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The Luxembourg Specialised Investment Fund

Considering the advantages of this Luxembourg collective investment scheme.

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The Luxembourg Specialised Investment Fund (SIF) was introduced into the Luxembourg legal system by the law of 13 February 2007, on specialised investment funds (the Law). This vehicle, which can be created and subscribed to by well-informed investors (a concept which encompasses high-net-worth individuals), combines unique features, such as: an attractive regulatory and tax regime, a flexible investment policy and responsiveness to market conditions.

Scope of eligible investors

The scope of eligible investors in a SIF covers well-informed investors, i.e. institutional investors, professional investors and any other investors, who confirm in writing that they adhere to the status of well-informed investors, and either invest a minimum of EUR125,000 in the SIF, or benefit from an assessment made by a credit institution, an investment firm or a management company, certifying their capability to appraise the contemplated investment and the risks associated thereto.

This means that sophisticated retail or private investors are allowed to invest in SIFs. In practical terms, this also means that an investor will qualify as a well-informed investor if he/she adheres to the status (this can be done simply by way of a formal engagement letter) and invests the minimum amount specified above in the structure. Current Luxembourg practice shows that the assessment referred to above will be difficult to obtain from a credit institution, an investment firm or a management company.

Scope of eligible assets

The scope of assets in which a SIF may invest is unlimited. The SIF regime may therefore be adopted by vehicles investing in any type of asset and pursuing any type of investment strategy. In addition, the Law does not outline any specific investment restrictions (unlike for standard undertakings for collective investment or even venture capital funds), which adds to the flexibility of the structure, although the principle of risk-spreading applies.

This latter principle should be borne in mind when drafting the investment policy of the SIF and an investment in the shares of a single issuer will not be considered as sufficiently diversified by the CSSF (the Luxembourg supervisory authority), hence the necessity to consider additional investments.

The CSSF has issued circular 07/309 relating to risk-spreading in the context of SIFs. This states, *inter alia*, that a SIF will not be allowed to invest more than 30 per cent of its assets or subscription commitments in securities of the same nature, issued by the same issuer, and that short sales on securities of the same nature, issued by the same issuer, may not exceed 30 per cent of the SIF's assets. In addition, when using financial derivative instruments, the SIF must ensure, via appropriate diversification of the underlying assets, a similar level of risk-spreading.

Corporate structure and optional regime

A SIF may be created under the form of a contractual structure with management company (fonds commun de placement, FCP) or under that of a corporate type fund (*société d'investissement à capital variable* - SICAV - or *société d'investissement à capital fixe* - SICAF).

Whatever the type of structure, it is possible to create a SIF with multiple sub-funds, each of which is linked to a specific portfolio of investments, and with different share classes. In this respect, the Law provides for the ring-fencing principle, according to which the assets of a sub-fund are exclusively available to satisfy the rights of investors, who have invested in such sub-fund, and the claims of creditors, which have arisen in relation to such sub-fund. This principle applies in all cases, unless a specific clause providing otherwise has been inserted into the SIF's constitutional documents.

It is also possible to opt for either an open-ended or closed-ended SIF (this qualification has an impact on the ability of the investor to apply for redemption of shares).

The submission to the SIF regime is optional. This means that the documentation of the SIF, and in particular its articles of incorporation and prospectus (or management regulations), should clearly specify that the investment vehicle is governed by the Law. In the absence of such express submission, the vehicle could be considered as a mere unregulated company governed by the general provisions of Luxembourg company law.

Capital requirements and assets under management

The minimum capitalisation of a SIF must amount to EUR1,250,000. Such minimum must be reached within 12 months of the authorisation of the SIF by the CSSF.

Although the Law's only requirement is the minimum capital referred to above, Luxembourg custodian banks recommend that SIFs have assets under management of at least EUR20 million.

Such minimum amount, which should be reached shortly after the SIF has commenced trading, is usually required to prevent either: the assets from falling below the minimum capital requirement, which may occur should the SIF be invested in securities that have substantially depreciated, or to prevent the SIF's performance from being impaired, through the payment of all required fees relating to the creation and administration of the vehicle.

Other salient features include the following:

- The SIF may commence trading before the authorisation has been granted by the CSSF, provided that an application for authorisation is filed with the CSSF within one month following the SIF's creation.
- The Law does not contain any restrictions as regards distribution of dividends. What is required, however, is compliance with the minimum capital principle.
- The intervention of a financial institution as promoter is not required. SIFs can therefore be incorporated by an individual or group of individuals.

- The investment manager of a SIF is not subject to the approval of the CSSF. However, the directors who formally represent the SIF (i.e. the Board of Directors in the case of a public limited company) must be approved by the CSSF. Their Curricula Vitae, dated and signed, should be provided, along with the authorisation request. Individuals may act as investment managers of the structure, but the CSSF tends to require the presence of a legal entity as investment manager when the structure carries out certain types of investments, such as futures.
- The appointment of a custodian bank is compulsory. Such custodian should have its registered seat in Luxembourg, or be the Luxembourg branch of a credit institution having its registered office in another member state of the European Union.
- The Law does not impose precise rules as regards issue and redemption of securities. Shares may therefore be issued at a predetermined price (as opposed to at net asset value for standard undertakings for collective investment) and repurchased below their net asset value.
- A Luxembourg independent auditor should be appointed to certify the annual accounts of the SIF.
- Annual reports should be published six months after the expiration of the periods to which they relate. Their minimum content is provided for in the appendix to the Law and remains fairly general. Semi-annual reports are not required.

Tax treatment of the SIF itself

SIFs are subject to an annual subscription tax of 0.01 per cent. This tax is determined on the basis of the total net assets, valued at the end of each calendar quarter. Some exemptions from the subscription tax are available for investments made by SIFs in other Luxembourg undertakings for collective investment subject to the subscription tax, such as certain monetary funds and certain pension pooling funds.

The capital duty originally fixed at EUR1,250 was abolished in January 2009.

SIFs are exempt from corporate income tax, net wealth tax and municipal business tax. Subject to certain provisions of Luxembourg law, distributions made by SIFs to their investors are exempt from withholding tax.

Tax treatment of Luxembourg resident shareholders

For corporate resident investors, profits and capital gains are taxable at a rate of 28.59 per cent. Individual resident investors are subject to income tax at the progressive ordinary rate (with a maximum of 38.95 per cent).

Tax treatment of Luxembourg non-resident shareholders

Income derived by Luxembourg non-resident shareholders is not subject to taxes in Luxembourg, unless the SIF's units are sold or exchanged within six months of their acquisition, and represent more than 10 per cent of the SIF's capital.

Conclusion

The SIF is a lightly regulated and tax efficient fund, which offers an onshore alternative for consideration (as compared to traditional offshore jurisdictions, such as the Cayman Islands or the BVI) when deciding on a jurisdiction for setting up a fund, and the type of vehicle to use.

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