Circle Partners
Guide to Investment Funds in Luxembourg

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I | Luxembourg Special Investment Funds (SIFs)

1 | Advantages of SIFs
The SIF is a regulated Luxembourg branded investment fund vehicle for sophisticated (well-informed) investors. SIFs are subject to the law of February 2007 on Specialised Investment Funds, as amended (the “SIF Law”).

Advantages and key characteristics:
- A well established, flexible, onshore regulated investment fund vehicle adapted to any type of investment fund product (traditional funds, investment funds, real estate funds, private equity funds, etc.) and strategy;
- Regulated European Union (“EU”) Structure;
- Reputation of the Luxembourg brand;
- Regulatory environment including accessibility, knowledge and responsiveness of the regulator. SIFs are authorized and supervised by the Commission for the Supervision of the Financial Sector (“CSSF”);
- No restrictions on the type of eligible assets;
- The AIFM Directive introduced a passport enabling alternative investment fund managers to market the SIF they manage to professional investors throughout the EU;
- Ability to achieve tax neutrality for products.

2 | SIFs structures
Luxembourg based SIFs can be structured as one of the following:
- a common fund (fonds commun de placement (FCP) – contractual form); or
- an investment company (SICAV or SICAF – corporate form).

SIF structures may take the form of a single or a multiple compartment undertaking for collective investment.

The minimum capitalization of a SIF 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 at subscription.

SIFs may be constituted with multiple compartments, each compartment corresponding to a distinct part of the assets and liabilities of the SIF.

2.1 | FCPs
An FCP is a co-proprietorship which has no legal personality and is governed by a contractual arrangement. It must be managed by a Luxembourg management company on behalf of the joint owners and is deemed in most cases to be tax transparent. The co-ownership of the assets is established under Luxembourg law. The investor’s liability is limited to contribution and capital commitment.

2.2 | SICAV or SICAF
A SICAV is a limited liability company whose capital is at any time equal to its net assets. Its capital increases and decreases automatically as a result of subscriptions or redemptions, without any formalities required.

A SICAF is a limited liability company with fixed capital. It can only be open-ended if the investors can buy and sell shares at their request and at a price equal to the net asset value per share.

A SICAV/SICAF can choose one of the following legal forms:
- SA - société anonyme (public limited company);
- Sàrl - société à responsabilité limitée (private limited company);
- SCA - société en commandite par actions (partnership limited by shares);
- SCoSA - société coopérative organisée sous forme de société anonyme (cooperative in the form of a public limited company).
3 | Types of fund structures
Luxembourg law facilitates a variety of possible structures for SIFs. These are the most commonly used structures:

- Single-class fund;
- Master - feeder fund;
- Fund of funds.

The possible variations are almost limitless and therefore very much dependent on the investment manager’s needs and wishes.

3.1 | Single - class fund
This structure is established with a single class of investor shares and investors can participate in a single investment portfolio.

3.3 | Master - feeder fund
Master - feeder funds are structured in a way to enable subscribers to subscribe in different separated feeder vehicles, which are pooled into and managed as a single master portfolio. This structure is very popular amongst investment managers who would like to pool the assets from various tax and regulatory environments and distinct requirements to participate all together in the same investment portfolio. Economies of scale can be achieved and various tax and regulatory environments can be approached without an adverse effect for the other feeder vehicles.

3.3 | Fund of funds
Fund of funds are funds with an investment strategy of holding a portfolio of other investment funds rather than investing directly in securities, real estate, equity, etc.

4 | Investments
SIFs are required to comply with general diversification and risk management requirements, but are not subject to detailed investment or borrowing rules.

In general, the CSSF considers that the risk-spreading principle is complied with where the investment restrictions of a SIF adhere to the following guidelines:

1. In principle, a SIF may not invest more than 30% of its assets or commitments to subscribe securities of the same type issued by the same issuer. This restriction does not apply to:
   - investments in securities issued or guaranteed by an OECD Member State or its regional or local authorities or by EU, regional or global supranational institutions and bodies;
   - investments in target undertakings for collective investments (“UCI”) that are subject to risk-spreading requirements at least comparable to those applicable to SIFs.
   For the purpose of the application of this restriction, every sub-fund of a target umbrella UCI is to be considered as a separate issuer provided that the principle of segregation of liabilities among the various sub-funds vis-à-vis third parties is ensured.

2. Short sales may not in principle result in the SIF holding a short position in securities of the same type issued by the same issuer representing more than 30% of its assets.

3. When using financial derivative instruments, the SIF must ensure, via appropriate diversification of the underlying assets, a similar level of risk-spreading. Similarly, the counterparty risk in an OTC transaction must, where applicable, be limited having regard to the quality and qualification of the counterparty.
5 | Investors
SIFs are reserved for informed investors who are able to assess and understand the risks associated with investing in such vehicles.

Such investors are:
- Institutional and professional investors;
- Other types of investors who have declared in writing that they are informed investors, and either of the following:
  - Invest EUR 125,000 minimum; and
  - Have an appraisal from a bank, a MIFID firm or a UCITS management company certifying this prospective shareholder has the appropriate experience, expertise and knowledge to adequately understand the investment made in the fund.

A SIF must establish procedures and controls ensuring that its investors are well-informed investors within the meaning of the SIF Law. In addition, the managers/directors and other persons who are involved in the management of the SIF, including the managers of the assets of the SIF (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.

6 | Supervision
The setting up and launching of a SIF requires the prior approval of the CSSF. The Articles of Association, the choice of depositary and information regarding the directors and officers must be submitted to the CSSF prior to the formation of the vehicle. The SIF is required to constitute an issuing document (private placement memorandum, information memorandum, etc.) which must include the information necessary for investors to be able to make an informed judgment.

A SIF approved by the CSSF has to notify the CSSF in writing of any change relating to any and all information and elements that the CSSF used to grant its approval and any such change is subject to the prior approval of the CSSF.

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

7 | Key service providers
The registered office of the SIF must be in Luxembourg and the board of directors, which members need to be approved by the CSSF, appoints the following services providers:
- The central administrator, with a Professionnels du Secteur Financier (PSF) license which has its offices in Luxembourg;
- The investment manager;
- External Auditors, based in Luxembourg;
- The depositary must be a credit institution with its registered office or establishment located in Luxembourg.

Typical service providers are the following:
- a management company;
- depositary (for FCPs);
- an administrator;
- a depositary/custodian/broker;
- an auditor;
- directors.

7.1 | Management company
An investment company must appoint an approved management company or designate itself as being self managed. A SIF – FCP must be managed by a Luxembourg management company since it has no legal personality. The board of directors of the management company, in conjunction with the depositary has the ultimate control of a common fund. The management company is responsible for the FCP, including the appointment of service providers.
7.2 | Administrator
The administrator will typically oversee day-to-day operations of the fund, calculate and determine the net asset value ("NAV") of the fund, process subscriptions and redemptions, act as the registrar and transfer agent, keep various records of the fund and undertake anti-money laundering procedures on behalf of the fund. The valuation of the assets must be based on the fair value. The administrator must be based in Luxembourg. Luxembourg investment funds must maintain records that are sufficient to show and explain its transactions and to enable its financial statements to be audited at any time.

7.3 | Depositary
As is the case for all Luxembourg fund vehicles, the assets of a SIF have to be safeguarded and/or monitored by a Luxembourg established depositary bank. It must be a credit institution with a registered office in Luxembourg or a Luxembourg branch of a credit institution registered in another EU state. However, the SIF Law does not impose specific functions on the depositary bank thus resulting in fewer constraints for the organisation of the relationship between the SIF and its depositary bank and prime broker.

7.4 | Auditor
The auditor of the fund has to be based in Luxembourg. SIFs must have the accounting data contained in their annual reports audited by an approved independent auditor. The independent auditor must provide proof of appropriate professional experience and is appointed and remunerated by the SIF. The independent auditor is obliged to promptly inform the CSSF of any fact or decision of which it becomes aware while auditing the accounting data contained in a SIF’s annual report, etc., in the event that such fact or decision:
- constitutes a material breach of the law or the regulatory provisions adopted for its execution; or
- threatens the continuity of operations of the SIF; or
- may lead to a refusal to certify the accounts or to the expression of opinions relation thereto.

7.5 | Directors
The SIF law requires that directors be of sufficiently good repute and be sufficiently experienced in relation to the type of business carried out by the SIF. The directors are not subject to any residency requirements. In practice, the appraisal of the CSSF will consider the qualifications and experience of the management team in its entirety. The board of directors of the investment company, and ultimately the shareholders, control the investment company. The board of directors is responsible for the investment company including the appointment and supervision of service providers. The CSSF must approve the choice of directors.

8 | Taxation
The overall tax burden SIFs are subject to is very low:
- An annual subscription tax of 0.01% on the net asset value;
- No capital gains or income tax;
- No wealth tax;
- No capital gains tax for non-resident investors;
- VAT exemption on management fees;
- Access to Luxembourg’s double taxation treaties;
- Choice between tax transparent SIF (for FCP) or non-tax transparent SIF (for SICAV - SICAF).

9 | Local fees
CSSF initial authorization fees:
- Single SIF: EUR 3,500;
- Umbrella SIF: EUR 7,000.
CSSF annual fees:
- Single SIF: EUR 3,000;
- Umbrella SIF: EUR 6,000 (up to 5 compartments).
II | AIFMD

The Alternative Investment Fund Managers Directive ("AIFMD" or "the Directive") impacted the fund industry in Europe and internationally. The Directive lays down requirements which must be met by alternative investment funds, covering authorization, capital, marketing, organization, remuneration, conduct of business, conflict of interest, functions and service providers and transparency. However, the main impact of the Directive will be on the managers of Alternative Investment Fund, including those of SIFs. Almost all SIFs will be in scope of the AIFMD and will have to ensure that an authorized Alternative Investment Fund Manager is appointed and identified, or comply with the requirements of the Directive as an internally managed AIF.

The Directive imposes additional requirements on SIFs relating for example to the depositary, valuation function, portfolio and risk management, reporting and disclosure to investors as well as reporting to the regulators.

The Directive introduced a passport enabling AIFM to market their AIF in other EU states, allowing authorized AIFM to market their SIF to professional investors throughout the EU.

In July 2013, the Luxembourg Parliament passed the Luxembourg AIFM Law transposing the AIFM Directive.

III | Undertakings for Collective Investment in Transferable Securities ("UCITS")

In Luxembourg, a UCITS may take three different legal forms:

- FCP;
- SICAV;
- SICAF.

UCITS can be set up as a single fund or as an umbrella fund consisting of multiple compartments, each with a different investment policy. The fund and compartments respectively may have an unlimited number of share classes, depending on the needs of the investors. Under certain conditions, cross-investments between sub-funds are allowed. There is no restriction on the type of investors authorised to invest in a UCITS. The shares are sold to the public but also to corporations and institutions. A UCITS must be authorised by the CSSF before it can start its activities. It must provide a series of documents and specific information to the Luxembourg supervisory authority CSSF. EUR 1,250,000 must be reached within six months of approval. The minimum capital of a self-managed SICAV/SICAF may not be less than EUR 300,000 at the date of approval.

A UCITS must invest in “eligible assets” such as transferable securities, money market instruments or bank deposits. The central administration must be established in the EU, i.e. a Luxembourg UCITS can be managed by a Luxembourg management company or by a management company based in another EU Member State. The fund’s NAV must be calculated at least twice a month.
Locations / Contacts
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