

## Editorial

*The opening-up and internationalization of the Swiss real estate market is already a reality – even if the Lex Koller has only been partially repealed for the time being. This has highlighted the fact that the country is lagging behind in another area: legal vehicles for investment in the real estate sector lacked flexibility and diversity compared with the possibilities available in many foreign countries.*

*One need only recall that Swiss law did not afford an option comparable to the limited partnership that is widespread in the English-speaking world.*

*This gap has now been filled since January 1<sup>st</sup>, 2007, thanks to the new legal forms introduced by the new Federal Act on Collective Investment Schemes (CISA).*

*This adaptation will be beneficial for our country by helping to further revitalize international investments and by enhancing our attractiveness and competitiveness at the international level.*

*The analysis that is featured in this Newsletter not only summarizes the legal conditions governing the principal new legal forms, but also reviews, in part two, the special tax regulations applicable to these entities and their unitholders.*



Thierry Barbier-Mueller  
Chief Executive Officer  
of the SPG Group

## New forms of collective capital investment in the real estate sector

*By Maître Yves Jeanrenaud and Maître Joseph Merhai<sup>1</sup>*

The new Federal Act on Collective Investment Schemes (CISA) of June 23, 2006, came into force on January 1, 2007, replacing the Federal Act on Investment Funds (IFA) of March 18, 1994, which had governed only contractual investment funds.

The CISA has now created new legal forms, in particular by introducing the open-ended mutual investment fund («SICAV», «société d'investissement à capital variable») as a company *sui generis* and the limited partnership (LP) for collective investments of the private equity type, in order to improve the international competitiveness of Switzerland as a financial centre.

In what follows we will examine briefly the principal characteristics of these two vehicles before going on to address a number of fiscal aspects.

On the other hand, we will not dwell on the closed-end investment company with fixed capital («SICAF», «société d'investissement à capital fixe»), since transparent tax treatment of this type of company has been ruled out owing to the fear of losing substantial tax revenues, which will diminish the benefit of establishing this type of company.

### SICAV

The SICAV is a specific, open-ended collective investment vehicle governed by the CISA and whose articles of association and regulations are subject to approval by the Swiss Federal Banking Commission (FBC).

It is a form of company whose capital and number of shares are not determined in advance. Its capital consists of promoter shares and investors' shares, it is liable for its financial obligations solely on the basis of the corporate assets and its sole purpose is collective capital management. The minimum number of investors required by the FBC is five. A SICAV may at any time issue new shares (units in tranches in the case of property funds) at the net asset value. It may not hold its own shares, either directly or indirectly. At a shareholder's request it must, in principle, redeem at any time the shares issued at the net asset

value. Some restrictions may apply to this right to request redemption at any time (investments that are difficult to value or trade), but only for a maximum duration of five years.

The SICAV may only manage its own assets and, unlike the management of a contractual collective investment fund, it is prohibited from managing third party assets or from giving investment advice.

The rules that are applicable to the SICAV in the area of investment policy and investment restrictions are identical to those that apply to contractual property investment funds. It may make investments in real estate and its accessories, in real estate shareholdings and companies provided that it owns at least two third of their capital and voting rights, in units of another property fund or of listed real estate investment companies up to 25% of the total assets of the fund and in foreign real estate shares if their value can be determined satisfactorily. The SICAV may not acquire real estate shares from its promoter shareholders, their agents or from individuals or corporate entities who are related to them, or sell such shares to them.

Among the principal rules that apply to risk spreading, it can be noted that the investments of such a vehicle must be spread over at least 10 buildings, that the market value of a building may not exceed 25% of the fund's assets, undeveloped land zoned for construction, including buildings to be demolished and buildings under construction, may not exceed 30% of the fund's assets and buildings construed pursuant to a right to build (ground lease) must not exceed 20%. The last two categories of investments may not together exceed 30% of the fund's assets, unless an exemption is granted by the FBC. Additional restrictions exist for insurance companies and occupational pension insurance institutions resulting either from the Federal Office of Private Insurance (FOPI) directive on investments in tied assets of June 12, 2006, or from the ordinance of April 18, 1984 on old-age, survivors' and disablement occupational pension schemes.

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