

HOW TO SET UP

A SPECIALISED INVESTMENT FUND (SIF)

DESCRIPTION

A Specialised Investment Fund (SIF) is an investment fund that can invest in all types of assets. It usually qualifies as an alternative investment fund (AIF) and can be sold to well-informed investors. SIFs that have appointed an EU AIFM can market their shares, units or partnership interests via a specific passport to well-informed investors across the EU.

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 investors who have confirmed in writing that they adhere to the "well-informed" investor status, and who either invest a minimum of EUR 125,000 in the SIF or have been assessed by a credit institution, investment firm or management company which certifies the investors' expertise, experience and knowledge in adequately appraising an investment in the SIF.

LEGAL FRAMEWORK

SIFs are subject to 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 AIFs, most SIFs qualify as AIFs.

SIFs investing in short-term assets and having distinct or cumulative objectives offering returns in line with money market rates or preserving the value of the investment must further comply with the requirements of Regulation (EU) 2017/1131 on money market funds.

There are a number of additional rules that have to be observed at national and/or EU level (e.g. concerning AML, MiFID, market abuse, derivatives, securities financing transactions and shareholder rights).

CAPITAL BASE

The net assets of a SIF may not be less than EUR 1,250,000. This minimum must be reached within a period of twelve months of its authorisation. At least 5% of the capital needs to be paid up at subscription.

LEGAL FORM

The SIF may be structured as:

- an open or closed ended common contractual fund (*fonds commun de placement* – FCP). The FCP has no legal personality and must be managed by a management company.
- an open or closed ended investment company with variable capital (*société d'investissement à capital variable* – SICAV), or fixed capital (*société d'investissement à capital fixe* – SICAF). The creation of such a corporate entity requires the drafting of instruments of incorporation.

The FCP or a SICAV/F may be set up as a single fund or as an umbrella structure with multiple compartments. The fund and compartments respectively may have an unlimited number of share-/unit classes, depending on the needs of the investors to whom the fund is distributed.

AUTHORISATION AND SUPERVISION

A SIF must be authorised by the *Commission de Surveillance du Secteur Financier* (CSSF) before commencing its activity. Afterwards, it is supervised by the same on an ongoing basis e.g. by means of regular reporting requirements. The CSSF charges an annual fee for its supervisory activity.

The draft documents and information to be submitted to the CSSF – via e-file (see www.e-file.lu) or email (setup.uci@cssf.lu) – for approval are set out in Articles 42, 42bis and 42ter of the SIF Law (as modified).

The documents and information are generally compiled and submitted to the CSSF with the assistance of lawyers/ auditors and/or a bank in Luxembourg.

The approval process of a new SIF or additional sub-funds is subject to the payment of a one-off fee.

The CSSF keeps an official list of the authorised SIFs that are subject to its supervision. A SIF may start business as soon as authorisation has been granted.

DISCLOSURE REQUIREMENTS AND FINANCIAL REPORTS

A SIF must prepare a prospectus or offering document, a PRIIP Key Information Document (KID) if retail investors can make investments, and an annual report. There is no obligation to prepare a semi-annual report.

APPOINTMENT OF AN AIFM

SIFs that qualify as AIFs are required to appoint an AIFM, unless they benefit from the limited exemptions provided by the AIFM Law. The AIFM can be established in Luxembourg, in another EU Member State or in a third country. SIFs qualifying as AIFs may either appoint an external AIFM (the management company of the fund or a different entity is appointed as AIFM) or choose to be internally managed. In the latter case, the SIF will itself be considered as the AIFM and will have to comply with all the legal obligations of the AIFM Law.

SIF qualifying as AIFs and which are managed by an authorised EU 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.

A UCITS management company may apply for authorisation as AIFM in order to manage both UCITS and AIFs.

Smaller AIFMs that do not exceed certain thresholds in terms of assets under management have to be registered and must comply with some of the requirements of the AIFM Law, or can decide to opt for a formal authorisation to benefit from the passport.

SPECIFIC ASPECTS: EUVECA AND EUSEF

SIFs that qualify as European Venture Capital (EuVECA) or European Social Entrepreneurship (EuSEF) Funds have the option of being subject to the EuVECA and EuSEF regulation respectively. Both regimes provide a passport that permits the marketing of the fund to EU-based eligible investors.

SERVICE PROVIDERS

A common fund must be managed by a management company, whereas a SICAV/F may either be self-managed or designate a management company. If applicable, the management company of an FCP must draw up the management regulations for the common fund. Self-managed SICAV/Fs may only manage assets of their own portfolio and may not manage assets on behalf of a third party.

The central administration of a SIF must be in Luxembourg. A SIF must appoint a Luxembourg depositary which is among other things responsible for the safekeeping of assets.

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. It is also possible to collaborate with a professional depositary of assets other than financial instruments.

The directors of the SIF and of the depositary must be of sufficiently good repute and have sufficient and relevant experience.

The annual report must be audited by an authorised independent auditor with appropriate professional experience.

Other typical service providers to a SIF include lawyers, portfolio managers (investment advisers), administrators/ registrars/transfer agents/domiciliation agents, distributors/nominees, market makers and paying agents.

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