

Immobilien-Spezialfonds Special OEREF

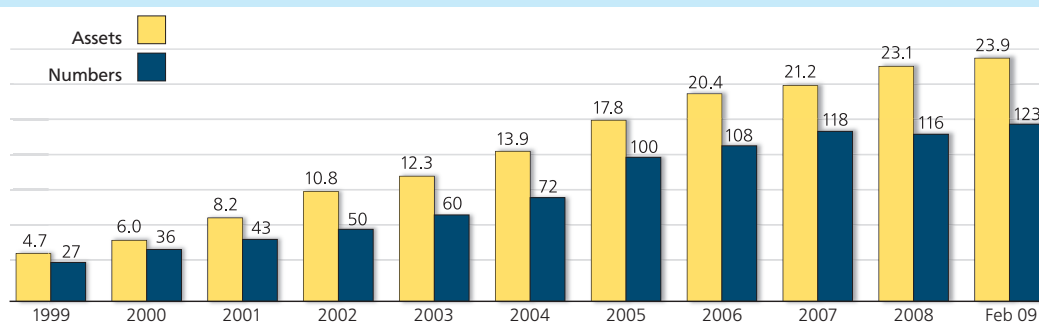
History

Open-ended real estate funds (OEREF) have a long tradition in Germany. The first fund of this kind has already been established in 1959. OEREF designed for institutional investors came up at the end of the 1980ies. In 1990, the "Immobilien-Spezialfonds" or "Special OEREF" was implemented into German investment law as a vehicle dedicated exclusively to institutional real estate investors. Since then, assets under management of this funds type as well as the number of funds have been increasing steadily.

2007 Amendment to the Special Fund Regime

German investment law has been regularly updated in order to reflect product innovation in the financial sector and to meet the needs of investors. In December 2007, the regulation of "Spezialfonds", that is funds exclusively dedicated to institutional investors, underwent fundamental changes. With investors' consent, a special fund's contractual terms and conditions may now deviate in almost every essential point from the legal provisions for retail funds. Management companies were thus given great flexibility to set up tailor-made vehicles for institutional investors.

Assets (in billion euro) and numbers of institutional open-ended real estate funds



As per end of year resp. month Source: BVI



Bundesverband Investment
und Asset Management e.V.

Legal Form

Special OEREF are set up as German “Sondervermögen”. This is a contractual type of fund. The fund’s assets are formally owned by the management company, but have to be kept strictly separate and are managed for investors’ account. The investors are not liable for the fund’s debt. A Special OEREF may have only one institutional investor or many of them – the number is not limited.

Relations between investors and the management company as well as the character of the fund are laid down in the contractual terms and conditions, which can be supplemented by side letters. Given that German investment law already provides for a set of standard rules, the terms and conditions can be limited to issues where this standard shall be replaced by individual agreements.

Manager, Custodian and Supervisory Authority

Special OEREF have to be managed by a “Kapitalanlagegesellschaft”, that is a fund management company licensed under German law. For every Special OEREF there is a depositary bank, which can be either a German bank or a German branch of a foreign banking group. The depositary bank shall control whether the fund is managed in accordance with the law and the contractual terms and conditions. Prior consent of the depositary bank is needed for selling real estate out of the fund and for taking loans.

“Kapitalanlagegesellschaften” are licensed and supervised by Bundesanstalt für Finanzdienstleistungsaufsicht (BaFin). In contrast, no authorization by BaFin is needed to set up a Special OEREF.

Investment Restrictions and Leverage

Special OEREF are allowed to invest in any kind of real estate all over the world. They can acquire real estate directly or indirectly via special purpose vehicles (SPV). These vehicles can be single-layer or multi-layer constructions, and they may be domiciled in another country than the real estate. One restriction to be observed is the non-acceptance of Special OEREF as private equity funds. Consequently, funds are not allowed to manage the businesses situated on their premises.

As a Special OEREF has to apply the principle of risk diversification, its portfolio should consist of at least four different pieces of real estate. A Special OEREF is allowed to take loans up to 50% of the total value of its real estate. Additionally, it can take short-term loans up to 30% of the fund’s net asset value.

Valuation

According to German investment law, OEREF real estate is regularly appraised by a committee of three experts independent from the fund management company. Valuation takes place at least once a year for every piece of real estate. Interests in real estate SPVs are appraised by an external auditor at least once a year.

However, investors of a Special OEREF can agree with the fund management company on other valuation rules.

Reporting

According to the law, the management company has to present a short-form annual report for every Special OEREF at the end of each financial year. The report has to be audited and the auditor must summarise the results in a separate certificate. Practically, the annual report is of little importance to Special OEREF investors. They usually agree with the management company on an additional reporting that fits their individual needs with regard to form, content and frequency. No prospectus or other issuing document is required for Special OEREF.

Redemptions

Special OEREF are open-ended funds, so principally every investor has the right to redeem fund units at any time. However, the fund’s terms and conditions can set considerable limits to this entitlement. If investors agree, there may be only one redemption date every two years.

If an investor demands redemption of his shares and the fund’s liquid assets are actually not enough to meet this demand, the management company has the right to temporarily suspend redemption. As institutional investors usually announce their decision to disinvest in time, this rule has little practical impact on Special OEREF.

Taxation

Although German contractual type funds have no legal personality, they are (like corporations) entities within the meaning of the German Corporate Tax Act. Thus, the funds are subject to tax in Germany. Due to a special provision in the German Investment Tax Act, however, they are exempt from corporate taxation, § 11 (1) InvStG.

Being a taxable vehicle, German funds have to fulfil tax obligations like filing a tax return and levying of WHT 25% from (deemed) distributions. However, on interests distributed to non-resident taxpayers relief at source will apply and WHT on distributions derived from German dividends may be reduced according to the respective Double Tax treaty. Distributions deriving from German real estate will be subject to WHT at a rate of 25%. According to the German investment Tax Act (§ 15 Abs. 2 InvStG), non-resident investors in Special OEREF have to file a tax return with regard to income from German real estate (including capital gains) thus

the WHT is provisional and due to the lower corporate income tax rate of 15,825% (inc. solidarity tax), part of the WHT will be refunded.

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BVI Bundesverband Investment und Asset Management e.V. represents the interest of the German investment fund and asset management industry. Its 92 members currently manage assets in excess of 1.5 trillion Euro both in mutual funds and mandates. For more information, please visit www.bvi.de. BVI is registered under the number 1575282143-01 in the EU register of interest representatives.

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