

HOW TO SET UP

A SPECIALISED INVESTMENT FUND (SIF)

DESCRIPTION

The Specialised Investment Fund (SIF) is a regulated, operationally flexible and fiscally efficient multi-purpose investment fund regime for an institutional or professional investor. It is regulated by the Law of 13 February 2007 on Specialised Investment Funds, as amended. The SIF is characterised by great flexibility with regard to the investment policy. Since its creation, the SIF regime has been designed to accommodate UCIs investing in any type of assets and pursuing both traditional and alternative investment strategies. SIFs are subject to the principle of risk-spreading.

ELIGIBLE INVESTORS

Investment in a SIF is limited to “well informed” investors that are able to adequately assess the risks associated with an investment in such a vehicle. These are defined as institutional investors, professional investors, and any individual investor who has confirmed in writing that he adheres to the status of “well-informed” investor and who either invests a minimum of EUR 125,000 in the SIF or has been assessed by a credit institution, investment firm or management company which certifies the investor’s expertise, experience and knowledge in adequately appraising an investment in the SIF.

LEGAL FRAMEWORK

The specialised investment fund was introduced by the Luxembourg Law of 13 February 2007 (SIF Law). 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: (i) general provisions applicable to all SIFs, and (ii) 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.

LEGAL FORM

The SIF may be structured as:

- A common contractual fund (*fonds commun de placement* – FCP)
- An investment company with variable capital (*société d’investissement à capital variable* – SICAV), or fixed capital (*société d’investissement à capital fixe* – SICAF).

A SICAV/F 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);
- SCS - *société en commandite simple* (limited partnership);
- SCSp - *société en commandite spéciale* (special limited partnership).

The SIF may be set up as an umbrella structure with multiple compartments. The compartment of an umbrella SIF can invest in one or more other compartments of the same SIF. The fund and compartments respectively may have an unlimited number of share classes, depending on the needs of the investors to whom the fund is distributed.

CAPITAL BASE

The net assets of a SIF must reach EUR 1.25 million within 12 months of the SIF’s authorisation. Only 5% of the capital needs to be paid up on subscription.

AUTHORISATION AND SUPERVISION

A SIF requires prior authorisation by the *Commission de Surveillance du Secteur Financier* (CSSF) and is subject to supervision by the CSSF.

The CSSF must approve the constitutional documents of the SIF, the issuing document, the choice of the directors/managers, the investment manager and the auditor, the central administration and depositary agreements and any modifications thereof.

APPOINTMENT OF AN AIFM

A SIF that qualifies as an alternative investment fund according to the AIFM law must be managed by an authorised AIFM, unless it benefits from an exemption. The AIFM may either be established in Luxembourg, in a Member State of the EU or in a third country. The SIF AIF can either be externally managed by appointing a separate AIFM, or be internally managed, where the SIF AIF's legal form permits such internal management.

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.

CENTRAL ADMINISTRATION

The central administration of the fund and the registered office (for an FCP, the seat of the management company; for a SICAV/F, the seat of the company) must be in Luxembourg.

DEPOSITARY

The eligible depositaries are Luxembourg established credit institutions but also Luxembourg established investment firms fulfilling certain requirements laid down by the Law of 5 April 1993 on the financial sector as amended. In addition to the type of depositaries described above, a new type of Luxembourg depositary namely the professional depositary of assets other than financial instruments has been introduced by the Law of 12 July 2013.

PROFESSIONAL STANDING AND EXPERIENCE

The directors/managers of the SIF (depending on the legal form, the members of the board or general partners) and of the depositary must be of good repute and have sufficient and relevant experience.

EXTERNAL AUDITING

The SIF must produce an audited annual report within six months of the end of the relevant period and make it available to investors.

The format follows the framework applicable to investment funds. There is no obligation to compile an interim report. SIF are free from the obligation to consolidate the companies that are held in the portfolio for investment purposes.

SPECIFIC ASPECTS: EUVECA AND EUSEF

SIFs which qualify as European Venture Capital (EuVECA) or European Social Entrepreneurship (EuSEF) Funds have the possibility to be subject to the EuVECA and EuSEF regulation respectively. Both regulations introduce a passport for the marketing of AIFs to EU-based eligible investors.

AUTHORISATION PROCEDURE

The file submitted to the CSSF must contain for approval (the list being not exhaustive):

- The constitutional documents;
- The issuing document;
- The CSSF questionnaire duly filled in;
- Names of the directors/managers of the SIF, who must be experienced and reputable (together with their up-to-date, dated and signed CVs, copy of their passport, proof of absence of criminal records and declaration of honour);
- The last available audited financial statements and a certificate from the supervisory authority of the initiator, if applicable;
- A statement explaining risk management procedures, including the management of conflicts of interest;
- The investment advisory agreement and a certificate from the supervisory authority of the investment manager, if applicable, and the last available audited financial statements (3 years) of the investment manager;
- The central administration agreement;
- The depositary agreement;
- The choice of the alternative investment fund manager (if applicable),
- Delegation agreement (if any);
- The letter of intent or engagement letter from the auditor;
- The draft nomineeship agreement, if applicable.

Authorised SIF are entered by the CSSF on a list which is published in the official gazette (the *Mémorial*).

Useful information sources

www.cssf.lu

Commission de Surveillance du Secteur Financier
(Luxembourg financial supervisory authority)

www.alfi.lu

Association of the Luxembourg fund industry