIT does not hold any properties and has not contracted to acquire any at the time of launch, its promoters are, in marketing the REIT, likely to need to demonstrate a "pipeline" of investments.

### **14. Can a REIT invest substantially all of its assets in another fund?**

Yes but some restrictions apply. The REIT will first need to ensure that doing so does not make it lose REIT status (see question 4 above). The Listing Rules provide for two further restrictions:

### **Master fund investment policy**

If the REIT principally invests its funds (directly or indirectly) in another company that invests in a portfolio of investments (a master fund), the REIT must ensure that:

- the master fund's investment policy are consistent with the REIT's published investment policy and provide for spreading investment risk; and
- the master fund in fact invests and managers its investments in a way that is consistent with the REIT's published investment policy and spreads investment risk.

### **Cross-holdings**

No more than 10 per cent, in aggregate, of the value of the total assets of the REIT may be invested in other listed closed-ended investment funds. This restriction does not apply to investments in closed-ended investment funds which themselves have published investment policies to invest no more than 15 per cent of their total assets in other listed closed-ended investment funds.

### **15. What is a private REIT?**

A private REIT is a REIT that is not widely held or marketed. A private REIT takes advantage of markets such as the International Stock Exchange, which do not require REITs to have a "free float" and which do not have disclosure standards as onerous as those on other markets. Those establishing a private REIT will, however, need to think carefully about how the REIT is held in the context of other REIT qualifying conditions (such as the requirement for the REIT not to be a close company).

### **16. What regulatory permissions do a REIT / its promoters need to consider?**

The REIT will be an alternative investment fund (AIF) for the purposes of the EU directive on alternative investment fund managers (the AIFM Directive) and will, as a result, need to have an alternative investment fund manager (AIFM). The AIFM is responsible for the AIF's portfolio management and risk management.

The AIFM can be either external (i.e. a third party appointed by the REIT to be its AIFM) or internal (i.e. the REIT manages itself as its own AIFM). A UK AIFM (whether external or internal) must be authorised by the FCA under the AIFM Directive. Obtaining the requisite authorisation can take some time, so it can be preferable to appoint an existing authorised AIFM as the REIT's external AIFM. See question 12 above for more on appointing an external AIFM.

### 17. To what market should a REIT's shares be admitted?

The UK market that offers the greatest liquidity (including because admission to it is a requirement for inclusion in the FTSE indices) is the London Stock Exchange's Main Market. The rules of the Main Market are, however, more onerous than other markets. A comparison of the key eligibility requirements and the key ongoing obligations for each of the London Stock Exchange's Main Market, AIM Market and Specialist Fund Segment is set out below.

	Prospectus required	Key eligibility requirements	Key ongoing obligations	Sponsor
<b>London Stock Exchange Main Market: premium listing, Chapter 15 Closed-ended investment funds</b>	Yes.	<ul style="list-style-type: none"> <li>— Accounts (to the extent published) independently audited in accordance with EEA standards.</li> <li>— Sufficient working capital.</li> <li>— At least 25 per cent. of shares in public hands.</li> <li>— Securities must be freely transferrable and eligible for electronic settlement.</li> </ul>	<ul style="list-style-type: none"> <li>— Rules on risk spreading, feeder funds, cross-holdings, investment policy, independence from manager, related party transactions and issues of shares below NAV.</li> <li>— Compliance with Disclosure Guidance and Transparency Rules and Market Abuse Regulation: announcement of inside information, declarations of dealings by directors and senior managers, "closed periods", periodic financial reporting (annual and half-yearly), notification of significant shareholders, access to information and corporate governance.</li> <li>— Pre-emption rights for shareholders.</li> <li>— Rules on certain transactions (e.g. rights issues, open offers).</li> <li>— Rules on stock exchange notifications.</li> <li>— Rules on financial reporting.</li> <li>— Rules on share repurchases and treasury shares.</li> </ul>	Yes.

<b>London Stock Exchange AIM Market*</b>	<p>No (unless shares are being offered to the public. An admission document is required, which is less onerous than a prospectus but still a significant document).</p>	<p>£6m in cash must be raised by way of equity fundraising on or immediately before admission.</p> <p>Sufficient separation between issuer and any investment in which it takes a controlling stake.</p> <p>Sufficient experience of directors and investment manager.</p> <p>Shares freely transferrable and eligible for electronic settlement.</p>	<ul style="list-style-type: none"> <li>— Rules on investment policy.</li> <li>— Rules on disclosure of price-sensitive information.</li> <li>— Rules on disclosure of certain corporate transactions (and approvals if significant).</li> <li>— Rules on disclosure of miscellaneous information.</li> <li>— Limited compliance with the Disclosure Guidance and Transparency Rules: notification of significant shareholders only. Compliance with Market Abuse Regime.</li> <li>— Rules on financial reporting.</li> <li>— Compliance with corporate actions .</li> </ul>	<p>No, but nominated adviser required to be retained at all times, which is broadly equivalent to a sponsor.</p>
<b>Specialist Fund Segment</b>	<p>Yes.</p>	<ul style="list-style-type: none"> <li>— Securities freely tradable.</li> <li>— Must be a closed-ended investment fund.</li> </ul>	<ul style="list-style-type: none"> <li>— Notification of corporate actions.</li> <li>— Compliance with Disclosure Guidance and Transparency Rules and Market Abuse Regulation.</li> <li>— Entities on the Specialist Fund Segment, given its minimal ongoing obligations, frequently comply voluntarily with some or all of the ongoing obligations under the Listing Rules.</li> </ul>	<p>No but an investment bank/corporate finance house would typically perform a similar role.</p>

## 18. What are the principal workstreams for admission to trading?

- *Eligibility:* a REIT seeking admission to the Main Market would typically submit an eligibility letter to the UKLA at the same time as submitting the prospectus for first review. The eligibility letter can be submitted earlier, but doing so is likely to delay the process. The AIM Market requires an early consultation with the AIM team and, as such, eligibility will be addressed at an early stage. Given the limited eligibility requirements for the Specialist Fund Segment, the eligibility process is more informal on that market.
- *Due diligence:* if the REIT has an existing business, legal and financial due diligence will be carried out by the REIT's lawyers and reporting accountants. Significant input will be needed from the REIT / its promoters to respond to document request lists and follow-up questions.
- *Accounts:* if the REIT has financial history, it will need to prepare accounts for the last three years (or the period of its operations if shorter) in accordance with IFRS. Those accounts will need to be reported on by the REIT's reporting accountants.
- *Working capital:* in its disclosure document, the REIT will be required to state that it has sufficient working capital for the next twelve months. In order to support this statement, a REIT / its promoters will prepare a working capital model showing cashflow and expenditure projections (typically over a longer period than the 12 month period), including a base case and a downside case with sensitivities applied. The working capital model will be reviewed in detail by the REIT's reporting accountants and its sponsor / nominated adviser.
- *Contractual arrangements:* the REIT will need to enter into contractual arrangements with its service providers and advisers. If the REIT is externally managed, the management contract is the critical contract and will be scrutinised by the sponsor / nominated adviser and its lawyers. If the REIT is internally managed, it may wish to put employee incentives in place.
- *Valuation report:* if the REIT has existing properties or has contracted to acquire properties, it will need to obtain a third party valuation report in respect of those properties. The valuation report is typically prepared in accordance with the RICS "red book".
- *Governance:* the REIT will need a board of directors (typically wholly non-executive if the REIT is externally managed). The length of the recruitment process for finding directors that have the requisite experience and skills and fit with the corporate governance requirements for a REIT should not be underestimated. Careful thought also needs to be given to the composition of, and terms of reference for, board committees. In addition, the directors will need time to familiarise themselves with the REIT's operation and be informed of their responsibilities and liabilities as directors of the REIT.
- *Financial position and prospects procedures:* it will be very important for the board of the REIT to have accurate and timely information on the REIT's operations and finances so that decisions can be made on a timely basis as to whether any public announcements are required. A REIT will therefore prepare a detailed memorandum on financial position and prospects procedures (usually using a template provided by the reporting accountants), which will then be reviewed in detail by the REIT's reporting accountants and its sponsor / nominated adviser.
- **The disclosure document and verification:**
  - The principal disclosure document for a REIT whose shares are to be admitted to either the Main Market or the Specialist Fund Segment is a prospectus. See question 19 below for details of the principal contents requirements for a prospectus.
  - If the REIT's shares are to be admitted to trading on the AIM Market, the principal disclosure document is an AIM admission document which, while broadly similar in terms of content to a prospectus, does not need to be vetted by the regulator prior to publication.
  - A prospectus will be subject to the review of the United Kingdom Authority (UKLA). A prospectus typically takes 6-8 weeks from first submission to clear comments from the UKLA. There is no such review process for an AIM admission document but the nominated adviser will need to be satisfied that it contains the prescribed contents.
  - Given the risk of liability for the REIT and its directors for false or misleading statements in the disclosure document, the disclosure document is typically subjected to a verification exercise which seeks to identify evidence supporting the truth of each statement made in the disclosure document. REITs also typically take out prospectus insurance with an insurance broker.

- **Marketing and fundraising:** assuming that the REIT wishes to raise new money on admission and / or existing shareholders in the REIT want to sell shares on admission, the REIT / its promoters will typically conduct a “roadshow” for prospective investors using a marketing presentation, which is consistent with the contents of the disclosure document (and which will also be verified).

### 19. What are the principal contents requirements of a prospectus for a REIT?

A prospectus for a REIT would typically include:

- **A summary**, which must follow a prescribed format and be a fair summary of the prospectus as a whole.
- **Risk factors:** which will be tailored to the particular operations of the REIT.
- **A business description:** this typically comprises (among other things) an introduction, the history of and background to the business, an overview of the business, including investment objective, investment policy, investment strategy, investment restrictions, valuation policy, and a comprehensive and meaningful portfolio analysis\*.
- **Details of the directors, management (including track record) and corporate governance.**
- **A property valuation report** (see question 18 for more details).\*
- **Historical financial information and (if necessary e.g. because the REIT has contracted to acquire properties) pro forma financial information.\***
- **Capitalisation and indebtedness tables.**
- **An operating and financial review (OFR):** being a narrative description of the REIT’s financial condition, operating results and capital resources in relation to the period covered by historical financial information.\*
- **Taxation summaries for the issuer and shareholders.**
- **Additional information:** containing miscellaneous details required by the Prospectus Directive, such as material contracts, share capital history and director remuneration.

### 20. What principal third party service providers and advisers does a REIT need in connection with admission?

- **Investment Manager / investment adviser:** if the REIT is to be externally managed, it will need an investment manager to, among other things, perform the function of an Alternative Investment Fund Manager (**AIFM**) under the AIFM Directive. If the promoter of the REIT is not already authorised as an AIFM, it may take a significant amount of time to obtain an AIFM licence. In those circumstances, REITs often appoint an existing AIFM (there are a number of “out-of-the-box” AIFM providers in the market) as their AIFMs (whether temporarily or permanently), with the promoter acting as investment adviser.
- **Administrator / Company Secretary:** externally managed REITs will typically need an administrator and company secretary to perform certain accounting, administration and secretarial services.
- **Sponsor / nominated adviser:** a sponsor’s primary responsibility is to confirm to the United Kingdom Listing that a REIT has satisfied all of the requirements for listing. It will also provide advice on the listing rules and corporate finance advice including on timetable, structure and marketing. A nominated adviser performs a similar function in relation to the AIM Market.
- **Broker:** the role of the broker (there may be more than one) is to procure subscribers and / or purchasers for shares in the offering and to assist in the management of communications and information flow to and from shareholders. The broker may be the same entity as the sponsor / nominated adviser, although some REITs prefer the sponsor / nominated adviser to be independent.
- **Lawyers:** the REIT’s lawyers are typically responsible for, among other things, producing a legal due diligence report on the REIT, drafting the disclosure document (with input from others), advising on an appropriate structure for the REIT group (including from a tax perspective), drafting and negotiating all legal documentation and performing a verification exercise on the disclosure document and marketing presentation.

\* Not relevant for blind pool funds.

- 
- **Reporting Accountants:** the REIT's reporting accountants are typically responsible for, among other things, producing a financial due diligence report on the REIT, reporting on the REIT's historic financial information, reviewing the REIT's working capital position and its financial position and prospects procedures.
  - **Debt providers:** REITs typically employ some gearing and so it is usual for a REIT to have one or more debt facilities. See question 4 for restrictions on borrowing by REITs.
  - **Registrar:** the registrar will maintain the share register of the REIT.
  - **Receiving Agent:** if the REIT raises money through an offer for subscription, the receiving agent manages receipt of subscription forms. Typically, the receiving agent operates in the same organisation as the registrar.
  - **Depository:** to comply with the AIFM Directive, a depository will need to be appointed to perform certain functions (e.g. cash flow monitoring and verification of the REIT's ownership of its property assets), although a lighter-touch regime may apply to REITs that are overseas entities, such as Jersey or Guernsey companies.
  - **Valuer:** the valuer produces the valuation report referred to in question 18 above.
  - **PR advisers:** REITs typically appoint PR advisers to manage the process of public communications in connection with admission.
  - **Insurance broker and underwriter:** a REIT will typically take out both directors and officers liability insurance and public offering of securities insurance.
- directors should be submitted for re-election at regular intervals. Nomination for re-election should not be assumed but be based on disclosed procedures and continued satisfactory performance;
  - the board should have a policy on tenure, which is disclosed in the annual report;
  - there should be full disclosure of information about the board;
  - the board should aim to have a balance of skills, experience, length of service and knowledge of the company;
  - the board should undertake a formal and rigorous annual evaluation of its own performance and that of its committees and individual directors;
  - director remuneration should reflect their duties, responsibilities and the value of their time spent;
  - the independent directors should take the lead in the appointment of new directors and the process should be disclosed in the annual report;
  - directors should be offered relevant training and induction;
  - the chairman (and the board) should be brought into the process of structuring a new launch at an early stage;
  - boards and managers should operate in a supportive, co-operative and open environment;
  - the primary focus at regular board meetings should be a review of investment performance and associated matters such as gearing, asset allocation, marketing / investor relations, peer group information and industry issues;
  - boards should give sufficient attention to overall strategy;
  - the board should regularly review both the performance of, and contractual arrangements with, the manager (or executives of a self-managed company);
  - the board should agree policies with the manager covering key operational issues;
  - boards should monitor the level of the share price discount or premium (if any) and, if desirable, take action to reduce it;
  - the board should monitor and evaluate other service providers;

## 21. What corporate governance standards apply to a REIT?

REITs typically report against the Association of Investment Companies (AIC) Code of Corporate Governance (the AIC Code), as it is specifically tailored to closed-ended investment companies. Reporting against the AIC Code satisfies any requirement to report against the UK Corporate Governance Code.

The AIC Code has 21 principals, which are as follows:

- the chairman should be independent;
- a majority of the board should be independent of the manager;

- the board should regularly monitor the shareholder profile of the company and put in place a system for canvassing shareholder views and for communicating the board's views to shareholders;
- the board should normally take responsibility for, and have a direct involvement in, the content of communications regarding major corporate issues even if the manager is asked to act as spokesman; and
- the board should ensure that shareholders are provided with sufficient information for them to understand the risk : reward balance to which they are exposed by holding the shares.

## 22. How long does it take to launch a REIT?

The time taken to launch a REIT will depend on a number of factors, including the complexity of existing business and the offering but a REIT is typically capable of being launched within four to six months of starting work.

### Contact details

If you would like further information or specific advice please contact:



#### Robert Boyle

Partner  
Corporate and M&A  
DD +44 (0)20 7849 2863  
robert.boyle@macfarlanes.com



#### Mark Slade

Senior counsel  
Corporate and M&A  
DD +44 (0)20 7849 2269  
mark.slade@macfarlanes.com



#### Jeremy Moncrieff

Partner  
Tax  
DD +44 (0)20 7849 2476  
jeremy.moncrieff@macfarlanes.com



#### Lora Froud

Partner  
Investment management  
DD +44 (0)20 7849 2409  
lora.froud@macfarlanes.com



#### Nick Barnes

Partner  
Real estate  
DD +44 (0)20 7849 2914  
nick.barnes@macfarlanes.com

November 2018

### Macfarlanes LLP

20 Cursitor Street London EC4A 1LT

T +44 (0)20 7831 9222 | F +44 (0)20 7831 9607 | DX 138 Chancery Lane | [www.macfarlanes.com](http://www.macfarlanes.com)

This note is intended to provide general information about some recent and anticipated developments which may be of interest. It is not intended to be comprehensive nor to provide any specific legal advice and should not be acted or relied upon as doing so. Professional advice appropriate to the specific situation should always be obtained.

Macfarlanes LLP is a limited liability partnership registered in England with number OC334406. Its registered office and principal place of business are at 20 Cursitor Street, London EC4A 1LT. The firm is not authorised under the Financial Services and Markets Act 2000, but is able in certain circumstances to offer a limited range of investment services to clients because it is authorised and regulated by the Solicitors Regulation Authority. It can provide these investment services if they are an incidental part of the professional services it has been engaged to provide. ©Macfarlanes 2018 (1118)