

Luxembourg Specialised Investment Fund

On 13th February 2007, the Luxembourg Parliament has adopted a law on Specialised Investment Funds (SIF). The new law replaces the law of 19th July 1991 on Undertakings for Collective Investments (UCIs) dedicated to institutional investors.

On March 6th, 2012, the Luxembourg Parliament voted on the text of the Law, modifying the current SIF law. The main goal of this amendment is the anticipated transposition of the new requirements set in the AIFM Directive.

Key features

- ▶ **Lightly regulated vehicle benefiting from the label of a regulated fund in Luxembourg**
- ▶ **Extended definition of eligible investors**
- ▶ **No restriction in eligible assets and investments**
- ▶ **Flexible risk diversification rules**
- ▶ **Segregation of the assets via multiple compartments allowed**
- ▶ **No requirement for a promoter**
- ▶ **Light reporting requirements**
- ▶ **Attractive tax regime**

1. Scope

1.1 Eligible investors

Three categories of investors are authorised to invest in the SIF:

- ▶ Institutional investors;
- ▶ Professional investors;
- ▶ Other well-informed investors who have adhered in writing to the status of well-informed investors and who comply with one of the following conditions:
 - minimum investment of EUR 125.000 in the SIF; or
 - positive assessment from a credit institution or another professional of the financial sector certifying their aptitude to appraise the contemplated investment and the risks attaching thereto.

This last category gives sophisticated individual investors (including high net worth individuals) access to the SIF.

1.2 Optional regime

The submission to the SIF regime must be opted for by inserting a mention to that effect in the constitutive documents or offering documents.

However, existing 1991 UCIs are automatically governed by the SIF Law without any formalities.

2. Legal aspects

2.1 Legal forms

The SIF can be incorporated in:

- ▶ a contractual form (as a *Fonds Commun de Placement* (FCP)), or
- ▶ a corporate form
 - as a Variable Capital Investment Company (*Société d'Investissement à Capital Variable* (SICAV)) ;
 - as a Fixed Capital Investment Company (*Société d'Investissement à Capital Fixe* (SICAF)).

Should the SIF be incorporated as a SICAV/SICAF, it could be incorporated as a public limited liability company (*Société Anonyme*, “SA”), a private limited liability company (*Société à Responsabilité Limitée*, “SàRL”), a partnership limited by shares (*Société en Commandite par Actions*, “SCA”) or a cooperative company organised in the form of an SA.

Besides, it must be noted that the SIF may be set up as an umbrella fund with multiple sub-funds, each corresponding to a separate pool of assets and liabilities.

2.2 Capital structure

The SIF must be capitalised with at least EUR 1.250.000. This minimum capital must be reached within 12 months from the date of the authorisation from the Luxembourg supervisory authorities of the financial sector (so-called CSSF).

2.3 Valuation of assets

Although the SIF has to value its assets at fair value, the bylaws or management regulations can determine how this value will be computed. Therefore, other valuation criteria like those set by professional associations (EVCA, RICS etc.) may be used.

3. Investment rules

3.1 Eligible assets

The SIF may invest in all types of assets including equity, debt, real estate, financial derivatives, hedge and private equity investments.

3.2 Investment policy and risk diversification

The SIF is required by the law to comply with the principle of risk diversification. However, the concept of risk diversification being not detailed in the law, the CSSF issued a circular providing with guidelines as to the minimum level of risk diversification that must be ensured by the SIF.

Under the circular, the SIF / each sub-fund may not invest more than 30% of its assets in a same investment line. This restriction is however waived for investments in collective investment schemes that are subject to risk diversification requirements that are equivalent to those applicable to the SIF.

The amended law of 2012 excludes from the authorised activity of SIF the purely passive investment activities (that should be undertaken rather by private wealth management companies, SPFs).

4. Regulatory aspects

4.1 Regulatory regime

The SIF is a regulated vehicle subject to the permanent supervision of the CSSF. However, the SIF benefits from a “light” regulatory regime, resulting from the fact that the SIF is dedicated to well-informed investors who are deemed to be able to value the risks involved in their investments. The SIF must be subject to prior approval by the CSSF before it can start its activity.

It must be noted that although the CSSF does not carry out an in-depth review of all materials, the CSSF has to approve the offering document, bylaws/management rules, the directors/managers (must be experienced and reputable) and the choice of the depositary bank of the SIF.

Moreover, the new law dated March 6th 2012 now requires prior notification and approval by the CSSF in case of delegation of functions/services to third parties.

The CSSF's approval would be obtained provided the following conditions are respected:

- ▶ The delegation of functions/services to third party must not prevent capacity of control of the SIF by the CSSF and must always be for the best interest of the investors;
- ▶ The directors/managers must be in a position to demonstrate that the delegates are competent and qualified for their respective assignments. In case the delegation is related to portfolio management, the mandate must have obtained specific approval to be issued by the CSSF or similar foreign supervision body.

4.2 Requirement for depository

The SIF must entrust the custody of the assets to a depository bank resident in Luxembourg.

4.3. Requirement for Central Administration

The SIF must appoint a Central Administrative Agent in Luxembourg.

4.4. Requirement to appoint an auditor

The annual accounts of the SIF must be audited by a Luxembourg independent auditor.

4.5 Requirement for a promoter

No promoter is required for the set up of the SIF.

4.6 Reporting requirements

The SIF must establish an offering document (sales prospectus) and an annual report.

The annual report must be presented to the investors at the latest 6 months following the end of the financial year. The annual report must include a balance sheet or a statement of assets and liabilities, a profit and loss account, significant information on the financial year as well as additional information for the assessment.

Under a CSSF circular, the SIF must also publish a monthly report. In practice, however, if the SIF does not calculate a Net Asset Value each month, the report can be based on the previous available report.

The SIF is free from the obligation to consolidate the companies that are held in the portfolio for investment purposes. Besides, there is no requirement to publish the Net Asset Value.

5. Tax aspects

The SIF is exempt from corporate income tax and net wealth tax. There is no withholding tax applied in Luxembourg on the distribution from the SIF except in situation where the EU Saving Directive applies (i.e. in case SIF established under the form of an FCP).

The SIF is subject to an annual subscription tax of 0.01% calculated on its Net Asset Value. Some exemptions may, however, apply depending on the underlying investments.

6. Services provided by Experta Luxembourg

Experta Luxembourg is a provider of services related to corporate and investment structures, as well as financial and estate planning. Experta Luxembourg assists private individuals, corporate clients and institutional investors with tailor-made solutions making use of creative planning techniques from various jurisdictions.

Experta Luxembourg may assist clients in the set up and management of SIFs, by coordinating the whole incorporation process and by providing all the services related to the Central Administration.

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The objective of this fact sheet is to provide the reader with a general view of relevant aspects relating to the SIF. No action shall be taken without prior consultation with Experta Luxembourg, as this document alone cannot cover all aspects relating to the incorporation and administration of the SIF. Finally, please note that this document is provided for information purposes only and should not be understood as legal or fiscal advice.

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