

# Luxembourg Specialized Investment Fund (SIF)

A specialized investment fund (“SIF”) is an investment vehicle designed for sophisticated investors that is regulated by the Luxembourg Commission de Surveillance du Secteur Financier (“CSSF”). A SIF provides a great deal of flexibility in the form of organization, investment policy and the types of underlying assets in which it can invest.

SIFs benefit from having a relatively prompt set-up process, low costs and minimal taxation in Luxembourg. They are very lightly regulated and are not subject to any restrictions as to investment strategy, asset classes or geography, but there is a diversification requirement that, with certain exceptions, requires that no investment represent more than 30% of its assets.

The SIF regime was amended further to the entry into force of Directive 2011/61/EU on alternative investment fund managers (the “AIFMD”). Whilst the AIFMD mainly purports to regulate alternative investment fund managers (“AIFM(s)”) it also contains various provisions applicable to alternative investment funds (“AIF(s)”) for which SIFs may qualify. A SIF which qualifies as an AIF must be managed by an AIFM that is authorized or registered in Luxembourg or in another member state of the European Union (including European Economic Area Member States) or that is authorized to provide investment management services in a third country.

A SIF may also qualify either as a European venture capital fund (“EuVECA”) or as a European social entrepreneurship fund (“EuSEF”) under the European Union regulations relating thereto.

## Investor Profile

Investments in a SIF may be made by "well-informed investors", which are defined as:

- Institutional investors and professional investors; or
- Any individual investor who has confirmed in writing that he is a "well-informed" investor and who either invests a minimum of €125,000 or has obtained an appraisal from a credit institution, an investment enterprise or a management company, certifying the investor's expertise, experience and knowledge in adequately appraising an investment in the SIF.

To the extent that a SIF/AIF is marketed in a member state of the European Union (other than Luxembourg), shares, units or partnership interests of that SIF can in principle only be marketed to professional investors.

## Regulatory Reporting Requirements

SIFs are subject to few regulatory requirements, which include:

- Submission of issuing document and any amendments to CSSF for approval.

- Issuance of an audited annual report for each financial year within six (6) months of the end of the financial year. There are no requirements to issue semi-annual reports or prepare consolidated financial statements.

Managers of SIFs that fall within scope of the AIFMD are in addition required to report regularly to the relevant supervisory authority in accordance with article 24 of the AIFMD.

## Distribution, Advertising, and Promotion

- The law governing SIFs does not impose any specific distribution, advertising or promotion restrictions. The legal form of the SIF, however, may impose these requirements. SIFs/AIFs managed by an authorized AIFM can benefit from the AIFMD passport to market their shares, units or partnership interests to professional investors within the EU.
- SIFs/AIFs managed by a non-EU AIFM may only be marketed in European Union member states subject to the national private placement rules of that member state.

## Fund Launch Timeline and Organiser Requirements

- A SIF may be started and launched by any qualifying investor.
- The issuing document must include any information necessary for prospective investors, but there are no minimum content requirements, subject to the investors' disclosure requirements of article 23 of the AIFMD, if applicable.
- The issuing document may be a private placement memorandum, offering memorandum or prospectus.
- The central administration of the SIF and the registered office must be located in Luxembourg.
- The CSSF must approve the constituent document, choice of directors and the Luxembourg-based depositary prior to admitting the SIF to the official SIF list. Time to activate the AIFMD management and/or marketing passport(s) (if applicable) must be taken into account.

## Fund Organisational Structure

- A SIF may be structured in various legal forms, including:
  - A common fund governed by a contractual arrangement ("FCP")
  - An investment company with variable capital ("SICAV") or with fixed capital ("SICAF"), qualifying as:
    - a public limited liability company ("SA") or a private limited liability company ("S.à r.l.")
    - a partnership limited by shares ("SCA"), a common limited partnership ("SCS") or a special limited partnership ("SLP")
  - As any other legal regime available under Luxembourg law.
- Both the SCS and the SLP are very similar to the Anglo-Saxon LP, having one or more unlimited or general partners with unlimited and joint and several liability, and one or more limited partners contributing only a specific amount pursuant to the provisions of the limited partnership agreement. This structure offers flexibility and freedom in the organization. SLPs are similar to the SCS but have no legal personality.
- The SIF must have a minimal capitalization of €1,250,000 within one year following approval by the CSSF.
- Issuance and redemption of shares/interests/units are governed by the constituent documents and not directly by the law governing SIFs.
- A SIF/AIF must appoint an AIFM (located in Luxembourg, another member state of the European Union or in a third country).

- A SIF must have a Luxembourg central administration.
- A SIF must appoint a Luxembourg depository, whose role shall vary depending on the status of the SIF under AIFMD. A SIF may be open-ended or closed-ended and have a limited or unlimited term.

## Initial and Ongoing Costs

- Initial and ongoing costs are minimal.

## Fees and Fee Limitations

- The law governing SIFs does not impose any specific fee requirements or restrictions.

## Taxation

- SIFs are not subject to any Luxembourg taxes on capital gains or income
- SIF capital contributions are subject to a one-time fixed capital duty charge of €1,250 and an annual subscription tax at a rate of 0.01%, calculated and payable in quarterly instalments assessed on the basis of total net asset value. The subscription tax, however, does not apply to:
  - (i) SIFs that invest in other collective undertakings and which have already been subject to an annual subscription tax
  - (ii) SIFs which invest in certain money market instruments
  - (iii) SIFs that implement pension pooling schemes
  - (iv) SIFs which invest in microfinance funds(v) SIFs which invest in certain institutional cash funds
- SIFs are eligible to benefit from certain Luxembourg's double taxation treaties and are qualified as a taxable person for purposes of VAT.
- For foreign investors, profits derived from SIFs are not taxable in Luxembourg.

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