

## Specialised Investment Funds



## TARGETED INVESTORS AND INVESTMENTS

The SIF law has been voted on 13 February 2007. The aim is to create in Luxembourg a particular type of undertaking for collective investment "UCI" called "specialised investment funds" (or "SIFs"), which are subject to rather light statutory rules.

Not only institutional investors but also professional investors and any well-informed legal or physical person (which includes those investing a minimum of 125,000 EUR in the structure or who has been subject to an assessment made by a credit institution) are entitled to create a SIF.

SIFs can invest in every type of investment (including real estate and private equity); they are subject to general risk-spreading rules.

Unlike the classical UCIs, SIFs can grant loans and financial guarantees to third parties.

The subscription and redemption prices are freely determined in the constitutional document.

SIFs may be constituted in contractual or corporate form.

## INVESTMENT VEHICLES

A SIF constituted as an investment company with variable capital (SICAV) will not have to be incorporated under the form of a *société anonyme* (public company limited by shares) like classical UCI, but can also assume other legal forms (*société à responsabilité limitée*, *société en commandite par actions*, *société coopérative organisée sous la forme d'une société anonyme*).

There is no stipulated required minimum capital upon incorporation (other than that required under the commercial companies law) but the subscribed share capital and the share premium have to reach together EUR 1,250,000 within the twelve months from the date of CSSF approval (at incorporation, the shares or the partnership interests must only be paid up to at least 5%).

The net asset value of a SIF constituted as a *fonds commun de placement* must reach the same amount of EUR 1,250,000 within the same period of twelve months.

The method of evaluating the assets shall be specified in the rules of management, which can notably refer to the principles of valuation established by the professional associations, which brings flexibility and allows adaptation to different types of investments. However, it has to be calculated at least once per year.

## APPROVAL AND CONTROL

SIFs must be approved by the CSSF within a month from their constitution. This is however not a prerequisite to the commencement of their activities. Their assets have to be held with an approved depositary, which however does not assume the supervisory role they have towards other UCIs.

In addition, the approval of the "promoter" is not required, only the directors/managers (within the meaning of Luxembourg company law) of the SIF must be approved.

SIFs have to draft an offering document and publish an audited annual report.

Compared to UCIs, the SIF Law no longer requires mandatory provisions to be included in the offering document provided that the information contained is up to date and enables the investors to make an informed judgment of the investment proposed and in particular of the risk attached to thereto.

However, they shall not be required to publish a prospectus nor a semi annual report.

Furthermore, the independent auditor does not need to issue a long form report.

As regards the management, the scrutiny of the financial situation is restricted to legal representatives of the company and not to investments managers to whom management has been delegated.

SIF shall benefit from a similar tax regime as the current UCIs reserved to institutional investors: subscription tax of 0,01% of the net asset value and fixed amount of capital duty limited to EUR 1,250 on contributions.

## TAX

At the level of the investors, distributions made by a SIF whether paid to resident or non-resident investors are not subject to any Luxembourg withholding tax. Besides, the realized capital gains are not subject to taxation in Luxembourg unless shareholders holds more than 10% of the units/shares of the fund and the shareholder sells its shares/units less than 6 months following the acquisition.

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