

## THE REAL ESTATE CERTIFICATE: A VERY TIMELY INSTRUMENT

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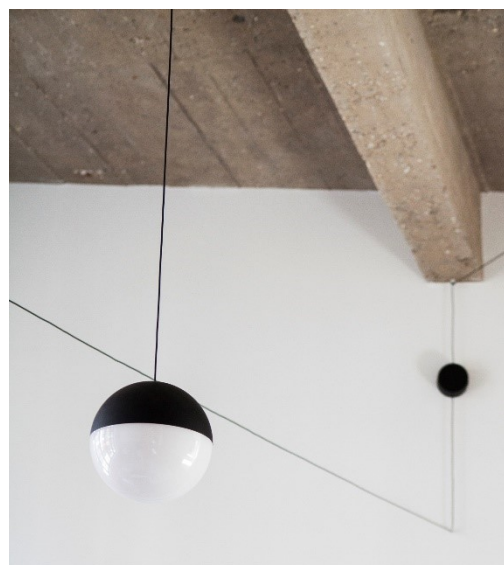
**On the sidelines of the success of other real estate investment structures or of alternative investment funds, real estate certificates definitely remain of interest. Said instrument can be organised in a flexible and efficient way, and structured in such a manner that the issuer is entrusted with a proactive role in the evolution of the structure.**

### Purpose

The real estate certificate is a security derived from the practice, whose issuance enables its holder, retail or institutional investor, to indirectly participate in the ongoing profits and in the sale proceeds of one or several specifically identified real estate assets.

From a legal perspective, the real estate certificate incorporates a mere contingent credit right against the issuing company, which is of importance as regards to the tax regime applicable to the holder of real estate certificates.

The real estate certificate has a limited duration, at the end of which the underlying real estate asset(s) are sold and the sale proceeds distributed among the certificate holders, either as a repayment of the subscription price of the real estate certificates, or as a gain resulting from the sale, in addition to the potential ongoing profits not yet distributed. If provided in the issuance conditions of the certificate, the duration of the real estate certificate may be extended.



### Underlying structure

The structure of real estate certificates can take the form of:

- a « direct » holding by the issuer, when the holder of the rights on the real estate asset(s) is also the issuer of the real estate certificates;
- an « indirect » holding by the issuer, when the holder of the rights on the real estate asset(s) is not the issuer but enters into a silent limited partnership (*“société simple interne”*) with the issuer (and with other persons as the case may be) ; the underlying asset of the issued real estate certificates consists in such cases in the rights of the issuer under the limited partnership agreement.

### Management

Depending on the individual cases, the management of the real estate assets concerned is carried out by the issuer or by the managing partner (*“gérant”*) of the limited partnership.

Said management may be outsourced either as a whole, which is generally appropriate in a direct holding structure relating to a single real estate asset, or for all or part of the asset management and the property management of the real estate assets.

If provided in the issuance conditions of the real estate certificate, a certain leverage can be created through borrowing from credit institutions.

The issuer of real estate certificates must pay attention to several governance principles, especially in relation to the management of conflicts of interests, as the issuer must act in the best interests of the real estate certificates holders.

Furthermore, an assembly of the real estate certificates holders needs to be set up and convened, in order on the one hand to be informed on a regular basis on the management of the real estate asset(s) and on the other hand to vote in determined situations (reconstruction of the real estate asset, anticipated sale, ...).

### **Public offering**

The real estate certificates may be subject to a public offering, in accordance with the applicable legislation, and admitted to trading on a regulated market.

### **Prospects**

On the sidelines of the success of other real estate investment structures and of alternative investment funds, real estate certificates definitely remain of interest.

It indeed consists of a securitization structure easily to set up, and that is not subject to the provisions applicable to alternative investment funds.

Such instrument can be organised in a flexible and efficient way, through the set-up of an appropriate governance and of a structure under which the issuer may be entrusted with a proactive role in the evolution of the structure. The role of the general assembly of the certificate holders must to that effect be conceived in a dynamic manner, including with a view to organising an “exit” towards other instruments as the case may be.

*\* For further details: T. TILQUIN, « Les certificats immobiliers », Jurimpratique, 2017, n.3, p. 67 and foll.*

### **For more information, do not hesitate to contact:**

Thierry Tilquin  
[t.tilquin@lime.law](mailto:t.tilquin@lime.law)

Thérèse Loffet  
[t.loffet@lime.law](mailto:t.loffet@lime.law)

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