The structural, operational, legal and compliance considerations relevant to sponsoring and managing private real estate funds may be generally familiar for many experienced professionals in the PE or private credit sectors. There are, however, various characteristics unique to the real estate asset class that a fund manager needs to consider before expanding into a real estate strategy or launching a new real estate investment management business. Those differences manifest at all stages of the real estate fund lifecycle.

This article describes key features of real estate funds and necessary considerations for fund managers considering pursuing the strategy anew. This first article in a two-part series delineates real estate strategies along the risk-return spectrum; distinguishes between operator and allocator funds; identifies appropriate fund structures for the various strategies; and describes certain other considerations. The second article will detail relevant securities law considerations and registration requirements; special tax considerations, particularly for U.S. tax-exempt investors and non-U.S. investors; and various other regulatory considerations.

See our three-part series on PE real estate funds: “Structuring by Investor Type and Distinct Statutory Considerations” (Aug. 13, 2019); “Private REITs and Other Potential Investment Vehicles” (Aug. 27, 2019); and “Unique Fund Terms and Notable Tax Items” (Sep. 3, 2019).

Real Estate Fund Strategies and Asset Classes

Private real estate fund managers typically market their products and describe their investment strategies according to a risk-return spectrum that includes four primary categories: “core,” “core-plus,” “value-add” and “opportunistic.”

Core is viewed as the least-risky strategy with the lowest return target (e.g., fully leased, high-quality office buildings in primary markets), with opportunistic being the riskiest strategy with the highest return target (e.g., ground-up development of a new residential complex in a secondary market). Core strategies focus primarily on current income with relatively low leverage. Further along the spectrum toward opportunistic strategies, the focus becomes more on future cash flow and the potential for capital appreciation from the improvement or development of properties – often accompanied by higher amounts of leverage.
In addition, real estate funds – and real estate investing generally – are often categorized by reference to the targeted asset class. Some of the major real estate asset classes include multifamily, industrial, office, retail and hospitality. More specialized real estate, such as senior and student housing, has also attracted significant investor interest over the last decade or so. Industrial has also been a hot sector in recent years, while retail is generally viewed as being under significant market pressure from technological and consumer preference trends (e.g., the decline of brick-and-mortar stores). That pressure is only becoming more pronounced with the impact of the current coronavirus pandemic.

For more on the coronavirus pandemic, see “Former OCIE Private Funds Examiner Forecasts Potential SEC Response to Fund Manager Efforts During the Coronavirus Pandemic (Part One of Two)” (Apr. 14, 2020); and “Withstanding the Coronavirus Pandemic: Business Continuity and Other Operational Risks (Part Three of Three)” (Apr. 7, 2020).

Another way real estate funds are distinguished is between “operator” funds and “allocator” funds. Operator real estate funds are offered by sponsors that themselves provide local operating or development services and expertise. In contrast, sponsors offering allocator funds invest alongside local operators or developers, typically through joint ventures. Although operator funds have become quite popular with investors in recent years, numerous allocator funds continue to be offered by many prominent real estate fund sponsors that benefit from a preference among larger institutional investors for large sponsors with established track records.

A final distinction among real estate funds is between investing in debt and equity. Debt funds might originate or acquire interests in performing or non-performing mortgages, for example, or in residential or commercial mortgage-backed securities.


### Closed- or Open-End?

Private real estate funds can employ a closed- or open-end structure. Closed-end funds follow the familiar PE model with a limited fundraising period; investor capital commitments that are drawn down over time; a defined investment period and fund term; and no ongoing subscription or redemption rights.

Conversely, open-end real estate funds generally have an indefinite life with evergreen potential for subscriptions and redemptions (i.e., akin to hedge funds). Unlike typical hedge funds that have full up-front funding of investor subscriptions, an open-end real estate fund may maintain a capital commitment/draw-down mechanism that allows the manager to put investor money to work more gradually.

For another context in which sponsors confront those decisions, see “What Must a PE Sponsor Consider Before Launching a Private Credit Strategy? (Part One of Two)” (Feb. 4, 2020).
Issues With Open-End Funds

With any open-end structure, the liquidity of the underlying investments and available cash flow are key considerations. Given the relatively illiquid nature of most real estate investments, open-end structures tend to fit only with core or core-plus strategies that generate sufficient cash flow to pay redemptions, or real estate debt funds with steady interest income or that invest in more liquid, real-estate-related securities. Open-end real estate funds also often have robust lockups; early redemption fee mechanisms; or the ability to defer redemption requests to, among other reasons, avoid the requirement to sell or refinance properties to meet redemptions.

In addition, valuation takes on added significance for open-end funds, as investors typically subscribe for and redeem interests in funds based on their net asset value (NAV). That requires sponsors to maintain ongoing calculations of the fair market value of underlying investments through appraisals or other mark-to-market determinations. Similarly, open-end fund managers typically earn management fees and any incentive fees or carried interest based on a NAV calculation, thereby resulting in the unrealized appreciation of underlying investments playing a role in their determination.

That approach to valuations is very different from a typical closed-end fund, where incentive fees or carried interest are determined based on the achievement of preferred returns calculated by reference to investor distributions. Also, management fees in closed-end funds are calculated based on investor commitments or invested capital, each of which is determined without regard for any unrealized appreciation of underlying investments.

Appeal of Hybrid and Closed-End Funds

In recent years there has been an increasing number of hybrid funds and other vehicles, which combine some features of open- and closed-end funds. One example is “build-to-core” vehicles or funds that provide for the long-term acquisition, development and operation of properties. That example often contains a built-in conversion feature investors can use after a property is fully developed to either retain their interests – usually on different economic terms – or to sell their interests in the property.

Given all of the above, administering and managing an open-end real estate fund is a more complex undertaking that is generally most attractive as a means to aggregate a large number of assets over a significant period of time. As such, while the open-end structure can be tempting and has some advantages, the closed-end structure is often a better fit for smaller or emerging managers. Many emerging fund managers also initially opt for a deal-by-deal structure (i.e., single-asset joint ventures or managed accounts) to build a track record and increase investor appetite for a first commingled, discretionary fund.

See “Correcting Alpha: Fundamental Flaws of IRR and How Sponsors Can Avoid Distorted Calculations (Part One of Two)” (Nov. 12, 2019).

See “Operational and Tax Challenges of Hybrid Funds” (Nov. 5, 2019).

See our three-part primer on deal-by-deal funds: “Structural Overview and Investor Perceptions Affecting Adoption” (Feb. 18, 2020); “Key Fundraising and Structural Considerations” (Feb. 25, 2020); and
Other Considerations

Fund Economics

As with other types of private funds, a real estate fund typically includes a management fee and carried interest payable to the sponsor.

For closed-end funds, a common management fee is 1.5% of capital commitments during the investment period and 1.5% of invested capital thereafter. Carried interest or incentive fees are typically 10–20% of the fund’s profits, with an average preferred return across all fund types of 8–9% and a GP catch-up (the GP/LP split for which can also vary). European waterfalls – requiring a full return of capital plus preferred return before any carried interest is paid to the sponsor – are relatively customary, particularly for new sponsors.

See “How Different Waterfalls Affect GP Receipt of Carried Interest (Part One of Two)” (Jun. 4, 2019).

Management fees and carried interest vary widely for open-end funds, with the management fee percentage typically starting lower than for closed-end funds and charged on the fund’s NAV. Also, open-end funds typically do not charge carried interest, or charge a rate – again, calculated on NAV where applicable – that is lower than in the closed-end context. Like most private funds, fee discounts are often given to large or early close investors.

Finally, real estate funds may also have another category of fees (e.g., break-up, monitoring and director fees) relating to services that are usually viewed by investors as part of a manager’s investment advisory function. Those fees are normally subject to a management fee offset of 50–100%.

Affiliate Services

Real estate fund managers, particularly operator fund sponsors, often realize additional revenue through the use of affiliates to provide certain services for underlying real estate investments. Those services may include property management; construction and development management; and leasing or brokerage services.

A key value proposition for vertically integrated real estate fund sponsors that offer those types of affiliate services is that the services would otherwise need to be provided by third parties but can be provided more efficiently and effectively by those sponsor affiliates. As such, the fees are generally not offset against the sponsor’s management fee.

Despite potentially benefitting real estate funds and their investors, affiliate arrangements present a potential conflict of interest if a sponsor is incentivized to improperly maximize the additional revenue streams for its own benefit and to the detriment of the fund. The SEC is also keenly focused on the issue, and real estate managers using affiliate service arrangements must ensure that specific and robust pre-investment disclosure describing any affiliate services is included in fund marketing materials and their Forms ADV, as applicable.

See “Full Disclosure of Portfolio Company Fee and Payment Arrangements May Reduce Risk of Conflicts and Enforcement Action” (Nov. 12, 2015).
In addition, it is advisable for sponsors to ensure – and have back-up data to support – that fees paid by the fund to its affiliates are no less favorable to the fund than would be available from a third-party provider.

**Joint Venture Arrangements**

As noted above, the investment strategy for many real estate allocator funds often involves entering into joint ventures with third-party operators or developers or, in the case of operator funds, with third-party capital providers (including allocator funds).

The party acting as the operator or developer for the underlying properties may serve as managing member and hold a 5-10% equity interest in the joint venture entity, with the right to earn fees and performance compensation or “promote.” Although joint venture partners are typically unaffiliated with the fund sponsor, those relationships and additional fees should be adequately disclosed to investors.

In addition to financial due diligence, fund sponsors are advised to vet potential joint venture partners for anti-money laundering (AML) issues. In addition, if an operator fund itself is acting as local operator or developer for joint ventures, the additional fees and carried interest payable by the joint venture partner are typically shared in whole or in part with the operator fund itself (as opposed to the fund sponsor).

For more on AML compliance, see “Lessons Private Fund Managers Can Learn From U.S. Bancorp’s Settlement of AML Violations” (Apr. 26, 2018); and “Survey Reveals Concerns About and Shortcomings With AML Compliance” (Nov. 16, 2017).

**Leverage Opportunities**

Finally, due largely to the production of relatively durable cash flows, real estate investments can often be leveraged to a greater extent than many other types of PE investments. Leverage may be incurred at the asset level or at various levels above the asset in a typical real estate investment’s capital structure.


As such, most limited partnership agreements for real estate funds will contain leverage restrictions that “look through” an investment’s capital structure and consider all sources of leverage from the asset on up. The extent to which leverage is restricted varies by strategy, with some core funds having a 30-50% loan-to-value (LTV) leverage limitation and some opportunity funds allowing for up to an 85% LTV leverage limitation. Sometimes lower LTV levels are required for an overall fund limitation, while higher levels may be allowed for individual investments.

Real estate loans also often contain other terms that are atypical compared to loans entered into in connection with most other types of PE investments. For example, loans for development projects will often require completion guarantees to be provided by the fund, and loans for other types of projects will require the fund to enter into environmental indemnity agreements and non-recourse carveout guarantees. Those bespoke terms must be addressed when formulating appropriate leverage limitations and related restrictions in the fund documents.
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The authors would also like to add a note of thanks for the contributions to this article made by their colleagues Rich Ashley, Adrienne Scerbak and Katie LaKoma.
REAL ESTATE

Launching a Real Estate Fund: Important Tax, Regulatory and Securities Law Considerations (Part Two of Two)

By John D. Reiss and Nathaniel Marrs, DLA Piper

Although many regulatory and tax issues apply across the private funds industry, it is important for fund managers to be aware of idiosyncratic issues related to each type of underlying fund asset. A fund strategy focused on real estate can raise unique, material issues during the entire fund lifecycle, but particularly during the formation and fundraising phase. That includes certain tax issues for non-U.S. and U.S. tax-exempt investors that are implicated by owning real estate, as well as registration obligations under securities laws and related structuring considerations.

This two-part series details critical considerations for any fund manager considering a real estate strategy. This second article summarizes relevant securities laws and the corresponding registration requirements; notable tax considerations for U.S. tax-exempt investors and non-U.S. investors; and other relevant regulatory considerations. The first article identified several real estate strategies along the risk-return spectrum and the suitable corresponding fund structures; distinguished between operator and allocator funds; and highlighted various other considerations when establishing real estate funds.

See “Roundtable Explores PE Trends Related to Emerging Managers and Real Estate Investing (Part One of Two)” (May 21, 2019); and “Symposium Highlights Portfolio Management and Global Trends for Private Equity and Real Estate Funds” (Jul. 2, 2015).

Registration Considerations

Securities Act

Similar to a typical PE fund or hedge fund, private real estate funds are generally offered to investors pursuant to a private placement of the fund’s securities (i.e., interests in the fund) conducted pursuant to Rule 506(b) of Regulation D under the Securities Act of 1933 (Securities Act).

Real estate fund sponsors are now permitted to employ general solicitation pursuant to Rule 506(c) under the Securities Act (introduced as part of the JOBS Act in 2012). Most larger sponsors do not prefer that approach for a number of reasons, however, including the heightened obligation for sponsors to verify (e.g., through supporting documentation) the accredited investor status of their investors (as opposed to relying on self-certifications and a “reasonable belief” as to that status under Rule 506(b)).
See “Seminar Provides Fund Managers with a Roadmap for JOBS Act Compliance” (Nov. 8, 2013); and “SEC JOBS Act Rulemaking Creates Opportunities and Potential Burdens for Private Funds Contemplating General Solicitation and Advertising” (Jul. 18, 2013).

Advisers Act

Impact of Registration

In addition to the issues surrounding a fund making a securities offering of its interests to investors, a real estate fund sponsor must also examine whether its funds invest in underlying securities. The answer to that threshold question plays a critical role in determining whether the fund’s sponsor or manager is required to register as an investment adviser under the Investment Advisers Act of 1940 (Advisers Act) or with any states.

Most PE sponsors are well aware that Advisers Act registration is a meaningful undertaking in terms of time and resources. It requires the development of a comprehensive compliance program and the appointment of a CCO, along with public disclosure of a variety of aspects of the sponsor’s operations. It also subjects a fund sponsor to inspection by the SEC, and those inspections can lead not only to deficiency letters but also SEC enforcement actions.

See “What Fund Managers Should Consider When Hiring and Onboarding CCOs: Determining CCO Governance Structures (Part Two of Three)” (Apr. 21, 2020); and “Benefits of Having a Dual-Hatted GC/CCO, and Alternative Solutions for Fund Managers (Part One of Two)” (Apr. 30, 2019).

When Registration Is Required

By definition, an investment adviser provides advice on the purchase and sale of securities. If the fund invests in securities, then the fund’s sponsor would in most cases be deemed to be providing advice – to the fund as its client – about the purchase and sale of those securities. Also, if an adviser’s “securities portfolios” meet certain assets under management (AUM) – i.e., generally over $100 million AUM, or $150 million AUM if managing only private funds – registration under the Advisers Act is required. If those AUM thresholds are not met, then a state investment adviser registration may still be required.

A fee simple interest in real estate (e.g., 100% ownership of an office building) is not deemed to be a security. Other types of real-estate-related investments are likely to be considered securities, however, such as:

- more passive minority stakes in real estate buildings or projects;
- interests in publicly traded real estate operating companies or real estate investment trusts (REITs); and
- most debt investments.

Generally speaking, the lower the ownership percentage and the less control an investor has over a property, the more likely it is that the investment would be deemed a security. As such, the analysis of whether a real estate fund sponsor needs to register as an investment adviser under the Advisers Act centers on the nature of the sponsor’s targeted investments and the degree of flexibility desired for future investment in securities.
Whether the sponsor uses managed accounts – as opposed to or in addition to commingled funds – can also be an important consideration. Another factor is whether registration would be viewed as beneficial from a marketing perspective. Notably, some investors (e.g., public pension plans, particularly those advised by larger consultants) have been known to consider Advisers Act registration a prerequisite for investment.


**Investment Company Act**

In all cases, private real estate fund sponsors will want to avoid registration of the fund itself as an investment company under the Investment Company Act of 1940 (Investment Company Act), even if the sponsor is a registered investment adviser.

If the fund invests only in real estate (i.e., non-securities), then Investment Company Act registration would not be required because the fund would not fall within the definition of an investment company under the Investment Company Act. If the fund does invest in securities, it could rely on Section 3(c)(1) or 3(c)(7) to avoid Investment Company Act registration, as is generally the case with PE and hedge funds.

Section 3(c)(5) of the Investment Company Act provides an additional avenue for certain real estate funds to avoid Investment Company Act registration. Specifically, it excludes any entity from the definition of investment company that is primarily engaged in the business of “purchasing or otherwise acquiring mortgages and other liens on and interests in real estate.” Historically, the SEC has interpreted that provision to mean at least 55% of the fund’s assets are in real estate investments, with at least 25% of the remaining assets held in other “real-estate related interests.”

The definition of “security” is co-extensive under the Advisers Act and the Investment Company Act, and any real estate fund manager should consider its Advisers Act status and that of its funds under the Investment Company Act in tandem. For example, if the funds are relying on Section 3(c)(1) or 3(c)(7) under the Investment Company Act, it may be difficult to also assert that the fund manager is not advising on the purchase and sale of securities for purposes of the Advisers Act.

In addition, the interplay between the Advisers Act and the Investment Company Act may also have practical implications for who can invest in a manager’s funds. For example, investors in any fund managed by a registered adviser that charges a performance fee must be “qualified clients,” which is generally a higher standard than the “accredited investor” requirement under Regulation D of the Securities Act. The qualified client requirement is no additional burden, however, for funds that require investors to be “qualified purchasers” pursuant to Section 3(c)(7) under the Investment Company Act, as any qualified purchaser is by definition also a qualified client.

Similarly, a real estate fund manager should carefully consider where and how investments in its funds may be made by its principals and employees in light of those securities regimes and the “knowledgeable employee” definition in Rule 3c-5 under the Investment Company Act. Specifically, the definition permits certain employees to invest in a sponsor’s 3(c)(7) funds without being qualified purchasers, and in 3(c)(1) funds of the sponsor without being counted for purposes of the 100-person limit. The Advisers Act also includes similar relief from the qualified client requirement for those employees.

See “Ways Fund Managers Can Compensate and Incentivize Partners and Top Performers” (Dec. 14, 2017); and “SEC Clarifies Scope of the ‘Knowledgeable Employee’ Exception for Section 3(c)(1) and 3(c)(7) Funds” (Feb. 28, 2014).

**Tax Considerations**

Tax structuring for real estate funds is often more complex than for a typical PE fund, particularly if a fund has U.S. tax-exempt or non-U.S. investors.

**UBTI Issues**

One of the primary sources of “unrelated taxable income” (UBTI) for U.S. tax-exempt investors investing in a real estate fund is taxable income generated by underlying property investments subject to debt, known as “debt-financed property.” One way for certain types of qualified U.S. tax-exempt investors (e.g., pension plans and college endowments) to avoid UBTI from debt-financed property is by structuring the fund and its underlying investment vehicles to comply with a complicated set of tax allocation rules known as the “fractions rule.”

For coverage of UBTI issues in the private credit context, see “Four Common Fund Structures to Mitigate ECI Risks When a PE Sponsor Launches a Private Credit Strategy (Part Two of Two)” (Feb. 11, 2020); and “Direct Lending Funds: Five Structures to Mitigate Tax Burdens for Various Investor Types (Part Two of Two)” (Dec. 10, 2019).

The fractions rule does not work for all U.S. tax-exempt investors, however, and UBTI can also be generated by a real estate fund investing in properties with a significant operational component (e.g., hotels or senior housing) or in dealer properties (e.g., condominiums). In those instances, a fund may be able to avoid or minimize UBTI by owning the underlying investments through one or more corporations or private REITs, provided the REIT is not “pension-held,” including REITs used in conjunction with other entities and structures (e.g., taxable REIT subsidiaries and structures for senior living under the REIT Investment Diversification and Empowerment Act).

In all cases, a real estate fund structured as a partnership for tax purposes must be careful to avoid or carefully manage any debt for which the fund or its subsidiaries acts as borrower, including fund subscription facilities.

See “Trends in the Use of Subscription Credit Facilities: Structuring Considerations Negotiated With Lenders and Important LPA and Side Letter Provisions (Part Two of Two)” (Feb. 7, 2019).

**FIRPTA Regime**

Non-U.S. investors investing in a real estate fund must pay careful attention to special tax rules covered by the Foreign Investment in Real Property Tax Act of 1980 (FIRPTA).
FIRPTA regime generally imposes U.S. federal income tax on gains from the dispositions of “U.S. real property interests” by certain non-U.S. investors, including on dispositions of U.S. real property interests held directly or through an entity treated as a partnership for tax purposes. Gains of non-U.S. investors are taxed as though the investors were engaged in a trade or business and constitute income that is effectively connected with the activity.

For more on FIRPTA, see “Tax Expert Provides Insight Into Recent U.S. Tax Court Decision on Taxation of Foreign Investments in U.S. Partnerships” (Dec. 7, 2017).

The requirement to file a U.S. tax return and pay branch profits tax may also apply to certain non-U.S. corporate taxpayers. To avoid that issue, a real estate fund may invest through one or more corporations, which may be leveraged to effectively reduce the corporate tax rate. Alternatively, the fund may invest through private REITs, which are generally not subject to U.S. federal income tax at the REIT level, provided the REIT distributes 100% of its taxable income and certain other requirements are met.

See “PE Real Estate Funds: Private REITs and Other Potential Investment Vehicles (Part Two of Three)” (Aug. 27, 2019).

A distribution made by a REIT – to the extent attributable to gains from dispositions of a U.S. real property interest (i.e., a capital gain dividend) – will generally be subject to FIRPTA, however, and considered effectively connected income, subjecting non-U.S. investors to U.S. federal income taxation and a U.S. filing obligations. The sale of REIT shares is generally not taxable to non-U.S. investors under the FIRPTA rules if the REIT is “domestically controlled,” – i.e., less than 50% of the REIT's shares (by value) are directly or indirectly owned by non-U.S. persons.

Finally, it is worth noting that a FIRPTA exemption applies for “qualified foreign pension funds,” which are entities wholly owned by qualified foreign pension funds and certain “qualified shareholders.” There are also special considerations for sovereign government investors that qualify for certain beneficial treatment under Section 892 of the Internal Revenue Code.

See “PE Real Estate Funds: Structuring by Investor Type and Distinct Statutory Considerations (Part One of Three)” (Aug. 13, 2019).

**Regulatory Considerations**

A variety of regulatory considerations can apply to real estate funds depending on the fund’s specific strategy. For example, a fund focused on originating whole or mezzanine loans to be made to U.S. borrowers will need to ensure it is complying with a variety of U.S. state-specific lender licensing regimes. There are, however, two primary regulations that warrant particular attention from real estate fund managers.

**ERISA**

The Employee Retirement Income Security Act of 1974 (ERISA) also bears on the structuring of a real estate fund if at least 25% of the investors in any class of equity in the fund are owned by “benefit plan investors” (as defined in ERISA). If the fund meets the 25% threshold, the investment manager will be required to act as a fiduciary of the benefit plan investors and could be prohibited from having the fund make certain types of investments. As such, real
estate funds may limit investment by benefit plan investors to avoid exceeding the 25% threshold.

See “Private Fund Industry Practice for Defining ‘Class of Equity Interests’ for Purposes of the 25 Percent Test Under ERISA” (Jul. 23, 2010).

Another approach used by real estate fund managers to avoid ERISA is to rely on the “real estate operating company” (REOC) exemption, which requires at least 50% of the investments of a real estate fund, valued at cost, to be in real estate that is managed or developed, and in which the fund has the right to substantially participate directly in those management or development activities. In addition, the fund must be actively engaged in those activities in the ordinary course of its business.

To rely on the REOC exemption, a real estate fund must have management or development rights in its first investment. REOC qualification must be established at the time of the first investment, and no capital should be funded for other purposes (e.g., paying fees or other expenses) without establishing a qualified escrow account to pay those amounts or take other special steps. The requirement to manage or develop the real estate in the ordinary course of business may be met through direct exercise of the applicable rights or through properly structured management arrangements.

The REOC exemption is often used in conjunction with the “venture capital operating company” (VCOC) exemption, which may be more familiar to sponsors of other types of PE funds. Layered VCOC/REOC structures are formed when a fund structured to qualify as a VCOC (because at least 25% of its investors in any class of equity are benefit plan investors) invests in a fund structured to qualify as a REOC. When this occurs, special ownership and structuring rules need to be applied to both vehicles.

See “Happily Ever After? – Investment Funds That Live With ERISA, for Better and for Worse (Part One of Five)” (Sep. 4, 2014).

CFIUS

Real estate fund sponsors also need to understand the potential impact of regulations promulgated by the Committee on Foreign Investment in the U.S. (CFIUS). New CFIUS regulations became effective on February 13, 2020, which strengthen CFIUS’ authority and broaden its jurisdiction to review a wider variety of U.S. investments, including non-controlling investments in U.S. businesses and real estate transactions.

Although the regulations may present more challenges for funds making other types of U.S. PE investments, they can also create issues for funds making U.S. real estate investments that are sponsored by non-U.S. managers or that have a significant non-U.S. investor base. That is particularly the case if one or more of the investments are in or near facilities that may raise national security sensitivities, such as military bases or airports.

See “Impact of FIRRMA on PE Funds: Recent CFIUS Developments and Upcoming Changes” (May 7, 2019); and our two-part series: “Understanding the CFIUS Review Process and How to Structure Investments to Minimize Regulatory Risk” (Apr. 2, 2019); and “FIRRMA Expands the Scope of Transactions Subject to CFIUS and Lengthens the Target Acquisition Timeline” (Apr. 9, 2019).
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