

# Real Estate funds

## **Applicable legal framework**

Real Estate funds<sup>1</sup> must be created either as a Part II fund of the Fund Law or as a SIF. The choice of one or the other depends on the type of investor targeted as well as the flexibility sought in terms of diversification and running of the fund.

## **Public funds: Non-UCITS (“Part II” funds)**

- Part II of the Law of 17 December 2010 on Undertakings for Collective Investment (“the Fund Law”);
- IML Circular 91/75 of 21 January 1991 clarifying certain aspects of the UCI legislative framework (Chapter I lays down specific rules applying to Part II funds investing in Real Estate assets);
- IML Circular 97/1 36 of 13 June 1997 on financial information to be provided by public funds;
- CSSF Circular 02/77 of 27 November 2002 on the protection of investors in case of NAV calculation error or breach of investments rules;
- CSSF Circular 08/371 of 5 September 2008 regarding the electronic transmission of prospectuses and financial reports of UCIs and SIFs to the CSSF;
- CSSF Circular 11/498 of 10 January 2011 on entry into force of the Fund Law.

## **Investors**

If the Real Estate fund is created under the provisions of Part II of the Fund Law, there is no restriction as to the type of investors. If however, the fund is a SIF, only well-informed investors will be allowed to invest in it. For further details on the “well-informed investors” definition, please refer to the SIF Quick Reference Guide of this brochure.

## **Funds dedicated to well-informed investors (“SIFs”):**

- Law of 13 February 2007 on Specialised Investment Funds (SIFs);
- CSSF Circular 07/283 of 28 February 2007 regarding entry into force of the law of 13 February 2007 relating to SIFs;
- CSSF Circular 07/309 of 3 August 2007 concerning risk diversification requirements applicable to SIFs;
- CSSF Circular 07/310 of 3 August 2007 regarding financial information to be provided by SIFs;
- CSSF Circular 08/371 of 5 September 2008 on the electronic transmission of prospectuses and financial reports of UCIs and SIFs to the CSSF.

<sup>1</sup> REITS funds or funds investing in Real Estate assets that are securitised may be created as UCITS.

### ***Eligible investments, investment restrictions and valuation requirements***

The range of investments eligible for Part II funds and SIFs is not limited: all types of Real Estate assets and Real Estate related assets are eligible.

The investment restrictions, depending on whether one considers Part II funds or SIFs investing in Real Estate assets, can be summarised as follows:

	<b><i>Part II funds</i></b>	<b><i>SIF</i></b>
<b><i>Maximum investment in one property<sup>2</sup></i></b>	20% of fund/sub-fund's net assets.	30% of the fund/sub-fund's gross assets.
<b><i>Maximum leverage</i></b>	Borrowings may not exceed 50% of the valuation of all properties in the fund.	No maximum foreseen by regulation but the CSSF checks that the maximum leverage indicated in the prospectus is acceptable.
<b><i>Minimum liquid assets in the fund</i></b>	No minimum foreseen by regulation but the fund's liquidity features must be in line with sections dealing with investors' ability to redeem in the prospectus.	No minimum foreseen by regulation but the fund's liquidity features must be in line with sections dealing with investors' ability to redeem in the prospectus.

Because these investment restrictions are laid down in the CSSF circulars, they may in certain cases be derogated subject to proper justification vis-à-vis the Commission.

Part II funds and SIFs have to comply with the following valuation requirements:

	<b><i>Part II funds</i></b>	<b><i>SIF</i></b>
<b><i>Minimum frequency of NAV calculation</i></b>	Once a year and each time shares or units are issued to, or redeemed from, investors.	Once a year.
<b><i>Valuation principles</i></b>	Valuation is made based on the realisable value of the Real Estate assets, estimated in good faith (unless differently provided for in the constitutional documents of the fund).	Fair value unless derogated in the fund constitutional documents (prospectus).
<b><i>Requirement for independent valuation of the properties</i></b>	Yes, at least annually and each time properties are bought or sold. Valuation to be performed by recognised professionals in the Real Estate sector.	No.

<sup>2</sup> As per Chapter I of Circular 91/75 of 21 January 1991 applicable to Part II funds, this restriction (i) is not applicable during the start up phase of the fund, which may not extend beyond a four-year period following the closing date of the initial offer period and (ii) is to be considered at the date of acquisition of the real estate property. Regulations on SIFs are silent on these matters; this must consequently be agreed with the CSSF on a case-by-case basis.

## Real Estate funds main features at a glance

	<b>Part II funds</b>	<b>SIF</b>
<b>Legal forms available</b>	<ul style="list-style-type: none"> <li>Investment company with variable capital (SICAV) to be incorporated as a public limited company (S.A.);</li> <li>Investment company with fixed capital (SICAF);</li> <li>Contractual fund (FCP).</li> </ul>	<ul style="list-style-type: none"> <li>Investment company with variable capital, to be incorporated as a public limited company (S.A.), a private limited company (S.à r.l.), a cooperative company organised as a public limited company (SCoopSA) or as a corporate partnership limited by shares (SCA);</li> <li>Investment company with fixed capital (SICAF);</li> <li>Contractual fund (FCP).</li> </ul>
<b>Eligible investors</b>	No restriction on the type of investors authorised to invest in a Part II fund.	Well-informed investors only, i.e. institutional investors, professional investors and other investors provided that they formally declare themselves as well-informed investors and either invest a minimum of EUR 125,000 or obtain a certificate from a regulated entity confirming their understanding of the risks associated to the investment in a SIF.
<b>Licensing requirements</b>	<p>Part II funds must receive the CSSF's prior authorisation before it can start its activities. The CSSF will pay particular attention to:</p> <ul style="list-style-type: none"> <li>The fund's draft constitutional documents, notably the prospectus;</li> <li>The identity of the promoter of the fund, which must be a professional in the financial sector and must have sufficient financial surface;</li> <li>The identity of the investment manager of the fund which must be duly licensed for that function in its country of domicile;</li> <li>The identity of the persons in charge of conducting the business of the fund; they must show good reputation and adequate experience for acting in such capacity;</li> <li>The identity of the Luxembourg central administration, the Luxembourg depositary and the Luxembourg external auditors.</li> </ul>	
	<p>A SIF may start operations without receiving the CSSF's prior clearance but must file an application for approval within one month following its creation. SIFs do not require a promoter identified to the CSSF nor do they need a duly regulated investment manager.</p>	
<b>Compulsory service providers in Luxembourg</b>	<ul style="list-style-type: none"> <li>Depositary: responsible for safekeeping of the UCI assets and certain other supervisory duties – must be a Luxembourg bank or Luxembourg branch of a foreign bank.</li> </ul>	<ul style="list-style-type: none"> <li>Depositary: responsible for safekeeping of the SIF assets – must be a Luxembourg bank or the Luxembourg branch of a EU bank.</li> </ul>
	<ul style="list-style-type: none"> <li>Central administration – responsible for accounting, NAV calculation, keeping of the register of the shareholders/unitholders, handling with subscriptions and redemptions, communication with investors and preparation of financial statements – which must be a Luxembourg bank or a branch of a foreign bank or a professional of the financial sector with a proper license;</li> </ul>	
	<ul style="list-style-type: none"> <li>A Chapter 16 Management Company if the Part II or the SIF is set up as an FCP;</li> </ul>	
	<ul style="list-style-type: none"> <li>External auditors.</li> </ul>	

**Real Estate funds main features at a glance (continued)**

	<b>Part II funds</b>	<b>SIF</b>
<b>Subscription/ Redemption</b>	<ul style="list-style-type: none"> <li>• Subscription at NAV plus subscription fees. A Part II fund can be closed to subscriptions;</li> <li>• Redemption price must in practice be made at NAV minus redemption fees. A Part II fund can be closed to redemptions.</li> </ul>	<ul style="list-style-type: none"> <li>• Subscription price can be freely determined in the offering document. A SIF can be closed to subscriptions;</li> <li>• Redemption price can be freely determined in the offering document. A SIF can be closed to redemptions.</li> </ul>
<b>Minimum capital requirement</b>	EUR 1.25 Mio to be reached within six months following approval.	EUR 1.25 Mio to be reached within 12 months following approval.
<b>Documents to be established according to laws and regulations</b>	<ul style="list-style-type: none"> <li>• Prospectus;</li> <li>• Articles of association (in case of a SICAV or SICAF);</li> <li>• Management regulations (in case of an FCP);</li> <li>• Agreements with the service providers;</li> <li>• Annual audited financial statements (annually within four months of period end);</li> <li>• Semi-annual non audited financial statements (annually within two months of period end);</li> <li>• Long Form Report describing the organisation of the fund (annually within four months of period end).</li> </ul>	<ul style="list-style-type: none"> <li>• Offering document;</li> <li>• Articles of association (in case of a SICAV or SICAF);</li> <li>• Management regulations (in case of an FCP);</li> <li>• Agreements with the service providers;</li> <li>• Annual audited financial statements (annually within six months of period end).</li> </ul>

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