

Significant Regulatory Innovations for REITs in Belgium

IN SHORT

The Situation: Belgium's Law of October 22, 2017, modifies the REIT Regime by broadening the scope of REIT activities and relaxing the country's existing regulatory framework for REITs.

The Result: The real estate sector welcomes an innovative change to its existing regulatory framework for the second time in less than a year (following the [FIIS Regime](#)).

Looking Ahead: The new regulatory framework will lead to increased cooperation between REITs and other market players in the real estate, infrastructure, energy, oil and gas, water, waste management, and social care sectors.

The regime of REITs in Belgium, as established by the Law of May 12, 2014, and the Royal Decree of July 13, 2014 ("REIT Regime"), has been amended following the entry into force of the Law of October 22, 2017 ("Amending Law"). The Amending Law brings significant changes to the REIT Regime, easing restrictions and opening new doors for both public and institutional REITs.

The REIT Regime covers both public REITs and institutional REITs. Public REITs, which are commercially and operationally active companies listed on a stock exchange, combine real estate development activities for their own account and activities as property managers. In contrast, institutional REITs could only attract capital from eligible investors acting on their own behalf. Institutional REITs were also required to be controlled by a public REIT.



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Key Modifications

The main modification under the Amending Law concerns REITs' authorized activities, which were previously restricted to the real estate asset class. The Amending Law opens up new horizons for REITs by lifting this limitation. This broadened scope reflects recognition of the knowledge and expertise of public REITs, combined with their long term investment horizon, which makes them particularly suitable investors in other asset classes.

The following key concepts characterize the Amending Law:

- **Expanded activities and reach.** REITs may now (i) participate in a wide variety of public private partnership activities (e.g., DBF agreements, DB(F)M agreements, DBF(M)O agreements and agreements for public works concessions relating to buildings and/or other immovable infrastructure) and (ii) develop activities and invest in sectors of energy, oil and gas, water and waste management;
- **Lifting of public REIT control over institutional REITs.** The Amending Law abolishes the requirement that a public REIT must have the exclusive or joint control of an institutional REIT. This is now replaced by a minimum participation threshold of 25 percent, provided that the fair value of the participations in so-called 'perimeter companies' (i.e., where the public REIT does not exercise either exclusive or joint control) does not exceed 50 percent of the value of the public REIT's consolidated assets;
- **Streamlined structural and organizational requirements.** The legally required management structure and administrative, accounting, financial, and technical organization of a public REIT may now also apply to institutional REITs in which the public REIT holds a participation;
- **Expanded access of physical persons.** Physical persons are now permitted to subscribe to securities issued by institutional REITs;
- **More flexible financing rules.** Notably, where a public REIT does not exclusively control a perimeter company, if certain conditions are met, such perimeter company's loans will not be taken into account in calculating the debt ratio of the public REIT (to recall, a public REIT's debt ratio cannot exceed 65 percent); and

- **Creation of social REITs.** The Amending Law introduces the social REIT, which will enable the financing of real estate infrastructure required in the social interest sector (disability care, elderly care, childcare, youth care, and education).

THREE KEY TAKEAWAYS

1. REITs now have the opportunity to further expand their property portfolio by participating and investing in a wide range of assets and projects that were previously unavailable to them before the entry into force of the Amending Law.
2. Other real estate players can now team up with REITs to develop large scale, long term real estate projects (e.g., in the infrastructure, energy, oil and gas, water, waste management or social interest sectors).
3. Contracting public authorities now have new and innovative tools to pursue cooperation with suitable private partners to develop a wide variety of public private partnership.

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