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Pocket Guide

OPCI 2018

An innovative real estate investment vehicle

Regulations and practical matters in 135 Q&A

November 2017
Tenth edition

Developments in the OPCI market
Source: IEIF

Editorial by the ASPIM and AFG

pwc

Pocket Guide

OPCI 2018

An innovative real estate investment vehicle

Pocket Guide drafted by our OPCI specialists in the Real Estate sector

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November 2017

Introduction

Since its creation 12 years ago, the real estate collective investment undertaking (*Organisme de Placement Collectif en Immobilier* – OPCI) has continued to gather momentum in the French real estate investment product market, with a sharp increase in assets under management, from €6 billion at 31 December 2008 to more than €78 billion at 31 December 2016, of which nearly €10.5 billion relates to Retail OPCIs. At that date, OPCIs made up more than 31% of assets under management in the OPCI/SCPI/SIIC sector (compared to 27% at 31 December 2015) and nearly 24% in the institutional real estate investment sector (compared to 18% at 31 December 2015) (Source IEIF).

In a rapidly changing economic environment that continues to be marked by exceptionally low interest rates and ongoing regulatory changes, OPCIs have continued to be created at a steady pace, reflecting their strong appeal and particular suitability to institutional investors (either individuals or club deals) and the general public. The number of OPCIs in existence grew from 59 at end-2008 to 277 at end-2016. Furthermore, at 30 September 2017, there were nearly 360 OPCIs.

New asset classes focused on social, environmental and technological issues are emerging and becoming increasingly central to discussions about OPCIs and their creation.

The regulatory nature of these vehicles and management companies has fuelled the creation of OPCIs by investors seeking greater control and reassurance. International investors are becoming increasingly aware of and attracted by OPCIs and their intrinsic qualities both from a regulatory standpoint and the greater operating flexibility they now offer thanks to the provisions of the AIFM Directive introduced three years ago.

Since 2014, "non-professional" or Retail OPCIs (13 at 31 December 2016, with nearly €10.5 billion in managed assets, including two OPCIs representing more than 75% of this amount alone) have benefited from stronger growth, particularly under life insurance contracts, which accelerated even further in 2015 and 2016.

This tenth edition of the Pocket Guide, prepared by real estate and collective management specialists at PwC, takes a look at changes observed and applicable legislation, in the form of 135 questions and answers. Its concrete approach is based on PwC's experience in the field working alongside asset managers and other stakeholders.

Contents

References to applicable legislation

References to articles of the French Financial and Monetary Code (*Code Monétaire et Financier* – FMFC) or the General Regulations of the French Financial Markets Authority (*Règlement général de l'Autorité des Marchés Financiers* – GR AMF) in this document are indicated by a footnote, and are listed in the appendix.

Editorial

OPCIs: growth that counts!

Eric Pinon, Chairman of the French asset management association (Association française de la gestion financière *– AFG) and Frédéric Bôl, Chairman of the French association of real estate funds* (Association française des sociétés de placement immobilier *– ASPIM)*

In France, some industries are still seeing double-digit growth and OPCI management is a prime example of such an industry. With gross assets peaking at €78.1 billion at end-2016 (of which €67.7 billion was attributable to the formula reserved for professional investors), the scope of this vehicle has expanded by more than 26% in 12 months and by more than 250% in five years. This growth demonstrates that, some ten years after the first approvals were granted by the AMF, OPCIs have become a collective management tool that harnesses the risk-adjusted performance these alternative asset classes are known for.

At the other end of the chain, OPCIs finance an essential business need in our country: providing premises for companies. After all, how can an industrial production facility, a logistics operation, a shopkeeper or even a start-up thrive without a roof over its head? Moreover, micro-enterprises, middle-market companies and other major players are not necessarily destined to become, or interested in becoming, owners of their indispensable business space. On the one hand, a company needs to be able to increase or reduce costs depending on its stage of development: the need for flexibility goes beyond the labour market. On the other hand, the owner of a building is tying up a significant amount of capital that a company could put to better use otherwise, such as for its core business. Also, it is sometimes difficult for a company to gain access to financing. Everyone who has ever rented or is currently renting knows how important it is to work with a professional lessor that is able to put properties on the rental market which conform to the most recent standards required by the public interest and tenants (energy consumption and carbon footprint of buildings and their users, quality of life in the workplace, etc.).

Accordingly, ASPIM and AFG will maintain the same level of vigilance in order to protect real estate funds' positive image among public authorities. Recent developments, including the pension fund (*Caisse de retraites*) decree and the creation of a real estate wealth tax (*impôt sur la fortune immobilière* – IFI), show that such vigilance is truly necessary.

We are happy to present the tenth edition of the Pocket Guide published by specialists from PwC and PwC Société d'Avocats, who share their expertise in the form of 135 questions based on practical issues encountered by OPCI stakeholders (managers, chartered accountants, appraisers, depositaries, etc.).

We hope that you will enjoy reading it too!

November 2017

***Frédéric Bôl**, Chairman of ASPIM*

***Eric Pinon**, Chairman of AFG*

The OPCI market at end-2016

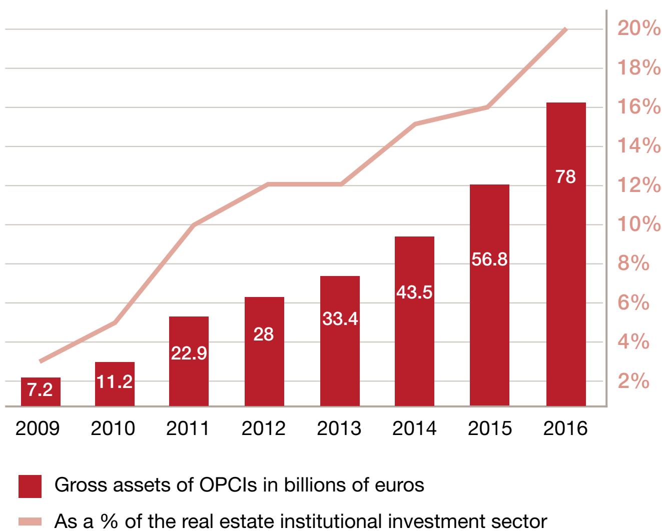
Source: Annual OPCI Directory 2017
Ninth edition, (Excerpts) published by the Institut de l'Épargne Immobilière et Foncière *(IEIF) - 2017*

Key figures of the OPCI sector

OPCIs were first created for the benefit of institutional investors in the form of OPCIs with streamlined operating rules (Simplified OPCIs, which became Professional OPCIs in 2013). Although first introduced in 2008, Retail OPCIs only really began to take off in 2012, when they were first used to back unit-linked life insurance funds.

At the end of 2008, the total gross assets under management of Retail and Professional OPCIs amounted to €6 billion. By the end of 2016, the figure was 13 times higher at nearly €78 billion (up 26%). In less than ten years, the number of OPCIs in existence grew 470% from 59 at end-2008 to 277 at end-2016.

Gross assets of OPCIs (in billions of euros)



Source: IEIF

With 19.5% of the institutional real estate investment market in France in 2016 (estimated to be worth €330 billion at end-2016), growth of OPCIs has risen. They currently rank third, behind institutional investors (representing 29.8% of the investment sector) and SIICs (27%), but well ahead of SCPIs (12.4%) for several years now.

Professional OPCIs account for 87% of the gross assets of OPCIs, i.e., €67.7 billion (up 18%), the vast majority of which are dedicated funds (94%).

In 2016, the gross assets of Retail OPCIs enjoyed strong growth, amounting to €10.4 billion (a €5.3 billion increase), representing a rise of 104% in comparison with 2015. They remain less developed than OPCIs, however, only representing 24% of the capitalisation of SCPIs (€43.5 billion) at end-2016, versus 13% in 2015. Their growth has occurred at an extremely fast pace, at a rate of 400% between 2014 and 2016, ahead of the growth of SCPIs (90%) and listed real estate companies (14%), which recorded lower inflows.

Retail and Professional OPCIs have continued to grow over the years, with their gross assets increasing at a quicker pace than the capitalisation of SCPIs, at a rate of 25% between 2015 and 2016 (compared with 36% between 2014 and 2015), versus 15% for SCPIs (unchanged). Although capitalisation levels were virtually the same in 2013, OPCIs have stood out in recent years: in 2015, gross assets were 1.6 times higher than the capitalisation of SCPIs. In 2016, they were 1.8 times higher than the capitalisation of SCPIs.

Comparison of gross assets of OPCIs, SCPIs and SIICs

Sector capitalisation (in billions of euros)	2015	2016	Change
Gross assets of OPCIs	**61.9**	**78.1**	**26%**
of which professional OPCIs	56.8	67.7	19%
of which Retail OPCIs	5.1	10.4	104%
Capitalisation of SCPIs	**37.8**	**43.5**	**15%**
Gross assets of SIICs	**127.5**	**128.5**	**1%**
Total OPCI/SCPI/SIIC	**227.2**	**250.1**	**10%**
Institutional investment sector	**342**	**330**	**-4%**

Sources: IEIF, Euronext

Portfolio management companies

The number of AMF-approved OPCI management companies is still rising sharply while the number of SCPI management companies remains stable and the number of SIICs is decreasing as a result of the sector's consolidation. This trend, which goes back several years, has continued in 2016.

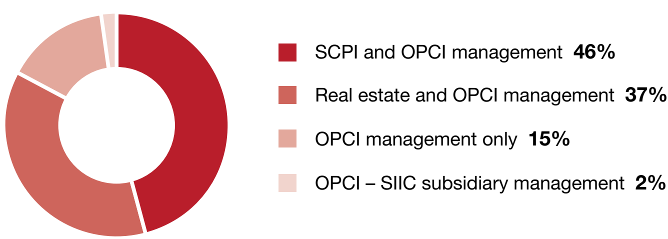
Change in number of portfolio management companies and SIICs

Number of portfolio management companies	2014	2015	2016	Change
Number of OPCI management companies	80	93	101	9%
Number of SCPI management companies	27	28	28	-
Number of SIICs	34	32	31	-3%

Sources: IEIF, Euronext

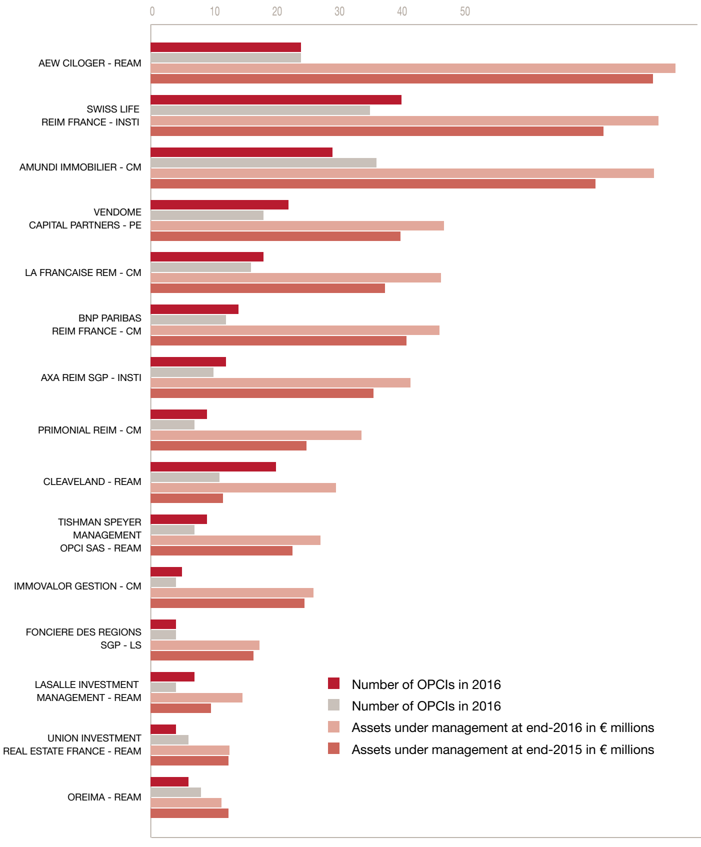
OPCI management companies have various different origins. The largest category in terms of gross assets under management is the real estate asset management category (for French or international institutional investors), accounting for 46% (up 13%) of gross assets under management at end-2016. The second-largest category is SCPIs, accounting for 37% (up 16%), followed by OPCIs, representing 15% (down 6%) and which are often subsidiaries of management companies specialised in private equity. Finally, to a lesser extent, certain SIICs have created OPCI management company subsidiaries aimed at diversifying their financing sources while also building on their real estate management expertise.

OPCI management company categories by origin
(as a % of gross assets under management at end-2016)



At end-2016, 15 OPCI management companies recorded gross assets of over €1 billion on an individual basis (versus 16 in 2015). Their combined gross assets amounted to nearly €60 billion (up 20%), representing 89% (a 700 basis point increase) of the total professional OPCI sector. At end-2016, eight portfolio management companies manage total gross assets of more than €3 billion, three manage between €2 billion and €3 billion, while four manage between €1 billion and €2 billion.

Portfolio management companies' gross assets under management at end-2016 (in descending order)



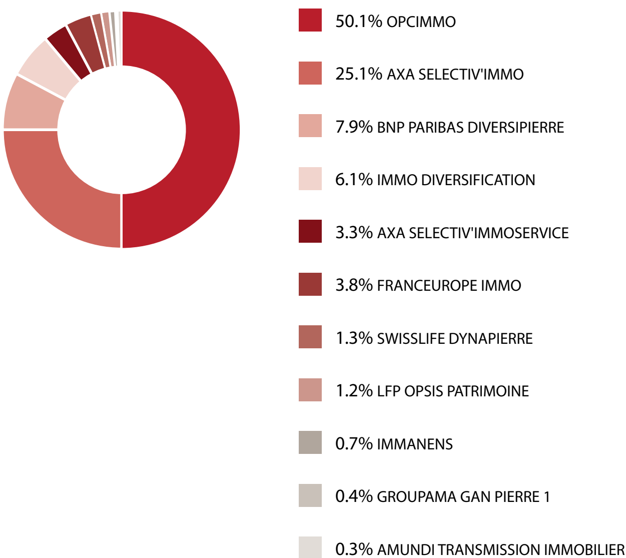
REAM – Real Estate Asset Management   PE – Private Equity   CM – Collective Management   INSTI – Institutional Investors   LS – Land Subsidiary

Source: IEIF

Retail OPCIs

At the end of 2008, the gross assets of Retail OPCIs amounted to €7.6 million, divided between three OPCIs. Since 2012, the gross assets under management of these vehicles have risen sharply to reach €5.1 billion at end-2015, divided between 11 OPCIs. As in 2015, a new threshold was crossed: the number of Retail OPCIs grew to 13 with total gross assets of €10.4 billion, representing a 200% increase in the gross assets of Retail OPCIs in one year.

Retail OPCIs – Capitalisation at end-2016



Source: IEIF

The inflows of Retail OPCIs have continued to grow steadily since their creation. In 2016, inflows into real estate funds for individual investors relating to Retail OPCIs represented 41.6% (up 10.7%) of total inflows, compared to just 0.7% in 2008.

Despite this, Retail OPCIs still account for a small percentage of the total capitalisation of real estate funds for individual investors, representing just 6.7% (up 3.6%) of the €1,231 billion corresponding to the combined capitalisation of SIICs, SCPIs, real estate UCITS and Retail OPCIs at end-2016.

Compared to other vehicles, whether they are listed (SIICs or real estate UCITS) or unlisted (SCPIs), Retail OPCIs were created quite recently. However, proportionally they have grown at a much faster rate than these other vehicles over the last nine years.

This is obviously not the case when the actual amounts invested are taken into consideration, with an increase of €37.7 billion for SIICs, €26.2 billion for SCPIs, €8.7 billion for real estate UCITS and €6.9 billion for Retail OPCIs.

In 2016, the net assets of Retail OPCIs increased significantly (92%), more so than those of SCPIs (15%) and SIICs (1.5%). The net assets of real estate UCITS, however, fell by 7% in 2016.

Professional OPCIs

Professional OPCIs make up 92% of the gross assets of OPCIs (i.e., €56.8 billion).

In terms of gross assets managed by funds, the average size of professional OPCIs slightly exceeds that of SCPIs (€221 million). However, it should be noted that major differences exist within the sector, where funds can range from a couple of million euros to more than a billion euros (for 2% of professional OPCIs in numerical terms).

Number of funds	2015	2016	Change
Number of OPCIs	**259**	**277**	**7%**
of which professional OPCIs	248	264	6%
of which Retail OPCIs	11	13	18%
Number of SCPIs	**173**	**178**	**3%**
Number of SIICs	**32**	**31**	**-3%**

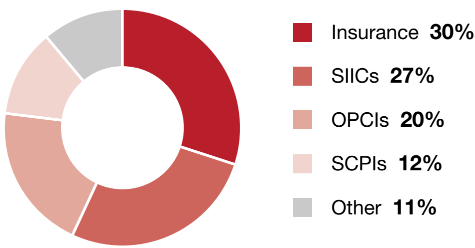
Average gross assets managed (in millions of euros)	2015	2016	Change
OPCIs	**240**	**265**	**10%**
of which professional OPCIs	229	241	5%
of which Retail OPCIs	466	796	71%
SCPIs	**221**	**244**	**10%**
SIICs	**3,984**	**4,145**	**4%**

OPCIs in the French institutional investment sector

In 2016, OPCIs represented nearly 19.5% of the French institutional real estate investment market. At 31 December 2016, the total assets of OPCIs amounted to €64.2 billion in an investment sector valued at €330 billion.

They therefore currently lie in third position, behind institutional investors (representing 29.8% of the investment sector) and SIICs (27%), but ahead of SCPIs (12.4%) and other investors (11.4%).

Holdings in the real estate investment sector at end-2016



Source: IEIF, AF2I, MSCI Real Estate

http://www.ieif.fr

http://www.aspim.fr

http://www.afg.asso.fr

OPCIs: an innovative legal system

Overview

OPCI stands for *Organisme de Placement Collectif Immobilier*, or real estate collective investment undertaking. OPCIs are unlisted property investment vehicles that are largely governed by the FMFC[1] and the GR AMF[2].

OPCIs work in much the same way as general alternative investment funds.

They are set up[3] as either SPPICAVs (*Société de Placement à Prépondérance Immobilière à Capital Variable*, i.e., an open-ended real estate investment company), or FPIs (*Fonds de Placement Immobilier*, i.e., a real estate fund), and must be approved by the AMF. OPCIs are managed by a portfolio management company (*Société de Gestion de Portefeuille* – SGP) controlled by a depositary.

The rules governing the composition of the OPCI's assets – property, financial instruments or liquid assets – offer varying degrees of latitude depending on the type of investor. The category of investor also determines the permissible debt ratio.

Within the limits defined by the law, OPCIs can be either "pure" with up to 95% of property assets, or "diversified" with at least 60% of real estate assets and up to 35% of other assets. Except in special cases, they must hold at least 5% in liquid assets at every net asset valuation.

The higher the proportion of real estate assets, the greater the importance of liquidity issues in light of the AMF criteria (valuation frequency, redemption terms, etc.).

Q1. What changes were introduced under the modernisation measures implemented with the transposition of the AIFM Directive?

Various measures to simplify the ranges of alternative vehicles were introduced in July 2013.

Only two categories of OPCI remain:

- those open to non-professional investors, namely the former Retail OPCIs and Unleveraged Simplified OPCIs (*OPCI à règles de fonctionnement allégées sans effet de levier* – OPCI RFA SEL): these are now known simply as "OPCIs";
- OPCIs reserved for professional investors, corresponding to former Leveraged Simplified OPCIs (*OPCI à règles de fonctionnement allégées à effet de levier* – OPCI RFA EL), which are now known as "professional OPCIs".

The main changes to the rules governing these vehicles were as follows:

- alignment of rules applicable to OPCIs open to non-professional investors with those applicable to the former Unleveraged Simplified OPCIs, especially as concerns asset composition ratios and subscription and redemption terms;
- the option to appoint a single external valuer (what used to be known as the "property expert") for professional OPCIs.

This Pocket Guide only presents rules that are currently in force.

For the purposes of this guide the term "OPCI" refers to both OPCIs and professional OPCIs, unless stated otherwise.

Q2. How do the regulatory texts (FMFC and GR AMF) define "authorised investors"?

Authorised investors that may subscribe for professional OPCI shares or units are those that:

- meet the legal criteria defined by the FMFC ("professional clients"[4]); and
- certain categories of investor defined by the GR AMF.

For all professional OPCIs	No minimum investment other than that defined, if any, in the prospectus: Investors defined as, or that have elected to be defined as, professional clients[5] (legal criteria defined by the FMFC).
	With an investment equal to or greater than €100,000: All investors[6].
	If the subscription or acquisition is made by an Investment Services Provider (ISP) in its capacity as a portfolio management investor, no minimum investment other than that defined, if any, in the prospectus: All investors[6].
For professional OPCIs approved as European Long Term Investment Funds (ELTIF)	With an investment equal to or greater than €10,000: All investors[6].

Investors who fall into the last three categories listed above and who are authorised to invest in professional OPCIs may not, however, be considered as professional clients, nor be classified as such by the portfolio management company.

Q3. OPCIs are eligible for unit-linked contracts issued by insurance companies. Is this eligibility subject to restrictions?

OPCIs are indeed eligible (or "admissible" in the terminology of the French Insurance Code [*Code des assurances*]) for unit-linked contracts[8], but a certain number of restrictions apply.

First, only OPCIs open to non-professional investors can be used to back unit-linked contracts, so OPCIs open to professional investors are excluded.

Furthermore, the OPCI's articles of association or internal regulations must provide for the redemption of the units or shares without any restrictions whatsoever within two months of the holder's request.

According to the contractual provisions, the amount paid is equal to the units' or shares' conversion value in currency or euros, based on their redemption value on the date stipulated in the contract. This date must fall within two months of the date the service request is received.

Under the French Insurance Code, the share of a contract's premium represented by dedicated OPCIs open to non-professional investors who have opted to hold over 10% of shares or units in other OPCIs is limited to 30%.

In our opinion, this latter provision seems to discount the possibility for dedicated OPCIs open to non-professional investors who wish to be eligible for unit-linked contracts, to hold OPCIs open to professional investors.

Purpose of OPCIs

The **main purpose**[9] of an OPCI is to:

- invest, directly or indirectly, in **real estate**, including off-plan property, which is intended to be leased;
- build property to be held either directly or indirectly for the purpose of leasing it;
- carry out any kind of work on such property (building work, renovation and rehabilitation) with a view to leasing it;
- perform any work necessary for the use and resale of the real estate held.

The **secondary purpose**[9] of OPCIs is to:

- manage financial instruments and deposits;
- acquire, directly or indirectly and for the purpose of leasing it, furniture, equipment or any other movable property allocated to the investment properties and necessary for the operation, use or exploitation thereof by a third party.

Q4. What categories of property can OPCIs hold?

The types of property that are eligible to be held by OPCIs[10] include property built or acquired for rental purposes. However, OPCIs may also hold:

- real rights to such property;
- lessee rights under the terms of leases to such property.

Property built or bought with a view to leasing	1. Property leased or available for lease on the date of its acquisition by the organisation or by any legal entity that has entered into a usufruct agreement. 2. Property that the investor has had built, rehabilitated or renovated with a view to leasing it, either himself or by any legal entity that has entered into a usufruct agreement. This property can be acquired under: – deferred sale contracts; – off-plan sale contracts; – contracts for the sale of buildings to be renovated or rehabilitated, or subject to property development contracts. 3. Undeveloped land in urban areas or areas to be urbanised under town planning documents.
Real rights to such property	1. Ownership, bare ownership and usufruct. 2. Leasehold. 3. Easements. 4. Rights given to the holders of construction leases and rehabilitation leases. 5. All real rights, held under deeds or long-term leases for the occupation of property belonging to central or local government, or a public body, to structures, buildings or installations located on said property. 6. Other surface rights. 7. Any right under the application of foreign law which is also comparable to one of the rights listed under points 1 to 6.

Based on this exhaustive list, lessee rights held under the terms of a lease are directly eligible to be held by OPCIs when they involve an eligible property.

Q5. What are the different forms of property investment?

Real estate held under OPCIs may be:

- directly acquired by the OPCI;
- received in the form of contributions in kind as part of a subscription, reverse merger or spin-off of another OPCI or SCPI[11].

Q6. Can OPCIs act as real estate dealers?

No, OPCIs may not acquire real estate with the sole purpose of selling it, and so cannot act as real estate dealers. However, we believe that in the absence of any specific legal proscription, OPCI subsidiaries may be permitted to operate as real estate dealers provided that this is a secondary occupation.

This provision does not concern bare ownership investments in residential real estate assets, which can be sold at any time.

Q7. Is there a minimum waiting period before assets can be sold?

No, the legal and regulatory provisions do not stipulate any minimum waiting period before an asset can be sold. However, as well as the prohibition against carrying out real estate transactions, it is also important to be aware of the need to respect the basic purpose of OPCIs, i.e., to invest in property (acquisition/ construction) with a view to leasing it. Consequently, where the assets are sold shortly after the acquisition, the interests of the investor must be analysed.

Q8. Can OPCIs invest in real estate outside France?

Yes. There is no legal barrier to direct or indirect investments by OPCIs in property outside France, although this kind of investment should be specifically included in the terms of the vehicle's prospectus. The portfolio management company must also be able to carry out and manage these investments.

Q9. Can OPCIs grant current account advances to their shareholders?

No. The legal and regulatory provisions that define the eligible assets stipulate that an OPCI may only grant current account advances to unlisted companies investing predominantly in real estate in which it directly or indirectly holds at least 5% of the capital.

OPCI legal forms

OPCIs take one of two legal forms:

- a SPPICAV, a joint-stock company (SA) or a simplified joint-stock company (SAS) with variable capital;
- an FPI, an unincorporated co-ownership scheme.

The legal form chosen affects the tax regime applied to investors and the rules governing asset eligibility.

The first FPI was approved in the first quarter of 2012 following the conversion of an SCPI. This form of vehicle remains rare at the time of writing.

Q10. What are the main advantages of setting up a SPPICAV as an SAS?

The FMFC provides for the creation of SPPICAVs as SASs[12].

This new development has enabled greater flexibility in the creation and operation of SPPICAVs, by virtue of:

- the absence of a minimum number of partners ("one or more persons"[13]);
- the relaxation of some regulatory obligations, including the preparation of the statutory financial statements.

It is important to remain prudent, however, when setting up a SPPICAV as an SAS – if the articles of association of the SPPICAV do not permit more than one partner, the SPPICAV may not be considered as an alternative investment fund (AIF).

An SAS is also a check-the-box entity (unlike an SA). For US tax reasons, investors prefer this kind of entity.

Q11. Are OPCIs considered as making public offerings?

No. OPCIs fall by law outside the scope of public offerings[14], and they may not be listed.

Unlike listed SIICs (*Sociétés d'investissements immobiliers cotées* – French REIT style entities), OPCIs are not bound by the same disclosure obligations as listed companies.

OPCIs do nevertheless have a specific disclosure obligation (see Q125, Q126 and Q128).

Q12. Who can invest in an OPCI?

Regardless of the legal form, OPCIs can be either:

- open to non-professional investors looking for a collective property investment vehicle; or
- exclusively reserved for "**authorised investors**" (see Q2), whether French or foreign (professional OPCIs).

OPCIs may be "dedicated"[15]:

- to a maximum of 20 investors; or
- to a specific category of investor that is clearly defined in the prospectus.

In any event, the OPCI's prospectus defines for whom the investment vehicle is intended, and the management company or the depositary, depending on the circumstances, ensures that each subscription complies with this provision.

Q13. What structures can allow investors to be treated differently within a single OPCI?

As a general principle, shareholders must receive equal treatment. The prospectus may however define special principles in one of the following cases:

- the creation of an OPCI with classes of unit. In this situation, the assets of the OPCI are considered to be indivisible and common to all shareholders. However, the OPCI can issue units with different characteristics, including:

- – the par value or currency of the units;
  – the management and/or subscription and redemption fees applied;
  – the rights granted to the net assets or income.
- the creation of an OPCI with sub-funds[16]. In this case, each sub-fund is managed like a separate OPCI and has its own discrete assets within the OPCI, unless otherwise stated in the prospectus. Investors subscribe specifically to the units of one of the sub-funds. The sub-funds may themselves have different classes of unit.

Q14. Are there any specific constraints in managing an OPCI with sub-funds?

Managing this kind of OPCI requires that each sub-fund complies with:

- the relative composition of the asset portfolio, and the division of risk, debt and control;
- the minimum amounts defined for net assets.

The sub-funds keep their own accounts, calculate their own net asset value, and issue periodic regulatory disclosures.

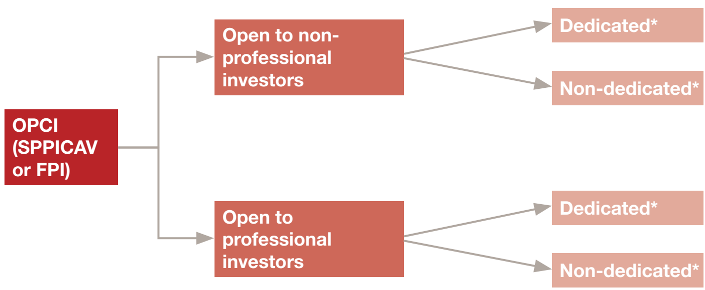
The statutory financial statements of an OPCI with sub-funds must include:

- a "consolidated" statement of financial position and an income statement;
- separate notes that set out the accounting rules and principles common to all sub-funds and information on the creation or liquidation of any sub-funds during the reporting period;
- detailed statutory financial statements for each sub-fund prepared in accordance with the OPCI chart of accounts.

Q15. What are the different possible set-ups for OPCIs?

All features of the OPCI must be clearly defined in the prospectus, and submitted for approval by the AMF.

Broadly speaking, the options are as follows:



**With or without sub-funds and/or classes of unit (that may grant the holder special rights to the assets and/or profits).*

Approval and regulatory obligations

Any creation or significant alteration[17] of an OPCI must be approved by the AMF. In addition, OPCIs must be managed in compliance with the general regulations and any special provisions set out in the prospectus.

OPCIs are managed by a portfolio management company approved by the AMF at the time of their creation. The portfolio management company must prepare a specific property programme of activity that enables the AMF to evaluate the financial, human and technical resources at its disposal and the planned organisation and procedures. The provisions specifically applicable to portfolio management companies are described in the section entitled "Who does what".

Regulatory obligations applying to OPCIs concern:

- an AMF-approved prospectus and, if applicable, a key investor information document (KIID);
- the creation of the OPCI;
- rules governing the composition of assets, and risk diversification and control;
- debt ratios;
- mandatory distributions.

These obligations may differ depending on whether the OPCI is open to non-professional investors.

Prospectus

OPCIs are approved based on an application submitted by the management company, which includes the following[17]:

- a KIID, except for OPCIs open to professional investors;
- the prospectus;
- articles of association (SPPICAV) or internal regulations (FPI).

OPCIs with sub-funds must present a separate section of the KIID for each sub-fund. OPCIs with several classes of units or shares can group them all together in a single KIID, provided it is submitted in the required format.

Subject to the unanimous agreement of the direct and indirect unit-holders, dedicated OPCIs open to non-professional investors may opt not to submit a KIID.

Q16. Are OPCIs concerned by the PRIIP Regulation?

The rules governing PRIIPs[98] (Packaged retail and insurance-based investment products) stipulate that a key information document (KID) must be prepared for "packaged" investment products marketed by banks and insurance companies, and also for investment funds when such products are marketed to retail clients.

"Packaged retail and insurance-based investment product" means an investment, including instruments issued by special purpose vehicles or securitisation special purpose entities, where, regardless of the legal form of the investment, the amount repayable to the retail investor is subject to fluctuations because of exposure to reference values or to the performance of one or more assets which are not directly purchased by the retail investor.

This requirement therefore applies to OPCIs, it being specified that professional OPCIs may also be concerned if they are not marketed exclusively to professional clients (see Q2).

Q17. What information does a KID contain?

KIDs must be prepared according to a standard format defined in the European Regulation and made available to non-professional investors as from January 2018. Investment vehicles for which KIIDs have been prepared are exempt from these provisions until 31 December 2019.

However, their management companies may have to provide the information required under the Regulation to the companies that issue investment products including their vehicles, and market them to retail clients (such as life insurance contracts).

On the date that this Pocket Guide was drafted, discussions regarding the practical arrangements for the introduction of this document were still ongoing.

KIDs have been defined in a way that both provides investors with appropriate information and enables them to compare different investment vehicles. In addition to general information about the investment vehicle, these documents primarily contain the following information:

- a risk indicator, presented on a scale of one to seven (with seven indicating the highest risk) and mainly targeting vehicles that could lead to a loss exceeding the amount invested by the investor. This indicator combines credit risk and market risk, which is calculated using the vehicle's historical data, particularly its volatility;
- four performance scenarios – favourable, medium, unfavourable and highly unfavourable – presented based on a one-year holding period, half of the recommended holding period and the recommended holding period. The calculation of these scenarios depends on, broadly, the vehicle's category, but it is mainly based on actual performance reported over the past five years;
- detailed information on costs and fees incurred by the investor. These costs include one-off costs (i.e., primarily vehicle entry and exit costs), recurring costs and, where applicable, incidental costs, such as outperformance fees.

Q18. What are the other impacts of the entry into force of the PRIIP Regulation?

All types of OPCIs, whether professional or non-professional, may have to provide the information required under the Regulation to the companies that issue investment products including their vehicles, and market them to retail clients (such as life insurance contracts). The required disclosures are no different from those defined for KIDs. To facilitate the collection and processing of these disclosures by insurance companies, a standardised European PRIIPs Template (EPT) has been created.

Vehicles that are exempt from the KID requirement due to the availability of a KIID (i.e., mainly Retail OPCIs) may have to complete an EPT, but in less detail (primarily regarding the restatement of transaction costs on financial instruments).

Creation of the OPCI

The FMFC[11] provides that OPCIs can be constituted:

- by cash contributions and/or contributions of eligible real estate assets[18];
- by the merger or spin-off of an OPCI and/or SCPI into one or more OPCIs;
- or by the conversion of SCPIs.

Certain OPCIs have been created by converting pre-existing companies (SAs or SASs).

Q19. What kind of assets can be contributed to OPCIs and how should they be measured?

The GR AMF restricts the asset classes that can be contributed[19] and excludes liquid assets defined specifically as:

- demand deposits;
- operating receivables.

Mixed contributions including liquid assets and real estate therefore appear to be inadmissible and would have to take the following form:

- a contribution in kind for the real estate;
- a subscription paid in cash for the deposit accounts.

In accordance with the applicable legal provisions, contributions to an OPCI must be measured in accordance with the same methods as those used to calculate the net asset value of the assets held. The process is supervised by the Statutory Auditors and is based on the report produced by the external valuers.

Startup capital and net assets

The previous provisions regarding the minimum amount of startup capital required have been revoked. OPCIs must now have accumulated at least €500,000 in **net assets**[20] within three years of their creation date.

Any OPCI whose assets fall below this threshold must be wound up[21] within:

- five days for an FPI or two months for a SPPICAV with no real estate assets;
- twelve months in all other cases.

Q20. What happens if an OPCI's net assets fall below the threshold during its lifetime?

If an OPCI's net assets fall below this threshold following the three-year period mentioned above, the portfolio management company has 24 months[22] to take corrective action. If the net assets have not been replenished at the end of this period, the portfolio management company must wind up the OPCI or carry out a merger or spin-off.

Q21. What conditions must be met prior to converting a joint-stock company (SA) or a simplified joint-stock company (SAS) into a SPPICAV?

First of all, it should be noted that company conversions do not require the AMF's approval; only the SPPICAV requires approval.

During the conversion, the company's assets and liabilities must be revalued and any unrealised capital gains are subject to an exit tax (see Q124).

In our opinion, it is important to ensure during the conversion that the revalued net assets of the converted company exceed €500,000 after factoring in the exit tax.

Rules governing asset composition and risk diversification and control

Asset eligibility

Real estate assets (categories 1 to 5, and 10) and other assets (categories 6 to 9) eligible to be held by OPCIs are limited to the definition given in Article L.214-36 of the FMFC.

The eligibility of new investments must therefore be confirmed prior to any acquisitions.

Q22. Is bare property ownership included in the list of eligible assets?

Assets eligible to be held by OPCIs are limited to the definition given by the FMFC[23].

This includes "properties (...) and the real rights pertaining to such properties (...)" within the purpose of investing "in properties **with a view to leasing them**". This is the wording as of March 2014, which was changed from "properties that they lease" – in order to allow OPCIs to acquire bare ownership of property managed by social landlords. The list of eligible real rights is set out in the regulations (see Q4), and includes ownership, bare ownership and usufruct.

Bare owners have the right to dispose of property, whether by selling it, donating it or passing it on, while beneficial owners only have the right to enjoy the benefits of ownership, i.e., to use the property or generate income from its use (via rental payments in the current case of real estate assets).

As a result of this new wording, bare property ownership is only an eligible OPCI asset where (i) the division of ownership agreement expressly provides that the bare owner (and not the beneficial owner) has the right to lease the property, or (ii) the building is leased to an authorised third party, in the case of social housing. This amendment only applies to OPCIs created after the "ALUR" law on rental management was published.

Q23. Are usufruct rights to membership shares included in the list of eligible assets?

No. Strict conditions[24] apply to the eligibility of membership shares, which in our opinion discount the eligibility of usufruct rights to shares in unlisted companies investing predominantly in real estate (*sociétés à prépondérance immobilière* – SPI).

Q24. Can an SNC be a direct or indirect subsidiary of an OPCI?

SNC stands for *société en nom collectif*, which is a French form of general partnership whose partners assume unlimited, joint and several liability for its debts. For an unlisted company investing predominantly in real estate to be eligible, however, the OPCIs and partnerships they invest in may not hold shares, units, financial rights or voting rights in any entity of any form whatsoever whose partners or members are indefinitely liable for the debts of the entity.

These provisions also stipulate that unlisted corporations investing predominantly in real estate are only directly or indirectly eligible for investment by an OPCI, if the liability of the partners or shareholders is limited to the value of their contributions.

As a result, investments in SNC units can only, in our view, be held indirectly as a subsidiary of a corporation held by the OPCI. However, this type of investment requires an enhanced risk management framework, particularly in the light of any specific conditions which may be inserted in the loan agreements.

Q25. How do the eligibility rules apply to an unlisted company that only holds lessee rights under leases?

According to the provisions of the FMFC[18], shares in companies whose "assets mainly consist... of rights held as a leaseholder under leasing transactions..." are eligible to be held by OPCIs.

Under French accounting standards, leasehold rights are not recorded in the financial statements of manufacturing and sales companies, but signing such a contract endows a company with real rights whose net value is used:

- to determine the value of the shares of the company held by the OPCI; and
- to establish compliance with the legal requirement to hold 60% of real estate assets.

We therefore conclude that:

- the eligibility of shares in such a company for acquisition by an OPCI should be based on a "financial" analysis of its assets, in order to ensure that, after lessee rights have been taken into account, the principle of investing essentially in real estate is adhered to;
- there is no need to consider the value of the property and the residual value of the loan separately to ensure the requirements concerning the relative proportions are met.

Q26. What kinds of financial securities are eligible for acquisition by OPCIs?

Admissible investments are strictly defined by the FMFC.

Investments under consideration should therefore be analysed in the light of its provisions, and classified according to whether they are:

- investments in partnerships or corporations investing predominantly in real estate: provided that the structures themselves are eligible, the investment may only be made in the form of units or shares – current accounts can be granted by the OPCI to companies in which it holds at least a 5% stake;
- other kinds of investment: the investment may only be made in the form of "financial securities" admitted to trading on an "organised or regulated market"; no restrictions apply to the activity of the issuer.

Investments in financial securities not admitted to trading on an organised or regulated market, such as unlisted convertible bonds issued by a property company, may not, in our opinion, be made by an OPCI unless they are units or shares in a company investing predominantly in real estate.

Q27. What kinds of financial contracts can OPCIs enter into?

The FMFC sets out an exhaustive list of the kinds of financial contracts OPCIs can enter into[25]:

- options, futures, swaps, forward rate agreements and any financial futures, currencies, rates, yields, financial indices or measures that can be settled by physical delivery or in cash;
- credit derivatives;
- financial contracts with payment of a differential.

OTC futures contracts may only be signed with a counterparty that qualifies as a collective investment undertaking (CIU) depositary. In addition, (i) the OPCI must be able to terminate the contract at any time at its market value, and (ii) the portfolio management company must be able to evaluate it without relying only on the market price given by the counterparty.

Trading in financial futures should not, moreover, distract the OPCI from its management objective.

The following rules must also be applied for **index derivatives**[26]:

- the composition of the index must be sufficiently diverse;
- the index must be representative of its market, and the underlying should be sufficiently liquid to allow the OPCI to reproduce the index with physical investment if necessary;
- the index must be published as appropriate.

The management company must put in place evaluation and position tracking tools if these kinds of contracts are entered into. The FMFC forbids the valuation of OTC contracts based on prices given by the counterparty alone.

To date, and to the best of our knowledge, no French property index meets all these criteria. Accordingly, it does not seem possible to use derivatives of current property indices to expose OPCIs to property risk or to hedge against it.

Asset composition ratio

Provided that **the specific requirements applying to professional OPCIs** are met (see Q41), the composition of assets is defined by legal and regulatory provisions[27].

These rules can be summarised as follows:

	SPPICAV	FPI
A. Real estate assets[28]	**At least 60% of assets as at 30 June and 31 December, including at least 51% of categories 1, 2, 3 and 5 for SPPICAVs[28]**	
1. **Property** built or acquired for rental and real rights to such property and furniture	Yes	Yes
2. **Units in unlisted partnerships** investing predominantly in real estate and whose partners are liable for the company's debts in excess of the value of their contributions	Yes	Yes, unless they are subject to corporate income tax (CIT) or an equivalent tax and do not hold, either directly or indirectly, lessee rights under lease contracts
3. **Units in unlisted partnerships or corporations** investing predominantly in real estate and whose partners are liable for the company's debts **to the extent of** their contributions	Yes	No
4. **Shares traded on a regulated market** whose assets mainly consist of real estate assets	Yes, up to 9% of the assets for the 60% ratio*	No

*given the type of securities concerned, this investment must be presented in full within real estate assets, despite it being only partially taken into account in calculating the ratio.

5. **Units or shares in OPCIs** or foreign entities with an equivalent purpose	Yes	Only units in FPIs or equivalent foreign entities, and only if they are controlled by the OPCI
B. Liquid assets[29]	**At least 5% of assets at each net asset valuation date**	
Term deposits[30]	Yes	Yes
Demand deposits[31]	Yes	Yes
Liquid financial instruments[32]	Yes	Yes
Operating receivables	No	No

Neither OPCIs nor the partnerships investing predominantly in real estate that they own may hold shares, units or financial or voting rights in any entity, regardless of its legal form, in which the partners or members assume unlimited, joint and several liability for the entity's debts.

Q28. How are the 60% and 51% thresholds calculated in practice?

The **method** used to determine the 60% and 51% figures is set out in the FMFC. Essentially, these percentages are determined as the ratio between:

- the value of eligible assets as defined in the table above; and
- total assets held by the OPCI and/or controlled unlisted companies investing predominantly in real estate, except current account advances granted to companies investing predominantly in real estate held in the portfolio.

To determine the figures, both:

- eligible securities in unlisted companies investing predominantly in real estate, directly or indirectly controlled by the OPCI (see Q70), and
- eligible FPI units held and controlled by an FPI,

are replaced by the fair value of the OPCI's share of their assets. The asset composition ratio is summarised as follows:

SPPICAV

60% min.
- **(D/I) Property**
- *C PRE partnerships*
- **(D/I) NC PRE partnerships**
- *(D) C PRE corporations*
- **(D/I) NC PRE corporations**
- **(D/I) OPCIs**
- **(D) SIICs**

51% min.

- **Other financial instruments**
- **Cash** 5% min.

D/I: Direct or Indirect
PRE: Predominantly Real Estate

FPI

- **(D/I) Property**
- *C PRE partnerships*
- *C FPI units*

60% min.

- **Other financial instruments**
- **Cash** 5% min.

NC: Non-Controlled
C: Controlled

NB: The black italics in the table above correspond to fiscally transparent investments, which are not accounted for in proportion to their value in the OPCI's assets.

Q29. How is the 5% liquid assets ratio calculated?

The method used to determine the liquid assets ratio is set out in the regulatory provisions of the FMFC.

In the absence of specific provisions governing this ratio, the denominator of the ratio should be the same as that used to calculate the 60% and 51% thresholds (see Q28).

Furthermore, unlike these real estate asset ratios, only liquid assets directly held by the OPCI are used in the calculation, and those held by its subsidiaries are not taken into account.

Finally, operating receivables are not taken into account in the calculation of the ratio despite being classified under the general "liquid assets" category used to define eligible assets.

Liquid assets (i.e., term deposits/demand deposits/ liquid financial instruments) must be free of any security interests or rights belonging to third parties in order to be included in the 5% liquid assets ratio.

Q30. How quickly do OPCIs have to comply with the rules on the composition of assets?

OPCIs have three years from the date of their creation to comply with the rules on asset composition and debt, as set out below[33]. The other rules, including risk diversification rules, must be complied with at all times from the creation of the OPCI.

Since this legal provision is not directly applicable to professional OPCIs, we believe that its implementation should be explained in the OPCI's prospectus.

Q31. What happens if the OPCI fails to comply with the asset composition rules?

Any breach of these provisions must be remedied:

- within a reasonable timeframe for the 60% and 51% thresholds, in order to be compliant at least seven times in each five-year period following the expiry of the initial three-year term defined above[34];
- within one month for the 5% liquid assets requirement, or six months if the OPCI does not hold any other financial instruments in its portfolio[35].

Risk diversification and control rules

In addition to the asset composition rules, OPCIs must also apply the **risk diversification and control rules** summarised in the table below:

Property risk diversification rules (OPCIs must be compliant at each 30 June and 31 December closing following the initial three-year term)	
Property	Property built, leased or available for lease, representing at least 20% of real estate assets[36], directly held by the OPCI or by companies investing predominantly in real estate that are controlled by the OPCI. Dedicated OPCIs that are considering an asset portfolio with over 10% of OPCI shares and units should also take account of the real estate assets held by the OPCIs[7].

Q32. Are there any exemptions to the 20% threshold described above?

The following exemptions exist:

- Professional OPCIs: these provisions do not apply;
- OPCIs resulting from the conversion of or spun off from SCPIs: these provisions may be exempted if so stated in the OPCI information documents.

Other risk diversification rules (OPCIs must be compliant at each net asset valuation date, with no transition period)	
Units in OPCIs and equivalent foreign entities	No more than 10% of **assets in total**[37] (see Q36).
Listed financial securities (excluding SIICs) and UCITS units	No more than 10% of **assets** per issuer – exemptions apply for some UCITS and certain bonds[38] (see Q35).
Term deposits	No more than 20% of **assets** with a single establishment. Unlimited, if the financial institution is the OPCI's depositary[39].

Financial contracts	Commitment limited to the amount of net assets.
Temporary sales of securities	No more than 30% of **assets**[40].
Temporary purchases of securities	No more than 40% of **assets**[41].
Counterparty risk on financial contracts and temporary securities transactions	No more than 10% of the OPCI's net assets[42].

The performance of temporary securities transactions must meet certain conditions to be valid, and the OPCI must be able to settle them at any time at their market value or a predetermined value.

Control rules (OPCIs must be compliant at each net asset valuation date, with no transition period)	
Listed financial securities (including SIICs) and UCITS units	No more than 20% of a single category of financial instrument issued by the same entity[43].

Q33. Should forward contracts used to hedge future assets/ liabilities be taken into account?

We believe so. If forward contracts have not yet generated any financial flows (for example, interest in the case of an interest rate swap), but are expected to in the future, they are nevertheless designed to set interest rate conditions and, as such, must be measured at market value to determine the OPCI's net asset value. Forward contracts should also be factored into the commitment rate calculation.

Q34. Can you create an OPCI of OPCIs?

As mentioned above, OPCIs may only invest up to 10% of net assets in OPCI shares and units.

The following exemptions exist, however:

- this restriction does not apply to dedicated OPCIs if[44]:
  - the exemption is specifically stated in the OPCI's prospectus;
  - shares or units in a single OPCI do not amount to more than 10% of the OPCI's assets (excluding operating receivables).
- this restriction does not apply to professional OPCIs. In our view, the terms of investment in OPCI shares and units should be clearly defined in the OPCI's prospectus.

In any event, the prospectus must clearly set out:

- the terms and principles of investment selection;
- the specific terms governing liquidity, especially the redemption of units or shares in the underlying OPCIs.

Q35. How are "assets" defined in the context of the risk diversification rules?

Most risk diversification ratios are defined by reference to the OPCI's "assets", but the precise calculation of these assets is not defined.

In the interests of consistency, we believe that "assets" should be calculated in the same way as for determining the 60% ratio of real estate assets. Accordingly, all assets held by the OPCI should be automatically included in the denominator, except current accounts granted to subsidiaries. The OPCI's share in assets held by unlisted companies investing predominantly in real estate under its control should also be included on a look-through basis.

Q36. *In what circumstances can an OPCI invest more than 10% of its assets in shares or units of a single UCITS?*

The rule limiting investment to 10% of assets in shares or units of a single UCITS does not apply to UCITS that only hold the following financial instruments:

- treasury bills;
- monetary market instruments whose remuneration does not depend, directly or indirectly, on one or more financial contracts;
- bonds traded on a regulated market which are issued or guaranteed by an OECD member state, by the regional authorities of an EU member state, or a party to the agreement on the European Economic Area, or by an international public body adhered to by one or more EU member states or parties to the agreement on the European Economic Area, or which are issued by the French social security debt reimbursement fund (*Caisse d'amortissement de la dette sociale* – CADES).

This exemption offers the possibility of investing in a limited number of UCITS (or a single UCITS) that comply with the conditions set out above, especially during the OPCI launch phase, before it invests in real estate.

As soon as the OPCI is created, the 10% ratio applies to UCITS held that do not meet these criteria.

Rules on debt

The OPCI's debt must not exceed 40%[45] of the value of the real estate assets held directly or indirectly, and must be allocated to the funding of:

- real estate acquisitions; and/or
- redemption requests (temporarily).

OPCIs must comply with this rule at each 30 June and 31 December closing following the expiry of the three-year transition period (see Q30).

The OPCI may borrow cash representing up to 10% of the value of its other assets.

Q37. With which establishments may OPCIs take out loans?

Unless exempt as a professional OPCI (see Q41), an OPCI may only borrow from credit institutions based in EU member states, countries that are party to the European Economic Area and OECD member states[46] if the loan is not granted by a group entity.

This rule only applies to loans taken out directly by the OPCI; its subsidiaries are free to borrow from any legally permitted source.

Q38. How should equity loans granted by shareholders of SPPICAVs be treated?

According to the provisions of the FMFC, equity loans are treated as equity "*for the purpose of assessing the financial situation of the firms to which they are granted.*"

However, pursuant to case law, this is only true for the overall assessment of the companies' financial situation. Therefore, equity loans may not be taken into account when verifying the loss of half of the share capital.

As a result, where applicable, any equity loans granted to a SPPICAV would not, in our view, be taken into account as equity in calculating the net assets and would therefore be considered as debt, particularly for debt ratio and leverage purposes.

Q39. Should the debt of the OPCI's subsidiaries and investments be factored into the debt ratio?

Yes[47]. This calculation takes account of the OPCI's share in all loans taken out by unlisted companies investing predominantly in real estate that it controls, either directly or indirectly, and loans taken out by the OPCIs and equivalent foreign funds that it holds, either directly or indirectly, whatever their nature (excluding current account advances granted by the OPCI itself or by an unlisted company investing predominantly in real estate, held either directly or indirectly by the OPCI).

Loans taken out by companies investing predominantly in real estate that are not controlled by the OPCI are not taken into account, however.

Q40. What guarantees can an OPCI offer to secure its real estate loans?

The FMFC expressly provides that OPCIs can offer personal or property security for buildings or real rights that they hold, but also to guarantee their shareholdings and investments in unlisted companies investing predominantly in real estate.

They must, however, ensure that:

- the OPCI's prospectus explicitly states that these guarantees may be offered and specifies their maximum amounts;
- the nature and value of these guarantees are consistent with the commitments they are intended to secure.

The maximum value of the assets that the beneficiary of the guarantees can use or dispose of under the terms of the guarantee may not represent more than the amount of the beneficiary's receivable against the OPCI.

If the guarantees are granted by the OPCI in the form of security interests in liquid financial securities or deposits, they may only concern the portion of cash and cash equivalents held in excess of the 5% threshold.

Q41. Which ratios apply to professional OPCIs[48]?

Only the 60% and 51% thresholds of real estate assets are applicable to all professional OPCIs.

The risk diversification rules can also be relaxed in several ways.

Finally, the provisions restricting the credit institutions with which an OPCI may contract a loan do not apply to professional OPCIs.

Prospectuses for OPCIs, including professional OPCIs, may stipulate specific ratios that can then be considered legally binding.
Professional OPCIs must set a maximum debt level.

Q42. Should the exit tax be factored into the debt ratio?

We believe so. Unless it is explicitly stated in the definition of debt ratio in the French Monetary and Financial Code, the exit tax recognised on the conversion of an SA/SAS into a SPPICAV or on a subsidiary's entry into the SIIC regime can be considered, in economic terms, as a method of financing real estate assets.

Q43. How is the debt ratio of a professional OPCI determined?

Although not restricted by legal provisions, the debt ratio of a professional OPCI must be defined in the prospectus.

We believe that the debt ratio should be determined in the same way as for a standard OPCI (see Q39). The related clauses of the prospectus must therefore be carefully drafted, especially in terms of the nature of the debt taken into account.

OPCIs' debt and cash levels are hotly debated by portfolio management companies, investors and the AMF, at a time when real estate values could potentially fall.
The AMF looks at investment vehicles' debt and cash on a case by case basis during the approval process.

Q44. What is leverage?

The AIFM Directive introduced a new risk monitoring indicator, namely "leverage", or the ratio between the OPCI's exposure (i.e., its entire assets, including those financed through borrowing) and its net assets. Two methods must be applied to determine the amount of leverage employed:

- the gross method, which takes into account the absolute value of all derivative positions held by the OPCI;
- the commitment method, which includes all options for netting assets and/or derivatives.

Based on the current interpretations of these regulatory provisions and in order to remain consistent with the methods used to calculate the gearing ratio, leverage must be calculated using, for the purpose of transparency, the exposures held indirectly through controlled unlisted companies.

The maximum level of leverage that can be employed in accordance with the commitment method must be set out in the OPCI's prospectus. No regulatory limits apply to this maximum, though vehicles with leverage greater than three are subject to additional reporting requirements concerning their main sources of financing.

Distribution requirements

In exchange for their tax exempt status (see "An attractive tax regime"), OPCIs are **required to distribute a certain proportion of funds each year**.

The proportion depends on whether the OPCI is a SPPICAV[49] or an FPI[50].

SPPICAV

Nature	Minimum distribution[51]	Distribution deadline
Net income from real estate assets	85% Basis: the share of distributable profits from directly-held property, less 1.5% of the cost price of these assets ("**notional reduction**" - see Q117)	Within five months of the end of the financial year in which the income was generated
Net capital gains on asset disposals (see Q45)	50% Basis: capital gains for the financial year, net of costs, less capital losses for the financial year net of costs incurred on real estate assets, plus any notional reduction applied in previous years to the cost price of the properties sold	Within five months of the end of the financial year following the realisation of the capital gains
Dividends from corporations that are exempt from tax on real estate activities under the SIIC regime	100% Basis: share of distributable profits from the dividends received from these subsidiaries	Within five months of the end of the financial year in which the dividends were distributed

Q45. How is the requirement to distribute 50% of capital gains in the event of the disposal of a property held indirectly by a SPPICAV applied?

When an indirectly-held property is sold, the SPPICAV's distribution requirements are determined as though the profits generated by the company or entity holding the property were generated by the SPPICAV. This principle applies to the extent of the OPCI's share of the capital gains, to property disposals carried out by:

- partnerships or corporations not subject to CIT or an equivalent tax;
- OPCIs.

The SPPICAV does, however, have an additional year to complete the distribution.

This principle also applies to income subject to the 85% distribution requirement.

FPI

Nature	Minimum distribution[52]	Distribution deadline
Net income from property and other assets	85% Basis: share of distributable profits from property and other assets held either directly or indirectly, less 1.5% of the cost price of directly-held property ("**notional reduction**" - see Q113)	Within five months of the end of the financial year in which the revenues were generated

Nature	Minimum distribution[52]	Distribution deadline
Net capital gains on asset disposals	85% Basis: Capital gains for the year less costs incurred on property assets, plus any notional reduction applied in previous years to the cost price of the assets sold Capital gains for the year less costs and capital losses for the year arising on the sale of other assets	Within six months of the sale

For disposals carried out before 1 February 2012, the real estate capital gains to be distributed were reduced by 10% per year for each year the property was held after five years of ownership.

For disposals carried out after 1 February 2012, the capital gains to be distributed are reduced by 2% for each year the property has been held after five years of ownership, by 4% for each year held after the 17th year, and by 8% for each year held after the 24th year.

Q46. How is the requirement to distribute 85% of the capital gains in the event of the disposal of a property held indirectly by an FPI applied?

When an indirectly-held property is sold, the FPI's distribution requirements are determined as if the capital gains generated by the company or entity holding the property had been generated by the FPI. The six-month distribution deadline is calculated from the date the property is effectively sold.

Q47. Are there any exemptions to the requirement to distribute 50% (SPPICAV) or 85% (FPI) of the capital gains generated?

Yes.

The income and capital gains generated by real estate assets located outside France are not taken into account in determining the distribution, provided that the income and capital gains are taxable in the country in which the real estate assets are located under the applicable tax treaty.

Q48. Is interest received under current account agreements between the OPCI and its subsidiaries subject to the requirement to distribute 85% of the net income from real estate assets?

We believe that this depends on the legal form of the OPCI.

The 85%[49] distribution requirement relating to SPPICAVs only concerns the portion of distributable profits represented by property income for the year in which it was generated (deferred by one year in the case of revenues indirectly generated by subsidiaries not subject to CIT or an equivalent tax or by an OPCI). Current account interest is therefore not subject to the SPPICAV distribution requirement.

The 85%[50] distribution requirement relating to FPIs, however, concerns the portion of distributable profits represented by:

- income from property held, directly or indirectly, by the FPI;
- other assets held, directly or indirectly.

Current account interest is therefore included in the scope of the distribution requirement.

Q49. Should profits from financial instruments relating to hedging a floating-rate loan, such as interest rate swaps, be taken into account in calculating the 85% distribution requirement for net income from real estate assets?

Yes. We think that the net gain or loss from swaps hedging the interest rate risk for a floating-rate loan should be included in the calculation basis of the 85% distribution requirement for net income from real estate assets, in order to reflect the situation that would have existed had the corresponding loan been taken out at a fixed rate.

Q50. Is accrued income taken into account in calculating the distribution basis?

The accrued income principle ensures that unitary distributions can be made in the event of subscriptions and redemptions. It represents the de facto payment by the subscriber or holder requesting redemption, of the share of the distributable amounts included in the corresponding net asset value.

The legal texts are not clear on this point, but we believe that the relevant share of accrued income should be taken into account in calculating the distribution basis.

Q51. How should compliance with the minimum distribution requirements be assessed?

The minimum distribution requirement for an OPCI is a non-accounting calculation which concerns three different categories of distributable profits, but the total distributed amount may not exceed the total net amount of distributable sums for the financial year. If one or more categories register losses and the OPCI is unable to meet the minimum distribution requirement, we believe that the residual distribution requirement should be carried over to the following financial year or years. OPCIs must, therefore, formally document the precise profits of each financial year and the distributions made in order to ensure this requirement is met.

The minimum distribution requirement can be considered to be met even where certain shareholders receive no dividend as a result of different classes of unit carrying different rights to profits.

The distribution requirement concerns profits generated since OPCI tax status was granted, which is either since the creation of the OPCI or since the date on which a pre-existing company was converted into an OPCI. In the latter case, profits accumulated prior to the conversion are not subject to the distribution requirement.

Q52. What are the most important issues in determining distribution requirements for non-SIIC subsidiaries of an OPCI?

At the time of writing, there are no formal tax instructions explaining how to determine non-SIIC subsidiaries' share of distributable profits: we think, therefore, that the calculation should take account of the profits by nature of companies held that are not subject to CIT (partnerships and/or corporations):

- distributable profits from property held by the company:
  - we believe that these profits should be taken into account after deducting depreciation: the notional reduction provided for under Article L.214-81 that reduces the basis subject to the distribution requirement only affects property held directly by the SPPICAV, and therefore corresponds in practice to the depreciation principle that would have been applied in a trading entity;
  - furthermore, as distribution requirements are determined at the level of the SPPICAV, interest recognised on current account advances granted by the SPPICAV to its subsidiary are not deducted from this revenue (see Q48 on the treatment of interest received by SPPICAVs);
  - given that distributable capital gains are by definition net of costs, we do not think that acquisition costs should be deducted from property profits, but recorded under the cost price of the corresponding property, as is the case for SPPICAVs.

- capital gains on property disposals carried out by the company: as mentioned above, we believe that capital gains on property disposals should be determined net of costs, as for SPPICAVs.

These distribution requirement principles apply to SPPICAV profits. Profits and capital gains generated by subsidiaries not subject to CIT are taken into account regardless of their actual allocation.

Q53. How should distributable amounts that exceed distribution requirements be allocated?

In the absence of more stringent legal and/or regulatory requirements, distributable amounts that exceed distribution requirements can either be:

- distributed;
- capitalised. In this case these amounts may not be distributed in the form of dividends at a later date (once they are included in capital, they form part of the gain (loss) on the sale/redemption of units); or
- carried forward. In this case they are added to the following year's overall distributable amount and will once again have to be allocated (but will not be subject to any additional distribution requirements).

Q54. Can amounts distributed for a given year that exceed distribution requirements be used to settle distribution requirements in respect of subsequent years?

We do not believe so. In the absence of any tax instruction setting out the practical arrangements for determining the distribution requirements, such requirements apply to future profits and cannot be deemed to have been settled by amounts distributed in previous years, even where such amounts exceeded requirements.

Q55. *How should the risks inherent in investing in OPCIs be taken into account in determining minimum capital requirements for insurance companies under the EU's Solvency II Directive?*

The EU's Solvency II Directive imposes a minimum capital requirement (Solvency Capital Requirement – SCR) on insurance companies, determined according to the risk to which the company is exposed, especially risk related to different asset classes.

The Directive's market risk module identifies sub-risks for equity and property.

The main points regarding OPCI units held by an insurance company can be summarised as follows:

- no distinction is made between professional and non-professional OPCIs,
- capital requirements are calculated including all of the OPCI's assets and liabilities on a look-through basis (including, where applicable, cases where assets are held via multiple holding companies); this analysis should be carried out based on the information to be provided by the management company:
  - an interest rate "shock" is applied to each category of asset held based on the rates defined in the regulations (i.e., generally 25% for real estate assets);
  - an interest rate "shock" is applied to the debt (either an increase or a decrease): the least favourable amount is used;
  - the sum of these amounts is divided by the OPCI's net assets, which produces the rate that will be applied by the investors concerned to their investment. In this way, the leverage created through borrowing is automatically allocated to the investor's capital requirements.

If information is not available to investors for certain investments, the interest rate shock of 49% applicable to equity investments should be used.

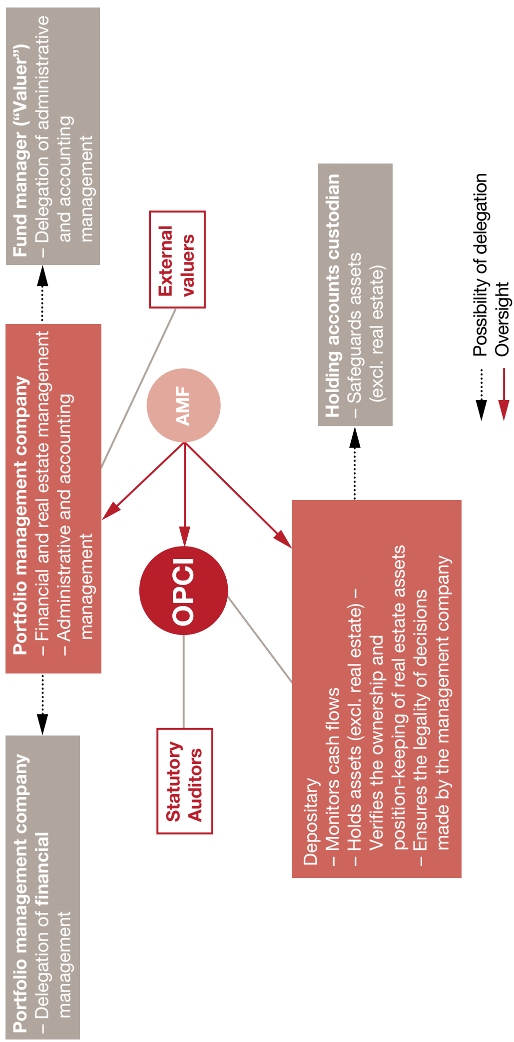
Who does what

OPCI operating principles

According to the relevant regulations, the operation of an OPCI involves several players and, where appropriate, their delegates. Under the supervision of the AMF, the primary players involved in the operation of an OPCI are:

- the portfolio management company;
- the depositary;
- the external valuers;
- the Statutory Auditors.

The following diagram illustrates the main **relationships** between them:


Fund manager ("Valuer")
– Delegation of administrative and accounting management
Portfolio management company
– Financial and real estate management
– Administrative and accounting management
Portfolio management company
– Delegation of **financial** management
External valuers
AMF
OPCI
Statutory Auditors
Holding accounts custodian
– Safeguards assets (excl. real estate)
Depositary
– Monitors cash flows
– Holds assets (excl. real estate) – Verifies the ownership and position-keeping of real estate assets
– Ensures the legality of decisions made by the management company
Possibility of delegation
Oversight

The French financial markets authority (AMF)

As a regulator of collective management operations for third parties, the AMF is the supervising body of OPCIs and their management companies. Accordingly, the AMF:

- approves management companies and ensures that they operate correctly;
- approves the creation of OPCIs, certain changes that occur during their life, as well as any mergers, spin-offs, dissolutions and liquidations.

Q56. Are OPCIs concerned by the Directive on alternative investment fund managers (AIFM Directive)?

Yes, OPCIs are considered alternative investment funds and fall within the scope of the AIFM Directive[53] which applies to all non-coordinated European fund managers.

The AIFM Directive entered into effect on 22 July 2013 and was transposed into French law on 25 July 2013.

Existing management companies concerned with this approval (see Q57) were required to obtain the AMF's approval to operate as portfolio management companies subject to the AIFM by 22 July 2014.

The main organisational challenges of this requirement related to:

- the implementation of a remuneration policy in line with the Directive's provisions;
- the adaptation of asset valuation policy and procedures;
- reporting to the supervisory authorities.

Q57. Do all OPCI management companies have to be AIFM compliant?

In principle, no. However, managers[83] with more than €500 million in assets (excluding UCITS) in unleveraged AIFs and whose redemptions are blocked for a five-year period after the initial investment, or more than €100 million in assets otherwise, are subject to the provisions of the AIFM Directive.

These thresholds are not assessed based on the net assets managed by AIFs but rather by taking into consideration both the value of assets acquired under leverage (i.e., mostly borrowings in the case of OPCIs) and the equivalent value of the underlying of any derivatives, which in this case consist primarily of interest rate swaps.

However, French regulatory provisions require that an OPCI be managed by an approved portfolio management company and the only possible concession concerns reporting requirements to the authorities (requirements are less stringent for non-AIFM-compliant portfolio management companies operating below the thresholds) and remuneration and valuation policies.

Q58. What new opportunities does the AIFM Directive propose?

Managers and/or funds that comply with this body of regulations will be able to benefit from a European passport. This means that (i) the manager can create and manage an alternative fund in another member state ("management passport") and (ii) that units in an alternative fund can be marketed **to professional investors** in other member states ("marketing passport").

These new opportunities concern AIFM-compliant management companies, provided that the AMF is notified of the request to benefit from a management or marketing passport.

Q59. What is the procedure for obtaining these passports?

The AIFM-compliant portfolio management company informs its EU member state's supervisory authorities of its intention to (i) create and manage an alternative fund and/or (ii) market an alternative fund that it manages, in any other member state.

The supervisory authorities must notify the relevant host state of the passport application and provide the portfolio management company with confirmation that its application has been approved within:

- twenty days for a marketing passport application;
- one month for a management passport application under the freedom to provide services and two months for an application under the freedom of establishment.

Once this confirmation has been received, the passport can be considered valid. However, the following factors should be taken into consideration:

- when creating an alternative investment fund in another member state, the vehicle must be approved in accordance with the provisions applicable in that state;
- when marketing an alternative investment fund in another member state under the passport, the vehicle is authorised to market to professional clients only and must comply with the rules applicable in that state.

Q60. Are OPCIs concerned by the UCITS V Directive?

In principle, no. The UCITS V Directive targets coordinated collective management vehicles and their management companies. However, the practical arrangements for applying certain provisions of this Directive may have a subsequent impact on the AIFM Directive and its implementing provisions, primarily with regard to employee remuneration requirements.

Portfolio management companies

Regardless of its legal form, an OPCI is managed by a regulated portfolio management company.

The portfolio management company is an investment service provider that is subject to specific regulations and approval/supervision by the AMF, which manages both individual and collective portfolios of financial and/or real estate instruments on behalf of clients.

Conditions for approval of portfolio management companies

OPCI portfolio management companies are approved by the AMF based on an application including documentation setting out a specific real estate management programme.

The portfolio management company's application must be prepared in the standard form defined by the AMF[54] in order to **assess whether the company's financial, material and human resources** are appropriate for its planned activities (type of vehicles managed, target clients, investment strategies).

The application must include a detailed three-year business plan.

Q61. Are OPCI portfolio management companies impacted by the MiFID II Directive?

Portfolio management companies that are authorised to carry out collective asset management services are no longer considered investment firms. As a result, they are not directly impacted by the provisions of the MiFID II Directive.

However, these companies may end up providing investment services to their clients, whether as part of a specific authorisation – such as to provide investment advice or portfolio management services – or as part of the marketing of the vehicles under their management. Since OPCIs are AIFs, they are considered, within the meaning of the MiFID II Directive, to be complex financial instruments and may not be included as a service of execution of orders for non-professional clients. Consequently, their sale must be accompanied by investment advice or, in the very least, an adequacy test.

Lastly, portfolio management companies may have to provide specific information to the distributors of their products.

Q62. What are the main impacts of the MiFID II Directive?

Portfolio management companies that distribute their own products will have to implement a formal product governance process that defines the target market for each new vehicle created on or after 3 January 2018, as well as for vehicles currently being marketed to non-professional clients. This information may have to be passed on to distributors who will also be required to define the target markets of their vehicles.

In addition, relations with distributors are set to change, as they will be required to report their status to portfolio management companies, i.e., whether they are:

- an independent distributor, in which case the distributor will no longer be authorised to compensated by way of retrocession fees from management companies; or
- a non-independent distributor, in which case the distributor may continue to receive retrocession fees from management companies provided that investors (i) are given transparent information and (ii) receive ongoing investment services.

It is important to note that the distributor is solely responsible for (i) reporting its independent or non-independent status in relation to the management company, and (ii) ongoing investment services.

Lastly, the MiFID II Directive is slated to enhance the information provided to investors on costs and fees incurred for investment services.

Q63. What specific resources are required of a portfolio management company?

A portfolio management company is subject to the following requirements:

a. financial resources:

- minimum share capital of €125,000[55];
- capital[56] at least equal to the higher of the thresholds below (subject to a €10 million cap):
  - €125,000 + 0.02% of assets managed in excess of €250 million;
  - one-quarter of general operating expenses of the previous year;
- additional own funds[57] of an amount sufficient to cover any risks relating to liability for professional negligence. The management company can choose to cover this risk using professional indemnity insurance. However, the conditions for doing so are such that at present this option is hardly ever taken up.

b. experienced and dedicated human resources:

- two directors[58], at least one of whom works full time;
- two full-time managers for each activity experienced in management for third parties. Accordingly, depending on the investment strategy, the portfolio management company must have at least:
  - two real estate managers covering all real estate business: transactions, asset management and property management;
  - two financial managers; although concessions are possible depending on the type of financial instruments included in the OPCI's planned investment strategy;
- a compliance and internal control officer;
- a risk management function separate, both on a hierarchical and functional level, from operating units, including the portfolio management function;
- a Statutory Auditor[59], regardless of the company's legal form.

Depending on the company's size and the scope of its activities, concessions may be made for the different functions described above.

c. a **conflicts of interest management** policy adapted to the company's structure and activity.

Given its particular importance, the AMF issued a recommendation documenting several points on this matter[60].

Q64. How can the own funds of portfolio management companies be invested?

The own funds of portfolio management companies can only be invested in assets readily convertible into cash with no speculative positions.

According to the AMF[61], investments carried out for a portfolio management company's own funds requirements should not prevent it from meeting minimum capital requirements.

However, if the own funds represent more than 130% of the company's capital requirements, the surplus may be invested, notwithstanding the rules set out above, provided that the corresponding assets do not put the capital requirements at serious risk.

Q65. Which situations should be taken into account in analysing potential conflicts of interest?

Conflicts of interest are essentially situations in which there is a risk of damaging the client's interests.

The primary risk areas for portfolio management companies with OPCI management activities include:

a. real estate activities of other companies belonging to the same group as the portfolio management company; the following situations are particularly pertinent in terms of the risk of conflicts of interest, as they are likely to call into question the independence of the portfolio management company:

- proprietary real estate management within the group;
- third-party real estate management within the group (e.g., SCPI management companies, other portfolio management companies);
- the existence of real estate promotion, brokerage or property administration activities within the group;

b. the existence of managed structures with **similar or identical investment strategies;** managing several vehicles with the same investment target requires a documented procedure to allocate or break down planned investments;

c. the existence of direct or indirect **specific remuneration methods for the portfolio management company;** accordingly, a variable management fees system can only be considered if the share of any outperformance allocated to the management company remains limited;

d. the existence of **incentive-based remuneration methods** based primarily on "performance" (managers: portfolio performance, sales team: volume of subscriptions).

In this context, the portfolio management company must put in place a remuneration policy that defines the balance between fixed and variable remuneration and the different forms of variable remuneration, for persons contributing to the risk profile of the management company and/or managed AIFs.

All of these analyses must be documented in the portfolio management company's approval application.

To mitigate risk in these situations, the portfolio management company must implement procedures which allow it to effectively manage resulting conflicts of interest.

These procedures must be continuously monitored by the compliance and internal control officer.

Q66. What procedures should be put in place for monitoring conflicts of interest?

Conflicts of interest are analysed and monitored using:

- a formal conflict of interest management policy;
- risk mapping of conflicts of interest, including all identified risks and the proposed measures to address such risks;
- a conflict of interest register, listing all identified situations that involve potential for conflicts of interest and the measures taken to manage these risks.

Q67. What procedures must be implemented when the OPCI's holder is also a majority shareholder of the portfolio management company?

There are no regulations requiring an OPCI to be managed by a portfolio management company that is independent from its subscribers. Investors can therefore create their own portfolio management company.

In this situation, the organisation and procedures must comply with the following principles:

- the minimum level of human resources in the portfolio management company (see "Portfolio management company");
- the independence of the management company's decision making.

Although the investor may wish to impose management decisions, procedures implemented by the portfolio management company must demonstrate that it is the only decision maker.

In practice, **diverse organisational solutions** may be considered as long as they comply with the principle of independence. In particular, an investment committee may be set up for each vehicle managed, involving investor representatives in the analysis of planned transactions, both as concerns property acquisitions and disposals as well as property upgrades (works) and marketing. Committee members outside the portfolio management company only have an advisory vote. The final decision must be made by the portfolio management company.

This system must be presented in the portfolio management company's approval application, which sets out the principle (the existence of an investment committee), the method for appointing members, and the advisory powers granted.

Please note that for "open-ended" OPCIs, putting in place an investment committee should not result in preferential treatment for any given investor.

Conditions for delegations

A portfolio management company **may delegate** some of its functions but **must retain** the majority of its key functions.

The delegation of functions does not exempt the portfolio management company from the responsibilities attributed to it by applicable regulations.

Significant delegations of functions have a major impact in terms of the organisation of the portfolio management company and therefore must be subject to prior approval of the AMF:

- either upon the portfolio management company's approval (initial application or modification) in the event that central functions are entirely delegated;
- or upon the approval of an OPCI (initial application or modification) in the event that central functions are delegated for a given vehicle.

Q68. What are the conditions for implementing delegation agreements?

Delegations:

- imply that the portfolio management company has sufficient resources and skills to monitor the delegated activities;
- assume the prior implementation of a selection process for delegates, based on an assessment of their skills and expected service quality;

- must be documented by a signed agreement between the portfolio management company and the delegate;
- can only be entered into in certain cases with a regulated entity; e.g., the portfolio management and risk management function can only be delegated to a portfolio management company.

In addition to delegations of functions, portfolio management companies may occasionally use third parties (service providers) to perform specific operations.

The selection of these third parties must also be based on an assessment of their skills and the quality of their services, but does not require AMF approval.

All of the following processes are subject to specific monitoring by the compliance and internal control officer: selection of service providers, monitoring the performance of delegated tasks, periodic assessment of the quality of the services provided.

Q69. What are the main issues in the event that a property administrator is used?

Property management of an OPCI's directly or indirectly held assets is typically a function performed by the management company. As the function is considered "non-essential" from a regulatory standpoint, portfolio management companies are permitted to delegate it to third parties. An external property administrator is therefore responsible for the following main functions:

- collecting rent and issuing receipts;
- monitoring maintenance expenses and small repairs;
- annual settlement of expenses.

All of these factors have a direct impact on the OPCI's net asset value and consequently during the selection of the delegated property administrator, the following matters must be taken into consideration:

- **capacity of the property administrator's system** to provide appropriate accounting information required for each valuation within a period that allows the definitive deadline set out in the prospectus to be met;
- **organisation of internal control** of the property administrator, who is responsible for first-tier controls prior to the communication of accounting data;
- ability of the property administrator to estimate the impact of the presentation of expenses during the valuation.

Finally, the organisation of financial flows with the property administrator must provide for the immediate transfer of cash resulting from rental payments to the OPCI.

Depositaries

Depositaries are independent from the OPCI, the portfolio management company and external valuers, and are credit institutions or investment firms authorised to provide custody or administration services for financial instruments[62].

Depositaries must:

- have their registered office in France or be a French branch of a credit institution or investment firm from an EU member state that is authorised to act as a depositary in its country;
- be appointed by the OPCI and mentioned in its approval application (prospectus);

Their role is to[63]:

- ensure that the OPCI's **cash flows** are properly monitored;
- **ensure the safekeeping** of assets:
  - provide custody services for the assets excluding property and operating receivables;
  - verify the ownership and position-keeping of real estate assets;
  - perform six-monthly controls and the annual certification of the asset inventory, including real estate assets;

  It should be noted that this function also applies, on a look-through basis, to assets held indirectly through structures controlled by the OPCI.
- **supervise** the legal and regulatory compliance of decisions made by the SPPICAV and the management company.

Finally the depositary ensures, on behalf of unit-holders, that property capital gains taxes are paid directly or indirectly by FPIs.

External valuers

Real estate appraisals are critical in determining an OPCI's net asset value.

In order to ensure the robustness of the values given to real estate assets held by an OPCI, legislation requires the use of external valuers[64]:

- **two valuers** are appointed by the SPPICAV's board of directors, or by the portfolio management company on behalf of the FPI, for a renewable period of four years (professional OPCIs may opt to appoint just one valuer); they are cited in the prospectus submitted for approval;
- valuers act **jointly but independently** from each other and draft, under their sole responsibility, a summary report upon completion of their engagement;
- buildings, real rights and lessee rights relating to leases on said property, held directly by the OPCI or indirectly through unlisted companies investing predominantly in real estate and **controlled by the OPCI** (see Q70), are assessed every three months (for professional OPCIs this assessment may be performed every six months); a full appraisal, including a site visit, must be performed at least each year;

This principle also applies to look-through assets, such that valuers work for the subsidiaries controlled by the OPCI as well as the companies controlled by them.

- valuers are also responsible for controlling, on a quarterly basis, the valuation methodology used by the portfolio management company for investments in units or shares of unlisted companies investing predominantly in real estate and **not controlled by the OPCI.** Their engagement consists of assessing the relevance of the methodology and assumptions used by the portfolio management company (appropriate and comprehensive data, application of consistent rates, etc.), as opposed to the value of the investments.

- finally, valuers are responsible for assessing real estate contributions to an OPCI, and their report is used as a basis for the OPCI's Statutory Auditor's report on this transaction.

It should be noted that "real estate valuers" currently consider that they cannot be considered "external valuers" **as defined in the AIFM Directive** in light of the regulatory requirements and responsibilities associated with this function. The valuation process implemented in the management company should therefore take this situation into account and, as a result, integrate an internal review process to be conducted by a non-management member who will be responsible for determining the value of all portfolio holdings upon the calculation of each net asset value.

Consequently, the term "external valuer" used in this section corresponds to the specific provisions governing OPCIs and not to those of the AIFM Directive.

Q70. What are the criteria for assessing control by an OPCI of an unlisted company investing predominantly in real estate?

Securities in unlisted companies investing predominantly in real estate may be held by an OPCI subject to three criteria[65]:

- the preparation of annual financial statements and interim financial statements (at least every six months);
- the type of property assets held;
- "control" by the OPCI.

This "control" condition is considered to be met when the OPCI is in **at least one of the following situations:**

- it directly or indirectly holds the majority of voting rights in these companies;
- it appoints the majority of the members of the administrative, management or supervisory bodies of these companies for two successive reporting periods;
- it has the possibility of exercising a dominant influence over these companies (pursuant to contractual provisions or the articles of association, when permitted by applicable laws);

- the companies concerned have a written commitment to transfer to the OPCI's management company the information it requires in order to:
  - value the assets and liabilities of these companies;
  - calculate investment limits and quotas in the organisation's real estate assets;
  - verify compliance with the debt limit;
  - determine and make available amounts distributable by the organisation.

The first three situations must be assessed taking into consideration any holdings in these structures by other OPCIs managed by the same management company or by other management companies related to it.

Q71. What are the rules for selecting external valuers?

The selection of external valuers by management portfolio companies must be subject to a documented process.

The selected external valuers:

- are subject to requirements relating to the appropriate skills, experience and organisation for the performance of their functions[66];
- are responsible for errors and omissions that are committed during the performance of their engagement; accordingly, during the selection process, they must confirm that they have professional indemnity insurance[67];
- must have access to all appropriate documents, information and investigatory resources[68];
- are subject to professional secrecy, except as regards[69]:
  - the Statutory Auditors;
  - the AMF;
  - the French Prudential Supervision and Resolution Authority (*Autorité de Contrôle Prudentiel* – ACP);
  - the French tax authorities.

Q72. How should the engagement plan for external valuers be prepared?

Current regulations[70] require portfolio management companies to define an **external valuer engagement plan**, with a planned engagement schedule of "four times a year at three-month intervals". As the portfolio management company is solely responsible for valuing its real estate assets, it does not seem necessary for experts to intervene at every valuation date. It is therefore possible to plan an engagement that is staggered over time, without necessarily updating all asset values at the same date.

Consequently, we believe that the external valuer engagement plan should take into account:

- the acquisition dates of each asset: external valuers should first update the valuation of the acquisition within three months and then perform a full review one year after the acquisition;
- the timeframe to perform these reviews/updates and communicate the reports.

The value ultimately used and included in the calculation of each net asset value is the sole responsibility of the portfolio management company.

Statutory Auditors

Statutory Auditors are appointed by the board of directors or management board for SPPICAVs[71], or by the management company's supervisory bodies[72] for FPIs, after AMF approval. Their engagement primarily consists of [73]:

- certifying the OPCI's financial statements;
- attesting to the accuracy of periodic reported information;
- preparing a report on transactions involving the OPCI such as mergers, cash contributions, distribution of interim dividends, spin-offs and liquidations.

Q73. Is it necessary to appoint a deputy Statutory Auditor?

No, legal provisions[74] specifically state that the appointment of a deputy Statutory Auditor is not required for OPCIs.

An attractive tax regime

Overview of the tax regime applicable to OPCIs

At the time of writing, the French tax authorities had not yet issued any comments on the tax regime applicable to OPCIs.

The main tax characteristics of OPCIs are as follows:

- SPPICAVs are exempt from CIT provided they comply with certain conditions, including obtaining AMF approval, complying with real estate ratios and distribution requirements (see "Approval and regulatory obligations – Distribution requirements" under section 1: OPCIs: an innovative legal system). FPIs do not have a legal personality and therefore fall outside the scope of CIT. FPIs must also comply with real estate ratios and certain distribution requirements;
- income is distributed by SPPICAVs in the form of dividends. Shareholders are taxed when these dividends are distributed by the SPPICAV. As FPIs do not have a legal personality, FPI unit-holders are taxed as if they had received the revenue generated by the FPI themselves, in accordance with the see-through approach. Revenue and capital gains distributed by FPIs are generally subject to real estate tax. Unit-holders are only taxed when the revenue and capital gains are actually distributed by the FPI;
- an existing company (subject to CIT), which is converted into a SPPICAV is exempt from CIT if it pays an exit tax of 19%. This exit tax is payable in equal instalments over four years on unrealised capital gains on some of its assets on the day of its change in status;
- corporations which are held (directly or indirectly and on a continuous basis during the financial year) by at least 95% by a SPPICAV, jointly by two SPPICAVs or by a SPPICAV and a listed SIIC, may elect, subject to certain conditions, for the CIT exemption regime applicable to SIICs. Companies that choose this regime will be subject to an exit tax of 19%, payable in equal instalments on 15 December of each year for four years on unrealised capital gains on their real estate assets on the day of

the option for the regime. Companies that meet the above conditions and which have elected for the CIT exemption regime applicable to SIICs will be hereinafter referred to as "SPPICAV subsidiaries";

- the purpose of OPCIs was extended in 2015 to include the rental of furnished premises. The provisions of the French Tax Code (*Code général des impôts* – CGI) were amended to enable the tax regime for the rental of furnished premises to apply to FPI unit-holders.
- finally, it should be recalled that until 31 December 2011, SPPICAVs (but not FPIs) and SPPICAV subsidiaries were transferee companies eligible for the provisions of article 210E of the FTC. Consequently, these companies were in a position to grant advantageous tax conditions to real estate asset sellers: under this regime capital gains on the sale (or contribution) of properties, securities in SPIs and fees relating to real estate leases were taxable at the rate of 19% (or 19.63% if the additional tax was applicable) instead of 33.33% (or 34.43% if the social security tax of 3.3% was applicable).

Q74. What tax reporting requirements apply to SPPICAVs?

Despite being fully exempt from CIT, SPPICAVs must file a tax return each year (unlike SICAVs).

Attached to their tax return for the first financial year under the tax-exemption regime, SPPICAVs must also include:

- a copy of the approval granted by the AMF; and
- the list of their subsidiaries that have opted for the CIT tax exemption regime applicable to SIICs.

SPPICAVs must also attach the following documents to their tax return for subsequent financial years:

- an updated list of their subsidiaries;
- a statement showing the breakdown of distributable amounts by type of transaction and their distribution requirements (the tax authorities have not yet published a model of this statement).

Certain tax reporting requirements only apply to companies (subject to CIT) that have been converted into SPPICAVs.

SPPICAVs must comply, where necessary, with all other tax reporting requirements and in particular VAT reporting requirements, single tax return forms (IFU) and form no. 2777 (levy in discharge [*prélèvement libératoire*] and withholding tax on investment income).

Q75. What tax reporting requirements apply to SPPICAV subsidiaries?

Certain tax reporting requirements must be met by SPPICAV subsidiaries which have opted for the CIT exemption regime applicable to SIICs.

SPPICAV subsidiaries must file a tax return each year along with a statement showing the calculation of SIIC distribution requirements in accordance with the tax authorities' model. SPPICAV subsidiaries must comply, where necessary, with all other tax reporting requirements.

Q76. Do SPPICAVs and SPPICAV subsidiaries benefit from any tax benefits upon an acquisition?

Yes, in the case where a SPPICAV (or a SPPICAV subsidiary) acquires securities in an SPI subject to CIT from a foreign seller and the capital gain generated by the latter is not taxable in France (in accordance with the provisions of the applicable tax treaty) or abroad (in accordance with foreign domestic law). In such situations (which should become less common following the entry into force of the new France-Luxembourg tax treaty), after its acquisition by the SPPICAV (or the SPPICAV subsidiary), the SPI subject to CIT may opt for the CIT exemption regime applicable to SIICs. It will have to pay the 19% exit tax, in equal instalments over four years, on the unrealised capital gains on its real estate assets. In other words, a SPPICAV that acquires securities in an SPI subject to CIT has the capacity to manage the unrealised taxation of the acquired company at the reduced rate of 19% and not at the ordinary rate (33.33% or 34.43% if the social security tax of 3.3% is applicable).

Q77. Can a SPPICAV subsidiary that has opted for the SIIC regime operate in a sector that is subject to CIT?

Yes, a SPPICAV subsidiary can have taxable activities (subject to CIT) as defined by the SIIC regime. Conversely, a SPPICAV is exempt from CIT on all of its activities.

Q78. Can a SPPICAV subsidiary sell a property to another SPPICAV subsidiary on a tax-neutral basis?

Yes, provided that both subsidiaries are held by the same SPPICAV and that the SPPICAV subsidiary acquiring the property undertakes to comply with certain tax obligations.

Tax neutrality is not extended to registration fees and VAT.

Q79. Are SPPICAVs and SPPICAV subsidiaries subject to the 3% contribution on distributed income?

Dividends distributed by a SPPICAV to its shareholders are not subject to the 3% tax.

Pursuant to the tax authorities' easing measure, dividends distributed by a SPPICAV subsidiary to its parent SPPICAV are also exempt from the payment of the 3% tax.

In any case, the 2018 finance bill proposes that the 3% contribution be cancelled as from 1 January 2018.

Q80. Are SPPICAVs impacted by the new restrictions (known as "anti-hybrid" measures) on interest deductions?

The "anti-hybrid" measures aim to prohibit the deduction for tax purposes of interest paid by a company (that is subject to CIT) to a related entity when the corresponding income is not taxed at a minimum rate of between 8.33% and 9.5% (depending on whether or not various additional surtaxes are applied) at the level of the lender. This minimum tax rate is determined based on the tax regime applicable to the gross income received. In other words, the income does not necessarily give rise to an effective tax payment.

When the lender is a SPPICAV, the "anti-hybrid" mechanism only applies, in principle, if the following three conditions are met:

- there is a relationship of dependence between the borrower and the SPPICAV;
- there is a relationship of dependence between the SPPICAV and one or more of its partners; and
- the tax rate applied to the interest income (or dividends or capital gains if the interest received by the SPPICAV is allocated to its partners via a dividend payment or a share buyback) at the level of the same partner (or of these same partners) of the SPPICAV is less than 8.33% (or 9.5%).

This being said, the "anti-hybrid" measures have no tax consequences in the following situations:

- interest paid by a SPPICAV to a partner(s) (related to this SPPICAV) that does not meet the minimum tax rate condition;
- interest paid by a look-through SCI to the SPPICAV that holds it when a partner(s) related to this SPPICAV does not meet the minimum tax rate condition.

In both cases, the SPPICAV's distribution requirements are calculated based on profits.

Generally, the "anti-hybrid" mechanism is only applied in very few situations involving professional SPPICAVs (for example interest paid by a SPPICAV subsidiary to its parent SPPICAV and partner(s) related to the SPPICAV based outside of France that do not meet the minimum tax rate condition).

Q81. What is the most effective way for a SPPICAV to hold real estate assets?

SPPICAVs can hold real estate assets directly or via a so-called look-through SCI or a SPPICAV subsidiary.

The best option from a tax standpoint and in terms of flexibility is to hold assets in a look-through SCI.

SPPICAVs which hold real estate assets directly are penalised (compared to when they are held through an intermediary) insofar as they cannot deduct depreciation expenses from the basis for the tax on business value added (CVAE).

In addition, and subject to the completion of certain preliminary processes, no discount for unrealised tax liabilities is granted to the purchaser on the sale of look-through SCI securities. The situation is different in the event of a sale by a SPPICAV of the securities of a SPPICAV subsidiary.

Lastly, the cost of the registration fees to be paid by the purchaser of the look-through SCI's securities is lower (the liability incurred by the SCI to purchase the asset is deducted from the registration fees base) than if the latter had acquired the real estate asset held by the SPPICAV.

Holding real estate assets through an intermediary company may create an input tax block at the level of the SPPICAV. Having said that, this financial cost may be reduced by an appropriate structure of financial flows (see the VAT regime applicable to OPCIs below).

Q82. Can an SCI held by an insurance company be converted into a SPPICAV on a tax-neutral basis?

In accordance with French legal provisions, an SCI held by an insurance company to cover policy liabilities related to commitments expressed in unit-linked life insurance contracts or bond investments ("ACAVI" SCI) can be converted into a SPPICAV on a tax-neutral basis (exemption from capital gains tax, registration fees, land registration tax and contributions to the registrar of mortgages' salary).

In a ruling in September 2010, the tax authorities extended eligibility for these exemptions to SCIs converted into SPPICAVs when the share capital of the SCI is held by two insurance companies and its units are not all unit-linked.

Tax regime applicable to SPPICAV shareholders

The following comments only describe the tax regime applicable to French and foreign companies with shares in SPPICAVs.

French company (subject to CIT) holding shares in a SPPICAV	
No dividend distribution by the SPPICAV	No taxation (or deduction) at the end of the financial year on positive (or negative) differences in net asset value.
Distribution of dividends by the SPPICAV	• Ordinary income subject to CIT at the ordinary rate (i.e., 33.33% or 34.43% if the social security tax of 3.3% is applicable.
Capital gains on the sale or redemption of SPPICAV shares	• Ordinary income subject to CIT at the ordinary rate (i.e., 33.33% or 34.43% if the social security tax of 3.3% is applicable.
CIT foreign company[A] holding SPPICAV shares	
Distribution of dividends	• The foreign company is not established in a country that is party to a tax treaty with France: withholding tax at 30%. • The foreign company is established in a country that is party to a tax treaty with France: reduced withholding tax rates on dividends only apply if all of the conditions to benefit from the treaty provisions are met. The wording of both of the applicable tax treaties should be examined.
Capital gains on the sale or redemption of SPPICAV shares	• The foreign company is not established in a country that has entered into a tax treaty with France: - (direct or indirect) ownership of less than 10% of the SPPICAV: in principle[B], not taxed in France; - (direct or indirect) ownership of 10% or more of the SPPICAV: taxation in France at the rate of 33.33% (or 34.43%). • The foreign company is established in a country that has entered into a tax treaty with France: the wording of both of the applicable tax treaties should be examined in order to determine whether the French state is entitled to tax capital gains on the sale of assets.

[A] This table does not examine situations where the foreign company is established in a non-cooperating state or territory.

[B] The one-third deduction does not apply. Corporate income tax liability in France is currently under debate.

Q83. How will the 2018 finance bill impact the tax regime applicable to physical persons with SPPICAV shares?

The 2018 finance bill proposes the introduction of a flat tax (*prélèvement forfaitaire unique* – PFU) that would be applicable to the revenue and capital gains received by physical persons on movable capital.

The comments below are up-to-date as of the publication date of this Pocket Guide, i.e., mid-October 2017. The provisions of the finance bill may be subject to modification during the course of parliamentary discussions.

A distinction is made between the situation of physical persons with SPPICAV shares who are domiciled in France and those who are domiciled outside France.

- **Physical persons domiciled in France:**

In the regime introduced by the 2018 finance bill, SPPICAV dividends received by physical persons would be subject to a PFU flat tax of 30% (i.e., 12.8% in income tax and 17.2% in social security contributions).

However, for these dividends physical persons would be able to opt for a progressive income tax schedule (45% incremental rate), with no 40% deduction. The dividends would also be subject to social security contributions of 17.2% (of which 6.8% would be deductible from the income tax base). The PFU flat tax should, in many cases, be more beneficial, both because of the tax rate and the base, i.e., SPPICAV dividends would not be eligible for the 40% deduction when the taxpayer opts to be taxed according to the income tax schedule.

Capital gains on the sale (or redemption) of SPPICAV shares received by physical persons would also be subject to a 30% PFU flat tax. In this situation, deductions based on the holding period would not be applicable.

For these capital gains, physical persons would still be able to opt for a progressive income tax schedule (45% incremental rate). In this situation, deductions based on the holding period would be applicable. Capital gains would also be subject to social security contributions of 17.2% (of which 6.8% would be deductible from the CSG social security contribution tax).

- **Physical persons domiciled outside France:**

Dividends paid by a SPPICAV to a physical person domiciled outside France would be subject to a withholding tax of 12.8%. Although more favourable tax-treaty provisions may be introduced, these dividends are currently subject to a withholding tax of 30%.

The regime for capital gains on the sale (or redemption) of SPPICAV shares received by physical persons domiciled outside France would not be modified. These capital gains would therefore be taxable based on the regime applicable to individuals with capital gains from real estate assets. Consequently, these capital gains (after, in some cases, the application of a deduction based on the holding period) would be subject to a levy in discharge of income tax of 19% and social security contributions of 17.2%.

Q84. How is a French non-profit organisation (hereafter "French NPO") that holds SPPICAV shares taxed?

Dividends paid by a SPPICAV to a French NPO are subject to CIT at the reduced rate of 15%.

Capital gains generated by a French NPO on the sale of SPPICAV shares are exempt from CIT.

Q85. *What are the withholding tax rates under domestic law (i.e., in the absence of a tax treaty) on dividends distributed by a SPPICAV?*

<table>
<tr><th>Dividends paid by a SPPICAV</th><th>Rate</th></tr>
<tr><td>- to a physical person not domiciled in France (subject to the provisions of the 2018 finance bill being adopted/current applicable rate: 30%)</td><td>12.8%</td></tr>
<tr><td>- to an NPO with its registered office in an EU state, Iceland or Norway</td><td rowspan="3">15%</td></tr>
<tr><td>- to a French collective investment undertaking (CIU) (including an OPCVM, OPCI, SICAF)</td></tr>
<tr><td>- to a foreign CIU meeting the following three conditions: (a) established in an EU state or in a state which has entered into an administrative assistance agreement; (b) raising capital among a certain number of investors with the aim of investing this capital, in accordance with a defined investment policy, in the interest of these investors; and (c) with similar characteristics to French CIUs (UCITS, OPCIs and SICAFs)</td></tr>
<tr><td>- other cases (in particular legal entities not domiciled in France, foreign OSBLs, UCITS and OPCIs not meeting the conditions mentioned above)</td><td>30%</td></tr>
<tr><td>- paid in a non-cooperative state or territory</td><td>75%</td></tr>
</table>

Q86. *How are Luxembourg, US or UK companies taxed (under the tax treaties entered into by France with Luxembourg, the US and the UK) when they own shares in a SPPICAV?*

<table>
<tr><th>SPPICAV shareholder company</th><th>Dividends</th><th>Capital gains on disposal</th></tr>
<tr><td>Luxembourg company</td><td>- 5% withholding tax if the Luxembourg company is a corporation that holds at least 25% of the share capital of the SPPICAV directly
- 15% withholding tax in any other circumstances</td><td>Changes effective from 1 January 2017:
- In principle[A], not taxed in France if the (direct or indirect) interest in the SPPICAV is less than 10%
- Taxed in France at the rate of 33.33% (or 34.43%) if the (direct or indirect) interest in the SPPICAV is equal to 10% or more</td></tr>
<tr><td>US company</td><td>- 15% withholding tax if the interest in the SPPICAV is limited to 10%
- 30% withholding tax in any other circumstances</td><td rowspan="2">- In principle[A], not taxed in France if the (direct or indirect) interest in the SPPICAV is less than 10%
- Taxed in France at the rate of 33.33% (or 34.43%) if the (direct or indirect) interest in the SPPICAV is equal to 10% or more</td></tr>
<tr><td>UK company</td><td>- 15% withholding tax if the (direct or indirect) interest is equal to less than 10% of the share capital of the SPPICAV
- 30% withholding tax in any other circumstances</td></tr>
</table>

[A] The one-third deduction does not apply. Corporate income tax liability in France is currently under debate.

When tax treaties are negotiated (or renegotiated), the tax authorities try, to the extent possible, to introduce provisions concerning withholding tax rates on dividends similar to those contained in the France-UK and France-US treaties, i.e., a 15% withholding tax rate if the interest in the SPPICAV is limited to 10%, and 30% if the interest is above this threshold. This was the case, for example, with regard to the amendments entered into recently between France and Germany and between France and Singapore.

Q87. What tax consequences does the amendment to the tax treaty entered into between France and Luxembourg have on SPPICAVs held by Luxembourg companies?

On 5 September 2014, the French and Luxembourg authorities signed an amendment to the France-Luxembourg tax treaty.

Pursuant to this amendment, capital gains generated by a Luxembourg company on the sale of securities of French or foreign companies located in France investing predominantly in real estate are taxable in France.

As a result, capital gains generated by a Luxembourg company on the sale of SPPICAV securities are now taxable in France at the rate of 33.33% (or 34.43% if the social security tax of 3.3% is applicable) based on the condition (which is frequently the case) that the Luxembourg company directly or indirectly holds 10% or more of the SPPICAV[A].

These new provisions apply to capital gains on sales generated on or after 1 January 2017.

[A] The provisions of article 244 bis A of the FTC relating to the one-third deduction do not apply in the event that the Luxembourg company directly or indirectly holds less than 10% of the securities of the SPPICAV. In such a situation, the question as to whether the capital gains on the sale are liable for corporate income tax is the subject of debate.

Such an amendment should have little impact for Luxembourg companies as the sale of the investment occurs most frequently from the "bottom" (sale by the SPPICAV of real estate assets or securities in look-through SCIs) and not from the "top" (sale of securities of the SPPICAV). This being said, it will have a negative tax impact in the event of certain redemptions of SPPICAV shares following an asset sale without reinvestment.

Registration fees related to transactions in OPCI units and shares

Subscription of OPCI units and shares	Exempt
Sale of OPCI units or shares[75]	Principle: exempt Exception (5% registration fee) in the following two cases: - when the purchaser is an individual who already holds (or will hold following their acquisition) more than 10% of the OPCI's units or shares; - when the purchaser is a legal entity or a fund which already holds (or will hold following their acquisition) more than 20% of the OPCI's units or shares.
Redemption of OPCI units or shares[76]	Principle: exempt Exception (5% registration fee) in the following two cases: - when the holder who requests the redemption is an individual who holds more than 10% of the OPCI's units or shares; - when the holder who requests the redemption is a legal entity or a fund (other than an OPCI) which holds more than 20% of the OPCI's units or shares.

Situation with regard to the annual 3% tax

Non-professional OPCIs are automatically exempt (i.e., without having to comply with certain tax reporting requirements) from the annual 3% tax due by legal entities and other bodies which hold, directly or indirectly, properties in France.

This automatic exemption does not apply to professional OPCIs. The latter may, however, be exempt from the annual 3% tax provided they comply with certain tax reporting requirements.

Q88. What conditions do foreign real estate investment funds (which directly or indirectly hold property in France) have to meet to be exempt from the 3% tax applicable to non-professional OPCIs?

Foreign real estate investment funds are automatically exempt from the 3% tax provided that they are subject to regulations equivalent to those which apply to non-professional OPCIs in France (open-ended OPCIs, not reserved for qualified investors, monitored by an authority similar to the AMF, liquid assets ratio of 5% and investing 60% in real estate, etc.).

The tax authorities have introduced two easing measures in this area.

First, the open-ended foreign investment funds which, in practice, complied with the 5% liquid assets and 60% real estate ratios (although they were not required under their local legislation to do so) are automatically exempt from the 3% tax (i.e., without having to comply with certain tax reporting requirements relating in particular to the identity of the shareholders/unit-holders).

Furthermore, open-ended foreign investment funds which are not eligible for the above measures, can be fully exempt from the 3% tax provided that the following conditions are met:

- their annual reports and prospectuses must expressly state that unit-holders who directly or indirectly hold more than 1% of the capital of the fund must make themselves known to the fund which must inform the French tax authorities; and
- form no. 2746 provides information related to the property that they hold directly or indirectly as well as information on the unit-holders, who, to their knowledge, directly or indirectly hold more than 1% of their capital.

If the tax authorities subsequently discover that one or more unit-holders who directly or indirectly hold more than 1% of the fund's capital were not made known to the fund, the latter will only be liable for the 3% tax on the interest held by the undeclared unit-holders.

The rules only apply to open-ended real estate investment funds whose headquarters are established in a member state of the European Union or in any country which has entered into an administrative assistance agreement with France or signed a non-discrimination clause.

Situation with regard to VAT

In a letter in June 2007, the Department of Tax Legislation described the VAT rules applicable to OPCIs.

The applicable principles are as follows:

- each OPCI is subject to VAT;
- management fees invoiced to OPCIs by the portfolio management company are automatically subject to VAT;
- the ordinary VAT regime applies to all OPCI revenue;
- rights to deduct VAT on overheads incurred by OPCIs are assessed at the level of each OPCI in accordance with the law.

The way in which real estate assets are held (e.g., directly by OPCIs or via intermediary companies) can affect the recovery of input VAT.

Appropriate solutions should be put in place so that situations where input VAT is not recovered, therefore impacting the OPCI's profitability, are reduced to a minimum.

Situation with regard to business tax (CET)

The French business tax (*contribution économique territoriale* – CET) comprises two specific taxes:

- (i) a company property tax (*cotisation foncière des entreprises* – CFE) based solely on the rental value of property subject to property tax; and
- (ii) a tax on businesses' value added (*cotisation sur la valeur ajoutée des entreprises* – CVAE). The CVAE rate is progressive, ranging from 0% for companies whose revenue is lower than €500,000 to 1.5% when revenue is greater than €50 million.

The rental of unfurnished premises (with the exception of premises for residential use) now falls within the scope of CET (this was not the case under previous business tax [*taxe professionnelle*] rules).

SPPICAVs, SPPICAV subsidiaries, and look-through subsidiaries for tax purposes (such as SCIs) held by SPPICAVs are concerned by this change.

The impact with respect to CFE is limited insofar as property is taxable in the name of the lessee (as was the case under the previous business tax) and not in the name of the owner.

SPPICAVs and their subsidiaries are, however, directly impacted financially by the CVAE tax. Their value added is subject to CVAE at a progressive rate, starting at 10% in 2010, with an increase of 10 points per year (80% in 2017), reaching 100% in 2019. Real estate companies which generate revenue of less than €500,000 are, in any event, exempt from CVAE.

The 2018 finance bill provides for determining the applicable CVAE rate by consolidating the revenue of all companies in which 95% of share capital is held, whether directly or indirectly. This provision would, for example, be applicable to a SPPICAV that holds assets directly and via subsidiaries (such as a look-through SCI or a SPPICAV subsidiary) which are at least 95% held.

With regard to CVAE, SPPICAVs which hold real estate assets directly are penalised in comparison to other real estate companies. To calculate the value added used as a basis for CVAE, SPPICAVs cannot deduct depreciation expenses as the real estate assets they own directly are recorded at fair value.

Brief comparison of the tax regime applicable to professional SPPICAVs and SIICs

The table below shows the main differences between the tax regime applicable to professional SPPICAVs and SIICs.

Issues at the level of the investment vehicle	Professional SPPICAVs	SIICs
Need to diversify the capital upon adopting the regime	No	At least 15% held by persons each holding at least 2% of the share capital at the time of the option
Maximum percentage held by a majority shareholder	No	No more than 60% of the share capital held by one shareholder or by shareholders acting together (excluding SIICs)
Single asset vehicle	Possible	In practice, no
CIT	Fully exempt	Partially exempt (possibility of having a taxable sector)
Distribution requirements	- 85% for net rental income - 50% for capital gains on sales - 100% for dividends paid by SPPICAV subsidiaries	- 95% for net rental income - 60% for capital gains on sales - 100% for dividends paid by SIIC subsidiaries

Option for the SPPICAV/SIIC exemption regime	Yes 19% exit tax	
Option for the CIT exemption regime applicable to SIICs by subsidiaries held at at least 95% by a SPPICAV/SIIC		
Specific tax due by SPPICAVs/SIICs on dividends paid to taxable shareholders at a reduced rate of about 11%	No	20% tax on dividends levied on the exempt sector and paid to a legal entity shareholder holding more than 10% of the SIIC
3% tax	Exemption not automatic but only if certain tax reporting requirements are complied with	Automatic exemption (due to being listed), i.e., without having to comply with certain tax reporting requirements
Registration fees and financial transaction tax (FTT)	- 5% registration fee for shareholders who hold a significant interest - No FTT	- For SIICs whose market capitalisation is greater than €1 billion: FTT of 0.3% and no registration fee - For SIICs whose market capitalisation is less than €1 billion: no FTT and no registration fee (but only in the absence of a deed)

Issues specific to corporate shareholders subject to CIT	Professional SPPICAVs	SIIC
Eligibility for the parent-subsidiary regime with relation to dividends distributed to a French company (subject to CIT)	No	
Taxation of capital gains on the sale of SPPICAV/SIIC shares by a French company (subject to CIT)[A]	33.33% (or 34.43%)	- 33.33% (or 34.43%); or - 19% (or 19.63%): if interest of at least 10% for at least 2 years
Taxation of capital gains on the sale of SPPICAV/SIIC shares by a foreign company (subject to CIT) (where there is no treaty)	- If direct or indirect interest of less than 10%[B]: not taxed in France - If direct or indirect interest of 10% or more: 33.33% (or 34.43%)	- If direct or indirect interest of less than 10%[C]: not taxed in France - If direct or indirect interest of 10% or more: 33.33% (or 34.43%); or - 19% (or 19.63%) if the foreign company is established in an EU member state, Iceland or Norway and has held directly or indirectly an interest of 10% or more for at least two years

[A] This table does not deal with situations where the foreign company is established in a non-cooperative state or territory.

Withholding tax on distributed dividends (where there is no treaty) to a foreign company[A]	30%	
Application of tax treaties	The answer depends on the wording of each tax treaty	The tax authorities have implicitly confirmed that dividends benefit from reduced withholding tax rates. For capital gains, the answer depends on the wording of each tax treaty

[A] This table does not deal with situations where the foreign company is established in a non-cooperative state or territory.

[B] The one-third deduction does not apply. Corporate income tax liability in France is currently under debate.

Accounting issues applicable to collective management and real estate accounting

Subscription and redemption methods

Shares or units (hereinafter "securities") in an OPCI:

- are **issued at any time** at the request of investors, based on the first net asset valuation after the deadline for centralising subscription orders;
- are **redeemed at any time** at the request of shareholders or unit-holders (hereinafter "holders"), based on the first net asset valuation after the deadline for centralising redemption orders.

The OPCI prospectus must indicate:

- the date of the net asset valuation (minimum of twice a year and a maximum of twice a month);
- the deadlines for centralising subscription and redemption orders;
- the settlement dates for subscriptions and redemptions; the maximum period between the date on which the redemption orders are centralised and the payment date for redeemed securities cannot exceed six months.

It is also possible to define "objective situations" in the prospectus in which security issuance may be temporarily suspended; this could be the case if the OPCI decides to issue a set number of securities or when a maximum net asset level is reached.

In view of the potential impact a major holder may have on a vehicle's liquidity, specific methods may be stipulated in the OPCI's prospectus to block redemption requests from holders holding, directly or indirectly, over 20% of outstanding securities. The OPCI's prospectus must specify the minimum redemption percentage to which this limit applies.

A lock-up period may also be defined for a maximum of ten years during which no securities can be redeemed[77].

Q89. What specific possibilities can professional OPCIs envisage in terms of subscriptions/redemptions?

Only professional OPCIs can:

- define subscription periods, outside of which no securities can be issued;
- suspend subscriptions and/or redemptions according to the terms and conditions defined in the OPCI's prospectus.

Q90. When should a newly-created OPCI publish its first net asset value?

The main stages of creating an OPCI are as follows:

- approval of the OPCI by the AMF;
- subscription by the first shareholders;
- registration with the trade and companies registry;
- first real estate investment.

The first net asset value (the vehicle's initial net asset value as defined in its prospectus) should be calculated on the day the OPCI holds the initial capital, even if the OPCI is not yet registered with the trade and companies registry.

Net asset values will then be calculated based on the frequency set out in the prospectus.

Q91. Is it possible to pay up subscription by offsetting receivables?

No. The provisions of the FMFC explicitly state that SPPICAVs may not carry out a capital increase through the offsetting of receivables. In the event, for example, of a material reduction in assets or the one-off financing of a new acquisition through a current account, and given that investments take time, a new subscription should be carried out which could subsequently be used to repay the current account advance.

Q92. How often should the net asset value be calculated?

The frequency with which the net asset value is calculated is directly related to the liquidity of the OPCI's securities since, unless a subscription period or specific clauses placing limits on redemptions are provided for, all investors must be able to request the subscription or redemption of units as soon as a net asset value is published.

The frequency may be determined by taking into account:

- the type of investors: the net asset value of a vehicle offered exclusively to qualified investors may be calculated less often than a vehicle offered primarily to retail investors;
- the investment strategy (proportion of real estate assets);
- breakdown of real estate assets.

Q93. How should an OPCI's incorporation costs be recognised?

An OPCI's incorporation costs primarily include registration rights, fees related to incorporation as well as various costs involved in the legal publication formalities (registry and publication costs).

In our opinion, these costs should only be incurred by the OPCI if stipulated in its prospectus.

In accordance with the OPCI's chart of accounts[78], these costs must therefore be directly recorded in a capital account. This principle also applies to any merger and contribution costs that may be incurred over the life of an OPCI.

The recognition of incorporation, merger and contribution costs cannot be deferred. The deferral of these costs would artificially inflate the OPCI's net assets and consequently its net asset value which goes against the general principle of equal treatment of holders.

Subscription and/or redemption price

The GR AMF stipulates that securities are:

- subscribed to at the next net asset value plus subscription fees, including the portion allocated to the OPCI;
- redeemed at the next net asset value less any redemption fees.

The wording of these regulatory provisions implies that:

- it is possible to deduct subscription fees not allocated to the OPCI, as well as redemption fees, whether or not allocated to the OPCI;
- subscription fees allocated to the OPCI must be deducted; the rate, as set out in the prospectus, however, remains under the responsibility of the portfolio management company.

Subscription fees that are not allocated to the OPCI are intended to **compensate the securities investment activity,** and are generally transferred by the OPCI to the portfolio management company, depository or any third-party involved in the marketing of the OPCI securities. As they are cashed by the OPCI and transferred, they have no impact on net assets or net asset value.

Subscription fees allocated to the OPCI are intended to **cover costs, duties and commissions incurred by the vehicle** for the investment of amounts received. In the absence of such fees, the investment costs for contributions by new investors would be incurred by all holders.

Q94. How should subscription fees be recognised?

In accordance with accounting provisions applicable to UCITS and, by extension, to OPCIs, subscription fees constitute part of a vehicle's capital, and consequently, on recognition, result in an increase in the OPCI's net assets and net asset value.

Given the time required to invest in real estate assets, recognition in the capital account can only occur once the OPCI has effectively incurred the corresponding investment costs.

Consequently:
- fees received by the OPCI must be recorded in a suspense account under liabilities;
- subscriptions received and their corresponding investment must be monitored to ensure that the balance of the suspense account can be transferred to a capital account when appropriate.

Q95. Which accounting treatment should be used for allocated subscription fees corresponding to subscriptions received which were ultimately used to settle security redemptions?

In the event that amounts received for a subscription are ultimately used to settle security redemptions, we suggest directly recognising fees in a capital account as soon as this situation is identified as the OPCI will consequently never have to incur costs related to the acquisition of investment assets on these amounts.

Q96. How should the rates of subscription fees allocated to the OPCI be determined?

The rates of subscription fees allocated to the OPCI should be determined by taking into consideration:
- the OPCI's investment strategy (direct or indirect purchases with various registration fees). For example, the tax base of registration fees can vary considerably (registration fees payable due to the acquisition of securities of a company investing predominantly in real estate are lower than those of a company financed through borrowing);
- the composition of an OPCI's assets, particularly the level of investment in real estate assets;

- the debt strategy; the rate of subscription fees allocated to the OPCI corresponds to a percentage of the investor's subscription in the capital, whereas investment costs relate to the total investment amount including any additional external financing. Accordingly, for example, if the investment costs, duties and fees are estimated at 6%, the rate of subscription fees allocated to the OPCI must be 12% for a vehicle with a 50% leverage strategy.

Q97. Can subscriptions be called progressively as investments are made?

The FMFC[80] stipulates that an OPCI's prospectus can specify that subscribed units be paid up progressively in line with the portfolio management company's capital calls.

In accordance with the general principle of equal treatment for all holders, the effective call rate (i.e., ratio of capital calls over total commitments):

- must be identical for all holders;
- must be applied directly for all new subscriptions.

Due to the principle of subscription at the next net asset value, the above principle cannot be verified based on the actual amount of each holder's subscriptions but by comparing all subscriptions at their nominal value equivalent.

Consequently, it is impossible to carry out a partly paid capital call for new subscriptions if previous subscriptions were fully called even if the investors are the same.

In accordance with specific provisions in the UCITS' chart of accounts applicable to venture-capital mutual investment funds (*fonds commun de placement à risque* – FCPR) and by extension to OPCIs, the amount of uncalled capital is shown as a deduction from net assets. Net assets, and consequently net asset values of the units issued, therefore correspond to the value of the called portion of the units issued.

Q98. *How is the amount of new subscriptions calculated in the event of partly-paid subscriptions?*

The OPCI's prospectus may stipulate that subscriptions can be carried out by amount (the number of securities subscribed is therefore calculated after calculating the net asset value) or by number of securities (in which case the amount subscribed will be determined after calculating the net asset value).

In the event of a progressive capital call of subscribed securities, the amount subscribed is calculated by taking into account both the value of subscribed shares and the remaining commitment for subscriptions to the extent of the uncalled portion of capital.

For example, if an OPCI's prospectus provides that subscriptions are carried out by number of securities, the calculation of net asset value at 30 June will result in the following data:

Number of outstanding securities: 1,000,000 securities with a par value of €100

Amount of capital remaining to be called: €50,000,000, i.e., 50% of the nominal value

Net asset value: €42

If an investor subscribed to 1,000 securities, the amount of the subscription would equal:

Value of subscribed shares immediately paid up (i.e., 1,000 x €42)	42,000
Remaining commitment for the subscription to be paid subsequently (i.e., 1,000 x €100 x 50%)	50,000
Total value of allotment letter	92,000

For subscriptions by amount, the number of subscribed shares is calculated based on the ratio of the total amount subscribed (excluding fees) to the "value of the commitment per share".

For an investor who wishes to invest a total of €50,000 in this OPCI, the subscription value of a share amounts to:

Net asset value	42
Remaining commitment for the subscription (i.e., €100 x 50%)	50
Total value per share of allotment letter	92

Accordingly, the number of securities subscribed is calculated by dividing €50,000 by €92, i.e., 543.478 securities.

The amounts of the capital called and any remaining commitment are then measured as above.

The amount of subscription fees will therefore be measured based on the total in the allotment letter.

Q99. How can the amount of subscription fees be called in the event of partly-paid subscriptions?

In the event of partly-paid subscriptions, the amount of allocated and unallocated subscription fees is calculated based on the total amount subscribed as calculated previously (see Q98). Fee payment procedures are set by the management company and defined in the OPCI's prospectus.

In light of the specific nature of these fees and for the benefit of simplicity, an OPCI's prospectus may stipulate, for example, that:

- the portion of the subscription fee allocated to the OPCI be called as and when capital is called up, in order to cover the investment costs as incurred;
- the entire portion of subscription fees not allocated to the OPCI be called on subscription, to remunerate the investment.

Various categories of securities (units or shares)

As previously mentioned (see Q13), various categories of securities with **different characteristics** can be created within a single OPCI, including:

- a different par value (e.g., to open the subscription to different institutional and retail investors);
- different subscription/redemption fees; however, given their impact on net assets and hence the net asset value, it does not seem advisable to have different rates for subscription fees allocated to the OPCI;
- different management fee rates;
- different currencies used to express the net asset value;
- different rights to the OPCI's net assets or earnings[80]. This provision allows carried interest shares to be issued which grant additional "compensation" to specific investors (generally the portfolio management company or the vehicle's managers), which generally goes hand in hand with additional risks at the launch of the vehicle.

However, given the specific characteristics of OPCIs, the target rate of return for investors must be clearly defined in order to set a level at which holders of carried interest shares receive additional compensation.

The creation of different categories of shares requires an appropriate system for measuring the net asset value of each category of shares based on the rights defined in the OPCI's prospectus, as well as a specific control system.

Q100. Are there other ways to remunerate the management company for the management of OPCIs?

The OPCI's prospectus can include variable management fees or performance fees linked to outperformance above a set target distributed between the unit-holders and the management company.

As for UCITS and in the absence of provisions specific to OPCIs, the following aspects should be carefully monitored:

- the definition of the performance target to be met beyond which profits will be shared, including the practical methods for measuring this performance;
- the period during which the OPCI's performance will be monitored (observation period); given the specific nature of the investments, we believe that the minimum one-year period defined for UCITS is insufficient for OPCIs;
- the methods for taking into account any redemptions that occur during the observation period, in particular the realisation of the share of outperformance allocated.

Putting in place an outperformance fee means also having an appropriate system to monitor the performance of the vehicle and calculate the fees as well as an appropriate control system.

Methods for determining net asset value: measurement and valuation principles

The general principles for issuing and redeeming securities at the option of the holder and at the next net asset valuation has led to the definition of the **principles for measuring assets and liabilities** and in turn a subscription/redemption value of the securities issued by the OPCI (valuation) – the net asset value – in order to ensure equality between holders of the securities.

An OPCI's net asset value is defined by the FMFC as the ratio of net assets to the number of outstanding securities.

Consequently, obtaining an OPCI's net asset value means measuring each asset and liability at market value, based on the following general principles:

Real estate assets

The cost price of a real estate asset held directly by an OPCI is made up of the asset's acquisition price plus the duties, costs and fees directly attributable to the acquisition (i.e., the "costs included" recognition principle). The portfolio management company may, however, opt for a "costs excluded" recognition method; if so, the duties, costs and fees directly attributable to the acquisition are not included in the asset's cost price and are recorded in a specific capital account. They are reclassified to the income statement upon the sale of the asset in order to record the capital gain or loss "net of costs" in accordance with applicable legal provisions.

Q101. Can finance costs incurred during the renovation of a building be included in the cost price of the real estate asset?

No.

However, if the loan was taken out specifically for the acquisition and to carry out renovation work, the finance costs could be considered to be a prerequisite and therefore "directly attributable to the acquisition" (of which the renovation forms part). This reflects the analysis of French accounting standards applicable to industrial and commercial companies, which provide that under certain conditions, interest expenses may be included in the cost price of assets acquired/produced.

The chart of accounts applicable to OPCIs[78] provides that borrowing costs form part of the OPCI's real estate activity.

Consequently, and regardless of the conditions or justifications put forward by the OPCI for using external financing, the related costs cannot in our opinion be included in a building's cost price and must therefore be recorded directly in "OPCI's real estate activity expenses".

Q102. Can marketing costs and fees incurred by an OPCI be included in the cost price of the related real estate assets?

No.

These costs correspond to expenses related to the real estate assets rental activity and include in particular costs incurred for finding tenants, relocation, commercial documentation, as well as related management costs and fees.

These costs do not meet the eligibility criteria for "expenses directly attributable to the acquisition" as although they contribute to the asset's value in that they allow the rental of the asset, they are not directly related to its acquisition (or subsequent renovation).

Consequently, these costs cannot, in our opinion, be included in acquisition costs and should be recorded within the OPCI's expenses.

Q103. What is the applicable accounting treatment in the event of the retrocession to an OPCI of subscription fees incurred in respect of an investment in SCPI units?

We think that it seems reasonable from an economic standpoint to deduct the payout of the subscription fees from the cost price of securities. The related cost price corresponds to the subsequent measurement of SCPI units (withdrawal price in the case of an SCPI with variable capital).

Q104. Can contingent consideration provided for in the acquisition agreement of a directly- or indirectly-held real estate asset be included either directly or indirectly in the OPCI's net asset value?

Any contingent consideration provided for in the acquisition agreement for property or securities in an unlisted company investing predominantly in real estate must be analysed for the probability of occurrence and should in our opinion be included in the asset's cost price when its occurrence and amount are deemed certain.

In any case, it should be included when the events that trigger the consideration are themselves included in the valuation of the asset by the external valuer.

Q105. What is the applicable accounting treatment for movable property that is acquired by an OPCI at the same time as a real estate asset?

According to the applicable regulatory provisions, OPCIs can acquire, on an ancillary basis, directly or indirectly and for the purpose of leasing it, furniture, equipment or any other movable property allocated to the investment properties they hold and necessary for the operation, use or exploitation thereof by a third party.

According to the changes made to the OPCI chart of accounts in November 2016, movable property acquired by an OPCI must be:

- recorded in "Real estate assets", along with buildings;
- measured at fair value.

Real estate assets held directly by the OPCI must be measured at their market value excluding duties during the calculation of each net asset value **under the responsibility of the portfolio management company.** Where no market value can be determined, the assets can be measured using:

- external resources; or
- financial models (discounted cash flow method, capitalisation method, etc.).

These measurement methods must also be applied to the valuation of securities in unlisted companies investing predominantly in real estate held by the OPCI.

Q106. How should real estate assets subject to an executory promise to sell be valued?

These assets should be valued at the price agreed by the parties if the sale is highly probable, less the estimated disposal costs.

Q107. How should buildings under construction be valued?

Buildings under construction are valued by the portfolio management company upon the calculation of each net asset value at market value **based on the state of completion at the valuation date.**

In the event that prospective financial models ("value at completion") are used, the market value is measured by taking into account the risks and uncertainties remaining until the date of delivery.

If a reliable measurement of market value is not possible, the assets are maintained at their cost price. For instance, if the external valuers are not able to appraise the property, the market value cannot be measured reliably.

Q108. How are securities in an OPCI's subsidiary valued by the portfolio management company?

Upon each net asset valuation, the portfolio management company must, in accordance with regulatory provisions[81], measure the present value of the OPCI's assets and liabilities including units and shares of unlisted companies investing predominantly in real estate.

From a practical standpoint, this valuation must be carried out by adjusting, at the valuation date, the subsidiary's net position (measured according to the rules and methods set out in the French Chart of Accounts [*Plan Comptable Général*]) for the impacts that the application of the rules and methods of the OPCI's[78] chart of accounts would have had.

The main "adjustments" to be applied are as follows:

- the recognition of unrealised capital gains or losses on real estate assets valued excluding duties (primarily buildings and securities of companies investing predominantly in real estate) and financial assets (UCITS, etc.) in the carrying amount in the subsidiary's financial statements;

- recognition of the fair values of all forward financial instruments (in practice, mainly interest rate swaps);
- adjustment for the deferral of any rent-free periods, as it would not have been possible had the building been held directly by the OPCI;
- adjustment of any non-qualifying assets recorded by the subsidiary (deferred expenses, etc.);
- any tax effects arising on these adjustments (limited/non-existent if the subsidiary has opted for SIIC tax exemption rules).

Q109. What accounting treatment should be used to value an investment in a company investing predominantly in real estate at fair value?

The valuation of an OPCI's investment in an unlisted company investing predominantly in real estate must cover the entire investment, the securities and where applicable the current account.

If the valuation results in an unrealised capital loss, the "estimation difference" (i.e., potential loss arising on the newly estimated value) must be recognised:

- firstly against the capital account, to the extent of the cost price;
- then against the current account.

Finally, in the event of a negative fair value, the excess of the estimation difference over the total cost price of securities and current account must be recorded in a provision account (49##) in the balance sheet under net assets with an offsetting entry to additions to provisions (15##).

This accounting treatment has no impact on the distributions payable for the year or on the corresponding distribution obligation.

Borrowings

The value used for borrowings is measured based on the **contractual value,** which is estimated:

- during the "normal life" of the loan, as its nominal value plus accrued interest;
- by taking into account, where applicable, any **early repayment** clauses if it is highly probable that the loan will be reimbursed before its normal term. This principle applies for the valuation of a loan specifically taken out to finance the acquisition of a real estate asset which is subsequently in the process of being sold, if the sale is highly probable.

Q110. How should real estate loan set-up fees be recognised?

No specific provisions have been defined to recognise real estate loan set-up fees. In our opinion, an analysis is required to determine whether the real estate loan is directly attributable to an acquisition:

- if so, and particularly when it strictly finances a specific acquisition, the set-up fees could be considered attributable to the acquisition, and may therefore be treated as expenses included in the building's cost price;
- otherwise, and particularly in the case of a general loan, or a real estate loan set up after the acquisition, set-up fees cannot be considered "directly attributable" to the acquisition and must therefore be recorded in interest expense.

Financial instruments

Financial instruments held by the OPCI are measured at their market value using the methods set out in the prospectus. The following valuation methods are generally used:

- UCITS' shares and units: last known net asset value;
- financial securities traded on a regulated or organised market: the last known quoted price (e.g., opening or closing price);
- OPCI shares or units: last known net asset value, including, in our opinion and where applicable, capital calls and/or distributions paid since publication;
- financial instruments traded on a regulated or organised market: the last known quoted price (e.g., opening/closing/settlement);
- OTC financial instruments: market value measured by the portfolio management company depending on the characteristics of the agreement; e.g., interest rate swaps are valued based on discounted future cash flows (interest payments).

In order for OTC financial instruments to be eligible assets on the balance sheet of an OPCI, the portfolio management company must have a department responsible for valuing them. The counterparty's valuation alone should never be used in calculating the net asset value.

Q111. What accounting treatment should be applied to caps within an OPCI?

Caps are OTC interest rate options. They are eligible assets on the balance sheet of an OPCI provided that they comply with the conditions set out in the FMFC.

A cap agreement generally provides for an interest payment to the OPCI when interest rates exceed a set level in exchange for a premium paid when the agreement is entered into. In our opinion, caps should be accounted for in accordance with the principles defined for recording OTC options in the chart of accounts for UCITS:

- recording of the premium paid in a financial instruments portfolio account;
- recognition of an off-balance sheet commitment for the agreement's nominal value;
- at each scheduled payment date under the agreement, any amounts received by the OPCI are recorded in interest income with an offsetting entry to the "cash at bank" account;
- whenever the net asset value is calculated, the premium recorded in the portfolio of financial instruments account is measured at its present value;
- on maturity of the agreement, the balance of the premium account is transferred to an interest expense account. The impact on net assets is offset by reversing the unrealised gain or loss recognised during the most recent net asset value calculations.

Q112. Should the numerator of the OPCI's debt ratio include the measurement (at present value) of financial instruments entered into by the OPCI or by its subsidiaries?

No. Only the information set out in the FMFC[82] should be included in the numerator of the OPCI's debt ratio.

Financial instruments entered into by the OPCI or by its subsidiaries are not included in this list and consequently should not be taken into consideration.

However, to calculate leverage they must be included:

- for the absolute value of their underlying equivalent when calculating leverage using the gross method;
- by including all netting options provided for by regulations when calculating leverage using the commitment method.

Q113. How should contributions of assets to an OPCI (buildings or securities in companies investing predominantly in real estate) be measured?

An OPCI can receive asset contributions (which must comply with OPCI asset eligibility rules) either at the time of its creation or during a subscription (see Q5). Contributed assets may be buildings directly held by the contributor or securities in companies investing predominantly in real estate that may be jointly held by several investors. In our opinion, regardless of how the contributed assets were previously held (sole or joint control), they must be contributed based on their present value measured in accordance with the methods set out in the OPCI's prospectus.

Methods for recording measurements at market value

"Estimation differences" on assets and liabilities at market value correspond to the difference between market value (as estimated) and cost in the financial statements. This represents the net unrealised capital gain or loss on the assets and liabilities and is recorded in **asset accounts by nature** (classes 2 and 3):

- for buildings under construction, constructed or acquired and other real rights (class 2);
- for deposits, financial and similar instruments (class 3).

An offsetting entry is recorded in a **capital account** under "Changes to estimation differences".

However, any impairment of **tenant receivables accounts** is recorded in an expense account within real estate expenses.

The "Changes to estimation differences" account is taken to "Opening capital" when inventory entries are recorded. As a result:

- "Estimation differences" (classes 2 and 3) represents the net unrealised capital gain or loss at the date on which the net asset value is determined;

- "Changes to estimation differences" accounts within capital represents the changes to net estimation differences between the last closing date and the date on which the net asset value is determined.

Equal payout per unit/share

Each holder of units or shares in the OPCI receives, on the payment date, **the same amount per unit or share,** regardless of how long they have invested in the vehicle.

This principle is underpinned by the principle of subscribing/redeeming securities at the vehicle's net asset value, which takes into account the accrued portion of distributions payable in addition to the impact of the measurement of assets and liabilities at their market value.

Consequently, each investor that subscribes at a given date pays, as part of the net asset value of the subscribed securities, a share of the amount payable per unit or share. Similarly, each holder that redeems securities at a given date receives, as part of the net asset value of the redeemed securities, a share of the amount payable per unit or share.

Q114. How should a subscription/redemption be accounted for to ensure an equal payout per unit/share?

In order to ensure compliance at all times with the equal payout per unit/share principle, each investor's subscription or redemption amount, excluding subscription or redemption fees, is recorded separately:

- in the income statement for the share relating to the accrued portion of income for the current year (accrual accounts);
- in specific retained earnings accounts for the share relating to net income and net capital gains carried forward from previous years;

- in special suspense accounts in equity for the share relating to net income for the previous year pending appropriation and interim dividend payments during the year;
- in the subscription account for the balance.

In order to comply with minimum payout requirements by type of distributable income, accrual accounts relating to the income statement for the current year must be broken down by nature (see Q50).

Q115. How should the resolution on the appropriation of profit be drafted?

In our opinion, in addition to the general information required, the resolution on the appropriation of distributable profit must:

- state the amount of profit for the year;
- state the amount of the distributable profits, as defined by the FMFC[84] as well as its breakdown (including the related accrual accounts):
  - carry forward of net capital gains;
  - carry forward of prior-year profits;
  - profit for the year;

(NB: These are the amounts on the balance sheet at 31 December Y)

- report any decisions relating to the distribution of interim dividends taken during the period by the board of directors specifying the balances of the related accrual accounts;
- determine the remaining amounts and decide how they will be appropriated between:
  - distribution per unit/share specifying the breakdown between profit and capital gains;
  - carry forward of net capital gains;
  - carry forward of prior-year profits;
  - capitalisation.

Moreover, based on current texts we believe that:

- in the event of net capital losses which exceed capital gains carried forward from previous years, the excess negative balance of capital losses for the year should be appropriated to the capital account;
- any remaining amounts to be paid out (after all of the OPCI's payout obligations stipulated in the FMFC have been met) can be appropriated to the capital account.

Q116. Is it possible to appropriate negative distributable income for a period to the capital account?

We believe so.

This negative distributable income may be considered as being excluded from any future distributable income. This point is covered by the provisions of the OPCI chart of accounts.

It is important to note that this appropriation, in accordance with the respective definitions of capital and distributable income set out in the French Monetary and Financial Code, does not legally constitute a capital reduction "resulting from losses" and therefore should not be subject to the legal formalities of these types of transactions.

Q117. Why use the notional reduction option to measure the OPCI's distributions?

As explained previously, OPCIs must distribute a significant portion of their profits. However, the specific accounting principles for OPCIs do not provide for the recognition of depreciation charges on directly-held real estate assets, which would otherwise allow OPCIs to deduct the amounts from distributable profit.

To ensure that OPCIs retain sufficient liquid assets either to reimburse the principal or to finance renovations, OPCIs may apply, on the base of mandatory distributions, a flat rate notional per annum reduction limited to 1.5% of the cost of all or a portion of physical real estate assets (land and buildings) held directly[84].

The allocation of the annual effective notional reduction to each real estate asset must be tracked manually so as to be able to add back net distributable capital gains when the corresponding buildings are sold.

Q118. What are the organisational issues specific to the accounting and administrative management of FPIs?

The accounts of FPIs must reflect the specific characteristics related to the methods used to include subsidiaries' profits as well as the principles on deadlines for distributing profits.

The FMFC provides that profits are taken into account by the FPI as and when they are recognised by the subsidiary and not on the effective reporting date. Accordingly, profits should be carefully monitored to ensure that they are not double counted, by excluding them during the measurement of the value of securities held in the FPI's assets.

Distributable capital gains[85] on the sale of buildings must be distributed within six months of the building's sale, regardless of whether the sale was carried out directly by the FPI or indirectly by a subsidiary. This may require the subsidiary to transfer the capital gains realised to the FPI to ensure it has sufficient cash.

For tax management purposes, the depositary must put in place specific processing procedures on behalf of holders.

A specific chart of accounts based on the UCITS' chart of accounts and appropriate disclosures

Chart of accounts

Due to their nature as "collective investment undertakings" and their similarities with UCITS and retail AIFs, OPCIs are subject to the UCITS' specific chart of accounts[86]. However, certain rules are different, reflecting the specific characteristics of their real estate activity. These additional rules are presented in a special OPCI chart of accounts as defined by regulation 2014-06 of 2 October 2014 of the French accounting regulations authority (*Autorité des Normes Comptables*).

The chart of accounts stipulates:

- the applicable main accounting and measurement rules;
- the chart of accounts to be used by OPCIs;
- the structure of the financial statements and disclosures required in the notes thereto.

In the absence of any specific provisions in the OPCI chart of accounts, the CIU chart of accounts should be used for non-real estate accounting treatments and the general chart of accounts should be used for all transactions not provided for in either of these sector-specific charts of accounts.

Q119. Which accounting standards should be used for OPCI subsidiaries?

The chart of accounts defined above only applies to OPCIs. Subsidiaries of OPCIs are therefore subject to the French Chart of Accounts. As subsidiaries of an OPCI subject to corporate income tax, this obligation concerns all companies with share capital (SA, SAS, SARL, etc.) as well as partnerships engaged in an economic activity[87], even if the OPCI itself is exempt.

However, these companies are not exempt from depreciating the real estate assets they hold.

Q120. Who incurs the costs related to an incomplete real estate transaction?

In our opinion, costs related to an incomplete real estate transaction should be covered by the OPCI if:

- they are clearly identified by the portfolio management company as being related to the OPCI and broken down for the project concerned;
- they fall within the scope of costs provided for in the OPCI's prospectus;
- they are subject to specific disclosures in the OPCI's annual financial statements.

Regulatory provisions in the FMFC[88] provide that if an OPCI's acquisition of an asset fails to succeed, the costs and expenses incurred are allocated to the asset category within which the asset in question would have been classified.

The OPCI chart of accounts[78] provides that "when a planned project fails to succeed, the audit, study and research costs related to the transaction are considered to be management costs (...). They are recognised within profit (...) ".

Q121. Can an OPCI have employees (e.g., caretakers for its properties)?

Yes. In our opinion, there are no laws that prevent OPCIs having employees. This situation may occur when an OPCI acquires a real estate asset with related employment contracts (e.g., caretakers).

The portfolio management company must demonstrate that it has the technical and human resources required to manage the OPCI's personnel.

Q122. How should interest income on current account agreements between the OPCI and its subsidiaries be classified in the financial statements?

Pursuant to the OPCI chart of accounts[78], current account agreements are presented in the balance sheet in "Real estate assets" under "Other real estate assets".

Consequently, in our opinion, interest received by the OPCI on these agreements should be presented in "Income from real estate activities" under "Other income from real estate activities". However, such interest should not be included in the requirement to distribute 85% of net income from real estate activities (see Q48).

Q123. How should cash flows related to financial agreements be presented in the SPPICAV's income statement?

In our opinion, financial agreements can be recorded under "Forward financial instruments" within the SPPICAV's assets or liabilities, even if they concern hedges of loans for real estate investments.

Accordingly, the related cash flows (income and/or expenses) should be recorded in the SPPICAV's income statement under "Income from deposits and non-real estate financial instruments". An explanatory note should describe the specific nature of the amounts in the notes to the financial statements. This item includes the net cash flows related to forward financial instruments by type.

Q124. What are the accounting impacts of converting an existing company into an OPCI ?

Converting an existing company into an OPCI requires a change of accounting standards (generally from the French Chart of Accounts to the OPCI chart of accounts[78]).

This corresponds to a change of accounting methods arising from regulations governing the legal entity. Detailed disclosures (description and reason for the change in method) and quantitative data (impacts of the change in method) are required in the notes to the financial statements.

In our opinion, the primary accounting impacts at the date of conversion – the opening balance of the accounting year presented – are as follows:

- remeasurement of assets and liabilities using the assessment methods applicable to OPCIs;
- recognition in the OPCI's capital account of the difference between accounting values based on the previous accounting standards and the remeasured values, net of the exit tax which forms the counterpart to the total prospective exemption from CIT[78]:
  - the following existing equity accounts are recognised in the capital account: share capital, reserves (statutory, regulated or other);
  - existing retained earnings are kept in the same account.

The comparative information must be prepared on a pro-forma basis in accordance with the OPCI chart of accounts, which means determining the value of assets and liabilities at the opening and closing date of the comparative accounts.

As the company would have been subject to exit tax on unrealised tax capital gains on real estate assets at the conversion date[89], the calculation of subsequently realised capital gains by the OPCI on the sale of real estate assets held during the conversion must be carried out using the value of these assets held in the accounts at the date of the conversion into an OPCI (i.e., the date it entered into the OPCI tax regime).

Periodic financial information

Both the FMFC and the GR AMF define periodic information that OPCIs must prepare and make available to their shareholders and to the AMF.

Mandatory disclosures are summarised below:

	Detailed inventory[90]	**Periodic disclosure document**[79]
Frequency of preparation	Every six months	Half-yearly
Subject to a Statutory Auditor's report	Not specified	Yes
Deadline for preparation by the portfolio management company	6 weeks	6 weeks
Deadline for publication/ availability to shareholders	Not specified	8 weeks
Publication methods	Methods not specified	Portfolio management company's website
Submission to the AMF	Methods not specified	Sent within 9 weeks

The portfolio management company may choose not to publish the periodic disclosure document on its website for (i) dedicated OPCIs and (ii) professional OPCIs. The portfolio management company must inform the AMF in the case of professional OPCIs.

Q125. What are the characteristics and minimum content required of the periodic disclosure document?

The content and presentation of the periodic disclosure document are defined by the AMF[91], as follows:

- breakdown of property by type and total net assets;
- number of outstanding securities;
- net asset value;

- portfolio;
- indication of movements in the composition of the portfolio during the reference period;
- quantified data relating to distributions paid during the period or to be paid.

If the disclosure documents are published quarterly, they should, in our view, be systematically subject to a Statutory Auditor's report (not only the half-yearly document).

Q126. What other information must also be periodically disclosed to investors in accordance with the AIFM Directive?

In accordance with the AIFM Directive, the following information must be periodically disclosed to investors:

- the percentage of the AIF's assets which are subject to special arrangements arising from their illiquid nature;
- any new arrangements for managing the liquidity of the AIF;
- the current risk profile of the AIF and the risk management systems employed by the AIF or its portfolio management company to manage those risks;
- any changes to the maximum level of leverage which the portfolio management company may employee on behalf of the AIF as well as any right of the reuse of the AIF's assets given as collateral or any guarantee granted under the leveraging arrangement;
- the total amount of leverage employed by that AIF.

As there are currently no regulatory clarifications concerning periodicity, in our opinion this information could be included in the OPCI's periodic disclosure document. In any case, it should at least be included in the OPCI's annual report.

Annual report

By way of derogation from the French Commercial Code (*Code de commerce*), OPCIs may use any presentation currency so long as it is defined in the prospectus. Except for professional OPCIs, the choice of presentation currency cannot be changed and must be maintained until the OPCI is wound up.

An OPCI's financial year is defined in its prospectus. It may not exceed 12 months, except for the first year which can be up to 18 months.

An OPCI's **annual report** comprises:

- the portfolio management company's management report;
- the supervisory board's report for FPIs, where applicable;
- annual financial statements, prepared in accordance with applicable accounting standards;
- the Statutory Auditor's report.

Q127. Is it possible to prepare an OPCI's annual financial statements in a foreign language?

We do not believe so.

The OPCI chart of accounts contains no specific provision regarding the preparation of annual financial statements in a foreign language. However, for such uncovered provisions, it refers to the chart of accounts for OPCIs with variable capital. Said chart of accounts specifies that "the annual financial statements are prepared in the national language and the accounting currency".

Q128. What is the minimum information required in the portfolio management company's management report?

The FMFC[92] stipulates that the mandatory disclosures in the portfolio management company's management report are:

- a summary of the structure's management objective;
- a description of trends in the real estate and financial markets over the year;
- a description of the significant events of the year;
- quantified data and comments on the entity's main management issues;
- a five-year financial summary including distributions;
- general information on the valuation of real estate assets;
- the entity's position at year end;
- changes in valuation methods and explanations thereof;
- information on the organisation and operation of the management, administrative and supervisory bodies;
- information relating to compliance with rules of conduct and ethics applicable to the structure's portfolio management company;
- a minimum one-year outlook on changes in the entity's activity in view of the trends in the real estate and financial markets;
- the entity's debt and cash position;
- an inventory of the main characteristics of the entity's real estate portfolio and financial instruments, if these are not presented in the annual financial statements;
- subsequent events.

The management report must also mention the in-kind contributions made, if any, during the period.

In addition, when the portfolio management company is AIFM-compliant, the following information must be included in the annual report made available to investors:

- the total amount of remuneration for the financial year, split into fixed and variable remuneration, paid by the management company to its staff, and number of beneficiaries, and, where relevant, carried interest paid by the AIF;
- the aggregate amount of remuneration broken down by senior management and members of staff of the management company whose actions have a material impact on the risk profile of the AIF.

If this information is communicated though any means other than the OPCI's annual report, such as the portfolio management company's annual report, the OPCI's annual report must indicate that this information has been made available to investors.

Q129. What are the deadlines for adopting a SPPICAV's financial statements?

The FMFC sets the following deadlines for information to be provided to the Statutory Auditors:

- forty-five days for the annual financial statements;
- seventy-five days for the management report.

In our opinion, it seems reasonable to consider that annual financial statements communicated within 45 days would be a draft version prepared by the portfolio management company that may not have been adopted by the board of directors. The board would meet to adopt the financial statements either within 75 days of the end of the financial year or within a time frame which would ensure that the adopted management report and annual financial statements were communicated to the Statutory Auditors within a maximum of 75 days.

Q130. Who is responsible for preparing the OPCI's annual report?

The preparation of the OPCI's annual report requires:

- the delegated administrative and accounting manager to prepare the annual financial statements;
- the portfolio management company to prepare or validate the annual financial statements and the management report.

In light of the specific characteristics of the OPCI's real estate activity and the involvement of different players/departments within the portfolio management company, a data gathering process should be put in place to ensure that all necessary information is available for the preparation of the annual report, especially as regards commitments given/received by the OPCI.

However, since any commitments given/received are included in the OPCI's net asset value, gathering these data for the preparation of the annual report should merely serve to confirm the completeness of the available information.

Q131. Are there any additional constraints in terms of the timeframe for approving the financial statements of an OPCI with real estate subsidiaries?

An OPCI that holds securities or units of real estate companies has additional constraints in terms of the timeframe for approving the financial statements.

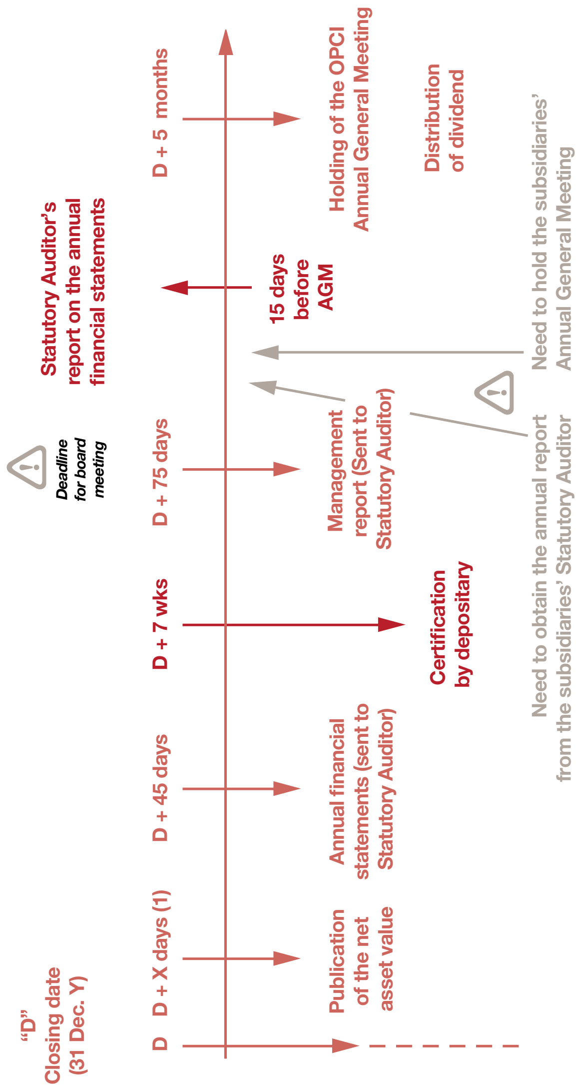
The approval of the OPCI's financial statements requires the prior closing and approval of the financial statements of all subsidiary entities.

Therefore, the constraints of all entities held (even indirectly) should be taken into consideration when setting out the timeframe for the approval of the financial statements.

Special attention is required in the following cases:

- where the OPCI has complex multi-layered holdings, which render the planning process more difficult;
- where the portfolio management company is not involved in the administrative, accounting and legal management of the entities held. This situation requires upstream coordination to ensure compliance with the regulatory deadlines specific to the OPCI.

Further to the transposition of the European Directive and the publication of measures to modernise asset management, the annual general meeting to approve the financial statements must be held within five months of the closing date, compared with four months previously.
However, the time limit for making dividend payments is still set at five months from the closing date. The time required to carry out dividend payments should therefore be taken into account before setting the date of the general meeting.



(1) Defined by the OPCI prospectus

Q132. What are the specific timing requirements for SPPICAVs set up as SASs?

The applicable provisions regarding timing requirements are identical for all OPCIs, irrespective of their legal form.

However, the following easing measures apply to SASs, depending on the particular provisions included in the company's articles of association.

- where no board of directors' meeting is held; the maximum time frame of 75 days applies to the preparation of the management report by the Chairman;
- the time frame for convening a Shareholders' Meeting and the form of this notification are set out in the company's articles of association.

Q133. Do SPPICAVs have any additional publication requirements for their income statements and balance sheets?

The FMFC[93] stipulates that SPPICAVs must file their income statements and balance sheets with the Registry of the Commercial Court at least 30 days before the Shareholders' Meeting is held to approve said financial statements. It also stipulates that SPPICAVs are exempt from publishing the financial statements again following the Shareholders' Meeting unless they have been modified.

Q134. Do SPPICAVs holding securities in companies have to prepare and publish consolidated financial statements?

As joint-stock companies (*sociétés anonymes*), which are not open to public investment, SPPICAVs have a legal obligation to prepare and publish a set of consolidated financial statements.

They may also benefit from the following exemptions:

- the "small group" exemption[94] if two of the following three threshold criteria are not met for two successive financial years:

  - 250 employees;
  - Total assets: €15 million (€24 million for financial years beginning on or after 1 January 2016);
  - Revenue: €30 million (€48 million for financial years beginning on or after 1 January 2016).

  In our opinion, only the latter two of these criteria are relevant to SPPICAVs, as they generally have a low headcount. However, since the total assets criterion is often satisfied on incorporation, accordingly the OPCI must closely monitor the revenue criterion at the end of the first two financial years.

- the legal exemption related to the sub-groups "which are controlled by a company that includes them in its consolidated financial statements"[95];
- the exemption related to non-material entities.

Q135. What accounting standards should be used for consolidation?

As there are currently no specific texts which exempt SPPICAVs from this obligation, in our opinion they should prepare consolidated financial statements in accordance with the provisions of CRC regulation 99-02, while applying the measurement, accounting and presentation rules set out in the OPCI chart of accounts.

However, the FMFC[96] does not exempt OPCIs from applying the article of the French Commercial Code[97] that authorises commercial companies to use international financial reporting standards (IFRS) as adopted by the European Commission. As a result, in our opinion, the consolidated financial statements of a SPPICAV may be prepared in accordance with these standards.

In this case, the OPCI would therefore have to appoint two Statutory Auditors.

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Appendix

(References included in the Pocket Guide)

[1] articles L.214-33 to L.214.85 and articles R.214-81 to R.214-128 of the FMFC
[2] articles 422-121 *et seq.* and articles 423-12 *et seq.* of the GR AMF
[3] article L.214-33 of the FMFC
[4] article L.533-16, referred to in article L.214-150 of the FMFC
[5] article L.533-16 and articles D.533-11 to D.533-12 of the FMFC
[6] article 423-14 of the GR AMF
[7] article R.214-12 of the FMFC
[8] article R.131-1, paragraphs 6 and 7 of the French Insurance Code
[9] article L.214-34 of the FMFC
[10] articles L.214-36, R.214-81 and R.214-82 of the FMFC
[11] article L.214-66 (SPPICAV) and article L.214-76 (FPI) of the FMFC
[12] article L.214-62 of the FMFC
[13] article L.227-1 of the French Commercial Code
[14] article L.411-3 of the FMFC
[15] article L.214-35 of the FMFC
[16] article L.214-85 of the FMFC
[17] AMF instruction no. 2011-23
[18] article L.214-36 of the FMFC
[19] article 422-37 of the GR AMF
[20] article D.214-118 of the FMFC
[21] article L.214-47 of the FMFC and article 422-145 of the GR AMF
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[23] articles L.214-36, R.214-81 and R.214-82 of the FMFC
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[28] article L.214-37 of the FMFC
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[30] article R.214-92 of the FMFC
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[51] articles L.214-69 and L.214-51 of the FMFC
[52] articles L.214-81 and L.214-51 of the FMFC
[53] EU Directive 2011/61/EU of 8 June 2011 on Alternative Investment Fund Managers (all uncoordinated funds)
[54] AMF instruction no. 2008-03
[55] article 317-2, section I of the GR AMF
[56] article 317-2, section II of the GR AMF
[57] article 317-2, section IV of the GR AMF and articles 12 to 15 of EU Regulation no. 231/2013 of the European Commission of 19 December 2012
[58] article 317-4 of the GR AMF
[59] article 318-2 of the GR AMF
[60] AMF recommendation no. 2009-23 on managing conflicts of interests in portfolio management companies dealing with OPCIs
[61] article 317-3 of the GR AMF and article 38 of AMF instruction no. 2008-03
[62] article L.321-2, para. 1 of the FMFC
[63] article L.214-24-8 of the FMFC
[64] article L.214-55 of the FMFC
[65] article R.214-83 of the FMFC
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[67] article L.214-55-1 of the FMFC
[68] article L.214-58 of the FMFC

[69] article L.214-56 of the FMFC

[70] article 422-165 of the GR AMF

[71] article L.214-24-31, 6th version, referred to in article L.214-65 of the FMFC

[72] article L.214-24-40, referred to in article L.214-78 of the FMFC

[73] article L.214-54 of the FMFC

[74] article L.214-24-31, 6th version, referred to in article L.214-65 of the FMFC on SPPICAVs; article L.214-24-40, referred to in article L.214-78 of the FMFC on FPIs

[75] article 730 *quinquies* of the FTC

[76] article 825 of the FTC

[77] article L.214-61-1 of the FMFC

[78] CRC regulation no. 2008-11 of 3 April 2008

[79] article L.214-53 of the FMFC and article 422-184 of the GR AMF

[80] article L.214-61-1 of the FMFC

[81] article 422-162 *et seq.* of the GR AMF

[82] article L.214-39, referred to in article R.214-104 of the FMFC

[83] article R.532-12-1 of the FMFC

[84] article L.214-69 (SPPICAVs) and article L.214-81 (FPIs) of the FMFC

[85] article L.214-82 of the FMFC

[86] CRC regulation no. 2003-02

[87] article L.612-1 of the French Commercial Code

[88] article D.214-124, IV of the FMFC

[89] article 208, para. 3 *nonies* of the FTC

[90] article L.214-50 of the FMFC

[91] article L.214-53 of the FMFC, article 422-184 of the GR AMF and article 28 of AMF instruction no. 2011-23

[92] article R.214-123 of the FMFC

[93] article L.214-68 of the FMFC

[94] article L.233-17 and R.233-16 of the FTC

[95] article L.233-17 of the FTC

[96] article L.214-67 of the FMFC

[97] arts. L.233-24 of the French Commercial Code

[98] EU Regulation no. 1286/2014 of the European Parliament and of the Council of 26 November 2014

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