

Investment Management
and Real Estate

Luxembourg Real Estate Vehicles*

2008



*connectedthinking

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EXPOSITION
ACTIVITES DE
NATURE

1. Introduction

In recent years, property investors and developers have become much more international in their outlook. Property has effectively become part of the global market place. However, the tax and legal system that applies to property transactions differs with each jurisdiction. Players in this market need to understand the local implications of their proposed transactions.

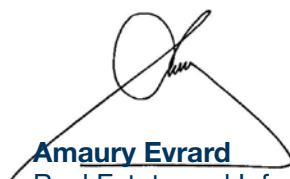
The Luxembourg legal framework is flexible enough to fulfil a wide range of investors' needs. Luxembourg's taxation regime is a key factor when considering whether to choose an unregulated or regulated Real Estate vehicle for international investors. There are several key factors to the success of Luxembourg, including:

- An ongoing political support for the development of the financial services industry;
- The broad awareness of Luxembourg funds;
- A high level of investor protection;
- A flexible onshore regime for setting up highly sophisticated and tax efficient Real Estate vehicles investing internationally;
- The presence of experienced service providers;
- The possibility of listing on the Luxembourg Stock Exchange.

This guide has been prepared by PricewaterhouseCoopers Luxembourg in order to provide general background information on the legal and taxation aspects of regulated and unregulated Real Estate vehicles domiciled in the Grand Duchy of Luxembourg as well as first guidance in the set up phase of these structures. The guide starts with the legal and tax opportunities for structuring Real Estate vehicles in Luxembourg, followed by practical information on the selection of service providers and actions during the lifetime of the structures. Practically, Real Estate structures are brought to life by the combination of several types of vehicles achieving an overall competitive position with minimal tax leakage.

Besides the choice of vehicles, the selection of service providers involved in Luxembourg Real Estate structures is key to establishing a successful project. Therefore, we provide some practical information on this selection. We also outline the attractiveness of the Luxembourg Stock Exchange for the listing of Real Estate funds as listing becomes more and more important to Real Estate players not only as an exit strategy.

We hope you will find useful information in this brochure and wish you an interesting read.



Amaury Evrard

Real Estate and Infrastructure Leader
Luxembourg



2. Structuring Real Estate vehicles

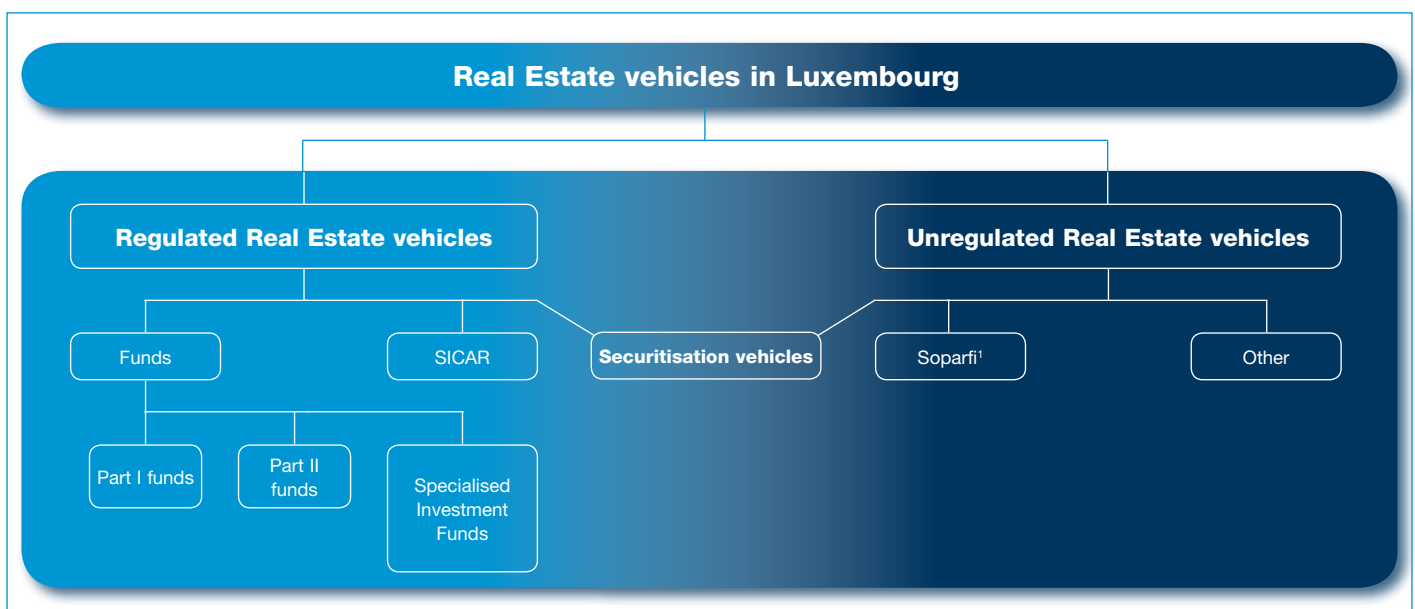
The choice of a Real Estate vehicle will depend on the type of funding that needs to be raised, the proposed investor base, the type of investments to be made and any specific tax considerations. Luxembourg offers a choice of both regulated and non-regulated structures that meet the different requirements of Real Estate players.

2.1 Regulated Real Estate vehicles

Sponsors who want to establish a regulated Real Estate vehicle in Luxembourg can choose between three different options, each addressing specific needs:

1. Undertaking for Collective Investment (UCI or “fund”), whose securities are distributed to the public; or
2. Specialised Investment Fund (SIF), i.e. UCI’s reserving their securities to well-informed investors; or
3. *Société d’Investissement en Capital à Risque*, which are eligible for well informed investors as well (SICAR);
4. Regulated securitisation vehicle.

Today, the most chosen regulated vehicle for structuring Real Estate investment schemes is the SIF. However, when focusing on Assets Under Management, it is clear that UCITS funds are the leading option. This should not be misinterpreted: the vast majority of Luxembourg Real Estate structures use unregulated vehicles for which no statistical information exists.



¹ Société de Participation Financière.

All regulated Real Estate vehicles, as described hereafter, fall under the prudential supervision of the Luxembourg financial sector regulator, the *Commission de Surveillance du Secteur Financier* (CSSF²) which plays a key role by (i) authorising the vehicle and by (ii) supervising the on-going operations of the structure.

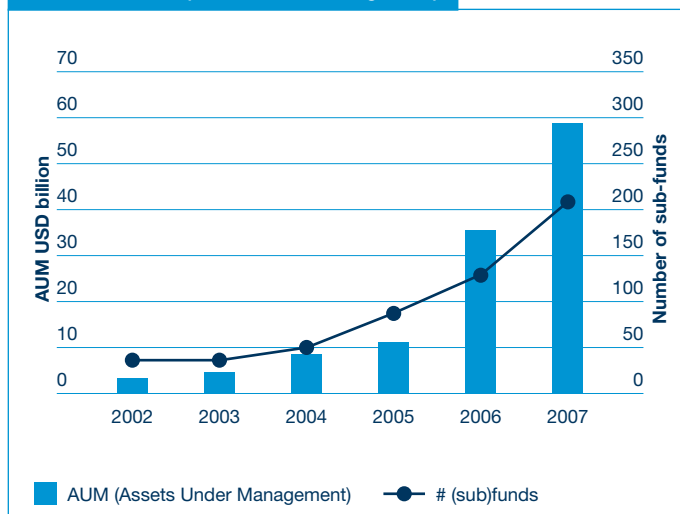
2.1.1 Real Estate funds

2.1.1.a General regulatory framework

1. Publicly distributed Undertakings for Collective Investment

Depending on the investment policies, Real Estate UCIs can principally be created in Luxembourg under “Part I” or “Part II” UCIs of the Law of December 20, 2002 (the “2002 Law”). Part I funds benefit from the EU passport, which has been introduced by the European Directive 85/611/EEC regarding Undertakings for Collective Investments in Transferable Securities (UCITS). They can be distributed cross-border all over the EU thanks to a simplified notification procedure, which is not the case for Part II funds. However, the investment universe of Part I UCITS is limited to assets eligible for UCITS under the before mentioned European Directive. Therefore, this type of fund is mainly used for the investment in Real Estate equities, REITs or to create Real Estate fund of funds. Real Estate UCIs under the so-called “Part II” of the 2002 Law offer a wider range of investments, such as direct investment in Real Estate properties, and can be considered as the classic type of regulated Real Estate fund structures in Luxembourg. Therefore, in the following we will focus on UCIs under Part II of the law.

Number of Real Estate/property sub-funds and evolution of AUM (Assets Under Management)



Source: Fitzrovia, 2008

Complementary to the general rules applicable to any UCIs, the CSSF issued a number of “circulars” that either specify certain legal dispositions or that introduce elements of regulation. In particular, Chapter I. Point III of the IML³ Circular 91/75 sets out specific rules and exceptions applicable to Real Estate UCIs.

Real Estate is defined in Chapter III of the Circular 91/75 as follows:

- Property consisting of land and buildings registered in the name of the UCI;
- Share holdings in Real Estate companies (including claims on such companies) the exclusive object and purpose of which is the acquisition, promotion and sale as well as the letting and agricultural lease of property provided that these share holdings are at least as liquid as the property rights held directly by the UCI;
- Property related long-term interests such as surface ownership, leasehold and options on Real Estate investments.

² The *Commission de Surveillance du Secteur Financier* (CSSF) is the supervising authority of financial markets in Luxembourg.

³ IML: *Institut Monétaire Luxembourgeois*, former official name of the CSSF. The circular is still partly applicable.

Obviously, spreading risk is a key element to consider in contemplating the choice for setting-up a Real Estate UCI. In general, the regulation requires that, at the date of acquisition of the relevant property, no one investment can be larger than 20% of the total Net Asset Value of the UCI. This diversification requirement does not apply during a start-up period of a maximum of four years from the closing date of the initial subscription period. Moreover, the aggregate of all borrowings of the UCI may not on average exceed 50% of the valuation of all its properties. However, depending on the investment policy of the UCI, any exceptions can be discussed individually with the CSSF.

We have listed below some of the main regulatory requirements inherent to a Real Estate UCI under the Part II of the 2002 Law:

- The CSSF, before granting a license, reviews (i) the UCI draft constitutional documents including the fund prospectus, the various agreements, (ii) the suitability of the fund sponsor (the so-called “promoter”), the custodian bank, the central administration, the Real Estate or property (investment) manager and the directors of the UCI on the respective management company. On average, the CSSF authorisation might be obtained within a period ranging from a couple of weeks to six months depending on the completeness of the application file introduced and the complexity of the project;
- A promoter is required. The “promoter” concept is not a legal requirement but an administrative practice of the CSSF. A promoter is an entity, which, in substance, takes ultimate responsibility in case of damages caused to investors.
- The promoter must be an institution active in the financial sector with sufficient financial surface and adequate reputation;
- The net assets of the UCI must not be less than EUR 1.25 Mio and must be reached within six months following the CSSF authorisation;

- A custodian bank and a central administration being Luxembourg professionals of the financial sector submitted of the financial sector supervised by the CSSF;
- One or more independent property valuers are required;
- The Net Asset Value (NAV) of the fund will be produced at least once a year and on a frequency depending on the redemption/subscription frequency;
- The fund needs to prepare a semi-annual and an annual report;
- A qualified auditor should audit the annual accounts of the fund.

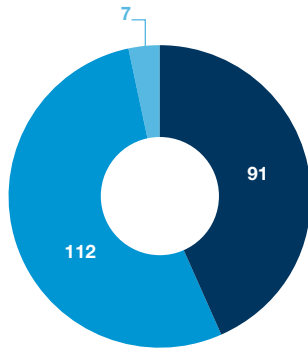
The legal forms available to publicly distributed UCIs are as follows:

- **A Fonds Commun de Placement (FCP)** is equivalent to the concept of “unit trust” as known in the U.K. and Germany. Having no separate legal status, it must be managed by a Luxembourg management company. It is, however, not liable for the obligations of the latter;
- **A Société d’Investissement à Capital Variable (SICAV)** is an investment company, with a variable share capital that at all times equals the Net Asset Value of the fund. It may operate either as open-ended or closed-ended fund;
- **A Société d’Investissement à Capital Fixe (SICAF)** is a corporate structure with fixed capital that may operate either as an open-ended or closed-ended fund. Fixed capital in this context means that the par or nominal value of the issued capital does not change. These companies have the right to repurchase their own shares.

SICAVs and FCPs are, by far, the most frequent legal forms used. SICAVs, under the 2002 Law, can only be set up as public limited companies (*Sociétés Anonymes*). As SICAFs are less flexible than SICAVs and do not offer any obvious advantages, they are not very common.

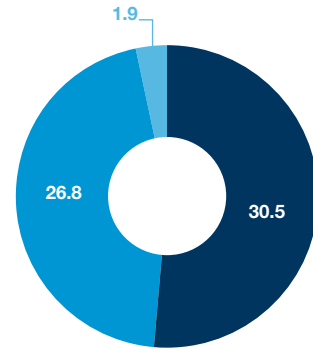
The interest in creating Real Estate funds under Part II of the 2002 Law stagnated in 2007 due to the advantages offered by SIFs. The number of Real Estate funds increased by 28 funds in 2007 with the number of Part II funds slightly decreasing (22 funds in 2006, 21 funds in 2007).

Part II Real Estate vehicles by number of sub-funds



● FCP ● SICAV ● SICAF

Part II Real Estate vehicles by AUM (in USD billion)



● FCP ● SICAV ● SICAF

Source: Fitzrovia, December 31, 2007

A key element of a UCI is that it can have various sub-funds and can issue different classes of shares. Different share classes may have different distribution policies or a different fee scheme. Units or shares issued by each of the sub-funds have different values representing specific pools of assets and liabilities.



2. Specialised Investment Fund (SIF)

In February 2007, the Luxembourg parliament adopted a law to replace the 1991 Law on UCIs dedicated to institutional investors; the concept of Specialised Investment Funds was thus created (the “SIF Law”). The main change, compared to previous regulation, probably concerns the scope of eligible investors, which has been broadened to include not only institutional investors but also professional and sophisticated investors.

This latter category includes private individuals who fulfil the following criteria:

- They formally adhere to the status of “sophisticated” investors (meaning in substance, that they are able to understand the risks associated with investing in the SIF) and;
- They invest a minimum of EUR 125,000 in the SIF. The minimum capital of the SIF (share capital and share premium), however, must reach EUR 1.25 Mio within a period of 12 months following approval by the CSSF.

The above-mentioned minimum investment amount may be waived if the investor receives a positive assessment from a credit institution, an investment firm or a management company on their ability to adequately appraise investments in SIFs. The net assets of the SIF may not be less than EUR 1.25 Mio and must be reached within 12 months following the CSSF authorisation.

Other differences in comparison to the 2002 Law are:

- Starting SIF activities without prior approval from the CSSF; application for approval will have to be filed with the CSSF within one month following the creation of the SIF;
- Promoters are no longer subject to regulatory approval; investment managers will not be subject to CSSF scrutiny and depositary banks, while required in Luxembourg, have fewer responsibilities;
- No requirement for publishing the Net Asset Value (NAV) other than once a year, to subscribe and redeem to NAV or to have fully paid shares in SIFs set up in the form of SICAVs;
- Semi-annual non-audited reports and Long Form Reports will not be required (only an annual audited report with more flexibility on portfolio disclosure);
- Even if the risk diversification requirement remains (as this is the essence of a UCI), the existing quantitative limits will not apply. The CSSF has issued a circular in August 2007 which clarifies that risk diversification is achieved once the fund does not invest 30% of its assets in a single investment;
- Investors will be able to invest in the SIF via equity or debt allowing effective tax optimisation;
- SIFs are not to be marketed to the general public.

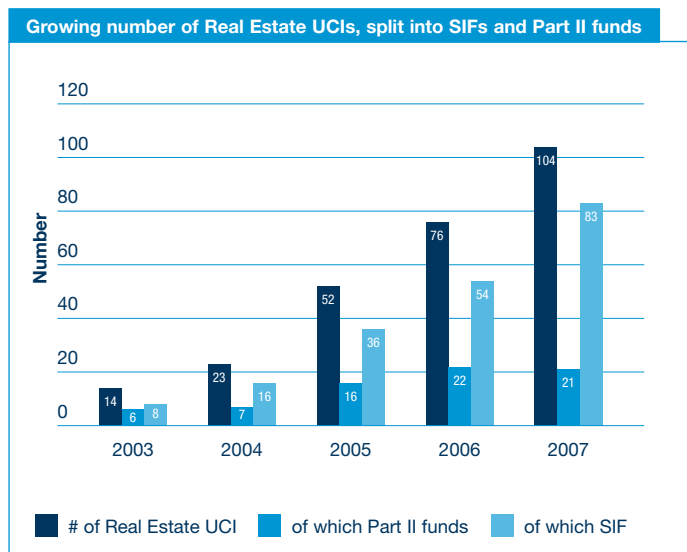
The range of eligible assets (nature of assets or associated risks) is unlimited which makes the SIF a very interesting vehicle for Real Estate investments of any kind such as timber, agriculture and infrastructure. The SIF Law will significantly reduce the time-to-market for new Real Estate funds dedicated to sophisticated investors. It will allow high net worth individuals and their advisors/managers to launch products tailored to their very own needs and institutional players to create new, or repatriate existing funds in a regulated environment.

The statistical data shows that the trend to set up Luxembourg Real Estate funds has kept growing since 2004 with the strongest growth in 2007.

It is interesting to note that Real Estate promoters have almost exclusively chosen SIFs. As a consequence, at the end of 2007, 80% of the Luxembourg Real Estate funds were SIFs. The total net assets of SIFs which mainly invest in Real Estate has significantly increased in 2007 and amounts to EUR 8.131 billion on December 31, 2007 (EUR 3.307 billion on December 31, 2006) which represents a 145% increase.

SIFs may be created in the same form as publicly distributed UCIs, i.e. as an FCP, as a SICAV or as a SICAF.

As publicly distributed UCIs, SIFs can have various sub-funds and can issue different classes of shares. Units or shares issued by each of the sub-funds have different values representing specific pools of assets and liabilities.



Source: CSSF annual report 2007

However, unlike a publicly distributed SICAV which can only be set up as public limited companies (*Sociétés Anonymes*), the SICAV/F-SIF may also be incorporated as partnerships limited by shares (*Sociétés en Commandite par Actions*, S.C.A.), limited liability companies (*Sociétés à responsabilité limitée*) or cooperative companies organised as PLCs (*Sociétés Coopératives Organisées sous forme de Sociétés Anonymes*). This flexibility facilitates the structuring of Real Estate products to the specific needs of sponsors and potential investors.

The S.C.A. combines the advantages of the very flexible rules applicable to public limited companies with the possibility to control the structure solely using the management company (general partner) without depending on decisions made by a general shareholders meeting. The general partners own and operate the business, whilst assuming liability for the partnership, whereas the limited partners serve as investors only; they have no control over the company and are not subject to the same liabilities as the general partners. The latter are personally liable for the partnership's obligations and debts, which explains why partners in SIFs are generally Luxembourg public or private limited companies (S.A. or S.à r.l.).

In August 2007, the CSSF published a general interpretation (CSSF 2007/309) of the SIF Law, i.e. related to the diversification requirements and the gearing applicable to Real Estate SIF. In principle, a SIF may not invest more than 30% of its assets or commitments to subscribe securities of the same type issued by the same issues. This circular represents the primary guidelines complementing the SIF Law. However, exceptions can be applied if managers can explain the economic reasons and the structure to the CSSF.

Finally, the table in Appendix I sets out certain specific characteristics of UCIs and SIFs compared to other Real Estate vehicles. Additional information on UCI, such as reporting requirements, specific accounting issues, etc. are more extensively discussed in this publication.

2.1.1.b Particular tax implications for Real Estate funds

Taxation of the fund entity

Luxembourg Real Estate funds (UCITS, non-UCITS and SIFs), whether they invest directly into Real Estate properties or into securities (shares and loans in/to Real Estate property companies) are not subject to income and capital gains taxes in Luxembourg.

However, they are subject to an annual subscription tax of five basis points, which is payable and calculated quarterly, based on the UCI's Net Asset Value at the end of each quarter. A reduced rate of one basis point annually is applicable to Real Estate funds subject to the SIF Law, as well as to compartments and share classes of Real Estate funds subject to the 2002 Law that are dedicated to institutional investors. Holdings in other Luxembourg funds, which have already been subject to subscription tax, are excluded from the subscription tax in any case.

Withholding taxes

Distributions by Luxembourg Real Estate investment funds, whether paid to resident or non-resident investors, are not subject to any Luxembourg withholding tax. Some payments may however be subject to withholding tax in application of the European savings directive. Please see Appendix II for further details.

Due to their tax-exempt status, withholding tax levied at source on income received by Luxembourg UCIs from Real Estate or intermediate holding companies is technically not refundable. UCIs formed as investment companies may benefit from certain double taxation treaties (DTTs) signed by Luxembourg and as a consequence from reduced withholding tax rates. UCIs formed as investment partnership will generally not benefit from DTTs unless the unit-holders themselves are able to claim the reduced rate under the applicable DTT. The latter implies huge administrative burdens and is therefore rare in practice.

Value Added Tax (VAT)

Services rendered directly to UCIs are exempt from VAT if they qualify as “management services”. The range of services covered by this definition is broad (accounting services, computation of the NAV, investment advice services etc.). However, it is worth mentioning that the European Court of Justice ruled on May 4, 2006 (so-called “Abbey National Case”) that custody services could not be considered as management services of investment funds but as services for control and monitoring of funds. This is a variation compared with the traditional interpretation of the VAT exemption in Luxembourg. Circular 773 published by the Luxembourg VAT authorities on December 29, 2006 provides information on how this decision should be implemented in Luxembourg. The Circular recognises two components in the custody services: supervision and control which cannot benefit from the VAT exemption and transactions (buy or sell) which benefit from the VAT exemption. The Circular also confirms that the 12% rate remains applicable for custody services.

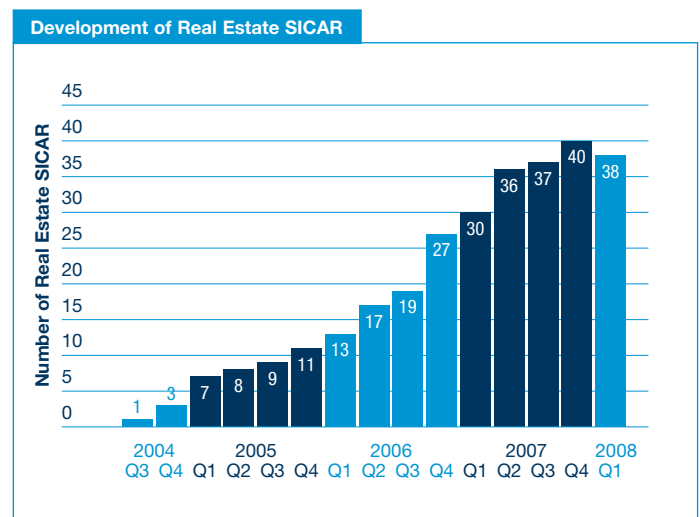
Sub-contracted services are also exempt from VAT if they qualify as management services of investment funds and as “final product”. “Final product” is defined as services re-invoiced as such by the main contractor to the UCIs (although a margin can be applied). For further general tax facts, please refer to Appendix II.

2.1.2 Real Estate venture capital companies (SICAR)

2.1.2.a General regulatory framework

The Law of June 15, 2004 (the “SICAR Law”) introduced a specific form of investment vehicles, i.e. the SICAR exclusively dedicated to investments in risk capital, and exclusively reserved to “well-informed” investors, as already described above.

The Introduction of the SICAR was well appreciated by the industry, as shown in the chart below:



Source: Mémorial/PricewaterhouseCoopers

The total number of SICARs increased in 2007 (December 31, 2007: 182, December 31, 2006: 115). About 40 files were submitted but not approved on December 31, 2007. According to the CSSF’s annual report, 40 out of 182 SICARs are investing mainly in Real Estate.

Taking into account that SICARs are, by definition, exclusively dedicated to investments in risk capital, it is obvious that these products do not have to comply with any kind of risk diversification requirement. SICARs may, in principle, invest 100% of their assets in only one target investment. Art. 1 of the SICAR Law specifies that investment in risk capital refers to the capital provided directly or indirectly to entities in view of their launch, development or listing on a stock exchange with the aim of offsetting the high level of risks taken by the investors with higher returns.

On April 5, 2006, the CSSF issued Circular CSSF 06/241, which inter alia specifies the conditions under which SICARs can be used to realise Real Estate structures.

The CSSF accepts Real Estate investments for a SICAR under the condition that they are considered as risk capital and are indirectly realised through Real Estate companies. A key element that needs to be demonstrated in order to qualify for SICAR is the “development” intention (value creation) of the acquired Real Estate. The sole fact that Real Estate objects can present a particularly high risk or are located in countries with a certain political risk does not in itself suffice to prove the characteristic of risk capital.

Whether the Real Estate investment qualifies as risk capital depends on the type of investment and its expected yield. So-called opportunistic investment strategies are acceptable in principle, while core-plus investments will be analysed on a case by case basis. Core investments are, in principle, not eligible.

The CSSF confirmed again in 2007 that investment in Real Estate core investments, even as accessory investment, does not qualify as risk capital. The same applies for the investment of liquidity in REITs during the investment period.

Circular 06/241 provides for some indication of qualifying Real Estate investments as risk capital:

- Investments with a high appreciation potential owing to the particular risks associated with the underlying Real Estate;
- Development/value creation projects at the level of the underlying Real Estate – High risk level/expected return;
- Identity of the managers, nature of their remuneration and selection criteria of the Real Estate assets;
- Financial participation of the managers/initiators in the project;
- Active management of the underlying Real Estate, holding duration/investment horizon limited in time;
- Generally, absence of regular rental income;
- Financing types: often high leverage, mezzanine, distressed, non-performing or CBO type financing.

Finally, it should also be pointed out that the investment policy must aim to buy with a view to sell at a profit. The creation of a SICAR whose policy would, for example, be limited to the holding or the management, through a SICAR, of family, corporate or group properties, is not eligible.

These could, for example, include a combination of:

- The objective of developing the target asset (for example value creation through investment in renovating a property or restructuring of a portfolio of properties);
- A specific element of risk associated with the property which is beyond the common level of a Real Estate risk (i.e. the location of the property in a distressed area or an emerging market or country or a property with significant tenant or void risk);
- The objective of acquiring the property in order to sell at a capital gain.

Compared to publicly distributed UCIs, SICARs are subject to a “lighter” regulation of the CSSF. The main regulatory topics inherent to a Real Estate SICAR are listed below:

- Like a publicly distributed UCI or a SIF, the CSSF approves entities applying for the SICAR status and carries out an ongoing supervision of their operations;
- The CSSF does not review the suitability of the investment manager to whom the actual management of the SICAR is delegated. It will however ensure that the SICAR meets the requirement of the law. In particular, the investment strategy will be a central element of the CSSF review;
- The subscribed share capital should be no less than EUR 1 Mio and must be reached within 12 months following the CSSF authorisation. The share capital should be fully subscribed and should be paid-up at a 5% minimum rate;
- A depository bank and central administrator being Luxembourg professionals of the financial sector submitted to the CSSF prudential supervision are required. However, in comparison with publicly distributed UCI, the depository bank has a lightened scope of responsibilities;
- SICARs must, at least once every six months, inform investors on request and free of charge about the NAV of the fund;

- Only an annual report covering the relevant financial year is required (no necessity for a semi-annual report or Long Form Report);
- A qualified auditor should audit the annual account of the fund.

A SICAR can be set up in a transparent form (partnership form) or non-transparent form (the corporate form). Most existing corporate forms in the Luxembourg Company Act are eligible (public company, private limited liability company and partnership limited by shares).

Indeed, most of the SICARs existing today have opted for the partnership limited by shares form (*Société en Commandite par Actions* or S.C.A.). This corporate form provides for the same advantages of the L.P. structure and at the same time enjoys the tax status of a Luxembourg incorporated company.

Please see Appendix I for the comparison of the SICAR with other Real Estate vehicles.

2.1.2.b Particular tax implications

Taxation of the SICAR entity

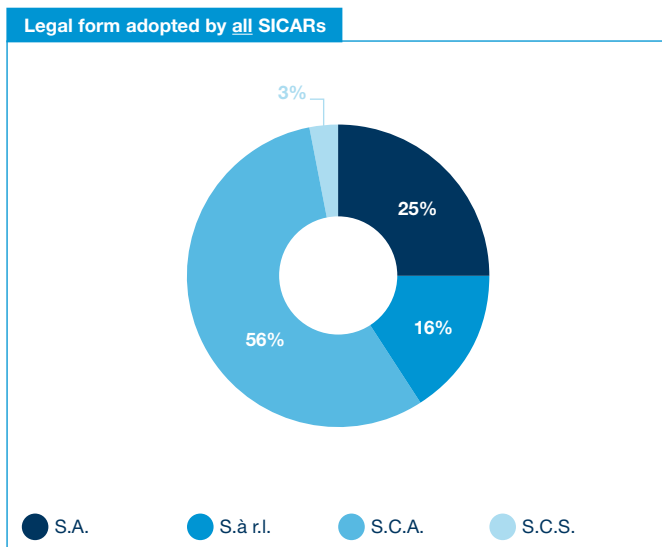
The applicable taxation regime depends on the legal form of the SICAR. The SICAR in the form of a limited partnership (S.C.S.) is deemed to be transparent for corporate tax purposes and exempt from municipal business tax. Taxation will consequently be levied at the level of partners according to the rules applicable in their country of residence.

A SICAR, which has adopted a corporate form is fully liable to taxation in Luxembourg. However, income and capital gains derived from securities are excluded from the taxable base. This accordingly applies to temporary investments in liquid assets held for a period of maximum 12 months before investment in capital risk.

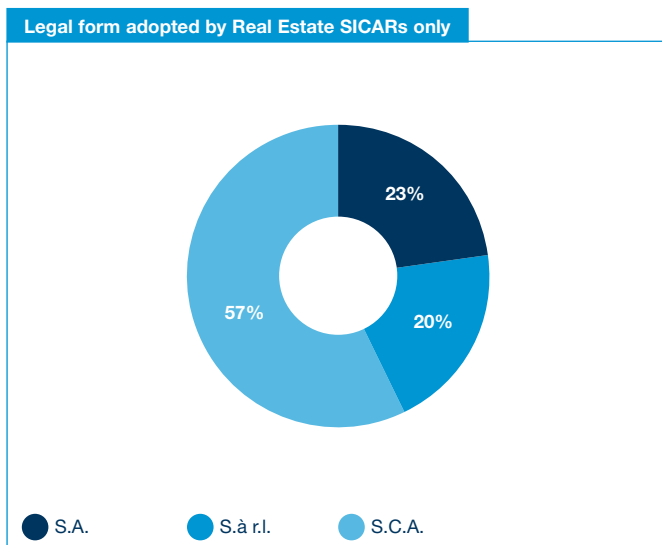
The preliminary works on the SICAR Law provide for a definition of securities in the sense of the SICAR Law. This definition is broad and includes bonds, loans and any other tradable securities as well as interests in underlying Real Estate funds.

Any other income is included in the taxable basis of the SICAR (i.e. royalties) and thus subject to the general provisions of the Luxembourg income tax Law.

The SICAR is not liable to Net Wealth Tax.



Source: CSSF & Mémorial, March 31, 2008



Source: CSSF & Mémorial, March 31, 2008

Withholding taxes

Distributions by a SICAR, whether paid to resident or non-resident investors, are not subject to any Luxembourg withholding tax. Some payments may however be subject to the withholding tax in application of the European Union Savings Directive. Please see Appendix II for further details.

The Luxembourg tax authorities have confirmed that they consider the SICAR as resident for double tax treaty (DTT) purposes. Income paid by foreign entities to the SICAR should therefore benefit from reduced withholding rates according to the appropriate DTT in place between Luxembourg and the source country. This equally applies to the parent subsidiary directive benefits.

However, the SICAR should also be recognised as a resident by the foreign authorities, although one can expect some questions to be raised by these foreign tax administrations regarding the application of double tax treaties due to the specific regime applied to a Luxembourg SICAR. For this reason, it is recommended to consult a tax advisor in the foreign country concerned.

Besides, withholding tax levied at source (at a reduced rate or at the normal rate) on exempt income received by a Luxembourg SICAR is normally not refundable. According to Luxembourg tax credit rules, the creditable amount is indeed limited to the amount of Luxembourg tax that would have been levied on this income. Income from securities being tax exempt in the hand of the Luxembourg SICAR, any related foreign withholding tax may not offset any Luxembourg tax.

Dividends paid by a Luxembourg taxable company to a SICAR benefit from the withholding tax exemption under the general conditions. This applies accordingly to the income tax exemption on income paid by a SICAR to another Luxembourg company. Please see Appendix II for details.

The pending question is whether other EU Member states will accept to grant the income tax exemptions under local provisions for dividends paid by a SICAR to a company established in another EU member state.

Value Added Tax (VAT)

The same regime as for services rendered to Luxembourg funds apply. Please refer to paragraph 2.1.1.b.

European Commission review

As at the date of printing this brochure, the EU Commission has undertaken a “request for information” procedure whereby it has sent a list of technical questions relating to the SICAR regime to the Luxembourg government, which has provided a reply. The purpose of this procedure is to assess whether or not the SICAR regime constitutes an illegal state aid scheme.

Under the current “request for information” procedure there is no set deadline for the EU Commission to render its conclusion.

It is important to note that the clear and unambiguous position of the Luxembourg government is that the SICAR regime does not constitute illegal state aid.

2.2 Real Estate securitisation structures

2.2.1 General regulatory framework

Regarding the authorisation and supervision of securitisation vehicles, the Securitisation Law differentiates between regulated and non-regulated entities. A securitisation vehicle is necessarily subject to CSSF supervision if it issues securities to the public on a continuous basis.

Authorisation by the CSSF means that the CSSF has to approve the articles of incorporation or management regulations of the securitisation vehicle and, if necessary, authorise the management company.

Moreover,

- Securitisation companies and management companies of securitisation funds must have an adequate organisation and adequate resources to exercise their activities;
- The directors of the securitisation vehicle must be of good repute and have adequate experience;
- The CSSF supervises regulated securitisation vehicles on a continuous basis.

However, today's most common types of Real Estate securitisation vehicles are unregulated.

Securitisation is a type of structured financing in which a pool of financial assets is transferred from an originating company to a Special Purpose Vehicle (SPV).

Within the meaning of the law, securitisation vehicles are entities, which carry out securitisation activities or which participate in securitisation transactions either by assuming all or parts of the securitised risk or by issuing securities for financing purposes. To classify as a Luxembourg securitisation vehicle governed by the law, entities must specifically state in their articles of incorporation or management regulations (for funds) that they are subject to the provisions of the Securitisation Law.

Securitisation companies can only take the legal form of a limited liability company while a securitisation vehicle can also be organised in a pure contractual form as a securitisation fund (see Appendix I).

Securitisation vehicles offer the possibility of creating several compartments within one legal entity. This allows each compartment to correspond to a distinct part of assets financed by distinct securities and the separate management of a pool of assets and corresponding liabilities, so that the result of each pool is not influenced by the risks and liabilities of other compartments. In an extreme situation depending on investor's needs, each building could be represented by a separate compartment, a solution which is not possible using a Real Estate fund structure as stated in section 2.1.1.. Furthermore, compartment segregation prevents insolvency contamination, which is one of the most important aspects of the Securitisation Law. The principle of bankruptcy remoteness separates the securitised assets from any insolvency risks of the securitisation vehicle or of the originator, the service provider or collateral. In addition, the law provides for the assets to be exclusively available to satisfy the claims of the investors who funded them and of the creditors whose claims are linked to their assets.

The law allows a wide range of assets, such as tangible or intangible assets or activities with a reasonably ascertainable value or predictable future stream of revenue to be securitised, which creates a lot of possibilities for Real Estate structuring. The transactions can be achieved by transferring the legal ownership of the assets ("true sale") or by transferring credit risks linked to the assets ("synthetic") set up either as a long-term securitisation or as a short-term Commercial Paper Programme.

The Luxembourg Securitisation Law offers an attractive regulatory framework for setting up workable Real Estate securitisation structures in Luxembourg at reasonable costs. Securitisation vehicles are in particular interesting for infrastructure investments or for any not actively managed portfolio, i.e. certain illiquid investments in timber. One successful Real Estate securitisation example in Luxembourg is a structure organised in the legal form of a S.à r.l.. The entity invested in several Real Estate properties by refinancing these investments with long-term loans provided by another group entity. The rentals as well as the sale payments received from the Real Estate properties are used to pay both the interest on and the principal of the loans.

Please see Appendix I for the comparison of securitisation vehicles with other Real Estate vehicles.

Statistical information on securitisation vehicles investing in Real Estate is not available. However, securitisation vehicles are used in many Real Estate structures mainly for repackaging.

Additional information on securitisation, such as reporting requirements, specific accounting issues, etc. are more extensively discussed in our publication “Securitisation in Luxembourg” which is available through our website: www.pwc.com/lu/publications.

2.2.2 Taxation of the securitisation company

Securitisation vehicles organised as corporate entities are fully liable to corporate income tax and municipal business tax.

According to the Securitisation Law however, the commitments of a securitisation company to remunerate investors for issued bonds or shares and other creditors qualify as interest on debt even if paid as return on equity. Hence, they are fully tax-deductible. The resulting tax neutrality is one of the key success factors of Luxembourg securitisation structures.

Securitisation companies are exempt from Net Wealth Tax.

Withholding taxes

Comments made in relation to the SICAR apply as the regime is similar.

Value Added Tax (VAT)

According to the Luxembourg VAT authorities, securitisation companies should apply for a “simplified VAT registration regime” and only self-assess Luxembourg VAT on goods and certain non-exempt services received from abroad pursuant to the reverse charge mechanism. This position has the advantage of lowering the administrative obligations of the securitisation company. On the other hand, even if a lot of services acquired by securitisation could be VAT exempt, the denial of VAT recovery could constitute a drawback, i.e. in relation to professional fees. The interpretation of the VAT authorities may not be totally in line with the EU VAT principles with regard to the denial of input VAT recovery. Each situation should therefore be analysed on a case-by-case basis.

European Commission review

Please see comments for the SICAR, which apply in similar circumstances.

2.3 Unregulated vehicles

2.3.1 Legal framework

In Luxembourg, the most common non-regulated Real Estate vehicle is known as the Soparfi (*Société de Participation Financière*). This type of vehicle may carry on holding and financing activities to which a tax efficient regime applies without any regulatory restriction. These are key factors when selecting a Real Estate investment vehicle. The tailor-made structure that can be put into place with these vehicles allows Real Estate partners to have the flexibility of a mere partnership in a corporate body.

Soparfis can be used as direct investment vehicles or as structuring vehicles underneath a fund structure. Irrespective of their country of incorporation, most of the larger Real Estate funds commonly use Luxembourg Soparfis as investment and financing for their Real Estate acquisitions – whether the properties are located in Luxembourg or abroad.

Finally, the table in Appendix I sets out certain key characteristics of Soparfis compared to other Real Estate vehicles.

2.3.2 Particular tax aspects

Taxation of the Soparfi

A Luxembourg Soparfi is subject to the general corporate tax regime and thus subject to corporate income tax and municipal business tax. It is also subject to Net Wealth Tax. Finally, it is subject to a capital duty which has already been reduced to 0.5% of the subscribed capital (upon incorporation of the company and at the occasion of any subsequent share capital increase) for 2008 and will be abolished completely as of January 1, 2009.

However, this general tax regime includes a participation exemption regime, which results for a Soparfi, as for any Luxembourg company, in a tax exemption of all income derived from its holdings (dividends, capital gains and liquidation bonuses) provided that certain conditions are met. Appendix II provides for further details in this respect.

Moreover, participations benefiting from the participation exemption regime are excluded from the taxable base for the purpose of the computation of the Net Wealth Tax.

It has unlimited access to Luxembourg's DTT network and to the EU Directives on tax matters.

Withholding taxes

Dividends paid by a Soparfi are in general subject to a 15% Luxembourg withholding tax. As Soparfis benefit from EU Directives and DTTs signed by Luxembourg, they are generally able to distribute dividends without any significant Luxembourg withholding tax cost. In instances where this would not be possible, dedicated financial instruments may reach neighbouring exemption goals.

Interest paid by a Soparfi is in general not subject to any withholding tax in Luxembourg (subject to a few exceptions). Some payments may however be subject to withholding tax in application of the European savings directive. Please see Appendix II for further details.

Income paid by foreign entities to a Soparfi should benefit from reduced withholding tax rates according to the appropriate DTT in place between Luxembourg and the source country. This equally applies to the parent subsidiary directive benefit.

Besides, withholding tax levied at source (at a reduced or at normal rate) on taxable income (i.e. interest income) should give rise to a tax credit on the corporate income tax payable in Luxembourg on such income. On the other hand, withholding taxes levied at source on tax exempt income (i.e. dividend income qualifying for participation exemption) will not give rise to such a tax credit.

Tax benefits

Luxembourg Soparfis are also used to invest directly into Real Estate properties either located in Luxembourg or abroad (i.e. in the U.K. or in Germany). In this latter case, the use of a Soparfi to invest directly into the Real Estate property would generally reduce the local tax burden on the property.

While the transfer of Luxembourg properties is usually subject to transfer taxes ranging from 7% to 10% (computed on the higher of the sales price and the market value), the transfer of shares in a company holding Luxembourg properties is generally not subject to Luxembourg transfer taxes.

Tax substance

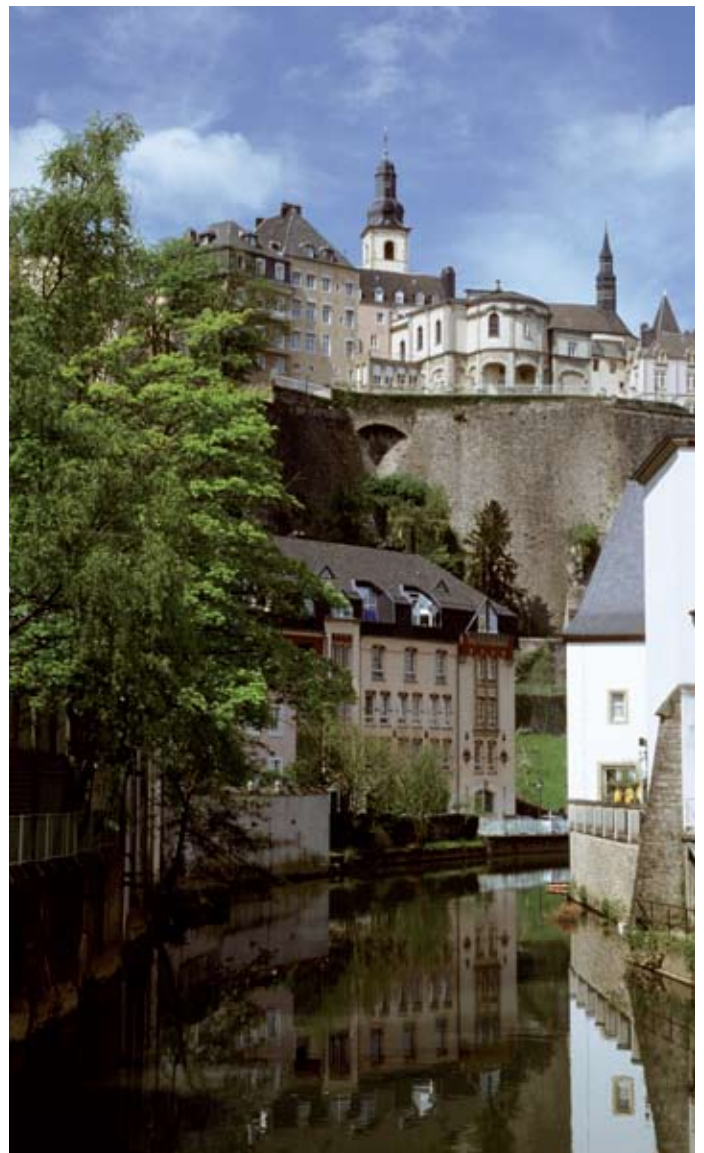
One growing issue in international taxation is the requirement by foreign tax administrations of genuine substance for Real Estate vehicles (and more generally in international tax structures as well) in order to benefit from a desired tax status (i.e. tax treaty eligibility, application of parent subsidiary directive, avoidance of CFC rules, etc.). The lack of substance may thus lead a foreign tax administration to conclude that a specific entity is purely artificial and should be disregarded from a fiscal point of view.

The entities must be provided with sufficient “business substance” in terms of purpose of the business, and sufficient “material substance”, i.e., office premises, equipment, staff, etc.

The requirements for substance for these entities are determined primarily by the tax rules of the country where the property owning entity is incorporated or where the asset is located. These requirements vary from country to country and should therefore be considered on a case by case basis.

It is important to point out that these requirements impact not only Luxembourg, but all locations playing a role in the Real Estate sector (and in the international tax structuring arena).

In this respect it should be stressed that Luxembourg service providers have been accustomed to provide such a level of substance for a long time. The pool of human resources existing in Luxembourg and in the neighbouring countries make it also easier for Luxembourg, than for some other jurisdictions, to accommodate the substance requirement of, for example, staffing.



3. The selection of service providers for Real Estate vehicles

The selection of service providers is essential in starting a Real Estate vehicle. Which business partners must be selected depends mainly on the legal structure of the chosen vehicle.

Besides substance requirements to achieve a tax efficient status while investing globally, no particular requirements exists for Soparfis. For regulated vehicles the Luxembourg laws foresee functions which can be exercised by the vehicle itself or outsourced to external parties either in Luxembourg or abroad. Typically, the expertise of specialists in the Real Estate industry is needed not only for the day-to-day operations, but also during the pre-launch and launch phases of the product. This will enable the sponsor to optimise the product from a regulatory, tax and operational point of view. In this paragraph we focus on the selection of service providers for Real Estate fund structures, which are today the most common Real Estate vehicles. However, the overview in Appendix III contains information regarding service providers for other entities.

The main service providers needed for Real Estate funds are:

- An investment advisor;
- An asset manager (in the larger sense covering facility and property management);
- An administrative agent;
- A custodian;
- A transfer agent;
- An auditor specialised in the Real Estate investment industry;
- A tax advisor;
- A lawyer able to optimise the agreements between the fund and the other service providers.

3.1 Investment advisor

The investment strategy is one of the Management's core functions. The investment advisor will advise and make investment/divestment recommendations in accordance with the investment objective, investment policy, investment powers and restrictions. Usually Luxembourg Management is supported by an external investment advisor located outside Luxembourg. The duties of the investment advisor depend mainly on the outsourcing concept and vary in practice. **Potential advisory functions are:**

- Advising the fund with respect to asset management;
- Identifying and analysing properties or structures and making respective recommendations in relation there to taken into consideration financial and other issues;
- Maintaining appropriate records of the performance and risk factors of the Real Estate investment structures and of its activities under the present agreement; preparing financial and operating reports;
- Any other advisory services in respect of the fund.

The success of the fund, therefore, largely depends on the ability of these service providers to identify investments, which have the potential of superior relative returns.

To summarise, the following criteria have to be taken into consideration when appointing a qualified investment advisor:

- Ability to identify investments, which have the potential of superior relative returns;
- Continuance of key personnel;
- Qualification of staff.

Most of Luxembourg Real Estate funds do collaborate with foreign asset and investment managers who are advising and supporting the local management of the structure.

3.2 Administrative agent

The administrative agent will perform a great deal of tasks that go beyond calculating the Net Asset Value. The NAV calculation is obviously the most visible aspect of fund administration. **But in the Real Estate fund industry, the administrative agent would normally need to demonstrate specific skills such as:**

- Ability to understand market practices and legal requirements for all relevant jurisdictions;
- Ability to handle commitments and cash call systems;
- Experience in pricing and valuation procedures;
- Experience in the establishment of consolidated accounts;
- Understanding of IFRS accounting if required;
- Availability of specific risk management tools;
- Ability to deal with any kind of performance fee calculation (including equalisation);
- Availability of IT infrastructure enabling effective interface with other service providers;
- Quality and experience of staff in Real Estate investments or in similar complex strategies.

When a fund of Real Estate funds is to be launched, the administrative agent has a specific role to play in the pricing of the fund. Specific procedures should exist concerning:

- The use of estimated, final or last available NAVs for the target funds;
- Alternative pricing procedures if there is a mismatch between the NAV calculation frequency of the fund of Real Estate funds and its investee funds.

This list is not exhaustive and only constitutes a sample of the specific requirements that need to be taken into account when selecting an administrative agent.

3.3 Custodian bank

The appointment of a custodian bank is mandatory for any Luxembourg-domiciled fund as well as for a SICAR and securitisation vehicle. The custodian must be a Luxembourg bank or a branch of a bank located outside Luxembourg or even outside the European Union.

Some of the criteria to be taken into account when selecting a custodian bank are listed below:

- IT infrastructure;
- Quality of compliance reporting and internal controls;
- Quality and experience of staff in Real Estate investments or in similar complex strategies;
- Availability of key contacts.

Custodian requirements are more flexible for a SIF: the custodian bank is responsible for the custody of assets but not for the supervision/control of the fund.

3.4 Transfer agency

The transfer agent may be the administrative agent or an agent specialised in this function. **The appointment of a transfer agent depends on several factors:**

- The way the fund is distributed;
- Number and category of investors (institutional/retail);
- Targeted countries for distribution;
- Level of services required for tax reporting and registration in the targeted countries;
- IT capacity and the ability to work efficiently with other service providers.

3.5 Property valuer

A real estate property valuer plays a key role in any real estate vehicles in the valuation of property at fair or market values in accordance with recognized property valuation standards such as RICS, IVSC and TEGOVA. Luxembourg regulatory guidelines for UCIs foresee that the management of a Real Estate fund must appoint one or more independent property valuers with specific experience in the field of property valuation. This valuation exercise should in principle be performed at least once a year and each time an asset is acquired or sold. In practice, a full valuation of each property is usually conducted annually on a rolling basis with a desktop valuation for any intermediate NAV calculation(s). In the case of a SIF or a SICAR, an independent valuation is not strictly required but expected by the regulator.

3.6 Auditor

Luxembourg regulation requires all Luxembourg regulated Real Estate vehicles to be audited annually by a local auditor. The choice of auditor must be approved by the CSSF.

The auditor must have sufficient Real Estate knowledge and resources and would also be an important source of information during the set up phase of the structure.

The auditor also has to issue a Long Form Report according to Circular CSSF 02/81 for UCIs under the 2002 Law. This report is addressed to the CSSF and the fund's Board of Directors and is not available to the public. The Long Form Report is designed to focus on both the organisation of the fund, its procedures and controls.

The Long Form Report is not required for a SIF, a SICAR or securitisation vehicles.

Finally, the auditor may issue specific certificates or reports at the request of the CSSF concerning, for example, contributions in kind.

4. Listing Real Estate funds on the Luxembourg Stock Exchange

In principle, almost all Luxembourg Real Estate vehicles may be listed in Luxembourg, as the Luxembourg Stock Exchange offers a listing place and an execution venue for the widest range of securities.

With 4,200 listed issuers from 105 countries, the Luxembourg Stock Exchange meets capital market players' needs thanks to 75 years of experience, high quality products and services, and fast, flexible and secure processes. Around 522 issuers from 13 different countries list 7,372 securities of funds on the Luxembourg Stock Exchange. Between 1996 and 2007, the number of shares and units of UCIs has increased from 2,766 to 7,372. The Luxembourg Stock Exchange boasts vast experience in the listing of Luxembourg domiciled funds. Recent changes in regulation have made the Luxembourg Stock Exchange a highly attractive listing place for offshore funds as well as Luxembourg domiciled Real Estate funds.

The quotation of a Luxembourg Real Estate fund on the stock exchange often eases its promotion and permits purchase by certain categories of non-resident investors and/or institutional investors who would otherwise not be entitled to buy securities of this sort.

Furthermore, listing on the Luxembourg Stock Exchange is a straightforward and inexpensive formality, one that can be achieved within a very short timeframe.

Luxembourg Stock Exchange offers two market segments: "Bourse de Luxembourg" as main market and the "Euro MTF".

The main market or Luxembourg Stock Exchange market has operated since May 1929. It is an EU-Regulated Market as defined in the European Directive 2004-39-EC and published on the list of the regulated markets in the Official Journal of the European Union. It offers a European passport for the admission to trading securities in more than one EU member states to issuers looking to enlarge their scope of international investors. The Luxembourg supervisory authority, the CSSF, is in charge of approving prospectuses for admission to trading on the Luxembourg Stock Exchange market. Issuers on the Luxembourg Stock Exchange market are subject to the requirements of the Prospectus and the Transparency directives, including the preparation of consolidated financial information in accordance with International Financial Reporting Standards (IFRS) or, in the case of non-EU issuers, with accounting standards deemed equivalent.

The “second market”, the Euro MTF is a Multilateral Trading Facility in compliance with the MiFID directive, which was launched in July 2005 to satisfy the needs of those issuers not interested in a European passport or in need of more flexibility in relation to the preparation of financial information. It is not an EU-Regulated Market. Therefore, it is outside the scope of EU Prospectus and the Transparency directives, allowing financial reporting under accounting standards other than IFRS or equivalent standards (in certain cases with a description of the main differences with IFRS or US Generally Accepted Accounting Standards). The Luxembourg Stock Exchange itself is in charge of approving prospectuses for admission to the Euro MTF market, in accordance with its Rules and Regulations. The Rules and Regulations provide the Luxembourg Stock Exchange with some flexibility so that, in limited and appropriate circumstances, some requirements can be adapted to accommodate an issuer’s particular situation. Since its launch, the Euro MTF has expanded rapidly, reaching 4,259 securities admitted to trading as at December 31, 2007. The trading mechanisms (including trading groups, continuous trading, pre- and post trade transparency), as set out in the Market Rules and the Trading Manual, are identical for both markets.

Admission procedures

New applicants shall inform the Luxembourg Stock Exchange and submit a file containing application forms (available on the website, with models of letter of undertakings) and supporting documents listed in Chapter 4 of Part 1 to the Rules and Regulations. Application for listing may be submitted via email at bolide@bourse.lu.

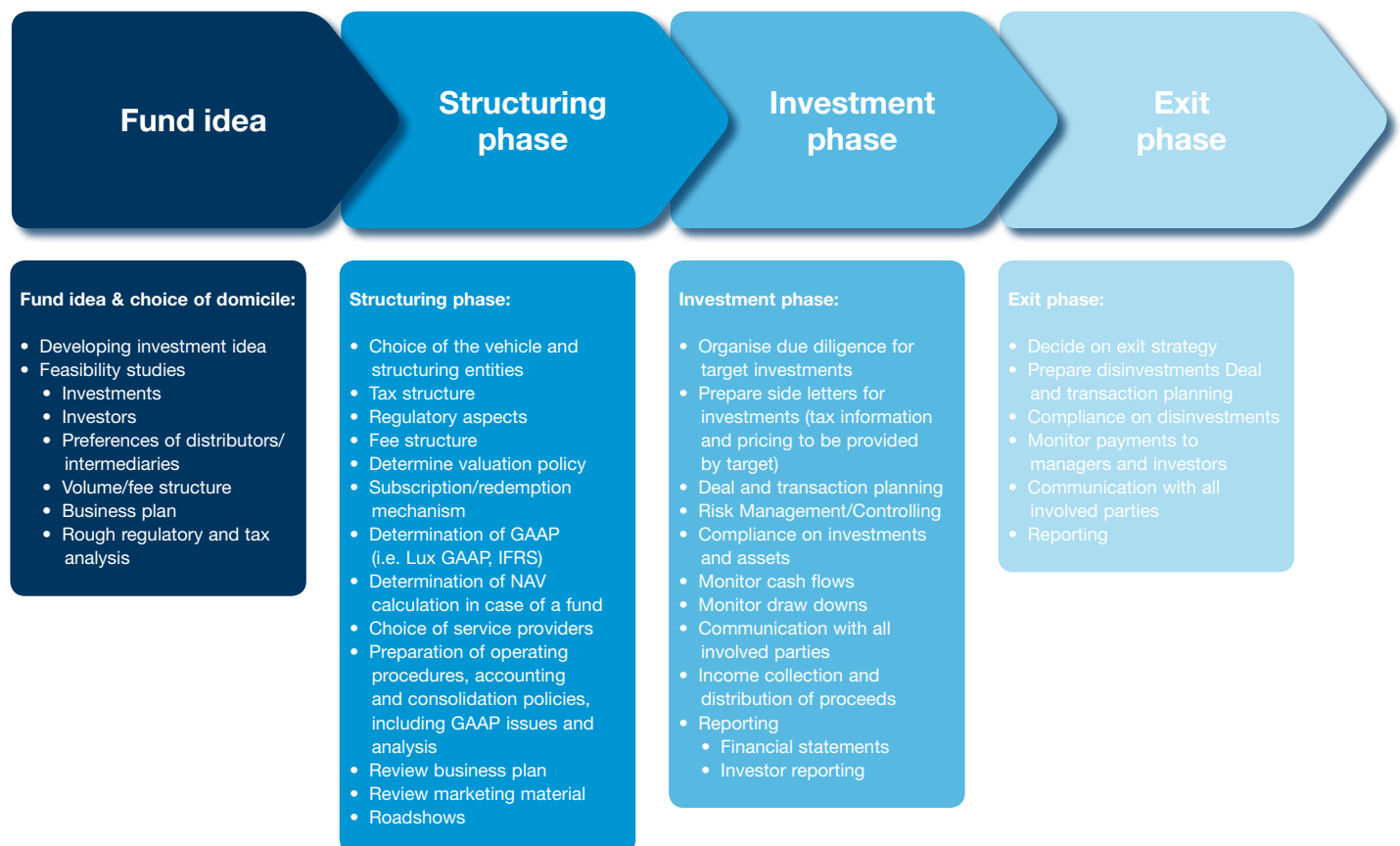
An application for the admission to trading of securities on one of the markets operated by the Luxembourg Stock Exchange is simultaneously deemed to be an application for admission to the Official List. The Luxembourg Stock Exchange is the competent authority for admitting securities on its Official List and for admitting these securities to trading on its markets and is therefore responsible for ensuring that dealings in securities are conducted in a proper and orderly manner. As a consequence, minimum standards, derived from European Union and Luxembourg securities legislation, are applicable to issuers seeking to have their securities listed. For more information, please refer to the brochure “The Luxembourg Stock Exchange – A prime location for listing” which is available on our website: www.pwc.com/lu/publications.





5. Setting up a Real Estate structure

During the set up phase of Luxembourg Real Estate structures, consideration should be given to all phases in the lifetime of the structure, as well as all relevant stakeholders. Comprehensive consolidation will ensure the success of the project.



Leveraging the experience of Luxembourg Real Estate service providers and the competencies of Luxembourg tax, legal and business advisors in the set up phase and throughout the lifetime of the vehicle will contribute to a successful and robust structure.

6. Your partner – Our team

PricewaterhouseCoopers Luxembourg is the leading professional services firm in Luxembourg with over 1,600 people. Investment Management & Real Estate. The Real Estate and Infrastructure Group in Luxembourg operates with 150 Partners and Directors.

Our Luxembourg practice reflects the diversity of our client base. Our services range from audit and tax services to support day-to-day operations of the structures which are rapidly developing today. Our philosophy is to work

We apply our extensive knowledge and practical experience to each of our clients' businesses, particularly when strategic planning. To facilitate sharing and collaboration amongst the broader Luxembourg business community, trends likely to impact your business.



Our international network of Real Estate accounting, tax and consulting professionals can quickly mobilise to form advisory, corporate services, accounting and tax bring to bear their accumulated prior experience as Real Estate well as their PwC experience.

PricewaterhouseCoopers Real Estate professionals globally serve over 1,500 Real Estate organisations, including clients include some of the most prestigious and forward-thinking Real Estate companies – companies whose

PricewaterhouseCoopers Luxembourg is recognised as a Centre of Excellence within our network in Europe for more than 120 dedicated experts to service major international players in Luxembourg and includes 22 special-

dedicated to Real Estate and Infrastructure vehicles based in Luxembourg to providing specialised skills required with our clients to develop and implement optimal solutions throughout the lifetime of the structures.

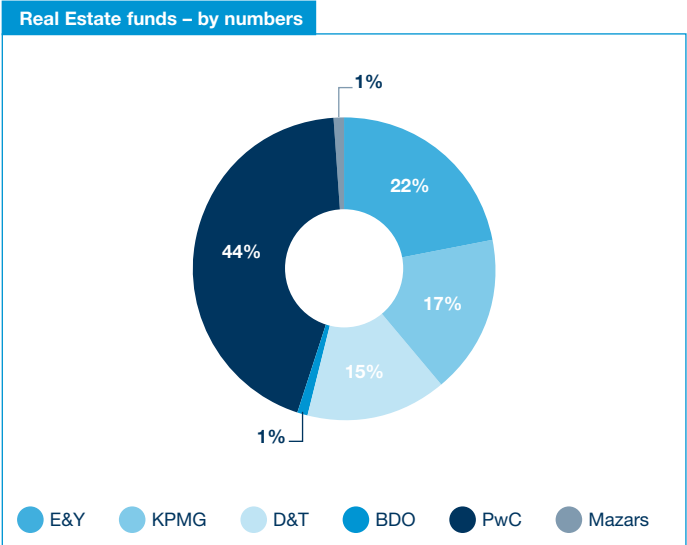
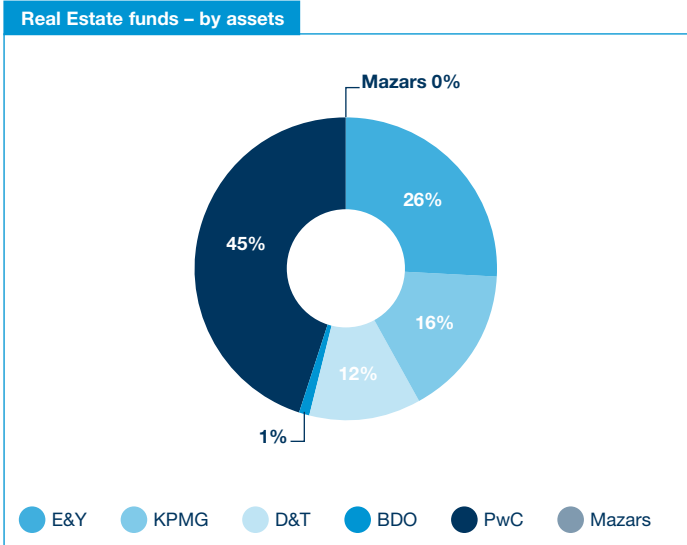
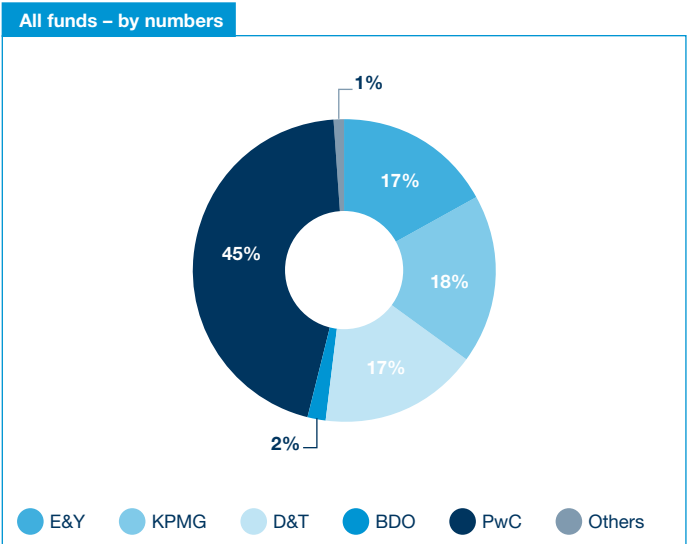
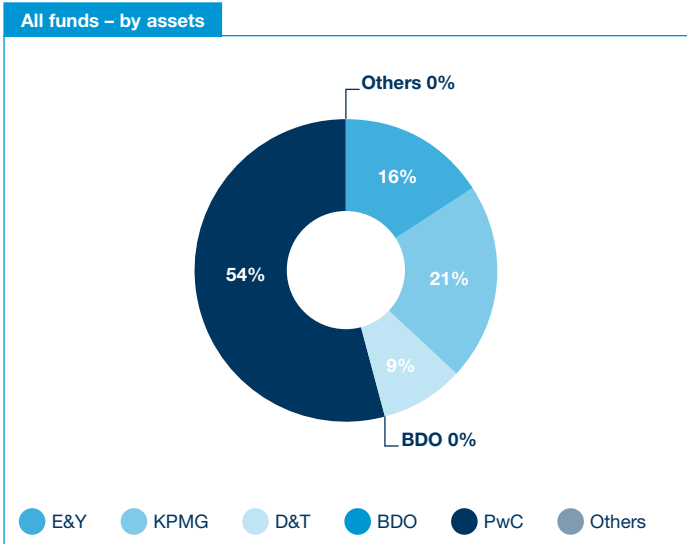
it comes to such pivotal issues as acquisitions and disposals, tax structuring, capital market transactions, and we sponsor Real Estate seminars. These events encourage knowledge-sharing and discussion about the evolving



the most qualified team to respond to your specific needs. Teams of professionals from valuation, transaction managers, planners, developers, credit underwriters, appraisers, advisors, asset managers and tax attorneys, as

Real Estate funds, institutional investors, investment managers, REITs, lenders, developers and operators. These executives have come to trust PricewaterhouseCoopers to support their business needs and goals.

Our market share reflects our experience



Source: PricewaterhouseCoopers Market Share of Investment funds audits in Luxembourg in terms of Assets Under Management and Numbers of fund (Fitzrovia, 2007)

PricewaterhouseCoopers is an active member of local and European bodies (ALFI⁴, FEFSI, INREV, EPRA) and participates with the local Luxembourg regulator (CSSF) in various Investment Management committees, including the SICAR Committee where PricewaterhouseCoopers is one of the two audit firms represented.

⁴ ALFI (Association Luxembourgeoise des Fonds d'Investissement) is the official representative body for the Luxembourg investment fund industry.

How can PricewaterhouseCoopers Luxembourg assist you?

PricewaterhouseCoopers Luxembourg offers a range of tailored solutions to international Real Estate and Infrastructure managers, including:

Tax

- Tax advisory on the fund set up, choice of structure;
- Advice on tax structuring based on a “three tier approach” (investment, structure and investors);
- Carried interest structuring;
- Implementation of the structure;
- Tax due diligence;
- Tax compliance and coordination of tax services.

Assurance

- Accounting advisory support;
- Training on Real Estate and other specialised topics;
- Audit of Real Estate structures and SPV’s;
- Advice on IFRS technical questions such as the application of IAS 40, issues on deferred taxes, consolidation and functional currency.

Advisory

- Assistance in operating memorandum set up;
- Advisory in operational flows;
- Consultations on regulatory aspects (Central administration and custodian bank issues, discussion with the CSSF, ...);
- Real Estate valuation reviews (external/internal appraisal reviews);
- Valuation management, best practice asset valuation;
- Risk assessment, portfolio structuring, sensitivity analysis, scoring and stress testing;
- Real Estate debt advisory (structured finance services for banks and investors, cashflow financing);
- Performance Improvement for funds (guidelines, IT effectiveness, Business Processes Management);
- Establish best practices for custody and administration services for Real Estate funds and SICARs.

Corporate Finance

- Deals origination and M&A financial advisory (acquisition mandates);
- Financial, tax and market due diligences;
- Valuation of investee companies;
- Asset valuation (international standards);
- Market research;
- Debt structuring/mortgage lending cash flows.

Accounting and Compliance

- Design and implementation of accounting and reporting procedures;
- Maintenance of local accounting records and consolidation;
- Establishment of financial statement under IFRS;
- Preparation of standalone, consolidated and management accounts;
- Corporate secretarial;
- Coordination of the fund activities and tax compliance;
- Compliance reporting.

PwC ACADEMY

An integrated service offering that encompasses all facets of training and development:

- Broad network of trainers leveraging all of PwC's diverse expertise;
 - In house training (such as Real Estate workshops) can be tailored to meet each of our clients' specific needs. Other technical training workshops that we deliver offer the Luxembourg business community a networking opportunity whilst learning about the legal and regulatory aspects of the Real Estate industry. These courses cover the following topics:
 - Types of investment vehicles available in Luxembourg;
 - Utilisation of intermediary vehicles;
 - Valuation of Real Estate assets and NAV calculation;
 - Reporting requirements;
 - Responsibilities of the custodian and central administration;
 - IFRS;
 - Standard structuring techniques.
- Soft skills training (e.g. management development programmes);
 - A dedicated training facility and trainer community;
 - All our training solutions are eligible to state co-financing.



7. Contacts



Real Estate and Infrastructure contacts in Luxembourg

Partners



Assurance

	Amaury Evrard Audit Partner – Real Estate and Infrastructure Leader
	Amaury, leader of the Real Estate and Infrastructure group, possesses significant experience in financial accounting for Real Estate as well as in advising clients during the set up phase on structuring, regulatory and operational issues both for closed and open ended structures. He is a member of the SICAR committee set up by the Luxembourg regulator and a member of the ALFI Real Estate Working Group.
	Telephone: +352 49 48 48-5751 amaury.evrard@lu.pwc.com
	Catherine Rückel Audit Partner – German Market Investment Management and Real Estate
	Catherine is specialised in Investment Management and Real Estate funds. She is particularly familiar with product structuring for the German market and represents PricewaterhouseCoopers Luxembourg in various international working groups and industry associations.
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	Kees Hage Audit Partner – IFRS and Real Estate Structures
	Kees is chairman of the IFRS Real Estate technical accounting group. He holds extensive experience structuring specialised Real Estate assignments and coordinates international projects.
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	Kenneth Iek Audit Partner – IFRS and Real Estate Structures
	Kenneth is a specialist in Real Estate and Investment Management working with clients in the set up phase and on operational issues. He also specialises in International Financial Reporting Standards, being a member of the firm's IFRS Investment Management and Real Estate International Accounting Groups.
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	Marie-Elisa Roussel-Alenda Audit Partner – Investment Management and Real Estate
	Marie-Elisa is specialised in US GAAP and IFRS as well as consolidation. Her client base ranges from listed entities and asset managers to Real Estate funds and structures. She also has experience in delivering solutions on SAS 70 engagements.
	Telephone: +352 49 48 48-2525 marie-elisa.roussel-alenda@lu.pwc.com

Assurance

	Laurence Demelenne Audit Partner – Real Estate and Infrastructure vehicles <p>Laurence's experience in auditing infrastructure vehicles, both regulated and unregulated, has enabled her to specialise in IFRS and US GAAP for the Real Estate sector.</p>
	Telephone: +352 49 48 48-2525 laurence.demelenne@lu.pwc.com
	Véronique Lefebvre Audit Partner – Private Equity and Unregulated Real Estate Structures <p>Véronique is specialised in Private Equity and unregulated Real Estate structures. She has extensive experience in deal structuring and IFRS.</p>
	Telephone: +352 49 48 48-2576 veronique.lefebvre@lu.pwc.com

Accounting and Compliance

	Anne-Sophie Preud'homme Audit Partner – Consolidation and Accounting/Technical <p>Anne-Sophie has depth and breadth of experience in financial accounting for regulated and unregulated Real Estate structures. She leads a core team dealing with Real Estate related technical questions in the audit practice and the Real Estate accounting team.</p>
	Telephone: +352 49 48 48-2521 anne.sophie.preudhomme@lu.pwc.com
	Cécile Menner Tax Partner – Repatriation Planning <p>Cécile advises many of the larger Real Estate and infrastructure funds and sponsoring institutions on the Luxembourg aspects of their structuring and has specific expertise in tax efficient repatriation planning techniques.</p>
	Telephone: +352 49 48 48-5773 cecile.menner@lu.pwc.com

Tax

	Wim Piot Tax Partner – Leader of the Tax department Luxembourg Wim is a Real Estate fund structuring specialist with an extensive experience in structuring Real Estate funds and Real Estate holding companies for pan-European and global investments via Luxembourg covering all relevant tax aspects. Telephone: +352 49 48 48-2569 wim.piot@lu.pwc.com
	David Roach Tax Partner – Tax structuring/Islamic Finance/Transfer Pricing David is a member of the Real Estate structuring team and the co-ordinator of the PricewaterhouseCoopers Global Islamic Real Estate Finance Network. Furthermore, he has particular familiarity with transfer pricing matters. Telephone: +352 49 48 48-2517 david.roach@lu.pwc.com
	Géraldine Piat Tax Partner – Tax structuring Géraldine is focused on advising Real Estate and infrastructure funds with respect to tax effective structuring matters. She has developed specialist expertise in tax effective repatriation and planning mechanisms. Telephone: +352 49 48 48-2569 geraldine.piat@lu.pwc.com
	Oliver Weber Tax Partner – Investment Management and Real Estate Oliver was involved in the establishment of the German fund tax reporting team. His professional focus is now tax reporting for investment funds under the German Investment Tax Act and general tax consulting for Real Estate structures. Telephone: +352 49 48 48 5712 oliver.weber@lu.pwc.com

Advisory



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8. Real Estate publications & links

PricewaterhouseCoopers' Real Estate professionals take great pride in being recognised as thought leaders in the industry and as major contributors to national Real Estate organisations such as the Urban Land Institute, NCREIF, PREA, INREV, EPRA and BPF, as well as to key rulemaking bodies such as the FASB, SEC and IASB. Other recent noteworthy industry-related activities include:

Emerging trends in Real Estate® Europe 2008



2008
Europe

A joint undertaking of the Urban Land Institute (ULI) and PricewaterhouseCoopers, Emerging Trends in Real Estate® Europe is a trend and forecast publication now in its fifth edition. The report provides an outlook on European Real Estate investment and development trends, Real Estate finance and capital markets, property sectors, metropolitan areas, and other Real Estate issues.

Emerging Trends in Real Estate® Europe 2008 represents a consensus outlook for the future and reflects the views of more than 485 individuals who were surveyed as a part of the research process for this report. Survey participants represent a wide range of industry experts – investors, developers, property companies, lenders, brokers, and consultants. ULI and PricewaterhouseCoopers researchers personally interviewed over 210 individuals, and survey responses were received from 277 individuals.

Emerging Trends in Real Estate® Asia Pacific 2008



A joint undertaking by the Urban Land Institute and PricewaterhouseCoopers, Emerging Trends in Real Estate® Asia Pacific 2008 is a trend and forecast publication now in its second year. The report provides an outlook on Asia Pacific Real Estate investment and development trends, Real Estate finance and capital markets, property sectors, metropolitan areas, and other Real Estate issues.

The growing Asia Pacific Real Estate market still offers opportunities for investors and developers in 2008. However, stiffening competition continues to compress yields to their lowest points. According to this year’s survey, there is a clear sense that most of the Asia Pacific property markets have moved toward maturity, although there is still a sense of bewilderment and “continued scepticism” regarding government regulations and the mechanics of how the Asia Pacific property markets function.

Based on investment prospect ratings, the top five markets are Shanghai, Singapore, Tokyo, Osaka and Hong Kong. Other notable increases in rank are Seoul, Ho Chi Minh City, and Mumbai moving into the top ten.

2008
Asia

European IMRE News
Quarterly



European IMRE News is produced by experts in their particular field at PricewaterhouseCoopers, to address important issues affecting the Investment Management industry.

2008
Europe

Going Global – Tax and legal aspects of real estate investments around the globe



This CD Rom is an information tool developed to provide guidance on the tax and legal aspects of real estate investments in countries around the globe. Key features include:

- Global real estate tax summaries: an overview of the tax systems in countries around the globe;
- Real estate investments in [country]: detailed guides to investing in property in a selection of jurisdictions;
- Municipal taxes: guides to the variety of local taxes that could impact real estate investments.

2008
Global

Global Real Estate Now



Global Real Estate Now offers in-depth analysis and commentary that is invaluable in making informed business decisions. Global Real Estate Now offers readers insightful articles and perspectives on emerging global industry trends and important issues.

2008
Global

<p>Global Real Estate funds: Trends and issues</p> <p>2006-2007 Global</p>		<p>Emergence, evolution and energy – three words that best describe current global Real Estate markets and capital flows. There is clearly an emergence of the growth and number of international Real Estate funds, global Real Estate fund of funds, and diverse opportunities in the private and public capital markets for domestic investors to participate in foreign Real Estate markets.</p>
<p>The PricewaterhouseCoopers Islamic Real Estate Finance Network: Developing solutions for Shari’ah-compliant investments</p> <p>2005 Global</p>		<p>Worldwide, few markets have proved as dynamic as the Islamic Finance sector. The amount of Shari’ah-compliant capital investments is estimated at 500-800 billion US dollars in over 70 countries, with annual double-digit growth expected over the next few years and decades.</p> <p>Over the past few years, PricewaterhouseCoopers has been heavily involved in advising on Islamically acceptable structures in various areas but with particular focus on Real Estate. This short brochure outlines the firm’s capabilities and gives contacts around the globe.</p>
<p>Real Estate European VAT scan</p> <p>2006 Europe</p>		<p>Investment Management and Real Estate firms are facing a complex puzzle of challenges and opportunities. The PricewaterhouseCoopers 2006 global Investment Management survey shows that, although Investment Management firms are optimistic about growth, they will have to tackle great challenges in areas such as portfolio management, cost of compliance, risk management and remuneration.</p> <p>PricewaterhouseCoopers Real Estate European VAT scan can help you control your VAT compliance, manage and streamline your VAT processes, and minimise your VAT exposures.</p>
<p>UK Real Estate insights Quarterly</p> <p>2008 UK</p>		<p>The latest issue of UK Real Estate insights looks at the issues currently affecting the UK Real Estate industry. This edition includes articles on:</p> <ul style="list-style-type: none"> • Economic outlook: Gloom deepens • Finance services outlook: Gloom deepens further • UK hotels: Early check-out for good times • Are high streets being short-changed? • Sustainability: Are consumers buying it? • REIT rule changes • Value Added Tax: Changes to the option to tax • Property authorised investment funds: Three months on • Additional tax relief on second-hand Real Estate acquired on or after April 1, 2008 • The basics of Islamic finance • UK Real Estate client conference • Events and publications

Glossary

ALFI: Association Luxembourgeoise des Fonds d'Investissement (Association of the Luxembourg Fund Industry)

Art.: Article

AUM: Assets Under Management

bn: Billion

BPF: British Property Federation

CBO: Collateralised Bond Obligation

CFC: Controlled Foreign Company

CPM: Collective Portfolio Management

CSSF: Commission de Surveillance du Secteur Financier (commission for the supervision of the financial sector)

DTT: Double Taxation Treaties

EPRA: European Public Real Estate Association

Euro MTF: Multilateral Trading Facility

EUSD: European Union Savings Directive

FASB: Financial Accounting Standards Board

FCP: Fonds Commun de Placement (contractual funds)

FEFSI: Fédération Européenne des Fonds et Sociétés d'Investissement

GAAP: Generally Accepted Accounting Principles

IM industry: Investment Management Industry

IFRS: International Financial Reporting Standards

IASB: International Accounting Standards Board

INREV: European Association for Investors in Non-listed Real Estate vehicles

ManCo: Management Company

MiFID: Markets in Financial Instruments Directive

Mio: Million

M&A: Mergers & Acquisitions

N/A: Not Applicable

NAV: Net Asset Value

NCREIF: National Council of Real Estate Investment Fiduciaries

OTC: Over the counter

Part I funds: UCITS funds governed by Part I of the Law of December 20, 2002

Part II funds: UCI funds governed by Part II of the Law of December 20, 2002

PREA: Pension Real Estate Association

REIT's: Real Estate Investment Trusts

SCOSA: Société Coopérative Organisée sous forme de Société Anonyme (cooperative company organised as a public limited company)

SEC: United States Securities and Exchange Commission

SICAF: Société d'Investissement à Capital Fixe (investment company with fixed capital)

SICAR: Société d'Investissement en Capital à Risque (investment company with risk capital)

SICAV: Société d'Investissement à Capital Variable (investment company with variable capital)

SIF: Specialised Investment Fund governed by the Law of February 13, 2007

S.A.: Société Anonyme (publicly limited company)

S.à r.l.: Société à Responsabilité Limitée (limited liability company)

S.C.A.: Société en Commandite par Actions (partnership limited by shares)

S.C.S.: Société en Commandite Simple (limited partnership)

Soparfi: Société de Participation Financière

SPV: Special Purpose Vehicle

UCI: Undertaking for Collective Investments

UCITS: Undertakings for Collective Investments in Transferable Securities, governed by Part I of the Law of December 20, 2002

UCITS III management companies: governed by Chapter 13 and 14 of the Law of December 20, 2002

ULI: Urban Land Institute

VAT: Value Added Tax

Appendix I

Comparison of Luxembourg vehicles (UCI, SICAR and Soparfi)

	Regulated Real Estate vehicles					Unregulated Real Estate vehicles
	UCIs			SICAR	Securitisation	
	Part I UCIs	Part II UCIs	SIF			
Legal forms	<ul style="list-style-type: none"> • Corporate – SICAV must be set up as S.A. – SICAF may be set up as S.C.A. or S.A.) • and contractual forms – FCP with management company 	<ul style="list-style-type: none"> • Corporate – SICAV must be set up as S.A. – SICAF may be set up as S.C.A. or S.A.) • and contractual forms – FCP with management company 	<ul style="list-style-type: none"> • Corporate – SICAV may be set up as S.A., S.C.A., S.à r.l. or SCOSA) – SICAF is unrestricted • and contractual forms – FCP with management company 	Corporate forms available, including partnerships (S.C.A. and S.C.S.)	<ul style="list-style-type: none"> • Corporate – S.A., S.à r.l., S.C.A. or SCOSA • and contractual forms – FCP – Co-ownership – Fiduciary property structure 	Corporate forms available, including partnerships (S.C.A. and S.C.S.)
Type	Only open-ended	Open or closed-ended	Open or closed-ended	N/A	N/A	N/A
Investors	All types of investor	All types of investor	Eligible investor only	Eligible investor only	All types of investor	All types of investor
Capital	<ul style="list-style-type: none"> • Fixed or variable capital • Minimum capital of EUR 1.25 Mio • Sub-funds authorised • Classes of shares possible • Distributions are made according to by-laws • Capital calls by way of capital commitment or issue of (partly paid shares for FCPs/not for SICAVs) 	<ul style="list-style-type: none"> • Fixed or variable capital • Minimum capital of EUR 1.25 Mio • Sub-funds authorised • Classes of shares possible • Distributions are made according to by-laws 	<ul style="list-style-type: none"> • Fixed or variable capital • Minimum capital of EUR 1.25 Mio • Sub-funds authorised • Classes of shares possible • Distributions are made according to by-laws 	<ul style="list-style-type: none"> • Fixed or variable capital • Minimum capital of EUR 1 Mio • No sub-funds authorised (pending modification of law) • Classes of shares possible • Distributions are made 	<ul style="list-style-type: none"> • Fixed capital • Minimum capital depending on legal form between EUR 12,500 and EUR 31,000 • Sub-funds possible • Classes of shares possible • Distributions are made in accordance with company law 	<ul style="list-style-type: none"> • Fixed capital • Minimum capital EUR 31,000 for a S.A. • Classes of shares possible • Distributions are made in accordance with company law
Supervision	Regulated by the CSSF	Regulated by the CSSF	Regulated by the CSSF	Regulated by the CSSF	Non regulated or regulated by the CSSF	Unregulated
Prior Approval process	<ul style="list-style-type: none"> • Prior approval by CSSF required: – Articles/Statutes – Directors of SICAV/Managers of ManCo – Experience of Promoter, solvency – Custodian Bank 	<ul style="list-style-type: none"> • Prior approval by CSSF required: – Articles/Statutes – Directors of SICAV/Managers of ManCo – Experience of Promoter, solvency – Custodian Bank 	<ul style="list-style-type: none"> • No prior approval by CSSF required • Submission of authorisation file containing: – Approval of Articles/Statutes – Approval of Directors of the fund or Manager of the ManCo – Custodian Bank 	<ul style="list-style-type: none"> • No prior approval by CSSF required • Submission of authorisation file containing: – Approval of Articles/Statutes – Approval of Directors – Approval of choice of Auditor/Custodian Bank 	<ul style="list-style-type: none"> • Prior approval by CSSF required for regulated vehicles: – Articles/Statutes – Directors of SICAV/Managers of ManCo – Choice of Auditor/Custodian Bank 	N/A

	Regulated Real Estate vehicles					Unregulated Real Estate vehicles
	UCIs			SICAR	Securitisation	
	Part I UCIs	Part II UCIs	SIF			
Investment restrictions	Investment restrictions under directive 85/611 EEC apply	Investment restrictions as defined by the CSSF's approval	<ul style="list-style-type: none"> • Flexible • Risk diversification required 	<ul style="list-style-type: none"> • Flexible • Investments must represent "risk" capital 	No investment restrictions	No investment restrictions
Net Asset Value frequency	Net Asset Value calculation on each subscription or redemption day, at least twice a month	Net Asset Value calculation at least once a month	Net Asset Value calculation at least once a year, depending on by-law	Net Asset Value calculation at least twice a year (in practice possibility to limit to one)	No requirements	No requirements
Distribution	<ul style="list-style-type: none"> • Public distribution possible • Cross-border distribution with EU passport possible 	<ul style="list-style-type: none"> • Public distribution possible • Cross-border distribution possible after approval process in distribution countries 	No public distribution	No public distribution	<ul style="list-style-type: none"> • Public distribution possible • Cross-border distribution with EU passport possible 	No public distribution
Supervisory Reporting requirements	<ul style="list-style-type: none"> • Monthly reporting to the CSSF (due on the 20th of following month; details in CSSF 97/136) • Annual Report (due four months after year-end) • Semi-annual Report (due two months after mid-year) 	<ul style="list-style-type: none"> • Monthly reporting to the CSSF (due on the 20th of following month; details in CSSF 97/136) • Annual Report (due four months after year-end) 	<ul style="list-style-type: none"> • Monthly reporting to the CSSF (due the 20th of following month; details in CSSF 07/310) • Annual Report (due six months after year-end) 	<ul style="list-style-type: none"> • Semi-annual reporting to the CSSF (due 45 days after the reference date; details in CSSF letter FST.07) • Annual Report (due six months after year-end) 	Report to the CSSF only required for vehicles that are regulated and that issue securities to the public	N/A
Audit requirements	Long Form Report to be issued in accordance to CSSF 02/81	Long Form Report to be issued in accordance to CSSF 02/81	Auditor required, no Long Form Report	Auditor required, no Long Form Report	Auditor required, no Long Form Report	Depending on size of company

Appendix II

Tax framework

a) Summary on taxation of Real Estate vehicles

	UCIs	SICAR	Securitisation	Soparfi
Capital duty	EUR 1,250 due upon incorporation	EUR 1,250 due upon incorporation	EUR 1,250 due upon incorporation	0.5% on any contribution abolished as of January 1, 2009
Subscription tax	5 bp p.a., reduced to 1 bp p.a. for SIF and for funds or compartments or class of shares dedicated to institutional investors	N/A	N/A	N/A
Taxation of income (aggregate rate)	Exempt	Income on risk capital exempt	Exempt	29.63% (municipality of Luxembourg-City)
Net Wealth Tax	Exempt	Exempt	Exempt	0.5% computed on net assets as at January, 1 of each year
Tax incentives	N/A	Exemption on any income derived from risk capital	Any distribution commitment to investors is deductible from the taxable basis	Income from holdings in other companies exempt from tax on income and net wealth under certain conditions
Luxembourg withholding tax	Exempt	Exempt	Exempt	15% – reduced (on dividend) to 0% subject to certain conditions
Access to tax treaties and EU Directives	No – with some exceptions for SICAV	Yes – subject to foreign tax authorities' view	Yes – subject to foreign tax authorities' view	Yes
EUSD applicable	Yes	Yes	Yes	Yes

b) European Union Directive on the taxation of savings income

On January 21, 2003, a directive on taxation of savings income (EUSD) was passed. The directive's goal was to prevent European investors from escaping their personal tax obligations regarding their savings income. Following this agreement, all EU member states, certain associated and dependent territories, as well as some third countries – with the exception of Austria, Luxembourg and Belgium – are now automatically exchanging information on cross-border EU interest payments originating in their territories. Depending on their legal form and regulatory classification, distribution made by some funds, or capital gains realised on these funds, could be caught by this directive when their investments in debt claims exceed certain threshold.

Austria, Luxembourg and Belgium as well as some of the associated or dependent territories/third countries are allowed to levy a withholding tax on such payments instead of exchanging information. (Exchange of information remains possible for these countries however upon express election by investors). The rate of withholding tax was 15% initially, rising to 20% in July 2008 and 35% in 2011.

When structuring a Luxembourg based fund, it is essential to take into account the impact of this tax requirement, as the location of service providers (like the paying agent for example), is even more important than the fund's domicile. The choice of legal form and investment strategy is also a key factor for determining whether the fund may be in the scope or not of the EUSD.

Even so it is not very likely that Real Estate funds fall under the scope of the EU savings directive, in certain cases, payments made by a Luxembourg fund through a paying agent resident in Luxembourg may be subject to a withholding tax.

c) Luxembourg Tax implications for non-resident investors

Only dividends by Soparfi are, in general subject to Luxembourg withholding tax. Distributions by other Real Estate fund vehicles are exempt. Exemption from respectively reduction of withholding tax is available under DTTs, Luxembourg provisions and the EU parent subsidiary directive.

Furthermore, any capital gain realised upon disposal of shares/units in a Luxembourg Real Estate fund, which has adopted the form of a UCI, SIF, securitisation company or of a Soparfi is subject to tax in Luxembourg, only in case cumulative application of the two conditions below as provided by Article 156 no. 8 of the Luxembourg income tax Law:

- The shareholder holds an important participation (i.e. more than 10% of the units/shares of the fund);
- The shareholder sells its shares/units within six months from acquisition.

However, for non-resident investors, most of the double tax treaties concluded by Luxembourg would in principle prevent this exceptional taxation.

Non-resident investors in Luxembourg are not taxed on capital gains realised upon the disposal of shares held in a SICAR irrespective of their shareholding percentage and holding period.

Appendix III

Service providers for Luxembourg Real Estate vehicles depending on the legal form of the structure

	Part II UCI	SIF	SICAR	Securitisation	Soparfi
Approval required for					
Promotor	Yes	No	No	N/A	No
Management	Yes	Yes	Yes	Yes, if supervised	No
Investment manager	Yes	No	No	No	No
Luxembourg custodian bank	Yes	Yes	Yes	Yes	No
Auditor	Yes	Yes	Yes	Yes, if supervised	Yes, if threshold

	Part II UCI		SIF		SICAR	Securiti- sation	Soparfi
	FCP	SICAV	FCP	SICAV			
Differences regarding the service providers' responsibilities							
Custodian Bank							
Safekeeping of assets	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Daily administration of assets	Yes	No	Yes	No	No	No	No
Supervision and control							
Control of the NAV calculation	No	No	No	No	No	No	No
Control shares issued, redeemed and cancelled	Yes	Yes	No	No	No	No	No
Control of the timely and correct settlement of the transfer of assets	Yes	Yes	No	No	Yes	No	Yes
Control whether income has been distributed/ reinvested according to the prospectus	Yes	Yes	No	No	Yes	No	Yes
Investment restrictions	Yes	No	No	No	No	No	No
Control that issued subscription price for securities are remitted within timeframe foreseen by constitutive documents	No	No	No	No	Yes	No	Yes
Other service providers	No differences						

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