

Specialised Investment Funds

Applicable legal framework

Luxembourg Specialised Investment Funds (SIFs) are subject to the following main laws of regulation:

- Law of 13 February 2007 on Specialised Investment Funds (“SIF Law”);
- CSSF Circular 07/283 of 28 February 2007 regarding entry into force of the law of 13 February 2007 relating to SIFs;
- CSSF Circular 07/309 of 3 August 2007 concerning risk diversification requirements applicable to SIFs;
- CSSF Circular 07/310 of 3 August 2007 regarding financial information to be provided by SIFs;
- CSSF Circular 08/371 of 5 September 2008 regarding the electronic transmission of prospectuses and financial reports of UCIs and SIFs to the CSSF;
- CSSF Circular 08/372 of 5 September 2008 regarding the guidelines for depositaries of SIFs adopting alternative investment strategies, where those funds use the services of a prime broker.

Investors

Only well-informed investors are authorised to invest in SIF. Well-informed investors are (i) institutional investors, i.e. regulated institutions active in the management of assets for their clients or themselves, (ii) professional investors within the meaning of Annex II to Directive 2004/39 on markets in financial instruments including notably large corporates, even unregulated ones and (iii) any other investor who meets the following conditions:

- He/she has confirmed in writing that he/she adheres to the status of well-informed investor, and;
- He/she invests a minimum of EUR 125,000 or has been the subject of an assessment by a credit institution, an investment firm or a UCITS management company certifying his expertise, experience and knowledge in adequately appraising an investment in the SIF.

Quick Reference Guide



Eligible investments and investment restrictions

The range of eligible assets is unlimited: Private Equity, alternative strategies, Real Estate and commodities are just a few examples.

However, as for all kinds of UCIs, the risk diversification requirement applies. The SIF Law itself does not define any detailed investment limits or leverage rules. The CSSF has published general guidelines for the risk diversification requirements applicable for SIFs in the Circular CSSF 07/309:

- 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. However, this restriction does not apply to (i) 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 and to (ii) investments in target UCIs that are subject to risk-spreading requirements at least comparable to those applicable to SIFs;
- Short sales may not in principle result in a SIF holding a short position in securities of the same type, issued by the same issuer and representing more than 30% of its assets.
- When using financial derivative instruments, a 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, when applicable, be limited having regard to the quality and qualification of the counterparty.

The CSSF states expressly in its circular that it may grant exemptions upon appropriate justification. Moreover, in case of specific investment policies, additional investment restrictions may be required.

Launch process of a SIF

Unlike funds submitted to the Fund Law, where prior approval by the CSSF is always required, SIFs may start their activities without such prior approval. The application for approval must however be filed with the CSSF within a month following the creation of the SIF, in order to then be posted on the official list of approved funds in Luxembourg. Thus, time-to-market for SIFs may be significantly reduced compared to traditional funds.

Organisational and administrative requirements

The directors of a SIF need to be authorised by the CSSF. They must be of high repute and have sufficient experience in relation to the type of SIF being created.

The custody of the SIF assets must be entrusted to a Luxembourg depositary bank, i.e. a credit institution which has its registered office in Luxembourg or which is the Luxembourg branch of a bank with registered office in another EU member state. The depositary bank has a lightened role compared to depositaries of Luxembourg public distributed funds. It is not legally required to perform supervisory and control functions e.g. regarding the NAV calculation, the issue, repurchase, cancellation of units, the timely remittance of consideration regarding the fund's assets, the compliance with investment restrictions, etc.

While making use of derivatives or adopting alternative investment strategies, a SIF may also use the services of a prime broker in accordance with market practice. According to CSSF Circular 08/372, the depositary of a SIF must approve the prime broker chosen by the SIF and must be in a position to obtain information from the prime broker on the composition and value of the SIF assets entrusted to it. If the depositary deems the prime broker to no longer be able to fulfil its supervisory tasks in relation with the SIF's assets, the depositary has the right to intervene in the relationship.

The central administration of a SIF must be situated in Luxembourg, but, it can obviously use external service providers. Finally, the SIF needs to appoint a Luxembourg-based authorised external auditor.

Legislative developments – the future of SIF

Since its entry into force in 2007 the SIF Law has clearly demonstrated that it enables tailored solutions responding to the industry's needs. There was a demand for a vehicle which is regulated but at the same time flexible, open to a wide, clearly defined range of investors. The increase in respect of numbers of SIFs and their assets under management demonstrates the high acceptance by the market players.

To ensure its future success, the Luxembourg regulator is currently analysing the options to readjust some provisions of the SIF Law, taking into consideration the economic and legislative developments and practical experiences of the last years. An as of yet unofficial draft law is currently under discussion: the amendments it will introduce to the SIF Law concern mainly the licensing process of a SIF (with a prior, yet swift, approval by the CSSF), the quality of its delegates (notably the portfolio manager), the introduction of a risk management process. These changes to the current regime purport essentially to give the CSSF the necessary tools to perform its supervisory role over the SIFs, while preserving their flexibility.

Moreover, the SIF framework will be heavily affected by the Alternative Fund Managers Directive (“AIFMD”), a European directive adopted in 2011 and to be transposed into national law within two years of entering into force. It aims at regulating and harmonising the European investment fund sector currently not covered by UCITS. Luxembourg SIFs will be clearly in scope of this new European regulation. Even if it is too early to analyse in detail the future amendments of the SIF Law, it seems clear that this new regulation will have a massive impact not only on the SIF Law but also on the functioning of SIF and the currently used business models.

SIF main features at a glance

<p><i>Legal forms available for SIFs</i></p>	<ul style="list-style-type: none"> • Investment company with variable capital (SICAV), to be incorporated as a public limited company (S.A.), a private limited company (S.à r.l.), a cooperative company organised as a public limited company (SCoopSA) or as a corporate partnership limited by shares (SCA); • Investment company with fixed capital (SICAF); • Contractual fund (FCP).
<p><i>Eligible investors</i></p>	<p>Well-informed investors only.</p>
<p><i>Type of securities that a SIF may issue to investors, for financing purposes</i></p>	<ul style="list-style-type: none"> • Shares/Units; • “Parts bénéficiaires”; • Debt.
<p><i>Licensing requirements</i></p>	<p>A SIF may start operations without receiving CSSF’s prior clearance, but must file an application for approval within one month following its creation. The CSSF will pay particular attention to:</p> <ul style="list-style-type: none"> • the SIF draft constitutional documents (incl. offering document); • the identity of the persons in charge of conducting the business of the SIF. They must show good reputation and adequate experience for acting in such capacity; • the identity of the Luxembourg central administration, the Luxembourg depositary and the Luxembourg external auditors.
<p><i>Compulsory service providers in Luxembourg</i></p>	<ul style="list-style-type: none"> • Depositary – responsible for safekeeping of the SIF assets – which must be a Luxembourg bank or a Luxembourg branch of a EU bank; • Central administration – responsible for accounting, NAV calculation, keeping of the register of the shareholders/unitholders, handling with subscriptions and redemptions, communication with investors and preparation of financial statements – which must be a Luxembourg bank or a branch of a foreign bank or a professional of the financial sector with a proper license; <p>• A Chapter 16 Management Company if the SIF is set up as an FCP;</p> <p>• External auditors.</p>
<p><i>Minimum NAV frequency</i></p>	<ul style="list-style-type: none"> • Yearly.
<p><i>Valuation of assets</i></p>	<ul style="list-style-type: none"> • Fair value unless otherwise stated in the SIF documentation.
<p><i>Subscription/Redemption</i></p>	<ul style="list-style-type: none"> • Subscriptions and redemptions must be carried out in accordance with the rules laid down in the SIF constitutional documents (i.e. not necessarily linked to the NAV); • Partly paid-up shares may be issued.
<p><i>Minimum capital requirement in the SIF</i></p>	<p>EUR 1.25 Mio to be reached within 12 months following the authorisation.</p>
<p><i>Documents to be established according to laws and regulations</i></p>	<ul style="list-style-type: none"> • Offering document; • Articles of association (in case of a SICAV or SICAF); • Management regulations (in case of an FCP); • Agreements with the service providers; • Annual audited financial statements (annually within six months of period end).

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