

**THE STATUS OF SPECIALISED REAL ESTATE INVESTMENT FUND (FIIS/GVBF) CLARIFIED  
FOR JOINT VENTURES AND CLUB DEALS**

30 April 2019

The adoption on 25 April 2019 of the draft act containing various financial provisions (Doc. 54-3624) clarifies the status of specialised real estate investment fund ("*fonds d'investissement immobilier spécialisé*" / "*gespecialiseerd vastgoedbeleggingsfonds*") (FIIS/GVBF) of joint ventures and club deals that do not fall within the definition of alternative undertakings for collective investment (AIF) and that wish to be considered as FIIS/GVBF under the act of 19 April 2014 on the AIF and their managers and under the royal decree of 9 November 2016 on the FIIS/GVBF.

**Status of FIIS/GVBF**

The status of specialised real estate investment fund (FIIS/GVBF) is organised by the act of 19 April 2014 on alternative undertakings for collective investment (AIF) and their managers and by the royal decree of 9 November 2016 on the specialised real estate investment fund (FIIS/GVBF).

This status of FIIS/GVBF is available to all institutional AIFs and to certain entities specifically mentioned in article 281 of the act of 19 April 2014, i.e.:

- investment undertakings with only one investor ;
- entities mentioned in article 2, paragraph 3 of the Directive 2011/61/UE (which the Directive excludes from its scope) ; and
- AIFs that did not appoint a management company and that fall within the scope of article 3, paragraph 1 of the Directive 2011/61/UE (which are also not subject to the provisions of the Directive 2011/61/UE by virtue of the "group exemption").



**Clarification of the status of joint ventures and club deals**

The situation of joint ventures and club deals that do not fall within the definition of AIF and that wish to be considered as FIIS/GVBF within the meaning of the aforementioned act of 19 April 2014 and royal decree of 9 November 2016 has been clarified following the adoption on 25 April 2019 of a draft act containing various financial provisions (Doc. 54-3624).

This act (art. 169) complements article 281, second indent of the act of 19 April 2014 by expressly specifying that “entities used as investment vehicles in which the shareholders, as a collective group, are granted day-to-day discretion or control”<sup>1</sup> can also opt for the status of FIIS/GVBF.

As indicated in the preparatory works, this is meant to cover the joint ventures and club deals.

### **Joint ventures**

The setting up of a vehicle under the form of a joint venture requires that the partners organise a joint control thereover, as this notion is defined in article 5 of the Companies Code and in article 1:14 of the Companies and Associations Code.

In its Guidelines on key concepts of the Directive 2011/61/UE (ESMA/2013/611), ESMA also specifies that the shareholders must exercise a discretionary power of decision over the vehicle which extends substantially further than the ordinary exercise of decision or control through voting at shareholder meetings (on matters such as mergers or liquidation, the election of shareholder representatives, the appointment of directors or auditors or the approval of annual accounts).

A case-by-case assessment of the agreements entered into by the partners needs of course to be conducted.

This clarification constitutes a major breakthrough for the real estate sector and the partnership structures between institutional investors, notably partnerships with foreign institutional investors.

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

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<sup>1</sup> « les entités servant de véhicule d'investissement dans lesquelles les actionnaires, en tant que groupe collectif, exercent un pouvoir discrétionnaire sur les opérations courantes » ; « de entiteiten die als investeringsvehikel dienen en waarin de aandeelhouders, als collectief, een dagelijkse beslissingsbevoegdheid of zeggenschap hebben ».