



# Real Estate Funds and Real Estate Investment Trusts

Alessandro Corno

September 7, 2007

# Real Estate Funds and Real Estate Investment Trusts

**Real estate investment funds and real estate investment trusts: a single asset class for collective real estate investment schemes**

# Real Estate Funds and Real Estate Investment Trusts

## *Società di investimento immobiliare quotata (Siiq) regulatory framework:*

### 3. public sources:

- Italian financial act 2007, law no. 296/2006 (“**Financial Act**”);
- implementation regulation by the Minister of Economy, yet to be published on the official gazette (“**Regulation**”);

### 4. private sources:

- rules of the markets organized and managed by Borsa Italiana, with specific reference to the Expandi market (“**Expandi Rules**”).

### 3. subject to the surveillance of Consob

# Real Estate Funds and Real Estate Investment Trusts

## SIIQ structural requirements and characteristics

- **Form (art. 1, par. 119 Financial Act; art. 5, par. 1 Regulation; art. 2A.2.2 Expandi Rules)**
  - the company must be an Italian Società per Azioni listed on an Italian regulated market;
- **Shareholders' structure (art. 1, par. 119 Financial Act)**
  - no shareholder can hold more than 51% of the corporate capital and, at least, 35% of the corporate capital must be held by shareholders, holding individually a participation not exceeding 1%;
  - these requirements must be ascertained by the SIIQ on the basis of findings which are available to the company at time of exercise of the option;

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- **Qualifying activity (art. 1, par. 119 Financial Act; art. 1, lett. c) and art. 6, par. 1 Regulation)**

SIIQ main business must be focused on real estate leasing activity:

a) real estate assets leased to third parties must constitute at least 80% of the total company assets (art. 1, par. 121 Financial Act);

b) the proceeds generated from real estate assets leased under lett. a) above must constitute no less than 80% of the total proceeds of the company (art. 1, par. 121 Financial Act);

c) the leasing activity may be carried out on real estate owned by the company or held in usufruct, or other real property right, as well as, under financial leasing agreements.

Should the SIIQ fail to comply with:

- 1) one of the regulations under letters a) and b) above for two consecutive years; or
- 2) both regulations under letters a) and b) above for one year;

it will lose the regime starting from the relevant year (art. 12, Regulation).

# Real Estate Funds and Real Estate Investment Trusts

- **Statutory requirements and limitations (art. 3, par. 1 Regulation; art. 2.A.2.2 Expandi Rules)**
  - By-laws must provide:
    - a) rules regarding investments;
    - b) limits to concentration of investment and counter party risks;
    - c) limits to individual and group debt leverage.
  - Under Expandi Rules the limits under letter b) above must be the following:
    - a) investment in a single real estate asset cannot exceed 1/3 of total assets;
    - b) proceeds coming from one single tenant cannot exceed 20% of total proceeds coming from leasing activity;
    - c) such limits can be modified only with a 90% majority of shareholders.

# Real Estate Funds and Real Estate Investment Trusts

- **Distribution policy (art. 1, par. 123 Financial Act)**
  - each year, at least 85% of the lower amount between: (i) net profits coming from lease activity (included participations in Sub-SIIQ) and (ii) net profits that may be distributed to shareholders at the end of each financial year, must be distributed to shareholders;
  - should the SIIQ fail to comply with the above regulation for one year it will lose the regime starting from the relevant year (art. 1, par. 124 Financial Act).
- **“Sub-Siiq” or “Siinq” (art. 1, par. 125 Financial Act; art. 1, lett. b) Regulation)**
  - it is possible to extend the SIIQ regime to S.p.A.s owned for no less than 95% by SIIQs, provided that such controlled companies carry out the qualifying activity.
- **Managers (art. 2.A.2.2 Expandi Rules)**
  - at least 3 members of the board of directors and/or officers, must have no less than 3 years experience in the field of real estate investments similar to those indicated in the corporate purpose of the company.

# Real Estate Funds and Real Estate Investment Trusts

## Siiq and access to Italian regulated markets

- MTA/MTAX
- Expandi
- Other markets

# Real Estate Funds and Real Estate Investment Trusts

## Accessing the Expandi Market: requirements

- capitalization at least equal to € 200 million (art. 2A.2.4 Expandi Rules);
- before the beginning of trading, the company must invest at least 50% of its assets (art. 2A.2.2 Expandi Rules);
- adequate diffusion, that is achieved when at least 35% of the share capital is placed on the retail market (art. 2A.2.4 Expandi Rules);
- not necessary to comply with profitability and financial soundness provided generally to access the Expandi market (art. 2A.2.1 Expandi Rules);
- not necessary to present two financial statement (the second one including the auditing firm's positive opinion). For newly incorporated SIIQs Borsa Italiana may accept financial statements relating to a period shorter than a fiscal year, provided it comes with a positive opinion of the auditing firm (art. 2A.2.1 Expandi Rules);
- necessity to name a specialist / market maker (art. 2A.3.4 Expandi Rules);

# Real Estate Funds and Real Estate Investment Trusts

## SIIQ information to the market

- prospectus: filing with Consob and Borsa Italiana and publication
- exercise of the option for special taxation regime (and loss of the regime)
- compliance with regulatory and statutory requirements

# Real Estate Funds and Real Estate Investment Trusts

## Real Estate Funds regulatory framework:

### 3. public sources:

- Art. 34 et. seq., Consolidated Financial Act, D. Lgs. no. 58/ '98 ("**CFA**");
- Decree of the Minister of Treasury, no. 228/ '99 implementing art. 37 of the CFA ("**DM 228**");
- Bank of Italy regulation dated April 14, 2005 ("**Bank of Italy Rules**")

### 4. private sources:

- rules of the markets organized and managed by Borsa Italiana, (section on the MTA Market) with specific reference to Exchange Traded Fund ("**ETF Rules**")

### 5. subject to the surveillance of the Bank of Italy

# Real Estate Funds and Real Estate Investment Trusts

## Real Estate Funds structural requirements and characteristics

- **Form (art. 36, par. 6, CFA, art, 12-bis, DM 228)**

closed-ended mutual investment fund: an unincorporated pool of assets which is independent and segregated from the assets of the SGR and of the unitholders;

- **Unitholders' structure**

Bank of Italy requires a substantial "plurality of investors";

- **Limit to real estate activities (art. 12-bis, DM 228)**

- broad range of real estate activities is allowed

- at least 2/3 of assets must be invested in real estate by means of:

direct property, other real property rights and participations in real estate companies

- direct construction of real estate is forbidden but the fund may invest up to 10% of assets in real estate company carrying out real estate construction activity

# Real Estate Funds and Real Estate Investment Trusts

- **Statutory requirements and limitations**

Under DM 228 and Bank of Italy Rules:

- a) very detailed rules regarding investments;
- b) strict limits to concentration of investment risks;
- c) no limits to counter party concentration risks;
- d) limits to debt leverage (up to 60% of the direct property, other real property rights and participations in real estate companies value and up to 20% of the value of different assets).

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- **Distribution policy**

no specific requirements although performance of fund is generally connected to timing of distributions.

- **“Sub-Funds”**

not allowed.

- **Managers (artt. 13 and 14, CFA)**

top management and auditors must possess professional and moral requirements provided by law.

# Real Estate Funds and Real Estate Investment Trusts

## Structuring a Real Estate Fund

- incorporation of an SGR and authorization by the Bank of Italy
- establishment of the fund and approval of the management rules of the fund by the Bank of Italy
- possible listing of the fund:
  - filing with Consob and Borsa Italiana and publication of the prospectus
  - subscription process
  - admission of the fund to E.T.F.

# Real Estate Funds and Real Estate Investment Trusts

## Alternative types of Real Estate Funds

- Real Estate Funds reserved to qualified investors
- speculative Real Estate Funds

# Real Estate Funds and Real Estate Investment Trusts

## **Real Estate Funds reserved to qualified investors (artt. 12-bis and 15, DM 228)**

- may be subscribed only by institutional or experienced investors
- may be subject to private placement not requesting a prospectus
- may be financed with the “draw down” mechanism
- management rules may set investments limits which depart from limits provided by the Bank of Italy for funds generally, with the exception of debt leverage limits

# Real Estate Funds and Real Estate Investment Trusts

## **Speculative Real Estate Funds (art. 12- bis and 16 DM 228)**

- the number of investors cannot exceed 200
- each investor must subscribe fund units for at least € 500.000
- may not be subject to public offering
- management rules may depart completely from provisions set forth by the Bank of Italy for real estate funds generally with the exception of the requirement of investing at least 2/3 of the assets of the fund in real estate

# Real Estate Funds and Real Estate Investment Trusts

## Certain recent Real Estate Fund structures

- so called “fund renting”
- so called hybrid funds
- captive funds

# Real Estate Funds and Real Estate Investment Trusts

**Setting up a SIIQ vs. setting up a Real Estate Fund:  
pros and cons**