

Asset Management
and Real Estate

Luxembourg Real Estate Vehicles



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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 fulfill 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.

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.

The guide highlights also major future regulatory and tax developments, such as the EU Alternative Investment Fund Managers Directive (AIFMD), which will potentially be the single most important regulatory development for the European real estate industry.

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 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

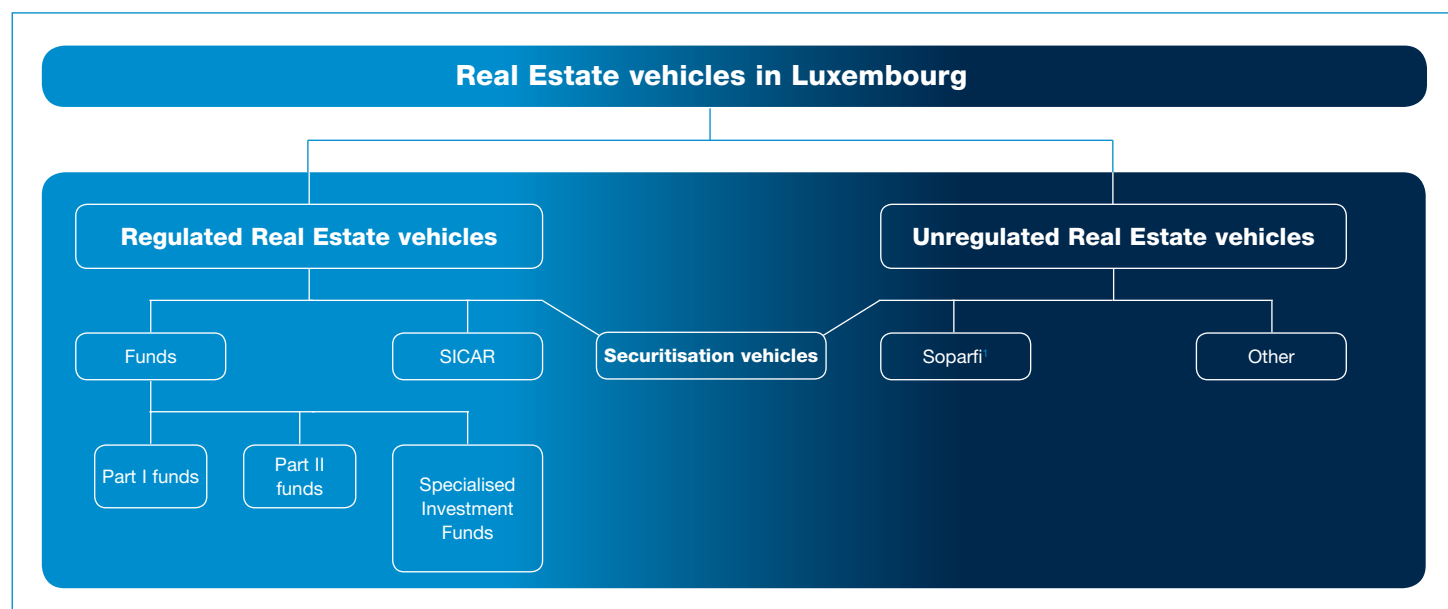
The choice of a real estate vehicle will depend on the type of funding that needs to be raised, the proposed investor base, the type of investments to be made and any specific tax considerations. Luxembourg offers a choice of both regulated and non-regulated structures that meet the different requirements 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 four 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” (SICAR), which are eligible for well-informed investors as well;
4. Regulated securitisation vehicle.

Today, the most chosen regulated vehicle for structuring real estate investment schemes is the SIF. However, 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 ongoing operations of the structure. Also included in this brochure is the description of certain unregulated vehicles (see – 2.3 Unregulated vehicles – page 16).

2.1.1 Real Estate funds

2.1.1.a General regulatory framework

1. Publicly distributed Undertakings for Collective Investment (UCI)

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 allow 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.

In addition to the general rules applicable to any UCIs, the CSSF issued a number of circulars that either specify certain legal dispositions or 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.

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.

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.

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 is required to prepare an unaudited semi-annual report as well as an audited annual report.
- A Long Form Report needs to be issued on an annual basis by a qualified auditor.
- An audited annual report must be published within four months of the fund’s financial year-end.

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 UK 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 NAV 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 has stagnated since 2007 due to the advantages offered by SIFs. The total number of real estate funds increased by 74 funds since the beginning of 2007 with the number of Part II funds decreasing by seven.

2. Specialised Investment Fund (SIF)

Since February 2007, Specialised Investment Funds according to the 2007 Law have been the preferred vehicles for regulated real estate entities. The main change, compared to previous regulation, 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:

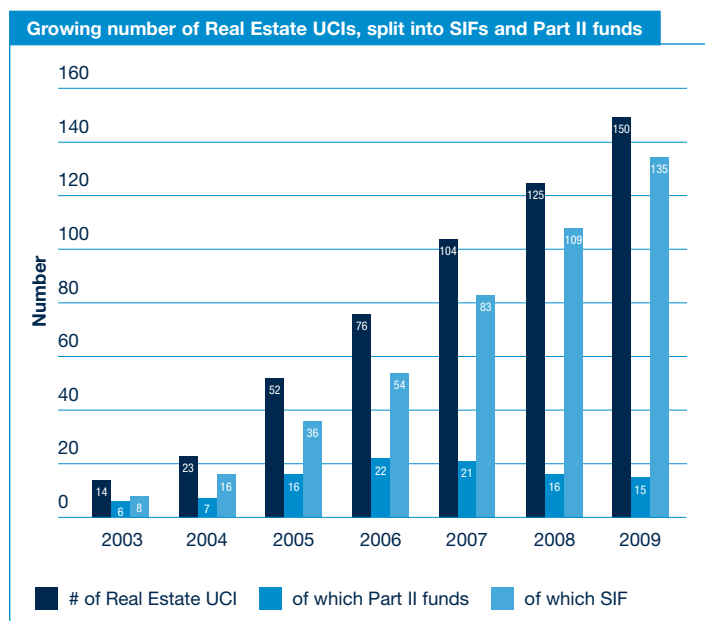
- They formally adhere to the status of “sophisticated” investors (meaning in substance, that they are able to understand the risks associated with investing in the SIF) and;
- They invest a minimum of EUR 125,000 in the SIF.
- The minimum capital of the SIF (share capital and share premium) must reach 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.

Other differences in comparison to the 2002 Law are:

- SIF creation and commencement of operations can begin 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 the subscription and redemption 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 are not required (only an annual audited report with more flexibility on portfolio disclosure).
- Audited annual report must be made available to investors within six months of the SIF’s year-end.
- Even if the risk spreading 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% or more of its assets in a single investment.
- Investors are 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.



Source: CSSF, December 2009

The statistical data shows that the trend to set up Luxembourg real estate funds has continued to grow.

It is interesting to note that real estate promoters have almost exclusively chosen SIFs. As a consequence, at the end of 2009, 90% of the Luxembourg real estate funds were SIFs. The total net assets of SIFs which mainly invest in real estate has significantly increased in 2008 and amounts to EUR 14.7 billion (EUR 8.131 billion on December 31, 2007) which represents a 81% increase. In 2009, the total net assets of SIFs has slightly increased and amounts to EUR 14.8 billion which represents a 1% 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.

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”, or 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 and specific accounting issues are more extensively discussed in this publication.

2.1.1.b Particular tax implications

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. Pension funds are exempt from subscription tax.

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 FCP 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 significant 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). Real estate funds established as investment companies are considered taxable person and may not have to register for VAT purpose in Luxembourg and self account for VAT under the reverse charge mechanism if they receive services from Luxembourg suppliers that are not exempt.

As of January 1, 2010, the new rules of the so-called “VAT Package” will be applicable. They contain substantial changes affecting the place of supply for cross-border services supplied to businesses/entrepreneurs (B2B) and to consumers (B2C), the rules on cross-border VAT refunds as well as the administrative cooperation and the exchange of information between EU Member States. For real estate vehicles and their service providers, this mainly means an extension of the “reverse charge rule” for cross-border B2B services (e.g. management services) and a new obligation to report in a “European Sales Listing” services rendered to EU VAT registered recipients where the recipient is liable to pay VAT in its country. Companies will be required to have knowledge of the specific rules that are applicable in the Member States of their counterparties. Therefore, the new VAT rules will certainly bring about a revolution for business engaged in cross-border services and companies will thus need to rethink the planning of their service flow to mitigate any additional VAT costs as well as their compliance and reporting obligations.

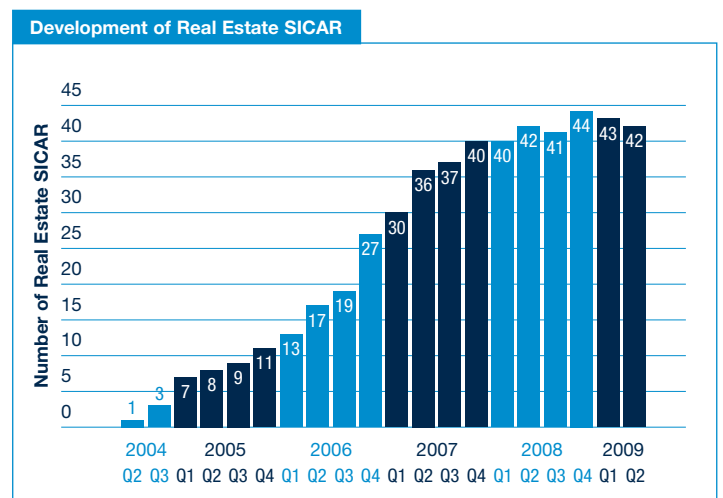
For further general tax facts, please see Appendix II.

2.1.2 Real Estate venture capital companies (SICAR)

2.1.2.a General regulatory framework

The Law of June 15, 2004 amended on October 15, 2008 (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 demonstrated by the chart below:



Source: Mémorial/PricewaterhouseCoopers, August 31, 2009

The total number of SICARs further increased in 2009 (August 31, 2009: 229; December 31, 2008: 221; December 31, 2007: 182; December 31, 2006: 115). There are 43 out of 229 SICARs 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 2008 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 noted 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.

The type of structure which could be considered eligible might include the following characteristics:

- 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.

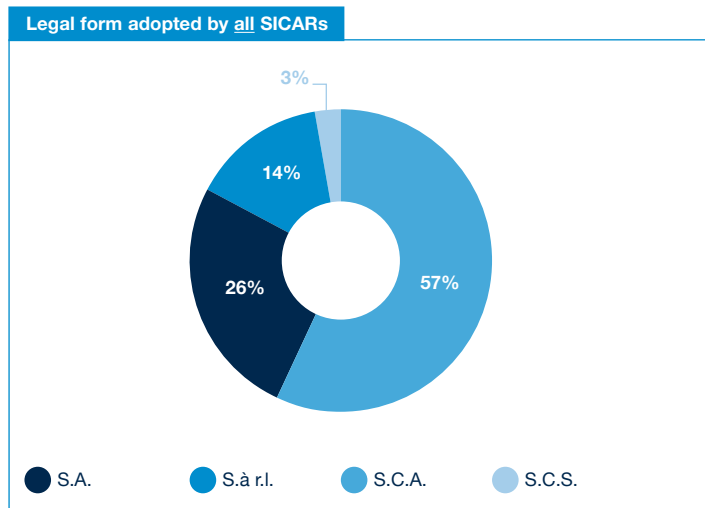
Compared to publicly distributed UCIs, SICARs are subject to a “lighter” regulation of the CSSF. The main regulatory topics which apply to a real estate SICAR are listed below:

- 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 including share premiums should be no less than EUR 1 Mio and must be reached within 12 months following the CSSF authorisation. The share capital 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 year, 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 SICAR.

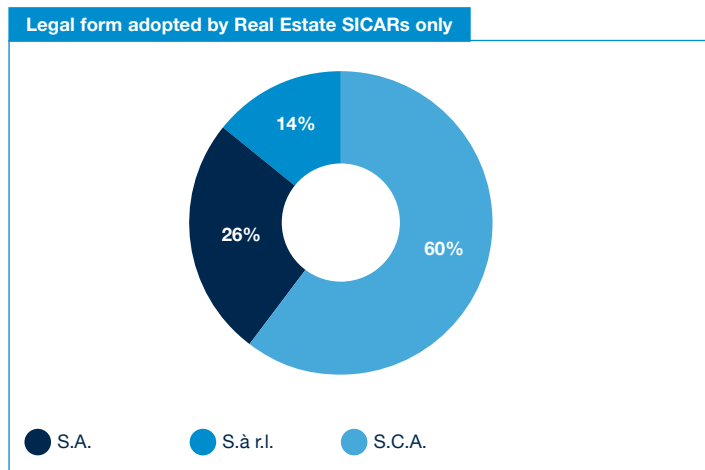
A SICAR can be set up in a transparent form (partnership

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).

Source: Mémorial/PricewaterhouseCoopers, August 31, 2009



Source: Mémorial/PricewaterhouseCoopers, August 31, 2009



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.

A key element of a SICAR is that it can have various compartments 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 compartments have different values representing specific pools of assets and liabilities. A compartment can be liquidated without having to liquidate the whole SICAR.

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.

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.

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 see – 2.1.1.b. Particular tax implications – p10.

European Commission review

In February 2006, 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 property could be represented by a separate compartment, a solution which is not possible using another regulated real estate vehicle. 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 arranged 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 income, as well as the sale payments received from the real estate properties were 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.



2.2.2 Particular tax implications

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 entities for their real estate acquisitions – whether the properties are located in Luxembourg or abroad.

Please see the table in Appendix I which sets out certain key characteristics of Soparfis compared to other real estate vehicles.

2.3.2 Particular tax implications

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.

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.

A Soparfi 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 Sopardis 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 e.g. in case the shares are held by a fund, 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 Sopardis may be also used to invest directly into real estate properties either located in Luxembourg or abroad (i.e. in the UK 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. Therefore, the pools of human resources existing in Luxembourg and in the neighboring countries make it easier for Luxembourg than for some other jurisdictions, to accommodate the substance requirement of, especially, staffing.

3. Regulatory and taxation outlook

The AIFM Directive is potentially the single most important regulatory development to happen in the European alternatives sector.

3.1 Regulation

Potential impact of the EU Alternative Investment Fund Managers Directive (AIFMD)

As a result of the financial crisis the need emerged to bring systemically important financial institutions under oversight by financial regulators. This need referred specifically to financial institutions which currently are exempted from financial supervision, such as hedge funds or real estate funds, but which are deemed to have contributed to the financial crisis. In response, the European Commission drafted the Alternative Investment Fund Managers (AIFM) Directive. The Directive is not aimed at specific institutions as such, but rather their managers as main decision makers. The scope of the Directive encompasses managers of hedge funds, private equity funds, infrastructure funds, real estate funds and commodity funds.

The main purpose of the Directive is to subject AIF managers to authorisation and supervision by local regulators, regardless of their legal form and place of domicile. Once placed under supervision, the AIFM is faced with a number of limitations and requirements:

- capital requirements based on funds under management;
- provisions regarding marketing of funds;
- the depositary must be an EU-domiciled credit institution;
- a remuneration policy must be in place, promoting sound risk management;
- limits on delegating activities to third parties;
- disclosure requirement towards the investors and the regulator.

The draft Directive of April 2009 met with heavy critique not only from the industry, but also European institutions such as the European Central Bank. The initial draft has become subject to extensive discussion between the European Commission, Parliament and Council of Ministers in the legislative process.

The revised reports of the Parliament and Council are expected to be concluded by April 2010. The negotiations between them will need to lead to a consensus view. The AIFM Directive is expected to become effective from summer 2012. Afterwards, the Directive will need to be transcribed into national law during a two year period.

At this stage, it is difficult to assess the exact consequences of the Directive on the managers of real estate funds and their business operations due to multiple uncertainties in the current draft regulation. Possible implications of the AIFM Directive for real estate vehicles are summarised below:

- “One-size-fits-all” approach seems inappropriate as private equity funds, hedge funds and real estate funds have different business models and carve outs create unlevel playing field.
- Directive will force real estate funds to examine alternative business models and their strategy including re-domiciliation, back and front office, leverage, substance.
- Existing structures will need examination.
- Competent authorities may impose restrictions and conditions in addition to those in the Directive.
- Significant extra costs (regarding authorisation, transparency, reporting requirements, etc.).
- Less favourable remuneration regime will come in place.
- Scope of inclusion or exclusion of “private placements” is unclear.
- For the non-EU managers, third country provisions remain unclear. They may need to be regulated in the EU or to be in an equivalent jurisdiction to distribute to EU investors. The non-EU managers will need to choose a place of domiciliation and to re-examine existing business models, including cost structures, etc.
- Fund investor bases will need examination in order to see whether, for example, non-EU fund managed by non-EU domiciled AIFM have EU based investors.
- Grandfathering and transitional provisions are unclear - no guidance yet on impact existing funds, particularly those closed to further investors.
- Detailed implementing regulations may not be available until autumn 2010.

3.2 Taxation

Major developments with respect of taxation in Luxembourg are briefly summarised below.

Corporate income tax

In July 2009, the Luxembourg government announced to make no changes to the Luxembourg corporate tax rate for the year 2010 but on a longer term basis it is committed to gradually reduce the effective corporate tax rate to 25.5% in the coming years.

Islamic Finance Circular

On January 12, 2010, the Luxembourg tax authorities issued their first circular on the Islamic Finance providing guidance on the Luxembourg direct tax treatment of some of the common Shariah compliant financial instruments. The brief circular is in particular relevance to the real estate sector as it has also recognised the predominant Islamic Finance instruments used by this sector. It covers a brief description of the main Shariah principles and Islamic Finance instruments i.e. Murabaha, Mudaraba, Musharaka, Ijara, Ijara wa Iqtina Sukuk, and Istinah. In addition, the circular provides guidance on the Luxembourg direct tax treatment applicable to Murabaha and Sukuk instruments.

Double Tax Treaties

Pursuant to the signature and entry into force of Luxembourg’s various double tax treaties (DTT) in the previous years, a number of DTTs have become now effective as from January 1, 2010 onwards. These individual treaties are with the governments of Moldova, Georgia, Azerbaijan, India and UAE respectively. The treaties with India and UAE (including Dubai and Abu Dhabi), as well as the treaty with Hong Kong not entered into force in 2008, are of particular help and importance in structuring real estate funds.

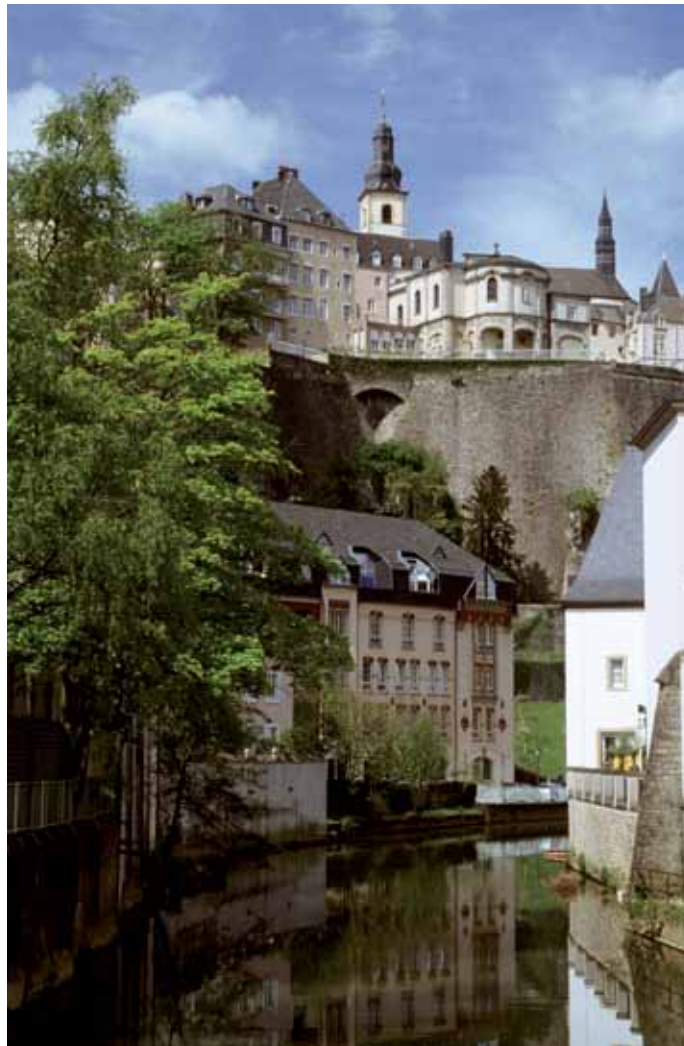
Transfer Pricing

Although Luxembourg, as an OECD member, has supported the authoritative guidance that the OECD has given on transfer pricing matters over the last 15 years, the Luxembourg tax authorities still only seldom challenge transfer pricing arrangements implemented by real estate funds and their management companies.

However, with the pressure on tax revenues being felt by all the major developed economies, it is clear that increasing attention is being paid to these arrangements in many jurisdictions with which the Luxembourg entities in a structure are entering into related party transactions. Particular “pressure points” for foreign tax authority review include Interest rates used for shareholder loans made from Luxembourg to SPVs owing real estate, charges to SPVs for services supplied from Luxembourg, with such charges often being made principally to recover pools of costs arising in Luxembourg entities.

For management companies deriving fees from regulated fund vehicles such as SIFs and SICARs, the level of fee retrocession or other rewards to group companies supporting the management company either with investor relations or with deal sourcing.

Hence, although not a Luxembourg-specific issue, transfer pricing and its proper documentation is a consideration of growing importance in any real estate fund structure.



4. 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 exist 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 chapter, we focus on the selection of service providers for the most common real estate vehicles. The overview in Appendix III also 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 broader sense covering facility and property management);
- an administrative agent;
- a custodian;
- a transfer agent;
- an auditor;
- a tax advisor;
- a lawyer able to optimise the agreements between the fund and the other service providers;
- independent property valuers (Part II UCI).

4.1 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 thereto 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.

4.2 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:**

- understanding of local GAAP (General accepted accounting principles), reconciliation between different GAAP or of IFRS accounting and reporting if required;
- 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 preparation of consolidated accounts;
- 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.

4.3 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, SICAR or securitisation vehicles: the custodian bank is responsible for the custody of assets but not for the supervision/control of real estate vehicle.

4.4 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.

4.5 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 recognised 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.

4.6 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.

4.7 Tax advisor

In order to design a favorable tax regime for investment funds and their investors a number of different combinations of aspects such as types of investor and income, holding, financing and management structures need to be considered.

Cross-border tax structuring requires an extensive knowledge of the bilateral treaties between different jurisdiction involved as well as the tax systems in the countries of the investor, the investment and the investment vehicles.

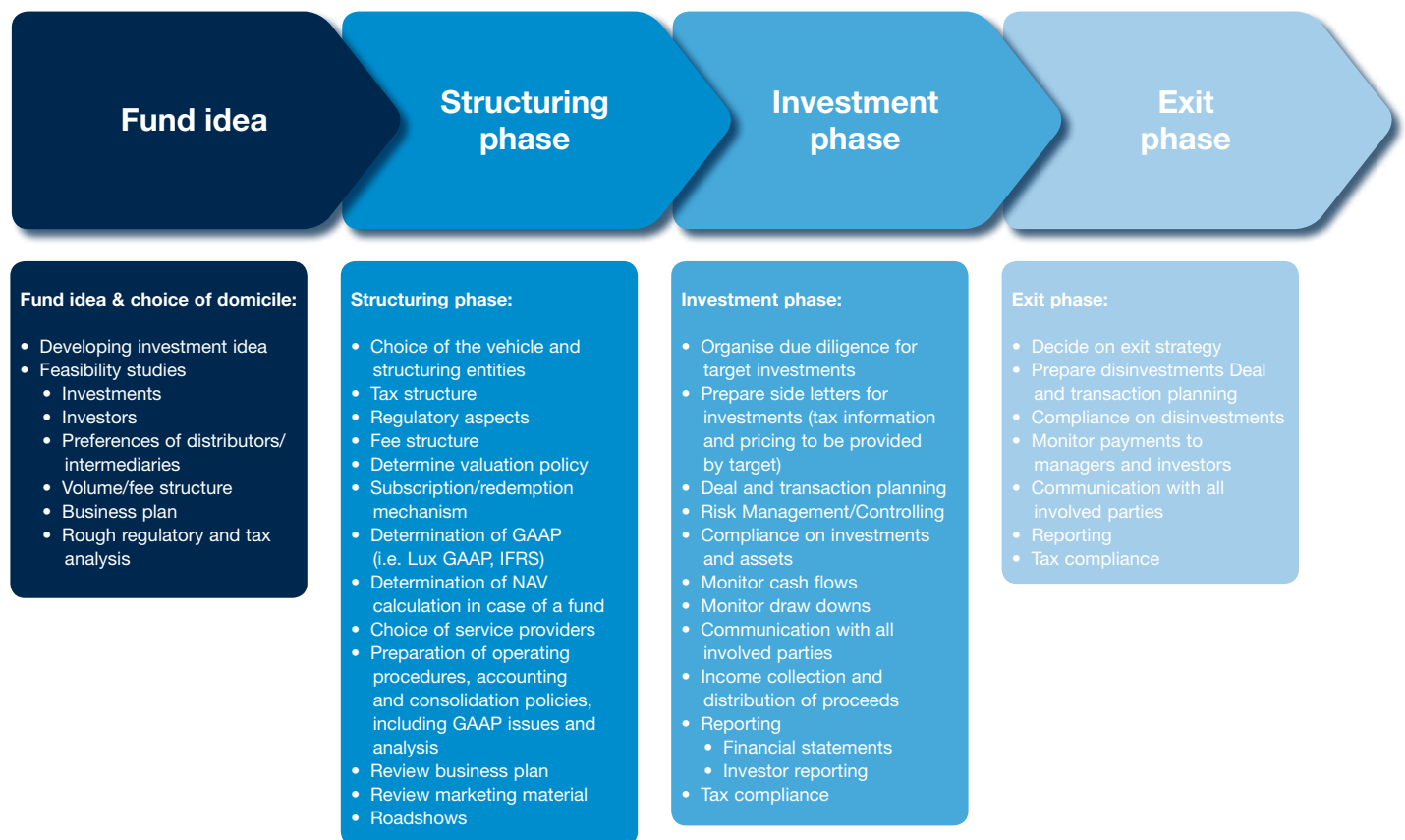
Tax advisors provide a range of tax services to the fund comprising consulting and compliance services during the set-up, the investment and the exit phase of the fund.

Furthermore, tax advisors are assisting the fund to provide specific tax reporting complying with investors' home country tax legislation, which is requested by an increasing number of jurisdictions, e.g. Austria, Germany, Switzerland and UK.



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 1,950 people. Management & Real Estate.

The real estate and infrastructure group in Luxembourg operates with more than 100 dedicated experts to service major Our Luxembourg practice reflects the diversity of our client base. Our services range from audit and tax services dedicated day operations of the structures which are rapidly developing today. Our philosophy is to work with our clients to develop We apply our extensive knowledge and practical experience to each of our clients' businesses, particularly when it comes facilitate sharing and collaboration amongst the broader Luxembourg business community, we sponsor real estate seminars.



Our international network of real estate accounting, tax and consulting professionals can quickly mobilise to form the corporate services, accounting and tax bring to bear their accumulated prior experience as real estate managers, planners, PricewaterhouseCoopers real estate professionals globally serve over 1,500 real estate organisations, including real estate of the most prestigious and forward-thinking real estate companies – companies whose executives have come to trust PricewaterhouseCoopers S.à r.l. was awarded with the “Best Audit Firm”, “Best Risk Management Firm” and “Best Financial network devoted to CFO, treasurers, auditors, tax specialists, lawyers, and other professionals of the financial sector.



Best Risk Management Firm
LUXEMBOURG FINANCE MANAGEMENT AWARDS 2008



Best Financial Advisory Firm
LUXEMBOURG FINANCE MANAGEMENT AWARDS 2008



Best Audit Firm
LUXEMBOURG FINANCE MANAGEMENT AWARDS 2008



PricewaterhouseCoopers Luxembourg is recognised as a Centre of Excellence within our network in Europe for Asset international players in Luxembourg and includes 30 specialised Partners and Directors.

to real estate and infrastructure vehicles based in Luxembourg to providing specialised skills required to support day-to-and implement optimal solutions throughout the lifetime of the structures.

to such pivotal issues as acquisitions and disposals, tax structuring, capital market transactions, and strategic planning. To These events encourage knowledge-sharing and discussion about the evolving trends likely to impact your business.

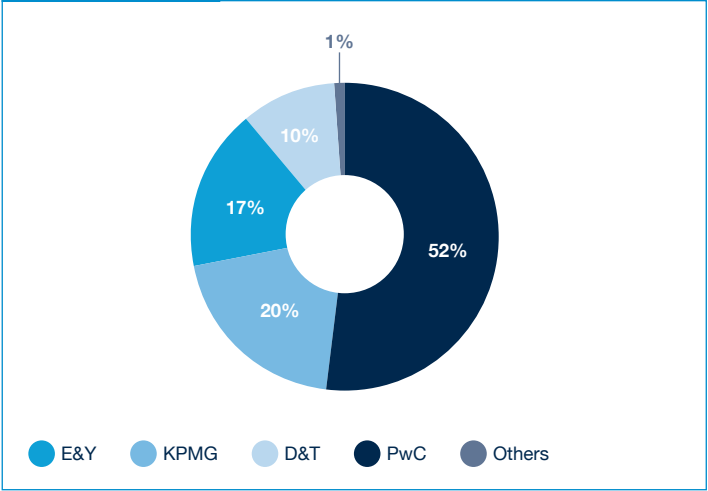


most qualified team to respond to your specific needs. Teams of professionals from valuation, transaction advisory, developers, credit underwriters, appraisers, advisors, asset managers and tax attorneys, as well as their PwC experience. funds, institutional investors, investment managers, REITs, lenders, developers and operators. These clients include some PricewaterhouseCoopers to support their business needs and goals.

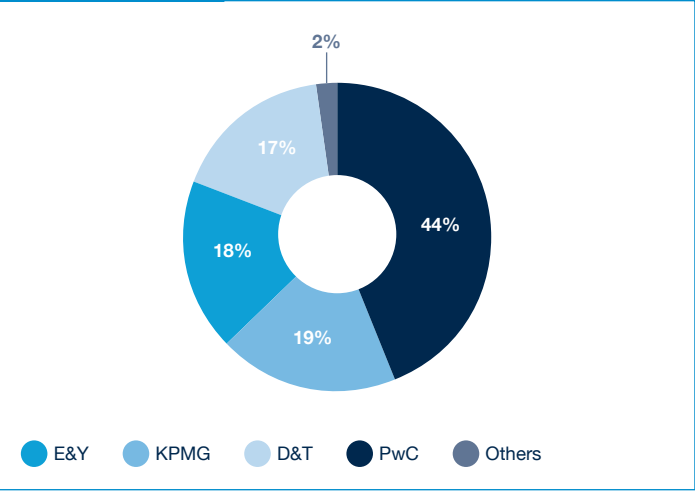
Advisory Firm” in Luxembourg during the Luxembourg Finance management awards 2009 by CFO World, a Luxembourgish

Our market share reflects our experience

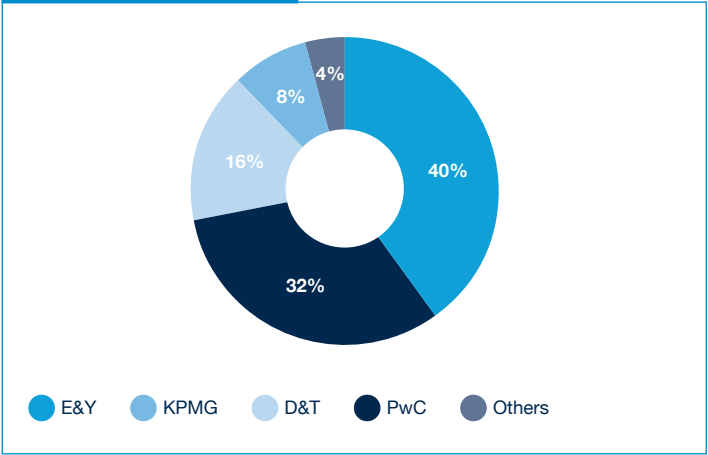
All funds – by assets



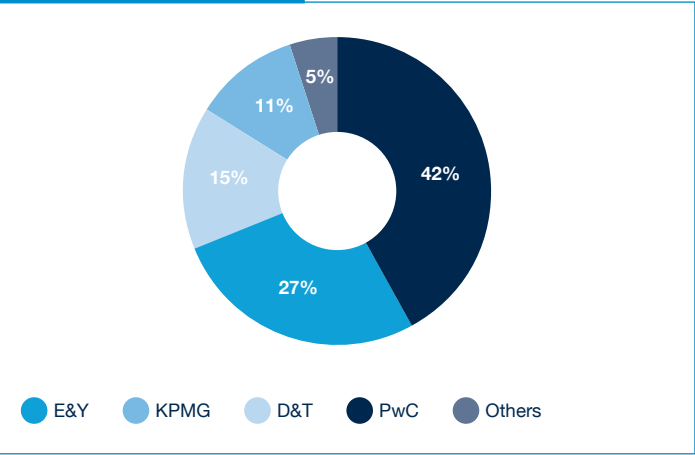
All funds – by numbers



Real Estate funds – by assets



Real Estate funds – by numbers



Source: Fitzrovia, December 31, 2008

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

How can PricewaterhouseCoopers Luxembourg assist you?

PricewaterhouseCoopers Luxembourg offers a range of tailored solutions to international real estate and infrastructure managers, including:

Tax

PricewaterhouseCoopers is the global market leader for tax services. PricewaterhouseCoopers Luxembourg assists to real estate structures and SPV's with tax strategy, planning and compliance, including:

- 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;
- investor tax reporting.

Taking a holistic view, we combine industry insight with the technical skills of tax specialists and our other in-house professionals as necessary, to develop all-encompassing solutions. Focusing on industry, our dedicated tax specialists render a full range of tax services for real estate.

Services are centralised through one tax correspondent in charge of coordinating these tax services. We are used to working with an expansive and diverse client-base comprising all types of businesses — multinationals, local companies, privately-owned organisations, entrepreneurs, family businesses, trusts, partnerships and private individuals.

Assurance

Our approach reflects your business and its related risks

Based on your business model and its related risks our Assurance group provides assurance on the financial performance and operations of your real estate business. We can also help your business improve its external financial reporting and adapt to new requirements and International Financial Reporting Standards (IFRS).

In every case, the PricewaterhouseCoopers audit is underpinned by our deep real estate knowledge, wide international experience, and global network of skilled professionals.

Statutory and contractual Audits

We provide assurance services to real estate structures and SPV's that must submit to an independent audit to comply with statutory or regulatory requirements. Our statutory audit provides assurance on the truth and fairness of an organisation's financial information; advice on controls and processing system weaknesses; confirmation of accounting treatments with respect to complex transactions.

Independent Controls & Process Assurance

For real estate structures and SPV's that require an independent evaluation of their business processes and related controls, PricewaterhouseCoopers provides: overall evaluation of management controls; assurance on business processes, systems, data and technology management; risk management solutions; and traditional third party assurance. Our services enable you to gain comfort that your systems, processes and risk management procedures are operating effectively and within a well-controlled environment.

International Financial Reporting Standards

PricewaterhouseCoopers Luxembourg has many years of experience in auditing financial statements prepared in accordance to IFRS. In addition, we are helping clients in the transition from local GAAP to IFRS and assist clients around the world to provide accurate and meaningful IFRS financial reports. Our IFRS specialists can guide you through all stages of the IFRS reporting lifecycle. The application of IFRS has important consequences for the consolidation and makes complex demands on the consolidated reporting especially in real estate structures.

We dispose of an IFRS technical department in Luxembourg which supports the audit team regarding technical questions and provides IFRS advice for clients in all stages of lifecycle of your business. The IFRS technical department is composed of 14 Partners, Directors and Managers and is supplemented by additional IFRS experienced employees of PwC Luxembourg. The members of the IFRS technical team represent PwC Luxembourg in many international committees of PwC worldwide network.

The local IFRS technical department is connected to the worldwide network of the Global Accounting and Consulting Services (ACS). This accelerates the handling of critical technical issues and the development of appropriate solutions.

In addition, PwC Luxembourg is represented in the PwC IFRS Real Estate International Accounting Group, a team of international PwC real estate specialists, that covers real estate specific reporting issues and that prepares technical solutions, checklists and illustrative financial statements focused on the real estate industry.

Corporate Finance

Real Estate deals origination and M&A financial advisory

PwC Luxembourg offers comprehensive support both for real estate transactions and for the transactions of the real estate companies themselves.

With a core team especially assembled for each specific transaction, we conduct highly professional real estate, financial and tax due diligences, which may include financial modeling. We have developed deal support solutions (available on the side of the buyer or the seller) which are individually structured to give investors a competitive advantage. Within the framework of the transaction consultation and due diligences conducted by PwC, both strategic investors, as well as financial investors, are given assurance with respect to the surrounding economic, tax, legal, and financial circumstances, as well as on the assumptions underlying a transaction.

Our transaction advising and due diligence services on the seller side of real estate transactions aim to meet the requirements and expectations of the most demanding potential investors. Through a structured sales process, geared towards the transaction's goals, a maximum degree of goal achievement can be realised.

Real Estate valuation management - best practice asset valuation

PricewaterhouseCoopers in Luxembourg provides diversified valuation services and support to a global clientele. PwC has a long-standing commitment to provide high-quality independent real estate valuation and advisory management services. Connected to an international network, PwC Real Estate Valuation Advisory's line of service offers comprehensive valuation reviews of both third-party and management-prepared valuations as well as valuation assistance that wish to reorganise and/or enhance their own internal valuation management functions with an emphasis on best practice and cost savings.

Valuation administration is an additional branch of PwC valuation services, wherein PwC manages the appraisal process on the behalf of the client. This process includes assisting the client in selecting and engaging a third-party appraisal firm, coordinating the flow of information between the client and the appraiser(s), performing appraisal review(s), resubmitting comments to third-party appraiser(s), and reporting final values. PwC also offers valuation training and assistance on appraisal software

(Argus) and appraisal processes/procedures, e.g. valuation methodology, scope of work, highest and best use, and types of ownership interest. Risk assessment services are provided in the form of scoring and stress testing tools. Finally, PwC offers a robust database of real estate transactions and trends within the Luxembourg and greater European market, which can be customised based on client preference.

Real Estate debt advisory (structured finance services for banks and investors, cash flow financing)

PwC has an on-going commitment to provide the highest quality debt services to clients. A fragile global economy and a financing environment undermined by the credit crunch crisis have increased the complexity of real estate financing (making money more expensive to borrow). As a result, PwC's debt support services approach is designed to help clients obtain the best financing structure. Integrated service lines enable us to assist clients on all phases of the deal financing process from origination to post-closing with a focus on the commercial, tax and legal aspects, and financial assumptions. Additionally, PwC provides the following services relating to debt structuring and the arrangement of real estate based transactions:

- real estate analysis for investors;
- real estate analysis for banks;
- facility arrangements for investors;
- facility arrangements for banks.

Advisory Services and Consulting

PwC Luxembourg offers comprehensive support in the real estate fund industry and is equipped to serve real estate clients throughout the entire fund lifecycle – including fund inception, management throughout the fund's lifecycle, and the disposal or liquidation phase. Services include both legal and regulatory advice as well as consulting services on operational issues.

Real Estate Fund - Set-up

PwC Luxembourg has developed dedicated services for real estate funds based on its expertise and experience. PwC has the ability to assist clients in:

- determining the optimal fund structuring as well as the re-domiciliation of funds;
- drafting or reviewing the fund prospectus;
- drafting or reviewing the operating memorandum, which lays the basis for all operational processes;
- filing and communication with the CSSF;

- designing the fund's organisational processes in light of complex legal and regulatory requirements;
- the selection and implementation of appropriate administration systems (e.g. document management, accounting).

Real Estate Fund – Compliance Advisory Services

PwC Luxembourg is able to render a thorough compliance review of real estate fund structures by:

- assessing and benchmarking the entire range of business risks for real estate funds;
- conducting review of controls and procedures, which will promote more effective risk management;
- conducting review of the systems environment and the service providers.

Real Estate Fund - Efficiency

PwC Luxembourg delivers a unique range of services to support the efficiency of clients' real estate business by:

- benchmarking the clients' real estate operations in comparison to current market practice;
- designing or re-engineering of real estate business related procedures and controls;
- analysing and performing a gap specification for operating systems;
- reviewing third party service providers to ensure overall business efficiency;
- designing or re-engineering real estate business related operational processes including customised and precise definitions of roles and responsibilities.

Accounting and Global Compliance Services

PwC Luxembourg through its Global Compliance Services department (GCS) can help manage local or global compliance issues, risks and opportunities, allowing clients to have firm control on their compliance activities.

PwC has a strong local and international network of tax and accounting compliance professionals, providing a consistently high quality service, coordinated across as many territories as required.

PwC services cover the entire life cycle of a business including:

- accounting and consolidation;
- corporate tax compliance;
- corporate secretarial.

The GCS department is made up by more than 160 professionals out of which 60 are fully dedicated to real estate.

PwC has developed teams that have deep knowledge and experience in working with real estate clients in order to provide real estate specific services. The team is made of specialists that regularly attend trainings fully focused on the real estate complexities. PwC's real estate department is managing the accounting, consolidation and reporting process of some of the major institutional players in the real estate industry. PwC also gains large experience in the assistance of IFRS conversions, but also in the preparation of IFRS consolidations. PwC can also help coordinating all compliance functions through a unique web based database named "GCS Worldview" which provides clients with full oversight of regulatory compliance position on a global basis.

PwC ACADEMY

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

- a broad network of trainers leveraging all of PwC's diverse expertise;
- in-house trainings (such as real estate workshops) can be tailored to meet each client's specific needs. The open training workshops that we deliver offer the Luxembourg business community a networking opportunity while 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.

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
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	Anne-Sophie Preud'homme Audit Partner – Consolidation and Accounting/Technical
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Glossary

ACS: Global Accounting and Consulting Services	GAAP: Generally Accepted Accounting Principles	SEC: United States Securities and Exchange Commission
AIFMD: Alternative Investment Fund Managers Directive	GCS: Global Compliance Services	SICAF: Société d'Investissement à Capital Fixe (investment company with fixed capital)
ALFI: Association Luxembourgeoise des Fonds d'Investissement (Association of the Luxembourg Fund Industry)	IM industry: Asset Management Industry	SICAR: Société d'Investissement en Capital à Risque (investment company with risk capital)
Art.: Article	IASB: International Accounting Standards Board	SICAV: Société d'Investissement à Capital Variable (investment company with variable capital)
AUM: Assets Under Management	INREV: European Association for Investors in Non-listed Real Estate vehicles	SIF: Specialised Investment Fund governed by the Law of February 13, 2007
bn: Billion	ManCo: Management Company	S.A.: Société Anonyme (publicly limited company)
BPF: British Property Federation	MiFID: Markets in Financial Instruments Directive	S.à r.l.: Société à Responsabilité Limitée (limited liability company)
CBO: Collateralised Bond Obligation	Mio: Million	S.C.A.: Société en Commandite par Actions (partnership limited by shares)
CFC: Controlled Foreign Company	M&A: Mergers & Acquisitions	S.C.S.: Société en Commandite Simple (limited partnership)
CPM: Collective Portfolio Management	N/A: Not Applicable	Soparfi: Société de Participation Financière
CSSF: Commission de Surveillance du Secteur Financier (commission for the supervision of the financial sector)	NAV: Net Asset Value	SPV: Special Purpose Vehicle
DTT: Double Taxation Treaties	NCREIF: National Council of Real Estate Investment Fiduciaries	UCI: Undertaking for Collective Investments
EPRA: European Public Real Estate Association	OTC: Over the counter	UCITS: Undertakings for Collective Investments in Transferable Securities, governed by Part I of the Law of December 20, 2002
EU: European Union	Part I funds: UCITS funds 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
Euro MTF: Multilateral Trading Facility	Part II funds: UCI funds governed by Part II of the Law of December 20, 2002	ULI: Urban Land Institute
EUSD: European Union Savings Directive	PREA: Pension Real Estate Association	VAT: Value Added Tax
FASB: Financial Accounting Standards Board	REIT's: Real Estate Investment Trusts	
FCP: Fonds Commun de Placement (contractual funds)	SCOSA: Société Coopérative Organisée sous forme de Société Anonyme (cooperative company organised as a public limited company)	
FEFSI: Fédération Européenne des Fonds et Sociétés d'Investissement		



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 • Compartments authorised • Classes of shares possible • Distributions are made according to by laws 	<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	Soparfi
	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 once a year	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
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	28.59% (municipality of Luxembourg-City)	28.59% (municipality of Luxembourg-City)	28.59% (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	Securitisation	Soparfi
	FCP	SICAV	FCP	SICAV			
Differences regarding the service providers' responsibilities							
Custodian Bank							
Safekeeping of assets	Yes	Yes	Yes	Yes	Yes	Yes	N/A
Daily administration of assets	Yes	No	Yes	No	No	No	N/A
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/statutes	Yes	Yes	No	No	Yes	No	Yes
Investment restrictions	Yes	No	No	No	No	No	No
Other service providers	No differences						

