

**REVIEW**  
**of**  
**real estate collective investment undertakings' (CIU)**  
**legal regulation**

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## **I. Review of real estate collective investment undertakings' legal regulation**

On March 1, 2008 a recast Law on Collective Investment Undertakings of the Republic of Lithuania came in force. From this date on, new special collective investment undertakings may be established in the Republic of Lithuania, including real estate investment trusts (REIT), private equity funds, funds of funds as well as hedge funds, etc.


### **1. Definition of CIUs and real estate CIUs**

According to the Law on Collective Investment Undertakings of the Republic of Lithuania, a 'collective investment undertaking' shall mean an investment trust or an investment company the sole purpose of the incorporation whereof shall be, by offering the units or shares, accumulate personal funds and invest such funds collectively into the assets.

Investment trust is a type of activity of a collective investment undertaking whereby the assets are managed by participants (legal or natural persons) by the right of common partial ownership under the trust right. In other words, an investment trust may only operate provided that its management company exists. Meanwhile, an investment company is defined as a limited liability company and is a separate legal person.

In conclusion, an investment trust is not a separate legal person therefore it must be managed by a licensed market professional – a management company; meanwhile an investment company is a legal person therefore its management does not necessarily have to be undertaken by a management company.

An essential quality of a real estate CIU is that its assets can be invested in the real estate existing in Lithuania as well as foreign countries, as well as into the real estate under development. In fact, an investment trust or an investment company will be allowed to invest its assets in other investment objects as well (see below).



## 2. Form and types of activity

As it has already been mentioned, a real estate CIU can be established either in the form of an investment company or an investment trust.

There are several types of an investment company: 1) an investment company with variable capital (a public limited liability company whose shareholders have the right to request at any time that their shares be redeemed and the amount of whose capital varies depending on the issue and redemption of shares) or 2) a closed-ended investment company (a public limited liability company that issues a fixed number of the shares redeemed upon the expiry of the period of activity of the company provided for in the articles of association of the public limited liability company or another time specified in advance in its articles of association).

Investment trust is a type of activity whereby the assets managed by legal or natural persons by the right of common partial ownership under the trust right.

Real estate CIUs may be either open-ended or closed-ended; a more comprehensive analysis of these differences is provided below.

## 3. Objects of investment

Real estate CIUs may invest into:

1. Land, buildings, and/or premises, registered in the name of the CIU.
2. The real estate objects planned to be constructed.
3. Transferable securities and money market instruments of the companies whose main activity is the acquisition, reconstruction, leasing, trade and/or development of real estate (real estate companies).
4. Units or shares of the real estate CIUs incorporated in the Member States whose supervision regulations are at least as stringent as in the Republic of Lithuania.
5. The movable property and equipment necessary for the operation of the object of real estate included in the investment portfolio of the collective investment undertaking.
6. Other investment instruments.



#### **4. Particularities of investment**

A real estate CIU is entitled to:

1. Conclude agreements on transferrable assets and money market instruments or sales of other investment instruments it does not possess, on its own account.
2. On account of the collective investment undertaking, borrow up to 75 percent of the value of net assets as of the day of the loan contract conclusion for a term laid down in advance in the instruments of incorporation of the CIU.
3. The assets comprising an investment trust or owned by an investment company may be pledged.

#### **5. Restrictions of investment**

A real estate CIU shall be prohibited:

1. To lend its assets of the real estate CIU or use the assets to guarantee or secure the obligations of other persons.
2. Assets of a CIU may not be invested in precious metals or the securities entitling to them, but may be invested in money.

#### **6. Real estate price**

The price of acquisition of an object of real estate may not significantly exceed, and the sale price may not significantly fall below, the price established by the real estate valuator. A significant difference in the price shall be the price which differs by more than 15 percent from the value of the object of real estate as established by the real estate valuator.




## **7. Shares and investment units**

As a general rule, shares of variable capital investment companies and open-ended investment trusts must be redeemed within 30 calendar days from the request for redemption. However, the term of settlement can be postponed for no more than 6 months where the total value of the units or shares being redeemed exceeds the value established in the instruments of incorporation or prospectuses of the undertaking which may not be less than 10% of the value of net assets of the undertaking, or, in exceptional cases, where there are no sufficient funds to settle for the units or shares being redeemed and the sale of the investment objects held thereby would be loss-making. The settlement time limit can be postponed only provided such right is stipulated in the instruments of incorporation or prospectuses of the undertaking.

Shares of closed-ended investment companies or investment units of closed-ended trusts are redeemed upon the expiry of the period of activity of the collective investment undertaking.

## **8. Diversification of the investment portfolio of real estate CIUs**

- Net assets comprising **not more than 20%** of the assets of a real estate CIU may be invested in transferable securities (company shares, investment units, bonds, non-equity securities of other forms) and money market instruments, admitted to trading on a regulated market, as well as fixed-term deposits with maturity not exceeding 12 months which may be withdrawn on demand, investment units and shares of collective investment undertakings, futures, forwards and options.
- Net assets comprising **not more than 30%** of the assets of a real estate CIU may be invested in one object of real estate and/or a real estate company.
- The total amount of investment in the objects of real estate and the movable property and/or the equipment necessary for operation thereof **shall not exceed 40%** of the net assets comprising the assets of a real estate CIU.
- The total amount of investment in the transferable securities and money market instruments issued by the same real estate company and the



amount of the liabilities arising in respect of a collective investment undertaking as a result of transactions in derivative financial instruments with that company **may not exceed 30%** of the net assets comprising the assets of a real estate CIU.

- In case the real estate CIU invests into a real estate company which has already invested in the aforementioned investment instruments (objects of real estate and/or the equipment necessary for operation thereof, securities issued by the company itself, money market instruments and obligations concerning derivative financial instruments) total amount of investment therein **may not exceed 30%** of the net assets comprising the assets of a real estate CIU.

**Attention.** The investment portfolio of a newly incorporated real estate CIU shall be allowed, for 4 years from the approval of its instruments of incorporation and prospectuses by the Securities Commission, not to comply with the diversification requirements.

## 9. Taxation

Asset management services provided by both closed-ended and open-ended real estate CIUs (investment companies and trusts) are not subject to VAT.

According to the Law on Corporate Income Tax and the recent commentary by the State Tax Inspectorate, real estate acquired by investment companies with variable capital (open-ended investment companies), shall not be included in the taxable income.

Neither the Law on Corporate Income Tax, nor the commentary provides for taxation of investment trusts since they are not legal entities and therefore are not subject to the Law on Corporate Income Tax of the Republic of Lithuania. As a result, in the future, taxation issues of real estate CIUs should depend on the position regarding collective investment undertakings of the Securities Commission, Ministry of Finance of the Republic of Lithuania, as well as other authorities.



We hope you found the provided information useful.

The review is of an informational nature and shall in no event be treated as a legal opinion or consultation.

If you choose to establish special collective investment undertakings *Šarka, Sabaliauskas, Jankauskas* are ready to help you with all related legal issues. If you have any questions, please feel free to contact us.

Best regards,

*Šarka, Sabaliauskas, Jankauskas*  
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## II. Appendices

Appendix No. 1

### Comparison of a real estate investment company and an investment trust

	<i>Real estate investment company</i>	<i>Real estate investment trust</i>
<b>1. Types of real estate CIUs.</b>	A real estate investment company may be either closed-ended or open-ended.	A real estate investment trust may be either closed-ended or open-ended.
<b>2. Subject.</b>	Only a public limited liability company which has received a license issued by the Securities Commission can be a real estate investment company.	A real estate investment trust is a type of activity whereby the assets managed by legal or natural persons by the right of common partial ownership under the trust right.
<b>3. Establishment/formation.</b>	Considered established from registration in the State Enterprise “Centre of Registers”.	Considered established from approval of formation of an investment trust by the Securities Commission.
<b>4. Commencement of activities.</b>	A public limited liability company wishing to engage in the activities of a real estate investment company shall provide to the Securities Commission: a) an application b) business plan containing a description of areas of the activities to be performed, the organisational structure of the company, also information about the legal person, participants, heads thereof,	A real estate investment trust is formed by a decision of the board of a management company, by which the rules of an investment trust shall be approved. The management company may start collecting the investors’ funds intended to constitute the investment trust only after the Securities Commission approves the rules and prospectus of the fund. A decision of the board of the



	<p>activities, compliance with capital requirements, and other information by the Securities Commission. Upon evaluation of the required documents, the Securities Commission shall issue or refuse the license. Investment company shall be subject to the same requirements of bodies' experience and qualification. However, an investment company the management of whose assets has been delegated to a management company shall not form any management bodies and all decisions shall be taken by the management company.</p>	<p>management company regarding the formation of an investment trust must indicate:</p> <ol style="list-style-type: none"> <li>1. the name of the investment trust;</li> <li>2. the name and registered office of a depository;</li> <li>3. the initial amount allocated for the formation of the investment trust.</li> </ol>
<p><b>5. Relations between a management company and a collective investment undertaking.</b></p>	<p>An agreement on the management of assets of a real estate CIU shall be concluded with the management company. It must provide for:</p> <ol style="list-style-type: none"> <li>1. objectives and forms of investment activities;</li> <li>2. methodology of calculation of remuneration for the management company and the procedure for paying it;</li> <li>3. functions of the board which the management company undertakes to perform;</li> <li>4. powers of the management company in its relations with the depository and other institutions;</li> <li>5. the information which the</li> </ol>	<p>The rules of an investment trust shall determine the relations between a management company and participants in the investment trust. The rules must indicate:</p> <ol style="list-style-type: none"> <li>1. the name of the investment trust;</li> <li>2. the names and registered offices of the management company and a depository;</li> <li>3. a strategy for investment of the assets constituting the investment trust, investment restrictions and specialisation in the geographical area or economic branch;</li> <li>4. rights and duties of participants;</li> </ol>



	<p>management company will furnish to the investment company;</p> <p>6. the composition and market value of the investment portfolio whose management is delegated;</p> <p>7. liability for a failure to perform obligations;</p> <p>8. conditions of and procedure for terminating the agreement.</p> <p>9. the risks relating to investment into an investment company, a description of such risks indicating that investment in the real estate investment company is related to a long-term risk.</p>	<p>5. rights and duties of the management company in the management of the investment trust, the transactions which the management company may enter into and carry out on the account and for the benefit of the investment trust;</p> <p>6. the methodology of calculation of the remuneration payable to the management company, the depository and the distributor as well as the amount of the fee and the procedure for paying it;</p> <p>7. a finite list and methods of calculation of other expenses covered with assets comprising the investment trust;</p> <p>8. investment risks and their description providing that investment in a private equity investment trust is related to long-term risk</p> <p>9. other information.</p>
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**Comparison of closed-ended and open-ended real estate CIUs**

	<i>Open-ended real estate CIU</i>	<i>Closed-ended real estate CIU</i>
<b>1. Period of activity.</b>	Unlimited.	Closed-ended collective investment undertakings may be established for the term laid down in advance only. The period of operation of a closed-ended investment company issuing shares not entitling to dividends may not exceed 10 years. The same period of operation applies to a closed-ended investment trust the rules whereof provide for the issue of units not entitling to a share in investment proceeds.
<b>2. Redemption of shares.</b>	The shares shall be redeemed upon a request of a shareholder. A management company or an investment company must, upon the request of a participant in a collective investment undertaking, redeem his units or shares at the price valid on the day of filing the request. As a general rule, the shares have to be redeemed not later than within 30 calendar days from the request to redeem them. However, the term of settlement can be postponed for no more than 6 months	The shares of the company (or units of an investment trust, respectively) shall not be redeemed upon a request of a shareholder/participant. Shares are redeemed upon the expiry of the period of activity of the collective investment undertaking.



	<p>where the total value of the units or shares being redeemed exceeds the value established in the instruments of incorporation or prospectuses of the undertaking which may not be less than 10% of the value of net assets of the undertaking, or, in exceptional cases, where there are no sufficient funds to settle for the units or shares being redeemed and the sale of the investment objects held thereby would be loss-making. The settlement time limit can be postponed only provided such right is stipulated in the instruments of incorporation or prospectuses of the undertaking.</p>	
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**Comparison of legal regulation of real estate CIUs in Lithuania  
and other countries**

	<i>Real estate CIUs in Lithuania</i>	<i>Real estate CIUs in other countries</i>
<b>1. Investment objects.</b>	Objects of real estate planned to be constructed.	Investment in the real estate planned to be constructed is prohibited in the Netherlands.
<b>2. Requirements for an investor.</b>	May be either natural or legal persons. There are no quantitative restrictions or qualification requirements.	A private company cannot be an investor in Great Britain. An investor is permitted to own no more than 60 percent of shares or investment units in France.
<b>3. Diversification of investment portfolio.</b>	The investment portfolio of a newly incorporated real estate CIU shall be allowed, for four years from the approval of its instruments of incorporation and prospectuses by the Securities Commission, not to comply with the diversification requirements	A diversification of investment portfolio is compulsory in Germany and Great Britain.

**Comparison of merits and demerits of real estate CIUs**

<i>Merits of real estate CIUs</i>	<i>Demerits of real estate CIUs</i>
<ol style="list-style-type: none"> <li>1. It is prohibited to levy execution against the assets comprising an investment trust;</li>   <li>2. Management company managing assets of an open-ended real estate CIU shall have the right to postpone the term of settlement for the units or shares being redeemed for 30 days where the total value of the units or shares being redeemed exceeds the value established in the instruments of incorporation or prospectuses of the undertaking, which may not be less than 10% of the value of net assets of the undertaking, or, in exceptional cases, where there are no sufficient funds to settle for the units or shares being redeemed and the sale of the investment objects held thereby would be loss-making. The settlement time limit can be postponed only provided such right of the management company or the investment company is stipulated in the instruments of incorporation or prospectuses of the undertaking.</li> </ol>	<ol style="list-style-type: none"> <li>1. According to the Law on Collective Investment Undertakings, investment shall be the main purpose of the incorporation of a real estate CIU. Meanwhile, according to the interpretation of the workers of Securities Commission, the Law prohibits a real estate CIU from creating real estate themselves. However, in the absence of established practice such possibility cannot be excluded.</li>   <li>2. According to the commentary of Law on Corporate Income Tax, real estate acquired by investment companies with variable capital (open-ended investment companies), shall not be included in the taxable income. Investment trusts shall not be taxed according to the Law on Corporate Income Tax, since it applies to their management companies only.</li> </ol>



<p>The time limit may not be longer than 6 months.</p> <ol style="list-style-type: none"><li>3. the investment portfolio may also be comprised of objects of real estate located outside the Republic of Lithuania;</li><li>4. A real estate fund has the right to pledge the assets comprising an investment trust;</li><li>5. The investment portfolio of a newly incorporated real estate CIU shall be allowed, for 4 years from the approval of its instruments of incorporation and prospectuses by the Securities Commission, not to comply with the diversification requirements.</li></ol>	
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