

**SUMMARY OF RESPONSES TO THE QUESTIONNAIRE
ON PRINCIPLES AND BEST PRACTICE STANDARDS
ON INFRASTRUCTURE FOR DECISION MAKING
FOR CIS OPERATORS**



**Report of the Technical Committee
of the
International Organization of Securities Commissions**

May 2000

INTRODUCTION

Pursuant to a mandate given to it by the IOSCO Technical Committee (TC) in 1998, the Technical Committee Working Group on Investment Management (TCWG-5) undertook a survey of the jurisdictions of its members to ascertain principles and best practice standards used to provide for the infrastructure for decision making by CIS operators. This survey was undertaken to ascertain, in particular, how such infrastructure requirements impacted on conflicts of interests that arise in the course of CIS management. This was conducted by means of a detailed questionnaire (see Attachment 1).

Responses of the group members to the questionnaire were very broad and diverse. However, from these responses, it was possible to draw some general conclusions relating to common practices adopted in member jurisdictions. These general conclusions, which are set out below, are intended to promote greater understanding among members of the common standards and best practices that prevail in member jurisdictions with regard to the infrastructure for decision making by CIS operators.

Some of the aspects covered by the questionnaire were considered by members to warrant more detailed analysis, and if possible, the development of best practice standards that can be applied by members when dealing with some of the key issues that emerged from the survey. These areas are the regulatory measures adopted for dealing with conflicts of interests of the CIS operator and delegation of functions of the CIS operator. Given their importance, two separate detailed papers are being developed by members for further assistance and guidance to members when dealing with infrastructure issues for decision making by CIS operators.

MAIN CONCLUSIONS

Typical legal structure of CIS

CIS are generally organised in member countries under two structures: i) investment funds, which are structured as trusts or under contracts with individual investors, and ii) investment companies, which are structured as corporations. Entities assuming the responsibility for the operation of CIS are, in general, i) in the case of investment funds, management companies (and the Board of Directors of such companies) of CIS, and ii) in the case of investment companies, the Board of Directors of the CIS. In some jurisdictions, depositories or custodians responsible for the safekeeping of the CIS property also assumed an oversight responsibility in supervising the activities of the CIS operator.

Delegation of functions

Most jurisdictions allow delegation of functions on the basis that the CIS operator remains accountable to investors for the conduct of the delegatee. In many jurisdictions delegates must themselves be registered entities and delegation must be disclosed in the offer documents. With regard to sub-delegations, there is a wide range of responses. In some jurisdictions, only some functions (such as custody) can be sub-delegated. When sub-delegations are allowed, they are generally subject to the same requirements as delegations.

Relationship of the CIS Operator with other group companies

In most jurisdictions, there are restrictions that apply to transactions involving group companies, such as the application of best execution standards and the approval by the custodian.

Measures to avoid conflict of interests

Generally, internal controls such as Chinese walls are implemented by CIS Operators to avoid conflicts of interests. The adequacy of such structures are generally reviewed by regulators when licensing.

Codes of Conduct.

Codes of Conduct exist in many jurisdictions but are generally not mandatory. The involvement of the regulator varies from issuing to approving Codes including participating in the development of Codes. Typically, Codes of Conduct contain guidelines and best practice standards developed and implemented

by industry associations. Where relevant, guidelines and standards in Codes of Conduct are applicable to group companies ie CIS and its affiliated parties.

Representation of the interest of CIS

CIS rights as shareholders are exercised by the CIS's Board of Directors or the Management Company in the best interest of CIS investors. Although they can, in some cases, be delegated, the delegatee must exercise those rights in the best interest of the CIS investors. Generally, there is no requirement to disclose the criteria followed for the exercise of CIS's shareholder rights. For the purposes of restrictions applicable for the exercise of shareholder rights, the threshold for significant participation has been set at 10% in most jurisdictions.

Internal Controls

Mainly, internal controls to address conflicts of interests are dealt with by industry best practice standards. The CIS Operator (ie the Board of the CIS or the Management Company) is generally responsible for the implementation of effective internal controls. Written policies and procedures are usually required by the regulator.

Risk management

Risk management is generally the responsibility of the CIS Operator and is not subject to specific detailed regulatory requirements such as risk measurements or models in most jurisdictions. In some jurisdictions, prospectuses are required to contain disclosure relevant to detailed risk management requirements applicable, in addition to any risks inherent to investments of the CIS.

Disclosure

Generally a prospectus must disclose all relevant information that is needed by investors to make a well informed investment decision, including the merits and risks of the investment. While information relating to conflicts of interests of the CIS Operator is generally encompassed within the disclosure rules relating to prospectuses, in most jurisdictions there are no specific requirements as regards disclosure of conflicts of interests.

Enforcement of compliance

While the compliance function is not always subject to specific regulatory requirements, the responsibility for its implementation lies with the CIS Operator, and can be carried out through a compliance officer. In the case of a financial group, it is generally the practice to have a unique compliance officer for the whole group. Typically, a compliance officer is responsible for the review of the internal controls, risk monitoring, and reporting to the Board any inadequacies and lack of compliance with rules and policies.

External supervision

Generally, the regulatory authority responsible for the supervision of CIS Operators ensures that the CIS Operator has adequate organisation and resources to carry out the activities of the CIS through licensing requirements and on site inspections. Financial audits, and in some jurisdictions compliance audits, are required, and a review of the adequacy of internal controls of the operations is usually performed by auditors who will have reporting responsibilities to the regulator and the CIS.

GENERAL FRAMEWORK

1. Typical legal structure of CIS in your jurisdiction. Describe, briefly, the role of different entities with responsibility for the conduct of the CIS (Operator, Custodian (including trustee or depository), Investment Manager).

Country	Summary of responses
Australia	Managed investments schemes are typically structured as trusts. The Responsible Entity (RE) which is the operator of the scheme is solely responsible for the management of the scheme and must hold the scheme assets in trust for the scheme members. The RE may appoint agents to conduct any act it is authorised to do including the appointment of a custodian to hold assets of the scheme (which is no longer a legal requirement), but where it delegates its functions, it remains fully accountable to CIS members for the acts of its agents. ASIC requires the appointment of a custodian unless the RE can demonstrate it will hold the scheme property in accordance with appropriate custody standards including segregation of assets and, it can meet certain capital requirements.
Canada	CIS are defined as mutual funds and are established either as trusts or corporations. Investments in CIS are redeemable on demand and valued at their net asset value. <u>Mutual fund trusts</u> must have: (i) a trustee which have little or no legislated duties but have responsibilities under contract and common law (ii) an operator who can delegate functions (iii) a Canadian custodian who must be a different entity than the operator. Principal distributors act as selling agents of the funds. CIS organised as <u>Corporations</u> have boards of directors but are managed by operators and must have a Canadian custodian. All Canadian CIS must have a investment manager responsible for management of the portfolio of the CIS. Investment managers must be qualified as such and registered as advisers under applicable securities legislation. Often a Canadian CIS operator will hire a third party investment manager to conduct the portfolio management of the CIS, but the CIS operator remains responsible.
France	Two principle types of CIS: a) Open-ended companies called SICAV. Their capital is divided into shares that must be valued according to the value of their net assets. b) FCP (Fonds Commun de Placement). These are common funds. Their assets are divided into units. Their capital value is calculated on the value of their net assets. In the majority of cases, management companies manage SICAVs and FCPs. Their assets must be entrusted to a Depository for safekeeping. Both, Management Company and the depository must be entities duly authorised in France to carry out such activities and no single company can act both as Management Company and depository.
Germany	The Investment Companies Act provides for two types of CIS: (i) contract-based investments funds as mutual funds without legal capacity which are managed by an investment company where the investment company is obliged to mandate a depository bank to hold the mutual funds' assets and to issue and repurchase the units; and (ii) joint stock investment companies which are closed-end investment schemes. Their shares must be quoted on a German exchange. These companies have to mandate a depository bank to hold their assets in safe custody. Accordingly there are two types of operators: management companies and depository banks. Both operators require a licence, must act independently from one another, and exclusively in the interest of the unit holders. A company may not at the same time act as management company and depository.
Hong Kong	Two types of CIS: unit trusts and mutual funds. A CIS is required to have a qualified investment manager and an independent trustee/custodian. If the investment manager of the CIS is domiciled in Hong Kong, it is required to obtain a licence from the SFC. Foreign investment managers are required to be domiciled in an acceptable inspection regime and there is a requirement for the appointment of a <i>Hong Kong Representative Company</i> that must be authorised to represent the CIS and the Investment Manager to liaise with Hong Kong investors and the Commission. The trustee/custodian is responsible for : (a) monitoring the investment manager's activities in relation to the CIS; (b) holding and taking control of all CIS assets; and (c) taking reasonable care to ensure that the provisions in the CIS constitutive documents are complied with. The trustee/custodian and the investment manager must act independently and solely in the interest of the holders of the CIS.
Italy	The service of collective portfolio management is reserved to asset management companies and SICAVs. Custody of the financial instruments and cash of mutual funds shall be entrusted to a depository bank, which also carry out supervisory functions.
Japan	1. Securities Investment Trust. Its management corresponds to Invest Trust Management Companies (hereinafter referred to as "I.T. Management Companies"), who are the delegates. Trust Banks or banks with trust operation, which are the trustees, oversee the administration and safekeeping. Securities companies or registered financial institutions are responsible for the subscriptions and sales of beneficiary certificates. I. T. Management Companies can carry out these operations themselves also. 2. Securities Investment Companies are defined as companies which are established for the purpose of investing majority of capital in negotiable securities, and which possess a General Meeting of Investors, executive directors, supervisory directors and the board of directors. The Management Company, Asset Custody company and General Business Administrator carries out its operation.

Jersey	(a) Unit trusts: un-incorporated bodies constituted by a trust deed made between the manager and the trustee. The manager has the exclusive responsibility for the scheme. The trustee has the duty of oversight and safeguards, the title to the investments and the interests of the unit holders in them; (b) Investment companies (open-ended or closed-ended) these are incorporated bodies governed by an instrument of incorporation. They have a Board of Directors. However, responsibility for the management of the fund is delegated to a separate management company and safe keeping of the assets to a depository. The depository will also ensure the fund is managed by the manager in accordance with the Law.
Luxembourg	CIS may be organised in either under the contractual form, 'Fonds Commun de Placement' ("FCP"), or under the corporate form (investment company). FCP have to be managed by management company because it does not have a distinct legal personality and CIS organised under the corporate form are administered and managed under the responsibility of their board of directors and are therefore not required to have a separate management company. CIS of whatever form are required to appoint a depository that has to be a bank established in Luxembourg, which is primarily responsible for the safekeeping of the assets of the CIS. In the performance of its functions, the depository must act independently and solely in the interest of the investors.
Mexico	Two types of CIS organised as corporations: a) Common mutual funds (invest primarily in transferable securities) b) Debt instruments mutual funds (invest primarily in debt or money market instruments). Their ownership is represented by shares that must be valued according to the value of their net assets and must provide liquidity to their investors through redemption of their shares at their net asset value. CIS operators are independent entities organised with the sole purpose of taking full care of CIS portfolio management, operational services and shares distribution. Securities brokerage firms and commercial banks may also assume overall responsibility for management and performance of the functions of the CIS. Safekeeping of CIS assets (non-government securities) and shares is accomplished by a securities depository institution (INDEVAL). The INDEVAL doesn't have any supervisory responsibility. The Bank of Mexico carries out custody of government securities
The Netherlands	Two types of CIS: a) Investment companies have in most cases the legal form of a limited liability company, so that the shares in the company are the units in the CIS. Management can consist of natural persons or management companies. b) Unit trusts are unincorporated entities that are constituted by assets that are administered and kept by third parties (the custodian) for the benefit of the unit holders. Management is taken care of by a management company.
Portugal	Portuguese law only recognises CIS constituted under the law of contract. CIS are required to be managed by a Management Company, which activity is mandatory restricted to CIS' management and their assets must be entrusted to a Depository for safekeeping, always credit institutions established in Portugal. Both Management Companies and Depositories perform their functions independently and strictly with respect to the unit holders interest and must be duly licensed and registered with the supervisory authority to carry out such activities.
Spain	Two types of CIS: a) <u>Investment Funds</u> (IF) constituted as common funds. Their net asset is divided into units which are, at the request of the holders, issued and redeemed on a daily basis out of their own assets. IF are required to be managed by a Management Company. b) <u>Open-ended Investment Companies (OEIC)</u> constituted under statute. Their capital is divided into shares that must be valued according to the value of their net assets and must provide liquidity to investors by issuing or redeeming their own shares at the request of shareholders on a daily basis. In both cases, CIS's assets must be entrusted to a Depository for safekeeping. Both, Management Company and Depository must be entities duly licensed in Spain to carry out such activities and no single company can act as both Management Company and Depository. In the context of their respective roles the Management Company and the Depository must act independently and solely in the interest of the unit holders.
Sweden	CIS are constituted as Funds, managed by a management company (the operator). All funds shall have a depository (a bank or other credit institution) acting as custodian of the assets of the fund and administering incoming and outgoing payments in respect of the fund. The management company and depository shall act independently of each other and exclusively in the common interest of the unit-holders.
Switzerland	In Switzerland, we have CIS of the contractual type only. The assets are managed by a Fund Management Company and kept in safe custody by the Custodian Bank that also has supervisory tasks with respect to the compliance of the Management Company with the prospectus and the applicable statutory and regulatory rules.
United Kingdom	Two types of CIS: a) <u>authorised unit trusts</u> : unincorporated bodies created under trust law and constituted by a trust deed made between the manager and the trustee. The manager has the executive responsibility for the scheme. The trustee has the duty of oversight and safeguards the title to the investments and the interests of the unit holders in them; b) <u>open-ended investment companies (OEIC)</u> : incorporated bodies OEIC are governed by an instrument of incorporation. They must have an Authorised Corporate Director whose responsibilities include making decisions as to the assets of the scheme and ensuring that the shares are correctly priced. The depository is responsible for the safekeeping of scheme property entrusted to it and ensuring that the company is managed in accordance with certain parts of the Regulations. The manager of an authorised unit trust or the Board of Directors of an OEIC are the operators of the CIS. There are two types of custodians: trustees of authorised unit trusts and depositories of open-ended investment companies.

United States	CIS are legal entities that usually have no employees and retain an outside entity to provide investment advisory services, staff and facilities. Entities with responsibility for conduct of CIS: a) the Board of Directors, elected by CIS' shareholders, has overall legal responsibility for the management functions. At least 40% of the directors must be independent. One of the Board's primary duties is policing the conflicts of interest that may arise between the CIS's investment adviser (and its affiliates) and the CIS. b) Investment Adviser provides advisory services pursuant to a written contract approved by a majority of the CIS' shareholders and a majority of independent directors. The Adviser is viewed as the operator because the Adviser manages and assumes legal responsibility of the CIS on a day-to-day basis.
----------------------	---

2. Delegation of functions.	
a) Are CIS operators allowed to delegate any or all of their functions?	
Country	Summary of responses
Australia	Yes. All the functions the RE is authorised to do under CIS constitution, compliance plan, and the Corporations Law may be delegated to an agent.
Canada	Yes. Canadian regulation does not regulate the delegation of responsibility. If the CIS operator is not registered as adviser it must delegate the portfolio management to an registered and qualified investment manager.
France	Yes. CIS Management Companies can delegate CIS financial management to another CIS management company or SGP on condition that it has obtained the prior approval of the COB. The delegation must be formalised in a written contract. As for accounting and administrative activities, they can be delegated to any entity on condition that it neither creates conflicts of interests nor interferes with the independence or control of the depository. Depository: Custody of the assets can be delegated; the functions of supervision must not be delegated.
Germany	Management companies may not delegate the core elements of its management functions. Only minor auxiliary functions may be delegated. Depository banks may entrust securities only to the custody of a securities clearing and deposit bank.
Hong Kong	Yes, CIS operators are allowed to delegate a wide variety of functions <i>but not their responsibilities</i> . Basically, CIS Operators can delegate any activity including fund management, administration, valuation of assets, distribution and compliance. However, if the delegated parties do not carry out their functions properly, then the CIS Operators are held accountable.
Italy	Yes. Asset management companies may entrust, for the CIS they manage and by means of a contract in writing, other asset management companies or intermediaries authorised to supply the service of portfolio management.
Japan	Yes. I.T. Management Companies can delegate all or a part of authorities to instruct over management of a specific trust asset, but the I.T. Management Companies cannot delegate investment management of all securities investment trusts in which they are responsible for. The Management Company of the Securities Investment Company can delegate part of authority over asset management entrusted by securities investment company.
Jersey	Yes. Operators may delegate any of their functions to any person. The operator however remains ultimately responsible for any functions that have been so delegated. A custodian may also delegate safe keeping functions to sub-custodians.
Luxembourg	Yes. Accounting and administrative functions can be delegated to a third party established in Luxembourg. Management functions can be delegated to one or several external investment managers established in Luxembourg or abroad.
Mexico	No. CIS cannot be managed by more than one operator, so it cannot delegate functions to third parties, maintaining full responsibility for the management and accomplishment of the CIS functions, not only before the regulator but also before the shareholders themselves. On the other side, the CNBV may authorise a third party, other than their operators, such as banks and brokers, to distribute CIS shares among investors. In this case, the CNBV maintains supervisory responsibility on the same.
The Netherlands	Yes. CIS operators are allowed to delegate some of their functions such as advisory, custody and administration.
Portugal	<u>Management Companies</u> are not allowed to delegate, even partially, to third parties the management of CIS, being solely permitted to outsource the services (namely advising). <u>Depositories</u> of CIS are solely allowed to delegate their custody functions to a sub-custodian while, according with the circumstances, it reveals as appropriate.
Spain	Yes. IF Management Companies are only allowed to delegate their duties on a non-resident Management Company (Delegate Company) for the purpose of managing the foreign portfolio of IF. OEIC are allowed to delegate their administration, management and representation functions on brokers-dealers, dealers, banks, saving banks, portfolio management companies and CIS management companies. Depositories are allowed to delegate on other entities their custody functions.
Sweden	CIS operators are allowed only to delegate their administrative functions and the keeping of the register of all unit-holders in the fund to another entity. In Sweden there is an ongoing discussion about whether to allow further delegation of other functions.
Switzerland	Yes, but restricted to partial tasks, such as nav-calculation and fund management.
United Kingdom	Yes. Operators may delegate any function to any person. If the operator delegates any function concerning the management of the property of the scheme, he remains responsible for it. A trustee of an authorised unit trust may delegate any function to any person, except oversight of the manager or his associate, custody or control of the property of the scheme; or custody of documents of title or documents evidencing title to property of the scheme
United States	Yes. The Adviser may delegate all responsibilities to one or more delegates if the contract between the Adviser and the CIS permits it. If, however, the Adviser delegates investment advisory responsibilities, the shareholders and independent directors of the CIS must approve a new contract with the entity to which the responsibilities are delegated.

b) If delegation is possible what are the responsibilities of the CIS operator with regard to:	
i) accountability to investors with regard to delegated functions; and	
ii) disclosure requirements;	
Country	Summary of responses
Australia	(i) The RE is legally accountable to CIS members for the acts of its agents. (ii) RE remains responsible for discharging its disclosure obligations. Custodians must be appointed under written contracts that meet certain conditions.
Canada	(i) CIS operators are responsible for the improper actions of their delegates, including investment managers and custodians, by securities regulatory authority rule. Custodians are ultimately responsible for the safekeeping of CIS assets. (ii) CIS operator is responsible for the disclosure notwithstanding any delegation.
France	i) When a management company or a depository delegates part or all of its functions to another company this does not discharge the former from any responsibilities whatsoever. ii) Delegations must be disclosed in the prospectus of the CIS.
Germany	(i) In the event of neglect of their duties, management companies and depository banks are liable for compensation in respect of the unit holders. They are also liable for any damage caused due to the culpable conduct of third parties to which minor technical auxiliary functions have been delegated. (ii) There are no disclosure requirements in respect of the outsourcing of minor technical auxiliary functions (core functions may not be outsourced).
Hong Kong	i) Although the functions are delegated, the responsibilities and obligations of the CIS operator may not be delegated. ii) The delegation must be disclosed in the CIS offering document, including disclosure of any increase in fees and expenses to the CIS or its investors.
Italy	i) The mandate must not exonerate or in any way limit the responsibility of the principal intermediary; ii) the mandate and its content must be described in the prospectus.
Japan	The content of delegation must be detailed in prospectus used in subscriptions.
Jersey	i) If an operator delegates any functions it remains accountable to investors as if it had carried out the functions itself. ii) Disclosure requirements are not changed by the existence of any delegated functions. Delegated functions are subject to specific disclosure requirements in the prospectus of the CIS.
Luxembourg	The liability of the directors of the management company of an FCP or of an investment company is not affected by the fact that they have entrusted to specialised service providers the performance of accountancy and administrative functions. Their liability is neither affected by the fact that they have delegated their management functions to an external investment manager. Both the delegation of accountancy and administrative functions to specialised service providers and the delegation of management functions to an external investment manager must be disclosed in the offer documents of the CIS. The depository's liability is not affected by the fact that he has entrusted all or some of the assets in its custody to a third party.
Mexico	Not applicable.
The Netherlands	The CIS operator is always fully responsible (for both i and ii)
Portugal	i) The Depository's accountability to investors with regard to delegated functions will not be affected by the delegation of the custody functions. ii) Delegates are required to provide the Depositories, as principal responsible for the delegated custody functions, with all the information deemed necessary to allow the compliance with disclosure requirements to investors.
Spain	i) Subsidiary responsibility remains on the Management Company when delegating its functions on a Delegate Company. In the case of OEIC, the delegation does not relieve the Board of Directors of any of its duties and responsibilities. The responsibility of the Depository is not affected by the fact that it entrusts to a third party its custody functions. ii) Delegation of functions does not relieve Management Company of its duties regarding disclosure requirements to investors. Delegations must be disclosed in the prospectus.
Sweden	i) The accountability to investors remains within the CIS ii) there are at present no legal requirements about disclosure of delegated functions.
Switzerland	(i) Delegation does not change the liability of the Management Company in any way. (ii) Delegation to be disclosed in prospectus.
United Kingdom	(i) If the operator delegates any function, it remains accountable to investors as if it had carried out the function itself. ii) Disclosure requirements are not changed by the existence of any delegated functions. Delegated functions are subject to specific disclosure requirements in the prospectus of the CIS.
United States	(i) Responsibilities are set forth in the advisory and subadvisory contracts. Usually, the Adviser is responsible for all aspects of the advisory relationship and for supervising the delegate. If the contract expressly provides that the Adviser would not be accountable for the actions of a second adviser, the Adviser would not be considered to have delegated its functions and the second adviser would be accountable. (ii) The Board is ultimately responsible for ensuring that the CIS discloses the delegation. Delegation of functions to other entities does not relieve the Adviser of its disclosure obligations to the Board.

c) Can there be sub-delegations? If so, what are the requirements that apply to such sub-delegations?

Country	Summary of responses
Australia	Yes. Sub-agents are regarded by law as agents. ASIC requires that the appointment of subcustodians meets certain standards.
Canada	Yes. Only subdelegation of custodianship is regulated, although securities regulation ensures that the CIS operator remains responsible notwithstanding any delegation. Sub-custodians are prohibited from sub-delegating without consent of the custodian and the CIS.
France	Yes. Sub-delegation to a third entity is permitted on precisely the same terms and conditions as those applicable to delegations. The delegated company must inform the company that made the initial delegation of any sub-delegation. The company receiving a sub-delegation must not make any further delegation.
Germany	No.
Hong Kong	Yes, there can be sub-delegations. The same principle of delegation applies to sub-delegations: delegation of the function is permissible but not the responsibilities.
Italy	No.
Japan	No.
Jersey	Yes. However, ultimate responsibility remains with the manager and the depository.
Luxembourg	Yes. Subject to proper disclosure in the offer documents of the CIS and provided that the sub-delegates fulfil the eligibility requirements that are applicable to the delegates themselves.
Mexico	No.
The Netherlands	Yes for advice or administration etc., but not for management. The only requirement is that such sub-delegation is subject to an agreement.
Portugal	No.
Spain	Delegate Company for management functions is not allowed to sub-delegate on a third entity. The sub-custodian could, when necessary, sub-delegate the CIS' assets custody with the previous consent of the Depository who remains responsible for the custody of the securities which have been entrusted to it.
Sweden	No. The question of subdelegation has not yet been raised. There is no regulation concerning sub-delegation.
Switzerland	Generally no, but with one exception: investment decisions may be subdelegated once, subject to the consent of the management company.
United Kingdom	Yes. The regulations do not prevent sub-delegation. However, the various responsibilities of the manager/ACD/depository remain unaffected.
United States	Yes, sub-delegations are treated like delegations.

d) Are persons to whom functions are delegated:

- i) required to be registered with / approved by the regulator?
- ii) subject to supervision by the regulator?
- iii) subject to any other regulatory requirements?

Country	Summary of responses
Australia	No. Agents are not directly required to be licensed, approved or supervised by the regulator. There is indirect control of agents through the licensing of the RE that must demonstrate that it can continue to meet its legal obligations through adequate supervision of its agents.
Canada	A CIS operator can only delegate portfolio management to a registered investment manager. Likewise the contents of subcustodian contracts are prescribed by securities regulations. Canadian regulators supervise registered advisers, dealers and CIS operators but not the act of delegating functions.
France	i) In the case of financial management activities, the delegate company must be duly registered and authorised to provide such a service. In the case of administrative and accounting activities, the delegate company must be capable of undertaking the delegated function and possess not only the necessary infrastructure but also be independent of the delegating company.ii)Yes, if the function falls within the regulator's domain.iii)French law provides that the rules governing the activity of delegate companies must offer precisely the same guarantees to investors as those of the company making the delegation.
Germany	Persons who are authorised by management companies to exercise voting rights or to whom minor auxiliary functions have been delegated do not need a special registration and are not supervised. Depositories must be licensed as securities clearing or deposit banks by the respective federal authority and are subject to supervision. Branches of foreign banks must be authorised to conduct the deposit-taking business in accordance with the national law of their home state.
Hong Kong	Persons to whom functions are delegated are only required to be registered with the SFC if they would perform a registrable function in Hong Kong. To the extent that some of these functions are carried out overseas, we require that the place of investment management activities be carried out in a jurisdiction with an acceptable inspection regime. Where they undertake registrable activities overseas, they must also obtain necessary overseas regulator's approval.
Italy	Mandates may be given to EU intermediaries authorised in their home country to supply collective asset management services or portfolio management services on an individual basis and also to non-EU intermediaries authorised in their home country to supply such services, provided that cooperation agreements are in place between Italian regulator and the competent authorities of the home country.
Japan	i) Delegation must be recorded in the securities investment, trust deeds submitted to the supervisory authority, in accordance with the Law, and application of registration for securities investment company must include a copy of management sub-delegation contract. ii) The supervisory authority does not directly supervise the delegated party, but the I.T. Management Company or the management company of the corporate type investment trust is responsible for all actions taken by delegated party. Specifically, not only functions carried out by the management company, but also functions carried out by delegated party, which had been entrusted with a part of management authority, are under the corrective order. lii) There is no other regulatory requirement
Jersey	i)We would expect delegated functions to another regulated entity outside the Island to an entity regulated in its own jurisdiction. ii)we would expect functions that are delegated to be subject to supervision by a regulator. iii)Persons to whom functions are delegated will be subject to normal regulatory requirements. There are no regulatory requirements over and above those that we would apply in the normal course of events.
Luxembourg	i) Delegation to external investment managers is implicitly approved by CSSF when granting the authorisation of CIS themselves. Such approval is subject to the condition that the delegates are of sufficiently good repute and have the professional experience required for the performance of their duties. In the event where management functions are delegated to an external investment manager established abroad, the CSSF's practice is to seek from the competent authority in the home country of that investment manager information concerning the latter's honourableness, fitness and suitability. ii) Unless they have the status of banking institutions or investment firms which come within the scope of the Law relating to the financial sector, third party service providers or external investment managers are not subject to supervision by the CSSF. Third party service providers have to be approved by CSSF provided that they dispose in Luxembourg of the necessary infrastructure for performing the complete range of duties and tasks that are assigned to them.
Mexico	Not applicable.
The Netherlands	No.

Portugal	i) Resident delegates and non-resident delegates shall always provide evidence of being duly authorised by the respective home competent authorities to provide such custody services. In addition, residents delegates and delegated functions must be registered with the competent authorities to carry out the functions or custody. As far as non-residents delegates are concerned, they are not required to be registered, providing that their activity is to be carried out of Portuguese market or the portfolio also located outside Portuguese jurisdiction ii) CMVM analyse the terms of the delegation agreement and controls, pursuant to CMVM's supervisory powers, the maintenance of elements subject to said registration iii) No.
Spain	i) Delegate Companies entrusted with the IF foreign portfolio management must be non-resident companies duly registered with their home regulator. Entities entrusted with functions of OEIC must be duly licensed in Spain to carry out such activities: investment firms and credit institutions. Sub-custodians designated by Depositories can be resident or non-resident entities duly licensed to provide such service by their home regulator. ii) The delegation of IF foreign portfolio management has to be previously approved by the CNMV who verifies that the Delegate Company fulfils with the same requirements as regard Spanish Management Companies. Despite the delegation of the custody of CIS's assets is not subject to previous approval, the CNMV verifies that all securities are registered under CIS name and the Depository has to certify their existence and where they are deposited. iii) CNMV has adopted some guidelines for Depositories when selecting a sub-custodian: the entity should have a good credit qualification, should be subject to prudential supervision and the home rules governing its activity must offer enough guarantees to protect the investors' interests (in case of bankruptcy, insolvency, ...)
Sweden	There are no legal requirements but the contracts concerning delegations must be handed over to Finansinspektionen but no formal approval is given.
Switzerland	Formal approval is not required. However, the Federal Banking Commission reviews the contracts and may intervene, whenever necessary. Most institutions to which functions are delegated are regulated anyway. Therefore, even without formal approval, "subcontractors" cannot escape supervisory intervention.
United Kingdom	(i) Yes if the delegated functions require authorisation. ii) Yes, if the delegated activity requires authorisation, otherwise supervision is by supervising the control by the delegator. iii) Persons to whom functions are delegated are not subject to any other regulatory requirements.
United States	Yes. Persons to whom investment advisory responsibilities are delegated must be registered as investment advisers and are subject to inspection, but are not required to be "approved" by the SEC. To reflect a 1999 change to the Law, persons to whom non-advisory responsibilities are delegated are not required to be registered

III) INFRASTRUCTURE FOR DECISION MAKING

Independent decision making

3. Are there any legal restrictions as to the relationship of CIS Operator with other group companies or prohibitions to carrying out activities with them, in order to ensure an independent decision making process?

Country	Summary of responses
Australia	Yes. Restrictions are applicable to transactions under which a RE confers benefits (payment of money or any other financial advantage) to itself or its related parties (parent companies, sibling companies, and directors and spouses of related companies). In general any benefits to the RE or its related parties must be disclosed and approved by a members' meeting before they are given. Such restrictions are designed to protect the scheme property and the interests of its members and do not generally apply to any fees payable or indemnity available to the RE for the proper performance of its duties where it is disclosed in the scheme constitution.
Canada	Yes. Regulations prohibit certain specified transactions with group companies or related parties. The regime primarily relies on transaction based rules and some corporate governance rules which prohibit (i) self-dealing transactions with related parties of the CIS, its operator or persons responsible for the management of its investment portfolio and (ii) personal trading and front running. Rules also establish restrictions on (iii) purchases of securities underwritten by related parties of the operator and (iv) on fees paid by the CIS to related parties and impose (v) mandatory disclosure of self-dealing transactions. The regime also establishes thresholds on equity ownership, voting share or control. If the thresholds are exceeded the regime presumes that unitholders interest could be compromised. Law also requires CIS operators to follow a regulated standard of care to act "honestly, in good faith and in the best interests of the mutual funds.
France	Yes. Law provides that the autonomy of the management activity must be ensured and that the asset management company shall abstain from any initiative the objective of which is to privilege its own interests, or those of its shareholders or its partners or associates, to the detriment of the interests of its clients or unit- or shareholders. The Business Conduct of Rules states that it is particularly advisable to identify the activities which could find themselves in positions of conflict of interest with the UCITS management activity, determine the incompatibilities of functions and where necessary create Chinese walls. All activities and functions must be clearly identified and clearly separated in order to ensure the autonomy of investment management and organise necessary controls.
Germany	Yes. The management company and the depository bank may not be identical. The managers, and other persons with authority to represent the depository bank may not be employed with the management company, and vice versa. The functional and organisational division between the trading department and other departments must be guaranteed. Transactions both for the mutual fund and for the joint stock investment company must be carried out exclusively in the interest of the unit holders. In case of violations both the management company and the depository bank are required to assert the claims of the unit holders against the other party. Members of the board of directors or of the supervisory board of an investment company may neither buy from nor sell to the managed funds or companies, even if such transactions were in the interest of the unit holders.
Hong Kong	Any transactions between the CIS and the CIS Operator or its connected persons may only be made with the <i>prior consent of the Trustee/Custodian/Depository, carried out on arm's length terms and consistent with best execution standards</i> .and <i>may not in aggregate account for more than 50% of the CIS's transactions in value in any one financial scheme year</i> . All such transactions must be disclosed in the CIS's annual report. There are also rules applicable to the <i>operation of "house accounts"</i> (account owned by the CIS Operator or any of its connected persons over which it can exercise control and influence).
Italy	The CIS must be on the alert for conflicts of interest. However, provided that equal treatment of the CIS is ensured, they may carry out transactions where they have directly or indirectly a conflicting interest.
Japan	Yes. Management Companies are prohibited from engaging in asset management of a firm in which Management Companies have financial or personal interest with, in order to make profit for the said firm.
Jersey	Operators and custodians must be independent of each other. However, members of the same group of companies can act as operator and custodian provided certain conditions are met. For example, the group must be of a minimum size, the operator and manager must be separate companies and neither must be a subsidiary of the other, there must be no common directors or employees and they must operate separate systems. Operators and custodian are subject to requirements related to transactions entered into between the CIS and certain related persons.

Luxembourg	The Law does not refer to specific situations or transactions which lead to a conflict of interest, but limits itself to set out in general terms the obligation of those who are legally responsible for the management of a CIS to act exclusively in the interest of the investors. Hence, CIS operators are not precluded from engaging in connected party transactions provided that these transactions do not conflict with the interest of investors, which implies that connected party transactions have to be concluded on an "arm's length basis".
Mexico	In the first place, in order to ensure fairness and impartiality in the CIS assets and shares daily valuation process, Mexican law requires that valuers should be independent from the CIS themselves, their operators and also issuers of securities held in their portfolios. In the second place, in order to avert conflicts of interest, CNBV regulations prohibit CIS to buy securities formerly owned or managed by any other member of the same financial group to which the operator belongs.
The Netherlands	No legal restrictions, but any liaisons with group companies should be announced in the prospectus and/or in the annual report. The policy of the Nederlandsche Bank in such cases is to encourage CIS to disclose whether or not transactions with affiliated companies are done on an arm's length basis.
Portugal	Yes. CIS' Operators in most cases belong to the same financial groups. In this circumstances, Operators must obtain proper independence in the decision making process, avoiding any sort of conflict of interests, particularly ensuring that persons responsible for Operators' own portfolio may not be the same responsible for CIS' asset management. This independent infrastructure of decision making shall be reflected in Internal Rules organised by of Operators' that must be submitted to CMVM analysis. Furthermore, as a general principle, law establishes that CIS Operators shall only carry out transactions in the sole interest of the CIS and unit holders.
Spain	Yes. No institution may be Depository of a CIS managed by a company belonging to the same group, or of a OEIC in the same circumstances, except when certain norms of separation between both to guarantee their independence, stipulated in the Law are complied with. Law establishes the principle that CIS Operators can only carry out transactions in the sole interest of the CIS and its investors - transactions aimed at furthering the interests of group or related companies of the CIS Operator and the depository, or the interest of their managers or directors, are unlawful. Certain related party transactions are subject to special regime - even if carried out in the interest of the CIS: either approval by the General Shareholders Meeting of the CIS, in the case of OEIC; or that the transaction consists in a sale of market securities at market prices, or better for the CIS, entered into between the CIS and the director or manager.
Sweden	No legal restrictions. A CIS Operator and a Depository can belong to the same group but the management company and the depository shall act independently of each other and exclusively in the common interest of the unit-holders.
Switzerland	In Switzerland, most CIS are "bank products" sponsored by the custodian bank; there are no general statutory barriers against a bank being the parent company of the Management Company (universal banking system). However, in order to minimise conflicts of interest, the Investment Funds Act ("IFA") requires a separation of staff and infrastructure between Management Company and custodian bank. Moreover, the IFA imposes a strict fiduciary duty on both CIS operator (Management Company and custodian bank) to act in the sole interest of the investors. Therefore, no business transactions of any kind between Management Company / Custodian Bank are allowed, except buying and selling listed securities. Although members of the Management of the Custodian Bank may sit on the Board of Directors of the Management Company, persons in charge of supervising the Management Company are barred.
United Kingdom	Yes. Manager and trustee of unit trusts must be independent of each other. The depository of a OEIC must also be independent of the company and its directors. Operators and custodians are subject to requirements related to transactions entered into between the CIS and certain related persons.
United States	The Law imposes some prohibitions against certain transactions between CIS and its Adviser or the Adviser's group companies (e.g. purchases and sales of securities or other property). If a group company acts as a custodian for the CIS, certain conditions must be satisfied. Some affiliated transactions, which would otherwise be prohibited, are permitted if they comply with the terms of certain rules, or are permitted by the SEC on a case-by-case basis.

4. Describe briefly the operational structure designed to ensure the integrity of the CIS and, in particular, whether it is required to implement *Chinese walls* or other specific internal control measures in order to avoid conflicts of interests within the organisation.

Country	Summary of responses
Australia	A CIS has two options as regards the structural requirements that a RE must meet to be able to operate it. The RE must either have at least half of its directors qualified as “external directors” or must have a compliance committee with a majority of external members. The legal responsibility of both independent directors and compliance committee is an oversight function of the RE. Internal control measures must be set out in a compliance plan reviewed by ASIC (see Q5).
Canada	CIS operators are required to exercise its powers “honestly, in good faith and in the best interest of the mutual fund, and in connection therewith shall exercise the degree of care, diligence and skill that a reasonably prudent person would exercise”. In addition related party transactions are prohibited or regulated. Legislation does not require specific internal control requirements to ensure compliance with the above mentioned standards.
France	French regulations stipulate that the provider shall put into place means and procedures that ensure an effective control of its activities and those of its intermediaries and custodians. Internal controls must ensure that the rules of conduct in all aspects of clients relations are respected. Its organisation must enable it to exercise its activities with loyalty, diligence, neutrality and impartiality to the exclusive benefit of the clients or units of shareholders, whilst respecting the integrity and transparency of the market. The company must take all steps necessary to reduce the risk of conflict of interests. Functions potentially giving rise the possibility of interest conflicts shall be strictly separated.
Germany	Credit institutions, investment companies and depository banks must have in place a proper business organisation in order to monitor risks. The organisational structure and the envisaged internal control mechanisms are examined at the licensing procedure. Compliance with these provisions is to be checked by the internal auditing body and in connection with the audit of the annual accounts by an external auditor. The companies are free to decide whether to establish the compliance department at group level or within the individual group companies.
Hong Kong	Where a CIS Operator is part of a group of companies which undertake other financial activities such as corporate finance, banking or broking, it should ensure there is an effective system of functional barriers (<i>Chinese Walls</i>) in place to prevent the flow of confidential or price-sensitive information between the different areas of operation and written procedures to document the controls. There is also a requirement for segregation of duties: front office functions from back office functions; compliance from audit functions; the investment decision making process should be clearly delineated from the dealing process.
Italy	Asset management companies must organise themselves in such a way as to minimise the risk of conflicts between the pools of assets under management. Internal procedures must be implemented to ensure that exchanges of information do not occur between the sectors of the company that should be kept separate and with other group companies that supply certain services. CIS must identify cases in which the contractual conditions agreed with the persons who supply services to such companies conflict with the interests of the CIS and ensure that: the assets are not burdened with otherwise avoidable costs or excluded from the benefits and investors are informed in the prospectus of the sources of income or other benefits accruing from the service of collective management.
Japan	Management Companies, in accordance with the amended Securities Investment Trust Law, are prohibited from managing asset of trust funds or asset of securities investment company with an intent to gain profit from sources other than trust funds or asset of securities investment company; therefore, if the management of assets other than preceding assets (such as customer' s asset related to discretionary investment advisory contract) is handled within the corporation, then the corporation must implement specific internal control measures in order to avoid conflicts of interests within the organisation.
Jersey	A CIS operator would be expected to appoint a compliance officer. All compliance procedures must be in writing. Transactions with connected parties must be at least as favourable to the scheme as would be any comparable arrangement effect on normal commercial terms between two independent parties. Trustees and depositories are required to act solely in the interest of unit holders and shareholders. Operators and custodians are required to implement control and <i>Chinese walls</i> procedures in order to comply with principles on conflict of interest and misuse of information.
Luxembourg	There are no specific requirements for the implementation of <i>Chinese walls</i> or other specific control measures in order to avoid conflict of interests between the Operator of a CIS and affiliated or connected parties.

Mexico	Decision making as to CIS investment strategies and portfolios composition is centered in their investment committees, whose members should be appointed in special stockholders meetings to guarantee independence of the CIS investment decision making process from the trading process carried out by their operators; fairness and impartiality in the CIS assets and shares valuation process is guaranteed by the fact that it should be accomplished by independent persons or corporations; Safekeeping of CIS assets by the depository institution, through individual accounts in the name and on behalf of each CIS; Diversified mutual funds are required to invest in no more than 10% (and jointly 30%, by those being managed by the same operator) of the same issue, except securities issued, accepted or guaranteed by banks and also government securities; CIS managed by brokers are not allowed to trade debt instruments through money desks belonging to the same, but they should do it through those belonging to other brokers; CIS cannot place orders through the brokerage firms of the same financial groups to which their operators belong.
The Netherlands	There are no strict guidelines. However, an investment company must have a general description of the Administrative Organisation that should meet special requirements for decision making. For instance there must be a minimum of five persons in order to fulfil adequate segregation of functions. In this respect, Chinese Walls and market conformity are also taken care of.
Portugal	The CMVM has issued some recommendations: The investment decision must be entrusted to persons that perform this functions only within the Management Company; <i>Chinese walls</i> and other specific internal control measures must be implemented at a group level in order to ensure proper separation between particular sensitive areas; Management Companies shall be organised in terms of ensuring the functional separation between the decision and execution of investment area from the “back office” with operational autonomy and responsible; Management Companies may use – with an indicative goal and with no impact in the independence of the decision making process - “research services” produced by entities belonging to the same financial group or may also integrate a person from its staff in to the group “investment committees” without any further cost to the CIS; It is desirable that Management Companies have different addresses and are physically separated from other entities of the same group.
Spain	Most CIS Operators belong to financial groups. Regulation requires: that CIS Operators approve an internal code of conduct and be surrounded by <i>Chinese walls</i> ; that all investment decision are taken at CIS Operator level (and not by group management, who may have additional layers of information) and exclusively in the interest of CIS investors; that a compliance officer situated above the <i>Chinese walls</i> monitors, compliance and has the power and duty to limit the CIS Operator’s activity with regard to certain shares, if other units within the group are in possession of material privileged information; that the CIS Operator votes shares owned by the CIS exclusively in the investors’ interest.
Sweden	In the conduct of all business activity, the board, management and employees of the management company should act in a manner that does nothing to impair public confidence in the management company and in the industry as a whole. The CIS operator must have systems of internal controls and internal audition, risk measurement and valuation routines. There is no explicit demand for <i>Chinese walls</i> in the regulation Finansinspektionen appoints an auditor for each management company to participate in the audit of the company in conjunction with other auditors
Switzerland	CIS operators are subject at group level to strict guidelines and internal rules.
United Kingdom	A CIS operator is required to appoint a compliance officer and to set out its compliance procedures in writing, as well as to take steps to ensure that its officers and employees act in conformity with their responsibilities. Transactions with connected parties must be at least as favourable to the scheme as would be any comparable arrangement effected on normal commercial terms between two independent parties. Trustees and depositories are required to act solely in the interest of unitholders and shareholders. Operators and custodians are required to implement control and Chinese wall procedures in order to comply with principles on conflict of interest and misuse of information.
United States	CIS generally are not required to implement Chinese walls or any other specified internal control measures in order to avoid conflicts of interest. The Law, however, imposes an operational structure on CIS to minimise potential conflicts of interest and to ensure the integrity of the CIS. The Law imposes that at least 40% of the directors on the Board of a CIS be independent. Independent directors are expected to provide an independent check on the Adviser and other service providers. The oversight responsibilities include: (i) Approval of a written advisory contract that must also be approved by a majority of the CIS’s shareholders; (ii) Approval of Certain Distribution Agreements; (iii) Selection of the CIS’s independent auditor; (iv) Approval of a Fidelity Bond. Other requirements designed to avoid conflict of interest include: the requirement that CIS assets must be held with “eligible custodians”; pricing requirements concerning CIS’s securities; CIS and its Adviser must adopt codes of ethics governing securities transactions of their employees; and investment limitations on CIS investments.

Codes of conduct

5. Does there exist in your jurisdiction a statutory Code of conduct enforceable for all CIS Operators as regards the full activity of Operators (i.e.: relationships with investors or any other group company, conflict of interests between shareholders, clients, directors, etc?).

Country	Summary of responses
Australia	No. ASIC has statutory powers to approve industry Codes of conduct but no Code has yet been approved for CIS operators. However a MIS must have a compliance plan which sets out measures to be applied by RE in operating it. The responsibility for its preparation lies with the RE. The Corporations Law requires that the plan must deal with certain measures such as separation of the CIS property from that of the RE, constitution and conduct requirements of the compliance committee (if it exists), valuation of assets, audit of due compliance with the plan, and keeping of records of the MIS.
Canada	No. Law relies on compliance with legislated standard of care for CIS operators and the prohibitions and restrictions dealing with conflicts of interest.
France	Yes, at four levels: 1) broad principles enshrined in the Law and require CIS Operators to know their clients, defend their clients' interest, avoid conflicts of interest, have a proper organisation, sufficient means and effective Chinese walls, implement risk control systems, abstain from insider dealing and improper conduct in the market; 2) more detailed principles, set forth by the COB; 3) Detailed principles set forth by the French professional association in its Business Code of Conduct (the majority of entities have endorsed it); 4) internal codes of conduct which must be submitted to the COB during the authorisation procedure.
Germany	Credit institutions, investment companies and depository banks are subject to certain provisions designed to avoid conflicts of interest. Among others they are obliged to draw up internal rules relating to staff transactions to ensure the priority of customer interests. The rules of conduct and organisational requirements of the Securities trading Act only apply in cases where the management company or the depository also conduct investment services.
Hong Kong	In Hong Kong, we have a "Fund Manager Code of Conduct" which sets out the conduct requirements for persons registered with the SFC whose business involves the discretionary management of collective investments, including CIS (whether authorised or unauthorised), pension and provident funds. In addition, we have a product code for CIS called "Code on Unit Trusts and Mutual Funds". This Code governs the authorisation requirements for CIS and on-going obligations of CIS Operators in relation to CIS.
Italy	Asset management companies adopt and comply with a self-regulatory code of conduct, establishing the rules of conduct for the members of the administrative and control bodies, employees, financial salesmen and collaborators with reference to at least: the obligation of data protection; personal transactions involving financial instruments; the prohibition of receiving benefits from third parties that could lead to conduct contrary to the interests of investors.
Japan	Management Companies must follow management regulation laid out in the amended Securities Investment Trust Law in regards to the management of asset. I.T. Management Companies must faithfully give directions for investments and are prohibited from engaging in a transaction which may be harmful to the beneficiaries of asset trust, in order to gain profit for other people than beneficiaries.
Jersey	Operators of CIS are in the case of recognised funds subject to a statutory code of conduct enforceable as regards the full activities of the operator. Operators of unclassified funds have obligations derived from general law, the instrument of incorporation, and the prospectus. The Commission will also ensure that they operate in accordance with best practice that will mean that we can compare their method of operation against the statutory code of conduct in place for recognised funds.
Luxembourg	No. However, the Luxembourg Investment Funds Association ("ALFI"), which is the representative body of the Luxembourg investment fund industry, has developed on its own initiative an "ethical code" applicable to all parties involved in the operation of a CIS. CIS Operators who are members of ALFI adhere to the rules of the "ethical code" on a purely voluntary basis. These rules do therefore not have any legally binding effect.
Mexico	Even though it doesn't exist in this jurisdiction a statutory code of conduct enforceable for all operators, they must comply with basic principles contained in the Mutual Funds Act, the Securities Market Act, and CNBV regulations, all of which tend to avert conflicts of interest among participants, minimise risks, abstain from insiders trading and, in general, to operate in the best interest of their clients.
The Netherlands	No, but listed CIS are of course subject to regulations with respect to, for instance, market manipulation. Most operators have an internal code of conduct.

Portugal	CIS Operators are subject to the following levels of rules of conduct: a) Broad principles: CIS' Operators shall act with competence and due diligence; have the duty to reinforce the confidence in the securities market; defend clients' interests both with respect with the principle of equal treatment and avoiding conflicts of interest between CIS they manage; have a proper and fit organisation, sufficient means and specific internal control measures within the group organisation; implement risk control systems; abstain from insider dealing and improper conduct in the market and disclose the necessary disclosure of information to investors. B) Detailed principles foreseen in subordinated legislation or recommendations proposed by CMVM. C) Professional organisations issue Codes of Conduct previously approved by CMVM. Breach of conduct rules constitutes an administrative offence that can be sanctioned by CMVM, except rules issued by professional bodies.
Spain	CIS Operators are subject to three levels of rules of conduct: A) Broad principles enshrined in the Law and require CIS Operators to know their clients, defend clients' interest, avoid conflicts of interest, have a proper organisation, sufficient means and effective <i>Chinese walls</i> , implement risk control systems, abstain from insider dealing and improper conduct in the market;B) more detailed principles, set forth in subordinate legislation, proposed by the CNMV, implemented by the Government and construed by guidance; C) internal codes of conduct which must be approved by every CIS Operator at group level.
Sweden	Information must be given regarding all board members' other commitments and ownership interests in other institutions within the financial sector or in exchange-listed companies. Any person having access to details concerning the day-to-day operations of a management company may not on his own behalf acquire securities or other financial instruments to the mutual fund or otherwise trade with the fund. The Mutual Funds Association has developed on its own initiative " <i>Ethical Guidelines for Management Companies</i> " binding for its members but these rules have no legal binding effect.
Switzerland	The Swiss Funds Association ("SFA") has recently adopted a thorough Code of Conduct that is scheduled to be approved by the FBC shortly. The FBC will enforce compliance with this Code of Conduct by all Management Companies, members and non-members of the SFA alike.
United Kingdom	Managers of unit trusts and directors of OEIC have obligations derived from general law, the CIS instrument of incorporation, the prospectus, the Financial Services Regulations and the rules of SRO's. Breaches of the requirements above are enforceable.
United States	There is no statutory code of conduct for Advisers. However, the Law comprehensively regulates the conduct of Advisers. In addition, under state law, both the Adviser and the Board are fiduciaries with respect to the CIS, and must act in its best interests.

6. If yes, is it applicable to the whole group when CIS operators are subsidiaries of a financial group?

Country	Summary of responses
Australia	Not applicable.
Canada	Not applicable.
France	The broad principles apply to all financial intermediaries. Depending upon the activity, certain other specific rules may apply depending upon the activity.
Germany	Investment companies are generally subsidiaries of credit institutions which are subject to the rules of conduct and the organisational requirements of the Securities Trading Act.
Hong Kong	The Codes are only applicable to the CIS Operator and dealings of the CIS with connected persons of the CIS Operator.
Italy	Yes.
Japan	The prohibition by the law applies to I. T. Management Companies or the Management Company and is not applicable to the whole group.
Jersey	The code of conduct would be applicable to the entity to whom the permit under the Law has been issued. However, to the extent relevant the codes would have to be implemented at group level.
Luxembourg	Not applicable
Mexico	Not applicable
The Netherlands	-
Portugal	Rules of conduct are implemented at group level.
Spain	Codes of conduct are implemented at group level.
Sweden	Not applicable.
Switzerland	It will apply to the Fund business as a whole.
United Kingdom	Requirements fall on the operator itself not on other firms in the group.
United States	Not applicable

Representation of the interest of the CIS

7. Are CIS allowed to have significant participations in the companies they invest?

Country	Summary of responses
Australia	There are no specific provisions in the law. However the scheme constitution may contain restrictions as to the manner in which the RE may participate in the management of its portfolio companies, and , generally, the CIS operator is under a duty to adopt a course of action which is in the best interest of the scheme members. However, there are general restrictions that apply to participation rights in the context of takeovers such as a prohibition that shareholders (including MIS) must not act in concert with another shareholder to oust existing directors.
Canada	No. Investments are limited to 10% of their assets in securities of any one issuer and may no invest for the purpose of exercising control or management. Law also prohibits a group of related mutual funds (CIS under common management) from owning more than 20% of any one issuer. A single CIS may not hold more than 10% of the voting rights attached to the securities of any one issuer.
France	The investment of a CIS must not exceed 10% of the global asset value of an issuer or its related companies in any one class of assets.
Germany	No. CIS may not invest more than 5 per cent of the value of their assets and in securities of a single issuer. The voting rights arising from shares of a single issuer may not exceed ten per cent of all of the mutual funds managed by an investment company.
Hong Kong	A CIS can only hold ordinary shares issued by any single issuer up to 10% of its net asset value. In addition, a CIS may not invest in any security of any class in any company or body if any director or officer of the CIS Operator individually owns more than 0.5% of the total nominal amount of all the issued securities of that class, or, collectively the directors and officers of the CIS Operator own more than 5% of those securities.
Italy	No, a CIS is allowed to stake 5 % in companies shares, but it is not allowed to hold significant participation which gives the right to exercise a relevant interest on the issuer.
Japan	Since the Securities Investment Trust is defined as "management of investment of trust asset in mainly negotiable securities, following the direction of client," the CIS is not supposed to overstep the boundary of functions by participating in the management of invested company. Same applies to the Securities Investment Company.
Jersey	No. CIS may not acquire more than 5% of the securities issued by a single company and CIS belonging to the same group may not acquire more than 10% of the securities issued by a single company.
Luxembourg	An investment company or a management company acting in connection with all of the FCPs which it manages may not acquire any shares carrying voting rights which would enable it to exercise significant influence over the management of an issuing body. Moreover, an investment company or FCP may not acquire more than 10 % of the non-voting shares of any single issuing body, 10 % of the debt securities of any single issuing body; 10 % of the units of any single CIS.
Mexico	According to CNBV regulations, common mutual funds may participate in any company up to 30% of its capital stock. Nevertheless, Mexican law forbids them to become holding companies or to be in a position to control or materially influence the management of one or more companies by virtue of their ownership of securities issued by the same.
The Netherlands	Yes, as long as this is in conformity with their published investment policy.
Portugal	In broad terms, one CIS may not acquire or hold more than 10% of any shares (carrying or not voting rights) of a single issuer company. Moreover, with respect with the aggregate number of CIS managed by a sole Management Company, it may not acquire or hold more than 20% of said equity.
Spain	None OEIC, IF nor CIS belonging to the same group can acquire any shares carrying voting rights that could enable them to exercise significant influence over the management of an issuing company. Moreover, an OEIC or IF may acquire no more than 5% of the securities issued by a single company, and CIS belonging to the same group may acquire no more than 15% of the securities issued by a single company.
Sweden	No. Voting rights for shares; 5% of the value of the voting rights for all shares issued by the issuers, for bonds and other debt instruments; in general 10% of the issuer's outstanding loans, for other units of a CIS; 10% of the units in the fund. If a management manages more than one mutual fund, the provisions mentioned above shall apply to the total share holding of such funds.
Switzerland	Switzerland has the same rules and restrictions as laid down / recommended in the UCITS-Directive: max. 10 of voting rights in a single issuer.
United Kingdom	No. A CIS must not hold more than 10% of the voting share capital of a corporate, 10% of the debt securities issued by any single issuing body or 10% of the units of a CIS. Furthermore, a CIS operator may not acquire for a CIS participations in a company if they carry voting rights which would give the operator the power to significantly influence the conduct of business of the company. This significant influence test is based on all the participations controlled by an operator for all the CIS which it operates.

United States	Yes, although some provisions of the Law limit these participations. If a CIS is classified as “diversified”, it may not, with respect to 75% of its total assets, invest more than 5% of its total assets in any one issuer, and may not acquire more than 10% of an issuer’s outstanding voting securities. In addition, the Law generally prohibits a CIS from (i) purchasing the securities issued by, or any interest in, a person who derives more than 15% of its revenue from its business as a broker, dealer, underwriter or registered investment adviser, unless the CIS limits its investments to certain specified amounts; (ii) knowingly acquiring the securities of another company if “cross-ownership” or “circular ownership” exists between the CIS and the company; (iii) acquiring more than 10% of the total outstanding voting stock of an insurance company; or (iv) acquiring the securities of another investment company if, after the acquisition, the CIS exceeds certain limits.
----------------------	--

8. Who is entitled to hold and exercise the CIS rights as a shareholder of companies in which they invest?

Country	Summary of responses
Australia	The RE has the legal right to exercise shareholder rights such as voting and must do so in the best interest of the scheme members. When a custodian is appointed, the RE has the power to instruct it as to how it should exercise the shareholders’ rights.
Canada	Regulation does not regulate this activity. Generally CIS operator exercises the rights on behalf of the CIS in accordance with the trust agreement. CIS operator must comply with the required standard of care in exercising voting rights (to act in the best interests of the CIS).
France	The manager must be in a position to freely exercise, within the legal constraints, the rights of shareholders. These shareholders’ rights shall be exercised in the sole interest of the holders of shares or units.
Germany	Investment companies exercise the voting and shareholder rights connected to their mutual fund. Joint stock investment companies themselves have voting and shareholder rights. In both cases they are required to act exclusively in the interest of their unit holders (shareholders).
Hong Kong	The Trustee/Custodian/Depository, in consultation with the CIS Operator, is entitled to hold and exercise the CIS rights as a shareholder.
Italy	Asset management companies must exercise, in the interests of the unit-holders, the voting rights attaching to the financial instruments belonging to the funds, except if otherwise provided for by law.
Japan	The trustee exercises the right of the shareholder (voting rights) but I. T. Management Companies instruct the trustee on the execution of these rights.
Jersey	The operator of a CIS will exercise the CIS rights as a shareholder of companies in which they invest.
Luxembourg	The management company in the case of FCP and the board of directors in the case of investment companies.
Mexico	CIS operators are entitled to hold and exercise these rights on their behalf, as they have overall responsibility for the management and performance of the functions of the CIS.
The Netherlands	Management
Portugal	CIS’ rights as a shareholders of companies it invest are exercised by the respective Management Company.
Spain	Management companies in the case of IF rights as a shareholder and in the case of OEIC, themselves. In practice, Spanish CIS only invest in securities with financial purposes and such voting rights are not, in general, exercised
Sweden	Voting rights are exercised by the Management Company..
Switzerland	Voting rights must exercised by the Management Company in the sole interest of investors.
United Kingdom	The custodian of a CIS exercises the rights as shareholder of companies in which the CIS invests but it must follow instructions given to it by the operator.
United States	The CIS’s Board of directors. Typically, however, the Board delegates to the Adviser the responsibility for exercising the CIS’s rights as a shareholder.

9. Can the representation of CIS's shareholder rights be delegated to another entity? If yes, under what conditions.

Country	Summary of responses
Australia	Yes. CIS shareholder rights must be exercised in the best interest of members and RE is responsible for it even when the representation is delegated.
Canada	Yes. This activity is not regulated. If the portfolio management is delegated, the exercise of shareholder rights may also be delegated.
France	No. The Business Code of Conduct states that the delegation of the UCITS's shareholder rights to the custodian, the depository or the promoting firm of the UCITS should be avoided.
Germany	Management companies may authorise a third party to exercise the voting rights but should give instructions as how to do so.
Hong Kong	Yes. Where the Trustee/Custodian/Depository has delegated the administrative function to an Administrator, the representation of CIS's shareholder rights may be exercised by the Administrator instead.
Italy	The code of conduct of the Italian professional association on asset management provides that a CIS must vote exclusively in the interests of investors. The exercise of voting rights has to be adequately disclosed in the annual statements or in other ways.
Japan	Yes. It is possible to delegate the exercise of right as shareholder if I. T. Management Companies have entrusted the management of trust assets to another Asset Management Company.
Jersey	No.
Luxembourg	Yes. The delegation is not subject to any specific conditions, except that the CIS operator remains ultimately responsible for the acts or omissions of the delegate as if they were its own.
Mexico	No. CIS operators are the only entities who are entitled to exercise on their behalf all rights as shareholders of companies in which they invest.
The Netherlands	Yes, unconditional as far as CIS regulation is concerned.
Portugal	Yes. Management Company can delegate the exercise of these rights, through proxies, providing that unit holders' interests are properly protected.
Spain	No. The IF Management Company is the only entitled to exercise all the rights inherent in the securities of the IF in the sole benefit of the unit holders.
Sweden	Yes, without any special conditions.
Switzerland	Yes. Only in such cases, in which no conflict of interest may arise.
United Kingdom	Yes. The custodian and the operator can delegate their functions for the exercise of shareholder rights provided some conditions have been met.
United States	Yes. The delegation would have to be approved by the Board and the CIS shareholders, and the delegate would be a fiduciary with respect to the CIS.

10. Are there any restrictions, prohibitions or industry best practice standards regarding the exercise of CIS's shareholder rights in order to avoid conflicts of interests in the case of investments in:
- the controlling entity of the CIS Manager?
- other CIS group companies? And
- companies where other group companies have their own interests?

Country	Summary of responses
Australia	No restrictions except in the context of takeovers (see under Q7 above) . However, RE's statutory obligations to act in the best interest of the scheme members and give priority to their interests could impact on the way in which shareholder rights (including those in related companies) are exercised.
Canada	The Law prohibits a CIS from investing in these companies.
France	General principle states that such rights must be exercised in the sole interest of the unit holders or of the shareholders. No specific legal restriction or prohibition exists regarding the exercise of UCITS' shareholder rights. The Business Code of Conduct states that, in the event of a public take-over bid on either the promoting firm, the depository of the UCITS or the majority shareholder of the management company, a special decision-making procedure must be created.
Germany	There are no special regulations but there is a general rule according to which voting rights must be exercised in the best interest of the unit holders.
Hong Kong	There are no explicit rules. The overriding principle is that the CIS Operator must manage the CIS in the exclusive interest of the holders. Other rules to avoid conflicts of interests are: the CIS Operator (i) must ensure that security selections are based on thorough analysis and document the reasons for decisions; (ii) must not effect any transaction based on confidential information;(iii) must ensure that transactions made on behalf of the CIS are in accordance with CIS' objectives, restrictions and guidelines;(iv) must execute client orders on the best available terms; (v) must establish policies to minimise the potential for conflicts of interests.
Italy	No particular provision has been established.
Japan	They cannot buy negotiable securities owned by I. T. Management Company or its director with trust assets, nor can they sale or lend negotiable securities owned as trust assets to these people. According to the rule set by the Investment Trusts Association, there will be no management directives for stocks issued by the companies with special relationship with I. T. Management Companies.
Jersey	No.
Luxembourg	There are not specific rules. The general obligation imposed to CIS operators to act exclusively in the interest of investors implies that voting rights are not used in a manner that conflicts with the interest of investors.
Mexico	In order to avoid conflicts of interest, CIS may participate in the controlling entities of their own managers or in any member of the same group to which these belong, except brokers, up to 10% of the total stock and/or bonds issued; but in this case, CIS managers must refrain from participating in the CIS itself or in any other member of the same group to which they belong. Regarding the exercise of CIS's shareholder rights, there is no specific restriction or prohibition established in Mexican law.
The Netherlands	None.
Portugal	There are no specific regulations over this issue, being the exercise of those rights always subject to general principles that governed CIS activities.
Spain	Spanish regulation provides general principles regarding the exercise of the rights inherent to the securities in which CIS invest. This principle state that such rights must be exercised in the sole interest of the unit holders or shareholders, and avoiding conflicts of interest between Management Company group and investors. No specific restriction or prohibition is established regarding the exercise of CIS' shareholder rights.
Sweden	No specific restriction or prohibition. The general principle is that the management company must act solely in the interest of the unit-holders.
Switzerland	This topic is dealt with in the new Code of Conduct: Management Company must act in the exclusive interest of investors and, if required by investors, has to disclose how it voted and why.
United Kingdom	The custodian may exercise any right of voting conferred by any of the property of the CIS, but only after consultation with the operator. There are no other requirements, but reliance is placed on the principles for the operator to act in the interests of investors and to follow principles on conflict of interest.
United States	The Law prevents conflicts of interest by prohibiting a CIS from investing in the Adviser, the controlling entity of its Adviser, or in a CIS group company that is an affiliated person of its Adviser. If a CIS is a shareholder in companies in which other group companies have invested, the Adviser must disclose the conflict to the Board and receive its consent before exercising the CIS's shareholder rights in a manner that could benefit the Adviser. The Law also prohibits the investments of affiliated persons of a CIS in any "joint enterprise or other joint arrangement or profit-sharing plan" in which such CIS is a participant unless the SEC issues an order permitting them. In addition, the Law prohibits a CIS from purchasing the securities issued by, or any interest in, a person who derives more than 15% of its revenue from its business as a broker, dealer, underwriter or investment adviser, unless the CIS limits its investments to certain specified amounts.

11. Is it required that the criteria followed for the exercise of CIS's shareholder rights are disclosed in the offer documents or other documentation of a CIS?

Country	Summary of responses
Australia	No. Disclosure rules in the offer documents are very broad and do not have specific requirements as regards the exercise of shareholder rights. There are no other CIS documents subject to specific disclosure requirements.
Canada	No.
France	Yes. The provider shall account for its practices in matters of usage of voting rights in the annual reports of the collective investment schemes.
Germany	No.
Hong Kong	No, our Codes are silent on this.
Italy	No particular provision has been established.
Japan	Yes. It is disclosed in prospectus used in subscriptions
Jersey	No.
Luxembourg	No.
Mexico	No.
The Netherlands	Yes, in the prospectus
Portugal	No.
Spain	No.
Sweden	No.
Switzerland	No specific regulation; in cases of special importance, such an obligation could arise; moreover, investors have the right to obtain information about the way the Management Company has voted.
United Kingdom	No.
United States	No.

Internal control

12. Are there in your jurisdiction regulatory requirements relating to internal control and/or risk management systems or are these issues mainly dealt with as industry best practice standards?

Country	Summary of responses
Australia	All registered CIS are required to have a compliance plan that must set out measures to ensure that the RE has the ability to comply with its obligations. While the broad requirements that compliance plans must meet are set out in the Corporations Law, ASIC also gives guidance to REs regarding the structured and systematic processes it must undertake to identify risks of non-compliance and the measures it must put into place to address those risks. ASIC assess the adequacy of the scheme's compliance plan.
Canada	No. However the regulator considers such controls are necessary to comply with the law and standards of care..
France	COB's regulation provide that the provider shall put into place means and procedures that ensure an effective control of its activities and those of its intermediaries and custodians. Internal controls must ensure that the interests of the client are totally respected. A compliance officer and a person responsible for internal controls must be designated.
Germany	No. The Law only requires as a general clause that investment companies manage the mutual fund with the diligence of a prudent businessman that includes the necessity of internal control and risk management schemes. In addition, investment companies are required to maintain an internal audit.
Hong Kong	The SFC has a set of internal control guidelines for our registrants called "Management, Supervision and Internal Control Guidelines for Persons Registered with or Licensed by the Securities and Futures Commission".
Italy	Internal control and risk management systems have been dealt with by law and subsequent regulations. A CIS must establish an internal control function. The responsibility of such a function is assigned to a person not having hierarchical position with the persons responsible for the sectors of activity subject to control. This function has to be performed in an autonomous and independent way.
Japan	Yes. Based on the approval standards established for I.T. Management Companies, the applicant must possess knowledge and experience to carry out the business in just and accurate manner, and on top of that, the applicant must possess enough social creditability. The ability to appropriately execute business is determined by examining the conditions of internal control structure, such as management structure, business operation structure related to instruction on management of trust assets, personnel administration, management administration, calculation and review of calculation related to trust assets, instructions on management of trust assets and other related internal monitoring structure.
Jersey	Internal control and risk management systems are dealt with best practice standards.
Luxembourg	There are no specific regulatory requirements nor are there any industry best practice standards dealing with these issues. In practice, the greater part of CIS established in Luxembourg do not dispose themselves of the human and technical resources necessary for their administration and management, but use instead the infrastructure of third party service providers, mostly banking institutions or investment firms established in Luxembourg. Such entities are subject to requirements on sound administrative and accounting procedures and adequate internal control systems: existence of an organisation chart and a description of tasks, adequate operational systems and adoption of a procedures manual, appropriate documentation of operations, adequate support functions (accounting, EDP), existence of an independent internal audit function.
Mexico	Even though there are no specific requirements, CIS are obliged to maintain a diversified portfolio, according to their investment objectives and risks involved, in order to avert or diminish risks. CIS managers may implement, on a self-regulatory basis, internal control or risk management systems to assure that transactions are properly recorded, including appropriate segregation of duties, and also to manage some risks, in order to avoid enforcement action from the regulatory authority in the event of not complying with either ruled or self-imposed investment limits.
The Netherlands	Statutory provisions state, generally, that the Administrative Organisation should be adequate. Furthermore these issues are taken care of by industry best practice standards.
Portugal	There are no regulatory requirements relating to internal control imposed by specific laws or regulations unless those that impose to Operators an obligation to establish and disclose their internal control mechanisms in their Internal Rules – which are analysed by CMVM.
Spain	Yes. Regulations issued by the CNMV establish the minimum content of systems for internal control and monitoring and ongoing assessment of risks in CIS operators in connection with organisational aspects and availability of resources, with the control and monitoring of the risks incurred by the CIS and in connection with the control of the risks arising from the investment of their own resources. For complying with such provisions, it is necessary to have the sufficient organisational, material and human resources to develop an adequate system of internal control and risk monitoring as part of the entity's general procedures and policies, and in which limits and responsibilities are clearly defined.
Sweden	There are no specific rules. The management companies are free to determine their systems but the company must in the application describe the organisation of the internal controls and the internal auditing within the company. The application shall also contain a written description of the risk measurements that the company uses and details of the risk limits that are determined.

Switzerland	There is a general statutory requirement that will be molded into "best practice standards" by the afore-mentioned Code of Conduct.
United Kingdom	There are regulatory requirements for the operators to organise and control their internal affairs in a responsible manner, keeping proper records, and where the firm employs staff, should have compliance procedures and adequate arrangements to ensure that they are adequately trained and supervised.
United States	Internal control and/or risk management systems are dealt with as industry best practice standards.

13. Who is accountable for the implementation, development and on-going effectiveness of internal control of a CIS Operator? Who is responsible for assessing the quantity and quality of means, resources and systems to be employed?

Country	Summary of responses
Australia	A RE is fully responsible for internal controls relating to the operations of the scheme. Oversight functions are exercised by independent directors, compliance committee, auditors of the plan and external auditors.
Canada	The regulation does not cover this issue. However the regulator would take the position that the board of directors of the CIS operator would be responsible.
France	The manager must continue to have at all times at his disposal the same quantity and quality of staff, administrative and functional means as those necessary when obtaining the COB's authorisation. A person responsible for internal controls must be designated.
Germany	The business managers are responsible for the implementation and efficiency of internal controls.
Hong Kong	The senior management of the CIS Operator is principally responsible for compliance with all relevant legal and regulatory requirements. There is also a requirement for the appointment of a Designated Compliance Officer. Although the responsibility and obligations may not be delegated compliance activities may be delegated to a qualified professional..
Italy	Asset management companies are responsible for the implementation of the internal control of a CIS operator. A CIS will be authorised, provided that, <i>inter alia</i> , the organisational structure (with particular regard to internal controls) shows that sound and prudent management is ensured.
Japan	Management Companies are accountable for the implementation, development and ongoing effectiveness of internal control, and the accredited public accountant and the supervisory agency (including inspection) responsible for supervision of this companies are accountable for assessing the internal control.
Jersey	The Board of Directors. The Commission monitors these controls as part of the proactive compliance visit programme.
Luxembourg	The CIS Operator himself is in the first instance accountable for the implementation, development and ongoing effectiveness of internal control. The possibility for the CIS Operator to delegate to a third party service provider the administration of the CIS on behalf of which he acts does not in any way affect his responsibility. In those cases where CIS take themselves care of their administration, the review of internal control systems set up for these CIS is carried out by the latter's independent auditors. In those cases where CIS entrust their administration to service providers who are banking institutions or investment firms (which is mostly the case), it is the duty of the auditors of these service providers to review the internal control systems in place.
Mexico	The CIS managers (board of directors) should appoint the personnel responsible inside the organisation of the implementation, development and on-going effectiveness of internal control, which should be independent from the one belonging to other areas of the same organisation, and they are also responsible of assessing the quantity and quality of means, resources and systems to be employed
The Netherlands	Management (board of directors)
Portugal	Management Companies, <i>maxim</i> their management bodies are the sole entities accountable for both.
Spain	The Board of Directors assumes full responsibility. The scope or extent to which internal controls must be implemented will depend on each Entity's size, structure and type of business. The sufficiency of the internal control systems in place must be evaluated on the basis of the activities conducted and the risks actually assumed at any given time.
Sweden	The board of directors.
Switzerland	The Board of Directors; this responsibility cannot be delegated.
United Kingdom	The directors of the operator are responsible for both.
United States	The Adviser is accountable for the implementation, development and on-going effectiveness of its internal controls. The Adviser is responsible for assessing the quantity and quality of means, resources and systems to be employed. The Board, when annually renewing the advisory contract, examines the effectiveness of the Adviser's internal controls to ensure that the Adviser can meet its contractual and fiduciary responsibilities to the CIS.

14. Is it required that CIS Operators elaborate written policies and procedures? Who is responsible for its elaboration, reviewing and updating?

Country	Summary of responses
Australia	The RE must describe in the compliance plan systems and procedures it has adopted to deal with non-compliance risks, and is accountable for its review and updating.
Canada	There are no rules in this regard other than in respect of registered advisers who are required to establish procedures in writing for dealing with their clients
France	During the authorisation procedure, the management company and depository must submit to the COB a program of activities with, <i>inter alia</i> , details of investment policy and internal procedures. The depository is obliged to establish a document (cahier des charges) detailing, inter alia, its objectives and organisation.
Germany	Investment company's business operations must be laid down in writing in the internal working regulations that must be drawn up by the managers and are subject to internal audit control.
Hong Kong	Yes, the Designated Compliance Officer is required to maintain sufficiently detailed compliance procedures to give senior management of the CIS Operator reasonable assurance that the CIS Operator complies with all applicable requirements at all times. Staff performing the compliance function, in conjunction with management, must establish, maintain and enforce effective compliance procedures.
Italy	Asset management companies have to set up internal procedures serving to:reconstruct the times and types of action taken in supplying services;ensure adequate internal monitoring of the activities performed;handle and file correspondence and documents received and sent. Internal procedures shall be communicated in writing to the personnel involved and the financial salesmen.
Japan	According to the regulation set by the Investment Trusts Association, Management Companies must compose a management planning report on trust assets. The director of division in charge of management of trust assets is responsible for the documentation, reviewing, and updating.
Jersey	Yes. The Board of Directors of the operator is ultimately responsible.
Luxembourg	There are no specific regulatory requirements for CIS themselves. Such a requirement does however exist for banking institutions or investment firms to which the administration of CIS is delegated. It is the Management of these banking institutions or investment firms who has the responsibility for the elaboration, reviewing and updating of the internal control policies and procedures.
Mexico	Written policies and procedures must be set out in the Organisation and Procedures Manuals, which must be approved by the regulatory authority previously to its entry point. The CIS managers (board of directors) should appoint the officials or committee responsible of its elaboration, reviewing and updating.
The Netherlands	Yes, management. Policy change can be subject to the approval of the general meeting of shareholders and the Nederlandsche Bank.
Portugal	Management Companies, <i>maxime</i> their management bodies are responsible for preparing and updating Internal Rules which must be submitted to CMVM analysis.
Spain	Yes. The Board of directors is responsible for defining the criteria for preparing and revising a policies and procedures manual, designating the persons responsible for its specific implementation and establishing the frequency with which it must be revised.
Sweden	There are no specific rules.
Switzerland	Board of Directors is responsible; in practice, the Management has to laid down the written policies and procedures in an Internal Manual that is approved by the Board and is subject to periodical review by the External Auditor. The Articles of Association and the Internal Rules of the Management Company need approval by the FBC.
United Kingdom	Yes. The directors of the operator are responsible for the elaboration, reviewing and updating of the policies and procedures.
United States	Generally, no. The Law requires written policies and procedures relating to a limited number of specific topics for both the CIS and the Adviser. The Adviser is responsible for preparing, reviewing, and updating these procedures, which, in certain cases, are reviewed and/or approved by the Board. Advisers also may have certain written business practices.

15. Describe the main issues to be covered by written policies and procedures

Country	Summary of responses
Australia	While the types of measures to be adopted may vary depending on the characteristics and size of the schemes, the key areas that a compliance plan must address are the risks of: loss of the scheme assets, conflicts of interest with RE's related parties, improper use of information, RE not adhering to schemes policy, non disclosure of relevant information, RE not treating members or members of the same class equally and failure by the RE to apply the standard of care and diligence in operating the scheme.
Canada	The Law requires that registered advisers file policies with the regulators concerning standards directed to ensuring fairness in the allocation of investment opportunities among clientes. Otherwise the Law contains no further guidance.
France	The program of activities of the management company contains the following information: The registered address which must be in France, amount of initial capital, identity of its directors and their shareholding, the total number of employees, the number of managers managing portfolios on behalf of third party, the number of those responsible for the administrative management of portfolios together with an individual undertaking from each and every director that he will respect <i>inter alia</i> the prudential rules, permanent resources, the description of the technical means, and the internal regulations that shall stipulate the conditions under which those persons responsible for investment management may conduct operations in financial instruments for their own account, the <i>modus operandi</i> to ensure that a proper control of all transactions is effected and the obligations imposed on these persons to avoid any circulation or abusive use of confidential information.
Germany	All the business operations as well as internal control systems must be covered.
Hong Kong	The written policies and procedures should cover: legal and regulatory requirements; record keeping; business practices; prevention of money laundering; internal control; proper handling of investor complaints; compliance with dealing requirements; procedures in relation to dealing and related review processes to prevent improper activities; procedures to protect the firm's and CIS assets from acts of misappropriation; procedures to establish client identity; regular reconciliation of the firm's internal records; and reporting of material non-compliance by the CIS Operator or its staff with legal and regulatory requirements to senior management and/or the regulator(s).
Italy	The internal control function must: continuously verify the suitability of internal procedures and ensure compliance with the applicable regulations; check compliance with internal procedures and code of conduct; keep a register of complaints; provide advisory assistance to the company on problems concerning the provision of services, conflicts of interest.
Japan	The main issue covered by written policies and procedures ensures that executions of management structure, operational management structure related to directive of trust asset management, calculation and review related to trust assets, internal management structure such as directive of trust asset management other than trust-asset management are done sufficiently.
Jersey	-
Luxembourg	The policies and procedures which the Management of banking institutions or investment firms have to lay down in writing must encompass all aspects of the business of these entities, be they related to operations, administration or accounting.
Mexico	It should cover all areas which imply risk for the organisation, basically trading, financing and accounting, such as policies on recruitment, training and remuneration of personnel in charge of these functions; segregation of key functions among different areas; availability of appropriate electronic systems in a secure and adequately controlled environment, and safekeeping, archive and access to CIS documentation through the use of access codes for authorised personnel and also through back-up devices to prevent losses of information.
The Netherlands	Must content: Investment policy and risk awareness; day to day management by at least two persons sufficient expertise for management sufficient functional segregation, such as management, back office, front office, accounting and control; authorisation to perform transactions on bank accounts; management information.
Portugal	The internal rules must disclose: the definition of the organisation structure; fundamental rules regarding the objectives, proceedings and means to ensure the execution of said structure; penalties in case of breach of these rules. The implementation and updating of internal control rules, as well as the control of their proper execution and efficiency shall be directly supervised by Operators' Management bodies. Nevertheless, it is left to the discretion of Management Companies to introduce further issues to be covered by those Rules (the Code of Conduct of APFIN has established some rules of advertising and marketing, mechanisms to receive clients' complaints).

Spain	Written policies and procedures must cover a regular and effective communication systems within the entity to ensure that the Board of Directors is continually and timely informed of the risks assumed either by the CIS under management and by the management company itself, risk policies and measurements and reporting systems subject to regular review, enough and appropriate human and technical resources and an effective organisational structure which ensures that its functions are conducted in a sound, efficient and effective manner (recruitment policies, segregation of key functions), responsibilities, authorisations, approvals and operating limits have to be clearly defined and communicated to and followed by staff, procedures addressed to ensure the compliance with all regulatory requirements and with the entity's own internal policies and the establishing and maintenance of an appropriate and effective compliance function within the entity but independent of all operational and business functions and which reports directly to the Board of Directors.
Sweden	There are no guidances in this regard.
Switzerland	Investment Controlling Process; Risk Management, criteria for selecting broker-dealers and subcustodians; General Communication with the Board, Segregation of key functions; IT; Compliance function, Human Resources etc.
United Kingdom	The operator is required to ensure that its compliance procedures are set out in writing.
United States	Advisers must establish procedures designed to prevent the misuse of material non-public information. A CIS and its adviser must adopt written codes of ethics designed to ensure that those employees who have access to information regarding the investments by the CIS do not use such information for their own personal gain. Additionally a CIS must have written procedures designed to ensure that the terms of the transactions entered with certain of its affiliated persons are fair. An Adviser may adopt written procedures regarding (i) trade allocation, (ii) liquidity of portfolio securities and (iii) valuation of CIS portfolio securities for which market quotations are not readily available.

Risk management structures

16. Are there in your jurisdiction any rules or guidelines regarding the establishment of additional limits to those imposed by general regulation on portfolio investments as regards market risk, counterparty risk, liquidity risk, operational risk and legal risk of CIS?. If yes, how are these limits informed to investors?

Country	Summary of responses
Australia	No. The only requirement is that CIS investments must comply with the investment policy set out in the prospectus and its constitution.
Canada	No. Regulation requires adherence to certain specified investment restrictions for managing CIS that must be disclosed.
France	The prospectus must content: a) Classification of the UCITS according to the categories defined by the COB, based on geographic areas and on assets class; b) Investment strategy together with detailed explanation of risks attached to a particular type of investment (market risks, interest rate risks, exchange rate risks and any other important risk such as country risk). The market risk measures the exposure of the UCITS to share price fluctuations according to a methodology defined by the COB; c) Investment objectives and d) Indication of the minimum holding period. Periodic reports, such as quarterly reports, must not only inform the investor of any evolution of the risks during the period under review but also precise the strategy that was adopted to minimise such risks.
Germany	No.
Hong Kong	Effective policies and procedures shall be established to ensure the proper management of risks to which the CIS is exposed. SFC guidelines defined objective measures must be established to monitor risks but does not prescribe the risk measurements or models whose effectiveness is the responsibility of the CIS Operator. Risk measures/ limits need not in relation to investing in a CIS are required to be disclosed in the offering document.
Italy	No.
Japan	I.T. Management Companies set internal regulation on management of securities investment trust based on the business method documents, and their risk management system is based on the internal regulation.
Jersey	No.
Luxembourg	Only the requirement that the counterparties in transactions on OTC derivatives undertaken by a CIS must be highly rated financial institutions which are specialised in this kind of transactions. This requirement aims to reduce to the largest extent possible the counterparty risk in OTC derivatives
Mexico	Additional limits to those imposed by general regulation on portfolio investments may be established by the CIS themselves, following their investment objectives, in their general operating programs, which they must submit to the regulator when they apply for the necessary licence to engage in business, and should be thoroughly disclosed in their prospectuses.
The Netherlands	None
Portugal	Yes there are, with special focus on market, counterparty and legal risks. The limits are imposed by specific regulation regarding the use of derivatives, repo and securities lending operations. Disclosure to investors takes place through out fund rules, prospectus and semi-annual reports. On the first two documents the CIS must express, clearly, the objectives of using such instruments and the maximum/minimum exposition they will face on each of them. In the semi-annual reports they must identify operations, the results obtained with their use, divided by foreign exchange, interest rate and price risks, and also the correspondent impact on the CIS performance.
Spain	Yes. Rules issued by the CNMV establish that entities must identify, measure, quantify and monitor the risks assumed either by the CIS under management and by the Management Company itself. Also, such rules establish that CIS Managers must define risk limits, additional to those imposed by general regulation, that each CIS under management can tolerate according to the investment policy and objectives informed to investors (market risk, credit risk, liquidity risk, operational risk, legal risk, and risk of robbery, fraud, fire, flooding and other hazards). CIS Managers must include in the prospectus those risk inherent to the investments of the CIS and through periodic financial reports (quarterly reports) must inform to investors of the risk assumed along the period from a qualitative and quantitative point of view.
Sweden	There are no explicit rules or guidelines. However, if management companies have the intention of dealing with derivatives, they have to provide specific information regarding the market. Information regarding the use of derivatives must be disclosed in the prospectus.
Switzerland	NO general rules an additional limits; the IFA, however, generally requires any "special risk" to be mentioned in the prospectus.
United Kingdom	Significant reliance is placed on the specific and detailed investment and borrowing requirements set out in regulations. Operators are required to ensure that, taking account of the objective of the CIS and the manager's policy the property of the scheme provides a prudent spread of risk. It is the intention of this regulation that CIS should avoid excessive exposure to any one risk source. Disclosure is required to investors of the investment objectives of the CIS.
United States	No.

17. Does the regulatory authority assess the models to be used by CIS Operator before they are implemented? Is any model acceptable to the regulatory authority or are there guidelines regarding the use of specific risk assessment models?

Country	Summary of responses
Australia	No.
Canada	No.
France	The rules issued by the COB do not propose specific risk assessment models to be implemented. Nevertheless, the COB verifies, both during the process of an authorisation application and in the exercise of its supervisory activity, the sufficiency and adequacy of resources and control systems put into place. Providers conducting operations of a leverage nature (i.e. on the derivatives markets) must have the technical means necessary to ensure the necessary follow up and control procedures of open positions are effected.
Germany	No. It is planned to apply procedures used in banking supervision.
Hong Kong	No, and not applicable
Italy	A CIS will be authorised, provided that, <i>inter alia</i> , the organisational structure (with particular regard to internal controls) shows that sound and prudent management is ensured.
Japan	The models are assessed as part of the responsibility of I.T. Management Companies or the Management Company of Securities Investment Company; therefore, the supervisory authority does not assess the model before they are implemented.
Jersey	No.
Luxembourg	No.
Mexico	No, risk assessment models must be implemented by the CIS managers themselves
The Netherlands	n/a
Portugal	The basic principle established by CIS legal framework in order to evaluate its assets lies in their market or fair value. Nevertheless, there is some sort of non-listed or scarcely traded assets or derivatives that are not publicly traded which market value is not easy to assess. For those which market value is difficult to assess, CIS manager, with the knowledge of the members of board of directors, may define models in order to evaluate the assets other than those legally established. Those models must be authorised by CMVM by the time those documents are approved and then disclosed clearly upon the CIS rules and in the periodic reports. The principles supporting the agreement done by CMVM regards market practice and financial statements, in order to evaluate assets as fairly as possible. Those criteria and methods must be followed in respect for the continuity principle.
Spain	In the scope of legal derivatives limits of risk measurement, CNMV rules contemplate the possibility for CIS Managers to use either a standardised model defined by the CNMV or a model proposed by the CIS Manager itself, both based on the estimation of potential losses for the CIS within a certain period of time. The use of a model proposed by the CIS Managers must comply with certain qualitative and quantitative requirements, and must be previously approved by the CNMV. Regarding internal controls and risk management systems do not propose specific risk assessment models to be implemented. Nevertheless, the CNMV verifies, when processing an authorisation application and exercising its supervisory activity, the sufficiency and adequacy of resources and control systems on the risks assumed and some guidelines on the use of risk assessment models are included in the rules issued by the CNMV.
Sweden	No.
Switzerland	Contrary to the area of banking supervision, the FBC does not approve risk models in the CIS-area, as the approval of models would have no impact on the capital adequacy requirements of the Management Company. Internal structures and models are reviewed on a case-by-case-basis by the External Auditors.
United Kingdom	No.
United States	No.

IV) DISCLOSURE

18. In your jurisdiction, is disclosure to investors used to:

- a) inform investors of risks involved?
- b) to deal with conflicts of interest?

Country	Summary of responses
Australia	Yes. All the information required to make an informed assessment about investing in the scheme, including merits and risks, must be disclosed. This requirement includes disclosure of conflicts of interest of the RE. In addition, restrictions on dealing with related parties include disclosure to members.
Canada	Yes.
France	a) Yes. Management Companies or the marketing companies must enquire of the client, his objectives, experience in matters of investment and financial position. In this respect, the duty to inform and counsel shall include warnings against risks. The prospectus must inform of the risk; specific warning must be included in the prospectus when the CIS is invested in securities listed on emerging markets, or warrants, or certain illiquid assets. An express authorisation must be given by the client for with leverage effect on derivative markets, precising, <i>inter alia</i> , the nature of operations authorised effected and reporting requirements. Advertising must mention, where applicable, the least favourable possibility to draw to the attention of a potential investor the inherent risks of the investment. b) Yes. The annual report of a UCIT must, for example, disclose the transactions in securities or financial products in which the group to which the manager belongs has a special interest, indicate clearly the amounts and calculation of expenses, or administrative or financial management commissions collected by the manager or the depository. If brokers fees have been paid by the intermediaries in the form of “soft commissions” these must be disclosed.
Germany	Investment companies’ prospectus has to contain all material information necessary for the assessment of the units at the time when they are bought. They are also required to publish for each fund an annual and a half-yearly report containing all material information to assess the activity of the investment company and the performance of the mutual funds. Joint stock investment companies are subject to a similar obligation.
Hong Kong	Yes to both 10(a) and (b).
Italy	a) Yes. b) Yes.
Japan	a) Risks are disclosed in the prospectus used for subscriptions. b) Conflicts of interest are disclosed. in the prospectus used for subscriptions.
Jersey	a) Yes, in the prospectus; b) Yes, in the prospectus.
Luxembourg	a) Yes. Offer documents of CIS must disclose the particular risks associated with the investment policy they intend to pursue. B) No.
Mexico	a)Yes. The prospectus must detail policies on investment, liquidity, buying, selection and diversification of assets, together with maximum and minimum investment limits per instrument established by each CIS. Also, debt instruments mutual funds should include in their weekly reports on the status of their portfolios, addressed to investors, their actual market and credit risks rating assigned to them by a rating agency. b)Yes. The prospectuses must include complete information on the CIS background, their operators’ and their links with any financial group and information regarding investment committees and also persons or corporations responsible of assets and shares valuation.
The Netherlands	a) Yes, but general risks only and the way derivatives are used (such as purpose, type of instruments, markets, underlying assets and maximum limits), should be addressed in the prospectus. b) Yes, the type of relationship must be set out in the prospectus. Furthermore this is under review for further development.
Portugal	a)Yes. Management Companies must disclose all information deemed necessary to allow them to understand and accept all the risks involved in the proposed transactions. CIS’ rules and prospectus, which includes the description of CIS’ investment policy, in particular whether the CIS is specialised (sectors, geography, type of financial assets) and also concrete reference to the use of derivatives (particularly regarding purpose, type of instruments, markets, underlying assets and maximum limits imposed by regulation). Moreover, investors may assess the ongoing risk exposition of CIS either through the publication of the CIS portfolio (which includes reference to CIS’ assumption of patrimonial and extra-patrimonial liabilities) either by CIS’ accounts (annual and semi-annual). b) No.

Spain	a) Yes. The prospectus must include information about the risk inherent to the investments of the CIS and the maximum limits that the CIS can tolerate regarding: market risk, counterparty risk, exchange rate and interest rate risk and country risk. Detailed information about derivatives must be included. And specific warnings regarding the risks involved. Quarterly reports, must inform of the risks assumed by the CIS along the period from a qualitative and a quantitative point of view. Also these reports must refer the risk management policy. B) Yes. The prospectus must explain the type of relationship between both, their position within the group and the means implemented in order to avoid conflicts of interests and to ensure an independent decision making. Quarterly reports also must explain the type of relationship between the CIS Manager and Depository and information about transactions where entities belonging to the CIS group have acted as counterparts.
Sweden	a) The prospectus and periodic reports must include information of different categories securities and other financial instruments in which the fund may invest and of the extent, risk and purpose of derivatives instruments and securities lending and borrowing. b) No.
Switzerland	a) There is a general duty to disclose any "special risks" involved, even in e.g. a money market fund. Moreover, a risk warning may be required, subject to approval by the FBC. A general "fluctuations warning" is, however, not compulsory. b) Not compulsory.
United Kingdom	a) <u>Advertisements</u> are required to include several risk warnings relating to the fluctuating value of investments, the special nature of high yield investments, the risk of exposure to foreign currency and the risks relating to higher volatility funds. <u>Scheme particulars</u> of unit trusts and the prospectus of OEIC are required to state the characteristics of the scheme itself including any risks it may reasonably be regarded. <u>Annual and half-yearly reports</u> and accounts are required which include a report on any significant information on the development of the activities of the scheme during the period. <u>b)</u> It is required that transactions should be as least as favourable as a comparable arrangement effected on normal commercial terms rather than disclosure to investors.
United States	a) Yes. The prospectus must disclose the investment objectives, principal investment policies and associated risks. b) The prohibited affiliated transactions are not permitted even if the CIS or Adviser discloses the conflicts presented by the transactions. When other conflicts between the Adviser and the CIS that are not specifically prohibited by the Law arise, they must be disclosed to the Board, and often to investors, as well. In addition, the form used to register CIS shares with the SEC requires disclosure regarding certain conflict of interests.

V) ENFORCEMENT

Compliance function.

19. Are there in your jurisdiction regulatory requirements regarding the implementation of a compliance function within the CIS Operators organisation or is this issue dealt with as industry best practice standards?

Country	Summary of responses
Australia	Yes. CIS must have a compliance plan implemented by RE and audited by an external auditor.
Canada	Yes, registered advisers and dealers must have a designated compliance officer, although the Law provides no further guidance on the duties of compliance personnel.
France	Yes. The COB regulations provide that providers of CIS management services must not only prepare and put into effect internal codes of conduct but also appoint a compliance officer.
Germany	Yes. Investment companies are obliged to have in place an internal audit.
Hong Kong	There are regulatory requirements regarding the implementation of a compliance function. As mentioned earlier, the senior management of the CIS Operator is principally responsible for compliance by the CIS Operator with all relevant legal and regulatory requirements, and ensures that the compliance function possesses the technical competence and experience necessary for the performance of its functions. There is also a requirement for the appointment of a Designated Compliance Officer within the CIS Operator. Staff performing the compliance function, in conjunction with management, must establish, maintain and enforce effective compliance procedures.
Italy	Internal control and compliance is required by law.
Japan	The supervisory authority checks the implementation of a compliance of function within I. T. Management Companies and the Management Companies with the occasional on-site inspection.
Jersey	The Commission will expect all operators of CIS to have a compliance function within their organisation.
Luxembourg	No for CIS Operators. However, banking institutions and investment firms to which the administration of CIS is delegated are required to put in place an internal audit department made up of one or more members of staff.
Mexico	Up to this date, due to fact that there are no regulatory requirements on the implementation of a compliance function concerning internal control and risk management systems and their effective functioning within the CIS operators organisation, this issue should be dealt with as industry best practice standards.
The Netherlands	Industry best practice standards.
Portugal	CIS Operators must have a compliance function in charge of the supervision and control of the investment decision making process and the operational function. Accordingly, persons in charge of the compliance function must be different from those involved in functions they control.
Spain	Spanish regulation establishes that CIS Operations must have a compliance function (control unit) comprising one or more persons who are not involved in any operational and business functions and which reports directly to the Board of Directors.
Sweden	No.
Switzerland	A compliance function is compulsory; issue dealt with based on best practice in the industry.
United Kingdom	Regulatory requirements include for all CIS operators the appointment of a compliance officer, the establishment and maintenance of procedures to ensure that officers and employees act in conformity with the regulatory requirements and the preparation of written compliance procedures.
United States	The implementation of a compliance function is dealt with by industry best practice standards. As a practical matter, however, most CIS and Advisers have compliance officers and compliance departments. Advisers also may comply with systems for applying established procedures to prevent and detect any violations of the Law by persons under their supervision.

20. When the CIS Operator belongs to a financial group, could it be acceptable to have a unique compliance officer or department for the whole group?

Country	Summary of responses
Australia	There are no specific requirements relating to compliance officers. When reviewing a compliance plan as a part of the licensing of the RE, ASIC may, in light of the complexity of the plan and operations of the CIS, require the appointment of a compliance officer with adequate authority to escalate matters where necessary.
Canada	No. Regulation requires a separate compliance officer for CIS Operators registered as dealers or advisers.
France	Yes, on condition that the different entities of the group having separate functions requiring them to respect different professional bodies, business conduct rules and authorities have separate compliance structures.
Germany	Companies are free to decide whether to establish the compliance department at group level or within the individual group companies.
Hong Kong	There is no restriction on this. The important principle is that the compliance function and the Designated Compliance Officer should be independent of other functions and report directly to the CIS Operator's senior management.
Italy	Delegation of internal control functions to external persons is subject to approval by the Bank of Italy and Consob.
Japan	Yes. It is acceptable.
Jersey	Yes.
Luxembourg	N/a
Mexico	Yes
The Netherlands	Yes
Portugal	Groups are not required to provide a compliance functions for each entity. This function may be performed at a group level.
Spain	Yes. Groups need not establish such a compliance function at each one of their component entities. Depending on the size and the diversity of the activities that are conducted, it may be sufficient to appoint a control unit to exercise its functions and responsibilities throughout the whole Group or certain companies of the group.
Sweden	If there is a compliance function within the financial group, to which the CIS operator belongs, it is acceptable to have a function for the whole group.
Switzerland	Yes.
United Kingdom	Yes. The CIS operator is required to appoint a compliance officer; that person may or may not have compliance responsibilities elsewhere in the group.
United States	Best practice standards allow a financial group to have a unique compliance officer or department for the whole group, as long as the compliance oversight of the entities in the group is adequate.

21. If yes, there should be any rules of conduct to avoid conflict of interest?

Country	Summary of responses
Australia	ASIC may require that a compliance plan has adequate arrangements to avoid conflicts of interest if such conflicts are identified as material risks.
Canada	Not applicable
France	The COB regulations provide that the company should take all necessary steps to ensure that no conflict of interest arises.
Germany	Investment companies are required to maintain an adequate functional and organisational division between the trading department and the other departments. With respect to staff transactions, investment companies and depository banks are obliged to draw up internal rules to ensure the priority of customer interests.
Hong Kong	In approving a fund management group, the SFC must be satisfied with the overall integrity of the CIS Operator. Reasonable assurance is secured of the adequacy of internal controls and the existence of written procedures, including regular monitoring by senior management for updatedness and compliance. The SFC must be satisfied that adequate controls exist to proper address issues of conflicts of interests to safeguard investors' interests.
Italy	Yes, asset management companies must be on the alert for conflicts of interest.
Japan	I.T. Management Companies are prohibited from engaging in a transaction which may be harmful to the profit of the beneficiaries in order to profit securities companies, registered financial institutions, or the client of investment advising companies which I. T. Management Companies have financial and/or personnel interest with.
Jersey	The Commission will wish to ensure an appropriate degree of confidentiality for the information relating to the groups lines of business or entities to which the control unit has access.
Luxembourg	N/A
Mexico	In this case there should be rules to avoid conflict of interests, and to ensure that the information related to each entity of the group is not used improperly.
The Netherlands	There is no legal obligation to do so, but it is the preferred situation if a code of conduct is in place.
Portugal	No specific rules are required.
Spain	When a unique compliance officer or department is established for the group, it is necessary to ensure an appropriate degree of confidentiality for the information relating to the Group's lines of business or entities to which the control unit has access.
Sweden	There are no specific rules to cover any possible conflict of interest where a compliance officer has responsibility for a whole group.
Switzerland	Yes, in such case, the Compliance Officer is required to give special attention to any potential intra-group-conflicts of interest.
United Kingdom	There are no specific rules to cover any possible conflict of interest where a compliance officer has responsibility for a whole group. It is considered that if the compliance officer has these responsibilities, he is in a position to identify, assess and control the conflicts of interest that may arise.
United States	It may be necessary to implement procedures or policies to ensure that information remains confidential within members of the financial group. Industry best practice standards do not require specific procedures or policies.

22. Describe the main functions and areas to be covered by the compliance officer or department.	
Country	Summary of responses
Australia	Although there are no specific requirements relating to compliance officers or departments, ASIC requires REs to have adequate compliance mechanisms to implement its compliance plan. This encompasses that RE must have identified staff with specific compliance functions and checks that there are appropriate arrangements for compliance reporting, accountability and the development of a compliance culture.
Canada	There are no special provisions other than compliance with laws and supervision of trades.
France	The control unit is responsible for compliance with the rules established by the COB and AFG-ASFFI. For this purpose, it must conduct an ongoing review of the internal accounting control, risk monitoring and management procedures and systems. Its function is to not only evaluate compliance with all the established measures and limits and verify their validity but to also propose any modifications it considers necessary. It must also notify punctually the Board of Directors of any inadequacies observed in the system. It must also ensure the separation of the functions of the CIS manager and the depository.
Germany	Internal auditing body is responsible for compliance with regulations designed to avoid conflicts of interest and with internal rules relating staff transactions. Compliance with these regulations is checked also by external auditors in connection with the audit of the annual accounts.
Hong Kong	The Compliance Officer and the compliance department must maintain detailed compliance procedures to ensure that the CIS Operator complies with all applicable requirements.
Italy	At least once a year, the person responsible for the internal control functions must report the results of the activity to the board of directors and the board of statutory auditors. In the event of serious irregularities, he must report immediately to the board of auditors, which notifies Consob and the Bank of Italy of these irregularities.
Japan	The compliance officer or department ensures that the operation of I. T. Management Companies is in compliance with legislative order and regulations set by the Investment Trusts Association.
Jersey	The compliance officer /department will be responsible for ensuring compliance with all the rules and regulations laid down by the Commission with respect to CIS. This will include procedures for the purposes of combating money laundering. For this purpose, this will include ongoing review of internal controls and accounting systems and risk monitoring and management procedures and systems in order to evaluate compliance with the above.
Luxembourg	Banking institutions or investment firms to which the administration of CIS is delegated are required to put in place an internal audit department. The field of operation of internal audit extends to all activities and functions of the banking institution or investment firm. In general terms, the internal audit department shall make such enquiries and conduct such investigations as to enable it to conclude whether a banking institution's or investment firm's administration and accounting functions are appropriate, comprehensive and are operating effectively.
Mexico	The compliance officer or department should conduct a permanent review of management procedures and systems to evaluate compliance with CNBV and the Mexican Stock Exchange regulations, and propose preventive and corrective measure to the CIS Operator board of directors.
The Netherlands	Insider trading and observance legal and other regulatory requirements (internal and external).
Portugal	Compliance functions to be covered are those foreseen in Operators' Internal Rules.
Spain	The control unit will be responsible for compliance with the rules established by the CNMV. For this purpose, it must conduct an ongoing review of the internal accounting control and risk monitoring and management procedures and systems in order to evaluate compliance with all the established measures and limits and verify their validity, and to propose any modifications it considers necessary, and to notify any inefficiencies observed and to report punctually to the Board of Directors. It must also assure compliance with the rules requiring separation of functions between the CIS Manager and the Depository belonging to the same Group. The control unit may be the same unit that is in charge of supervising compliance with the Internal Rules of Conduct, where this is advisable because of the size or specific circumstances of the CIS Operator.
Sweden	There are no regulatory requirements and no explicit standards.
Switzerland	Compliance with investment rules and restrictions, any other statutory, regulatory and self-regulatory rules and regulations, nav-calculation, internal controls and procedures, money laundering and related topics.
United Kingdom	Responsibilities of the compliance officer are not included in the rules or regulations, but typically can include establishment of a compliance culture, identification of relevant responsibilities, preparation of internal procedures, advice to business units, monitoring of compliance with regulations, resolution of customer complaints, and the management of the relationship with the regulator.
United States	Some of the areas that are covered by compliance personnel include: ensuring compliance with the code of ethics, monitoring personal investments by employees, preventing insider trading, ensuring that portfolio investments comply with stated investment objectives, reviewing advertisements, reviewing brokerage arrangements, implementing accounting systems, monitoring internal controls, and complying with filing requirements. Compliance personnel should check for any weaknesses in internal controls, and provide reports to the Adviser and, if necessary, to the Board.

External Supervision

23. Does the regulatory authority undertake supervisory responsibility on the compliance of internal controls, risk management systems and conduct of business rules by CIS Operators?	
Country	Summary of responses
Australia	ASIC has supervisory responsibilities relating to RE. When granting a licence to a RE, ASIC takes into account, among other things, an RE's ability to comply with the requirements of its compliance plan and the scheme's constitution.
Canada	Yes, through inspections on market participants, advisers, dealers and CIS operators.
France	When processing an application for authorisation, the COB controls that the Management Company has internal control and risk evaluation systems and the resources that are commensurate with the activity in which the entity wishes to engage. In making on site inspections, the COB verifies that the company respects the engagements it gave in the descriptive documents the investment firm filed with the COB prior its authorisation. It is also a means through which the COB verifies the organisational requirements, the actual existence of Chinese walls and that control procedures have been created by the compliance officer. Furthermore, the presence of the managers who were originally granted certificates of fitness and properness is controlled.
Germany	These aspects are examined by a certified accountant during the annual audit. His report concerning the annual audit will then be analysed by the BAKred, which may take regulatory action if it has determined any shortcomings.
Hong Kong	Senior management of the CIS Operator and the Designated Compliance Officer are the parties responsible for supervision of internal controls, risk management systems and conduct of business rules on a day-to-day or routine basis. The SFC reviews compliance through regular inspections of the CIS Operator
Italy	Consob and the Bank of Italy check compliance of CIS activity with the above mentioned rules.
Japan	The supervisory authority is responsible, since the supervisory authority can issue order to I. T. Management Companies to take necessary measures to improve their management procedures when found necessary.
Jersey	When processing an application for authorisation the Commission will ensure that it has appropriate internal controls, ongoing systems and procedures in place the appropriate resources both through the quality and quantity to carry out its duties properly <i>and</i> effectively. On an ongoing basis the operator will be subject to compliance visits to ensure that its systems and procedures are operating effectively and in accordance with the rules and regulations of the Commission.
Luxembourg	The supervision that is exercised by the CSSF purports to secure that the CIS which are authorised in Luxembourg observe all the provisions of laws, regulations or agreements relating to their organisation and operation. The CSSF does thus have the overall and ultimate responsibility for the CIS it has approved.
Mexico	Yes. CIS and its managers must comply with a minimum of legal and regulatory requirements to be duly authorised as such by the regulatory authority, which, among other things, should review and approve its Organisation and Procedures Manuals and also undertake a site inspection to check up on its operational framework and accounting facilities. The regulatory authority must review CIS daily reports that provide enough information on how they are achieving investment objectives and how they are diversifying their portfolios to manage risks and avert possible conflicts of interest. Through on site inspections, the regulatory authority is able to check up on CIS internal control systems, compliance of accounting books and records with legal and regulatory requirements and due segregation of key functions, among other issues.
The Netherlands	Yes, however, on a limited (general) level through yearly on site inspections regarding organisation, policy, internal control and costs.
Portugal	Yes. When submitting its application for registration, CMVM checks that Management Company does comply with all the conditions required. In practice, CMVM carries out preparatory visits to Management Companies in order to verify, <i>in loco</i> , if they effectively respect all the conditions formally presented in the application. CMVM carries ongoing supervision based upon the information submitted by Management Companies. With a different scope of onsite inspections, CMVM also organise onsite visits with a more "prophylactic" goal, mainly to ensure and test the regular functioning of Management Companies as a complement of supervision carried out inside CMVM.
Spain	Yes. When processing an application for authorisation, the CNMV checks that the Management Company has internal control and ongoing risk evaluation system and organisational, technical, material and human resources that are commensurate with the activity in which the entity wishes to engage. Management Companies have to elaborate on annual basis a report on the grade of compliance with policies and procedures regarding internal controls established. This report has to be approved by the Board of Directors and submitted to the CNMV. Through on site inspections, the CNMV verifies the compliance with the internal control requirements.
Sweden	The application shall contain a written description of the risk measurements that the company uses and details of the risk limits that are determined. On site inspections check whether the control and management systems are adequate.
Switzerland	There is an ongoing reporting duty to the FBC. However, the FBC itself does normally not conduct on-site-inspections, delegating that task to the External Auditor.
United Kingdom	The regulatory authority has supervisory responsibility for the compliance of internal controls, risk management systems and conduct of business rules.

United States	SEC staff examines during the on-site inspections of CIS and their Advisers whether internal controls of the Adviser are comprehensive and functioning as intended. Although CIS and Advisers are not required to implement internal controls or risk management systems, the lack of such controls or systems may prompt the staff to more closely examine the CIS and the Adviser.
----------------------	--

What are the role of auditors, trustees, depositories or other parties in

- | | |
|---|--|
| - | the assessment of the implementation and effectiveness of risk controls in the CIS Operator structure |
| - | supervising internal controls and risks management systems of CIS Operators |

Country	Summary of responses
Australia	Under Australian law there are no longer requirements for independent trustees. The RE is responsible for the conduct of its agents (including custodian where appointed). Oversight functions are exercised by independent directors, compliance committee and compliance and independent auditors.
Canada	Trustees would likely be ultimately responsible although in practice they do not take part of the day business. There are no special duties on custodians or auditors in this regard.
France	It is the responsibility of the depository to ensure that the Asset management company respects the rules. The auditors principal function is to appraise the economical results of the management of the company. However CIS auditors are required to inform the COB about any fitfulness of the asset management company. In the same way, the depository's auditor is required to inform the COB about any fitfulness of the depository.
Germany	Investment companies are permitted to outsource their internal audit to certified accountants or depository banks. Nevertheless, the report concerning the annual audit of the investment company must include details of the internal audit activities carried out within the company.
Hong Kong	Where practicable, the CIS Operator should maintain an independent and objective audit function to report on the adequacy, effectiveness and efficiency of the firm's management, operations and internal controls. Where the size of the firm does not justify a separate internal audit function, the relevant roles and responsibilities should be performed or reviewed by the external auditors. The Trustee/Custodian is required to issue a report to the holders to be included in the annual report of the CIS on whether in its opinion, the CIS Operator has in all material respects manage the CIS in accordance with the provisions of the constitutive documents.
Italy	Auditors must notify Consob and Bank of Italy any irregularity in the activity of CIS.
Japan	Based on the interoffice regulation of I. T. Management Companies, the employer is responsible for the assessment themselves. In addition, internal auditors or any other qualified independent experts are responsible for the assessment.
Jersey	The auditor is required to review and report to the Commission on the adequacy of the annual financial resources of the operator. He is also required to state his opinion on whether the manager has maintained throughout the financial year systems adequate to enable him to comply with client money regulations. The depository of a CIS is required to monitor the operators compliance with regulations and any failure observed must be reported to the Commission.
Luxembourg	Auditors must review the internal control systems set up for the CIS. Depositories are not subject to specific duties except that they have the obligation to oppose themselves to the execution of instructions from the management company which conflict with the law, the management regulations or the prospectus.
Mexico	Auditors or the depository institution have no initial responsibility in the assessment of the implementation or effectiveness of risk controls in the CIS operator structure. Auditors are responsible of verifying effectiveness of internal control systems, through adequate bookkeeping and segregation of key functions. Depository institutions are ultimately responsible of safeguarding, through individual accounts, CIS assets and investors shares.
The Netherlands	Public auditors will perform a thorough opinion on this matter and review this annually.
Portugal	Auditor is responsible for a continuous review of CIS' activity. Therefore, despite of having a crystallised role by certifying the annual CIS' accounts, auditors are in fact entrusted of the performance of an ongoing activity, being required to report, among others, the fulfilment of internal control system. Furthermore, auditors have the duty to report to CMVM those facts that are susceptible to constitute a relevant breach of CIS' legal framework.
Spain	The application for the CNMV approval of a model proposed by the CIS Manager to measure the legal derivatives limits of risk must be supported by a favourable report on the behaviour of the model issued by the Depository of CIS as well as by an independent auditor or any other qualified independent expert. The use of a risk measurement model proposed by the CIS Manager is also conditioned to a continuous review of the Depository as well as the auditor. Auditor also must annually review its initial report
Sweden	The auditor - appointed by Finansinspektionen - should pay attention to the CIS Operators internal control system and - especially - the existing risks and give Finansinspektionen information about remarks in his annual report.
Switzerland	The External Auditor plays a key role in the enforcement area; auditor is required by law to report any violations and/or serious deficiencies/irregularities in the CIS and its staff forthwith to the FBC that will take appropriate action. The Custodian Bank is required to assure compliance with investment rules and restrictions as an ongoing obligation.
United Kingdom	Auditors have no responsibility for supervising internal controls and risk management systems but their reporting requirements include reporting on whether the CIS operator has maintained proper accounting records and adequate systems for their control. <u>Trustees and depositories</u> are responsible for supervising an operator's compliance with investment and borrowing powers and the operator's responsibility for ensuring the CIS provides a prudent spread of risk. They are required to report to investors on compliance with investment and borrowing powers in the period.

United States	Independent auditors often perform during their annual audit an expanded review of the CIS's internal control procedures and render a report to the Board on their findings. The Board should assess the implementation and effectiveness of risk controls of the Adviser when approving or reviewing the advisory contract between the CIS and the Adviser. The custodian/depository has no statutory role in assessing the implementation and effectiveness of risk controls. Auditors, trustees, depositories, and other parties do not supervise the internal controls and risk management systems of the Adviser.
----------------------	--

ATTACHMENT 1

QUESTIONNAIRE ON PRINCIPLES AND BEST PRACTICE STANDARDS ON INFRASTRUCTURE FOR DECISION MAKING FOR CIS OPERATORS

OBJECTIVES TO BE ACHIEVED

In September 1997 the IOSCO Technical Committee publicly released the paper entitled *Principles for the Supervision of Operators of Collective Investment Schemes* (Principles Paper). The Principles Paper recognises the important role of CIS as an investment vehicle for a wide range of investments opportunities which is used by millions of people who rely upon operators of the schemes to manage their funds and to act in the best interest of investors.

According to the Principles Paper, the fundamental purpose of supervising an operator of CIS is to ensure that:

- The assets of CIS are managed in the best interest of investors which includes ensuring the assets are held in safekeeping on behalf of investors, typically by requiring that they are registered in the name of an entity other than an operator and that they are held by an independent custodian.
- Individual share holdings in CIS are up to date and correctly valued and that the net asset value (unit price) is accurate at all times and available to investors.
- The CIS investments are properly diversified and comply with regulatory restrictions, prospectus disclosures and investments objectives.

These issues justify by themselves the supervision of CIS operators but raise a number of questions as regards the infrastructure for decision making within the CIS that require further analysis.

This analysis must deal with how and to what extent the different interests of those involved in the conduct of the CIS (operator, trustee, custodian....) are reconciled and what checks are put in place to assess whether a CIS operator has adequate risk control mechanisms to achieve the objective of the CIS.

The purpose of this questionnaire is to understand the different regulatory responses of TCWG-5 members to the enforcement of "corporate governance" within the CIS. In particular it covers (i) the rules and practices regarding the development of codes of conduct for CIS operators, (ii) the role of CIS operators in the management of significant participations in the companies in which they invest and (iii) the accountability for the implementation of adequate internal control and risk assessment systems which provide for independent review of processes and decision making within the CIS.

It is desirable that TCWG-5 members, in replying to the questionnaire, give concrete

examples of situations which led to the adoption of specific methodologies in their individual jurisdictions to deal with conflicts of interests. This would set in context the use of different risk control mechanisms in different jurisdictions, and also provide a practical focus to the responses to the questionnaire.

DEFINITIONS

The following definitions from the Principles for the Regulation of Collective Investment Schemes must be taken into account in order to answer the questionnaire:

CIS: an open ended collective investment scheme that issues redeemable units and invests primarily in transferable securities or money market instruments.

Custodian: includes trustee or depository but not a sub-custodian

Delegate: means a third party engaged by the operator of a collective investment scheme to carry out certain tasks for the operator of the CIS, but does not include the custodian of the CIS

Investment Manager: a person, which may or may not be the operator, who provides investment advice for the CIS

Operator: means the legal entity that has overall responsibility for management and performance of the functions of the CIS, which may include investment advice and operational services.

Group Companies: include those entities that form a decision-making unit because some of them, directly or indirectly, controls the composition of the boards of the others; or are in a position to influence the decision making by the others.

CIS managed by the same Management Company or by Management Companies of the same group must be considered as belonging to such group.

Significant participations: means any participation in a company if the percentage of the subscribed capital remaining in possession of the holder reaches at least 5 per cent.

I) GENERAL FRAMEWORK

1. Typical legal structure of CIS in your jurisdiction. Describe, briefly, the role of different entities with responsibility for the conduct of the CIS (Operator, Custodian (including trustee or depository), Investment Manager).
2. Delegation of functions.
 - a) Are CIS operators allowed to delegate any or all of their functions?
 - b) If delegation is possible what are the responsibilities of the CIS operator with regard to:
 - i) accountability to investors with regard to delegated functions; and
 - ii) disclosure requirements;
 - c) Can there be sub-delegations? If so, what are the requirements that apply to such sub-delegations?
 - d) Are persons to whom functions are delegated:
 - i) required to be registered with / approved by the regulator?
 - ii) subject to supervision by the regulator?
 - iii) subject to any other regulatory requirements?

II) INFRASTRUCTURE FOR DECISION MAKING

Independent decision making

3. Are there any legal restrictions as to the relationship of CIS Operator with other group companies or prohibitions to carrying out activities with them, in order to ensure an independent decision making process?
4. Describe briefly the operational structure designed to ensure the integrity of the CIS and, in particular, whether it is required to implement *Chinese walls* or other specific internal control measures in order to avoid conflicts of interests within the organisation.

Codes of conduct

5. Does there exist in your jurisdiction a statutory Code of conduct enforceable for all CIS Operators as regards the full activity of Operators (ie: relationships with investors or any other group company, conflict of interests between shareholders, clients, directors, etc?).
6. If yes, is it applicable to the whole group when CIS operators are subsidiaries of a financial group?.

Representation of the interest of the CIS

7. Are CIS allowed to have significant participations in the companies they invest?
8. Who is entitled to hold and exercise the CIS rights as a shareholder of companies in which they invest ?
9. Can the representation of CIS's shareholder rights be delegated to another entity? If yes, under what conditions.
10. Are there any restrictions, prohibitions or industry best practice standards regarding the exercise of CIS's shareholder rights in order to avoid conflicts of interests in the case of investments in:
 - the controlling entity of the CIS Manager?
 - other CIS group companies? and
 - companies where other group companies have their own interests?
11. Is it required that the criteria followed for the exercise of CIS's shareholder rights are disclosed in the offer documents or other documentation of a CIS?

Internal control

12. Are there in your jurisdiction regulatory requirements relating to internal control and/or risk management systems or are these issues mainly dealt with as industry best practice standards?
13. Who is accountable for the implementation, development and on-going effectiveness of internal control of a CIS Operator?. Who is responsible for assessing the quantity and quality of means, resources and systems to be employed?.
14. Is it required that CIS Operators elaborate written policies and procedures? Who is responsible for its elaboration, reviewing and updating?
15. Describe the main issues to be covered by written policies and procedures

Risk management structures

16. Are there in your jurisdiction any rules or guidelines regarding the establishment of additional limits to those imposed by general regulation on portfolio investments as regards market risk, counterparty risk, liquidity risk, operational risk and legal risk of CIS?. If yes, how are these limits informed to investors?
17. Does the regulatory authority assess the models to be used by CIS Operator before they are implemented? Is any model acceptable to the regulatory authority or are there guidelines regarding the use of specific risk assessment models ?

III) DISCLOSURE

18. In your jurisdiction, is disclosure to investors used to:

- a) inform investors of risks involved ?
- b) to deal with conflicts of interest ?

IV) ENFORCEMENT

Compliance function.

19. Are there in your jurisdiction regulatory requirements regarding the implementation of a compliance function within the CIS Operators organisation or is this issue dealt with as industry best practice standards?
20. When the CIS Operator belongs to a financial group, could it be acceptable to have a unique compliance officer or department for the whole group?
21. If yes, there should be any rules of conduct to avoid conflict of interest?
22. Describe the main functions and areas to be covered by the compliance officer or department.

External Supervision

23. Does the regulatory authority undertake supervisory responsibility on the compliance of internal controls, risk management systems and conduct of business rules by CIS Operators?
24. What are the role of auditors, trustees, depositories or other parties in
- the assessment of the implementation and effectiveness of risk controls in the CIS Operator structure
 - supervising internal control and risk management systems of CIS Operators