

SIF - Luxembourg

(LAW OF 13TH OF FEBRUARY 2007 RELATING SPECIALIZED INVESTMENT FUND)

Luxembourg is the leading country in Europe and a center of excellence for the investment funds industry. It has achieved this status by being the first Member State of the European Union to implement Directive 85/611/EEC into its national legislation on undertakings for collective investments (UCITS). It is furthermore a preferred jurisdiction for the structuring of all types of investment funds and has a strong reputation for the incorporation of holding companies, special purpose vehicles ('SPVs') and funds.

The specialised investment fund was introduced by the Luxembourg Law of 13 February to complement the main existing investment vehicles, namely the UCI, the Soparfi, and the SICAR. The SIF regime was amended by the Law of 12 July 2013 on alternative investment fund managers (AIFM Law). As a result, the SIF Law is now divided into two parts: general provisions applicable to all SIFs, and specific provisions applicable to SIFs which qualify as Alternative Investment Funds (AIFs) and which are required to be managed by an authorised Alternative Investment Fund Manager (AIFM).

Due to the broad definition of SIF AIFs, most SIFs qualify as SIF AIFs.

SIFs qualifying as AIFs (SIF AIFs) are required to appoint an AIFM which can be established in Luxembourg, in another EU Member State or in a third country. They may either appoint an external AIFM or choose being internally managed. In the latter case, the SIF AIF will itself be considered as the AIFM. As a consequence, all of the AIFM Law's obligations applying to the AIFM will have to be complied with by the SIF AIF.

SIF AIFs managed by an EU authorised AIFM benefit from a passport allowing AIFMs to market the SIF's shares, units or partnership interests to professional investors within the EU through a regulator-to-regulator notification regime.

The SIF regime meets the demands of most investors by being a CSSF¹ regulated investment vehicle giving the management company enough flexibility to manage a very broad variety of investment types, ranging from listed equities over real estate to private equity and allowing well informed investors to take profit from these investments.

The SIF, as a regulated investment fund, is straightforward to handle and the regulatory requirements are particularly reduced compared to regular investment funds. Only the SIF itself together with its directors as well as the service providers, such as the custodian or the auditors need to be approved by Luxembourg banking and financial sector supervision (CSSF).

Beyond the regulatory features, the overall tax burden of a SIF is exceptionally low and hardly any taxes are payable in Luxembourg.

¹ Commission de Surveillance du Secteur Financier, the Luxembourg financial sector supervision commission

Main features of a SIF

Investments	Details
Types of possible investments	Transferable securities, Money Market Instruments, Real Estate, Hedge Funds, Fund of Funds, Private Equity, Commodities, Derivatives, Debts or any other investment type.
Valuation	"Fair value principle", the Net asset valuation needs to be done at least once a year but can be done semi-annually, quarterly, monthly, weekly or daily.
Investment restrictions	The principle of risk spreading to protect investors applies and as such a SIF may not invest more than 30% of its assets in securities of the same nature issued by the same issuer including the use of derivatives.
Investors	Details
Eligible investors	<ul style="list-style-type: none"> - Institutional investors - Professional investors - Other investors who declare in writing that they are "well-informed" and who invest at least EUR 125.000,- in a SIF - Investors who have an appraisal of a bank or other investment company with a European passport as a well-informed investor
Registration of shares	Shareholders are registered with the transfer agent and shares are freely transferable between eligible investors.
Structure	Details
Corporate Structure	<ul style="list-style-type: none"> - Either a common transparent fund in a contractual form (FCP with a management company). - Or a legal entity with variable capital (SICAV), which can be incorporated as a company like S.A., S.à.R.L., S.C.A., S.C. - Or a civilian law partnership
Organisational structure	<p>A SIF can be set up as a multi-currency umbrella structure with 3 levels, fund, compartments (sub-funds) and share-classes:</p> <ul style="list-style-type: none"> - Each sub-fund's assets and liabilities are financially segregated. - Each sub-fund may have its own dedicated investment strategy and investment manager - Share-classes can be used for multi-currency and multi-fee structure - The investment prospectus must include sufficient information for the investor to be able to make an informed judgment of the investment performed by the fund.
Financial structure	The minimum subscribed capital of a SIF is EUR 1.250.000- to be reached within 12 months after incorporation. Only 5% of the capital needs to be paid up on subscription. For an S.A the starting capital is 31.000€ which can cover initial setup costs. Sifs are required to establish a conflict of interest policy.
Stock exchange listing	The fund can be listed on the Luxembourg stock exchange with an ISIN and registered with Clearstream and/or Euroclear for trading.

Taxation and fixed costs

Cost type	Details
Capital duty	No capital duty
VAT	Services provided to the SIF by FINEXIS as central administration is VAT exempt.
Subscription tax	0,01% of the Net Asset Value except for: <ul style="list-style-type: none"> - Investments into assets having already paid this tax - Money Market SIFs pay no subscription tax - Sifs for institutional pension schemes
EU directives and double tax treaties	Applicable for SICAV structures since they are considered as “fully taxable” company
Net Worth Tax	Exemption
Corporate Income Tax	Exemption
Capital gain tax	Exemption
Municipal Business Tax	Exemption
Dividends received	Over 50 double tax treaties can be applied
Income	Exemption
Capital gains	Exemption
Stamp Duties	No stamp duty on transfer of shares
Liquidation proceeds	No withholding tax
Revenues other than dividends or capital gains	Exemption
Dividends paid out	There is no withholding tax however, the European Savings directive is applied.

Organization

The domicile of the fund must be located in Luxembourg and the board of directors, which needs to be approved by the CSSF, appoints managing, organizational and controlling entities:

- The central administration, with a PSF license which is domiciled in Luxembourg
- The promoter, initiator of the fund does not need to be supervised or approved by the regulator
- The investment manager of a SIF can be defined by compartment and is not subject to the approval of (CSSF)
- External auditor
- The custodian must be a credit institution with its registered office or establishment located in Luxembourg, however its role is reduced in comparison with normal UCI-Funds to general supervision and safekeeping.

Service Providers

- **Management Company:** A common fund has no legal personality and thus must be managed by a management company.

The individuals who effectively conduct the business of a management company must be of good repute and be sufficiently experienced in relation to the type of SIF to be managed. The management company must have an initial capital of at least EUR 125,000.

- **Depositary:** Luxembourg SIFs must appoint a depositary which is responsible for both the safekeeping of assets and the supervision of the fund and, if applicable, its management company.

The individuals who represent the depositary bank must be of good repute and have sufficient and relevant experience.

The physical safekeeping can be entrusted to local sub-depositaries. CSSF Circular 08/372 clarifies the relationship between the depositary and any appointed prime brokers.

- **Auditor:** The fund (SICAV) or its management company (FCP) prepares an annual report which is to be audited by a Luxembourg statutory auditor with appropriate professional experience. There is no obligation to produce a semi-annual report.

Conclusion

To sum up, the very attractive tax features as well as its flexibility make the SIF the flagship investment vehicle in Europe. Taking advantage of the Luxembourg's central multicultural European environment puts it in a prime position among the investment tools, and this on a global scale.



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