



## Specialised Investment Funds (SIF)

The law on specialised investments funds entered into force on 13 February 2007 (the **SIF Law**). The SIF Law succeeded and replaced the law on undertakings for collective investment, the securities of which are not intended to be placed with the public, which was introduced in 1991 (the **1991 Law**).

The SIF Law is the result of a combination of legal, regulatory and fiscal provisions governing traditional undertakings for collective investment governed by the law of 20 December 2002 (the **UCI Law**) and the legal and regulatory regime applicable to investment companies in risk capital (SICAR) governed by the law of 15 June 2004 (the **SICAR Law**).

The end product is a lightly regulated, operationally flexible and fiscally neutral multipurpose investment fund regime for a qualified international investor base.

The key characteristics of the SIF regime may be summarised under the following headings:

1. Eligible investors
2. Supervision
3. Asset management
4. Investment concentration and leverage restrictions
5. Disclosure and reporting obligations
6. Legal form
7. Compartments
8. Depositary
9. Taxation

### Eligible Investors

The SIF regime is reserved for well-informed investors, meaning institutional investors, professional investors or any other investor who:

- (a) has confirmed in writing that it adheres to the status of well-informed investor; and
- (b) (i) either invests a minimum of EUR 125,000 in the SIF; or  
(ii) has obtained an assessment certifying its expertise, experience and knowledge in adequately appraising an investment in the SIF made by a credit institution within the meaning of Directive 2006/48/

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EC, by an investment firm within the meaning of Directive 2004/39/EC, or by a management company within the meaning of Directive 2001/107/EC.

In addition, the managers/directors (*dirigeants*) and other persons who are involved in the management of the SIF, including the management of the assets of the SIF (*i.e.* the personnel of an appointed investment manager or investment adviser) do not need to be certified as “well-informed” as a result of their involvement in the management of the SIF or its assets.

## Supervision

The setting up and launching of a SIF does not require the prior authorisation of the Commission for the Supervision of the Financial Sector (*Commission de Surveillance du Secteur Financier (CSSF)*). The constitutional documents for the relevant SIF need to be filed with the CSSF within one month following the establishment of the SIF. The CSSF will then verify the compliance by the SIF and its managers/directors with applicable laws and regulations prior to admitting the fund to the official SIF list, although the SIF may commence its activities as soon as it is established.

## Asset Management

The CSSF will devote special attention to the qualification of the managers/directors (*dirigeants*) of the SIF. The representatives of a SIF need to submit proof of their professional qualifications and experience, good standing and honourability to manage the SIF. The managers/directors are not subject to any residency requirement. In practice, the appraisal of the CSSF will consider the qualifications and experience of the management team in its entirety.

## Investment Concentration and Leverage Restrictions

The absence of preset or statutory investment restrictions represents another important feature

of the SIF regime. Although the principle of risk spreading applies, there are no preset quantitative, qualitative or other investment restrictions. CSSF Circular 07/309 provides, however, for certain “safe harbour” diversification rules. The SIF initiator(s) may thus freely determine the investment policies, architecture (*e.g.* a single- or multicompartiment (umbrella) SIF), investment restrictions or limitations provided that the investment policies are based on the principle of risk spreading.

SIFs are furthermore not bound by any preset or statutory borrowing restrictions.

## Disclosure and Reporting Obligations

Each SIF has to establish an “issuing document”, which may be labeled as a private placement memorandum, offering memorandum or prospectus, as the case may be. Even though no minimum content is prescribed (except if a Prospectus Directive-compliant<sup>1</sup> prospectus is to be prepared), such document must include all information necessary for prospective investors to make an informed investment decision.

A SIF is required to produce an annual report following a preset reporting template providing for a minimum level of disclosure. This annual report has to be provided to investors and the CSSF within six months of the end of the period to which it relates.

The SIF is not obliged to publish a net asset value.

## Legal Form

SIFs may be structured in several ways:

- as an FCP (*fonds commun de placement* - common fund) governed by a contractual arrangement and managed by a (regulated) management company,
- as a SICAV (*société d'investissement à capital variable* - investment company with variable capital) opting for the corporate form of a private limited liability company (*société à responsabilité limitée*), public limited liability company (*société anonyme*), corporate partnership limited by

<sup>1</sup> Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC.

shares (*société en commandite par actions*) or cooperative company in the form of a public limited liability company (*société coopérative sous forme de société anonyme*) or,

- under any other legal regime available under Luxembourg law, such as a limited partnership (*société en commandite simple*), for example.

A SIF may thus, amongst others, replicate the operational and legal flexibility typically associated with Anglo-Saxon limited partnerships.

Depending on the choice of fund vehicle, there will be a high degree of structuring flexibility, including for the organisation of subscriptions, redemptions or distributions, the valuation methodology, or the compartmentalisation of assets, liabilities, or investors.

The minimum capitalisation of a SIF (share capital and premium included) is EUR 1,250,000, which has to be reached within 12 months of its approval by the CSSF. At least 5% of each share must be paid-up (in cash or in kind) at subscription.

A SIF may opt for variable or fixed share capital. The distribution policy is freely determined in the constitutional documents. The various structuring options are meant to allow tailor-made profit repatriation schemes.

## Compartments

SIFs may be constituted with multiple compartments, each compartment corresponding to a distinct part of the assets and liabilities of the SIF. Compartments not only allow initiators and managers to combine different investment policies within the same legal entity but furthermore permit a “vintage” year approach whereby investors may participate in different investment tranches over time. The compartmentalisation also facilitates the introduction of certain “excused investor” provisions, allowing for the creation of segregated portfolios of assets in respect of which certain investors may not participate.

The constitutional documents of the SIF must expressly allow for the creation of compartments and need to foresee the applicable operational rules. The issuing document must thus describe the specific investment policy of each compartment.

Unless otherwise provided for in the constitutional documents of the SIF, the rights of investors and of creditors relating to a specific compartment or which have arisen in connection with the creation, operation or liquidation of that compartment are limited to the assets of that compartment. Consequently, the assets of that compartment are exclusively available to satisfy the rights of investors in relation to that compartment and the rights of creditors whose claims have arisen in connection with the creation, the operation or the liquidation of that compartment.

Unless the constitutional documents provide otherwise, for the purpose of the relationship between investors, each compartment will be deemed to be a separate entity. Each compartment may thus be separately liquidated. When the last compartment is liquidated, though, the SIF itself will be deemed liquidated.

## Depository

As is the case for all Luxembourg fund vehicles, the assets of the SIF have to be safeguarded and/or monitored by a Luxembourg established depository bank. However, the SIF Law no longer imposes specific functions on the depository bank thus resulting in fewer constraints for the organisation of the relationship between the SIF and its depository bank and prime broker (if applicable) (as compared to funds governed by the UCI Law).

## Taxation

The tax regime applicable to SIFs continues the proven and tested tax regimes governed by the 1991 Law and the UCI Law.

Safe for the application of the Savings Tax Directive, SIFs are exempt from income and net wealth taxes. Distributions are generally exempt from withholding tax.

SIFs are subject to an annual subscription tax (*taxe d’abonnement*) of 0.01% assessed on the total net assets of the SIF. Furthermore, the subscription tax does not apply to:

- SIFs which invest in other undertakings for collective investment and which have already

- been subject to an annual subscription tax;
- SIFs which invest in certain money market instruments only; and
- SIFs implementing pension pooling schemes.

Approximately 62 double-tax agreements concluded by Luxembourg are currently in force, some of which do not extend their benefits to Luxembourg undertakings for collective investment. The following jurisdictions however are listed to grant treaty protection to Luxembourg SICAV/SICAFs under the 2002 Law and may extend to (corporate) SIFs: Armenia, Austria, Azerbaijan, Bahrain, Republic of Korea, China, Denmark, Finland, Georgia, Germany, Hong Kong, Indonesia, Ireland, Israel, Korea, Malaysia, Malta, Morocco, Moldavia, Monaco, Mongolia, Poland, Portugal, Qatar, Romania, San Marino, Slovakia, Singapore, Slovenia, Thailand, Trinidad and Tobago, Tunisia, Turkey, United Arab Emirates, Uzbekistan and Vietnam.. The following countries may extend treaty benefits on a case-by-case basis: Bulgaria, Greece, Italy, Norway and Russian Federation.

SIFs which are organised as common funds (FCPs) may never claim treaty benefits themselves. Due to the lack of legal or fiscal nature of the FCP itself, investors may in principle directly claim treaty benefits from the target jurisdictions in which the SIF's investments are made.

It is worth noting that fund management services rendered to a SIF will not be subject to Luxembourg VAT.

## Conclusion

The SIF with its low entry-level threshold, flexible legal structuring options and its neutral tax regime completes the product range of investment vehicles available in Luxembourg.

The SIF regime delivers a tailored on-shore investment fund regime that compares favourably with international on-shore and off-shore fund regimes for an international initiator and investor base.

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