

Luxembourg Specialised Investment Funds

In February 2007 Luxembourg introduced a law on specialized investment funds (SIF). This regime has attracted significant interest, and as of late September 2009 some 900 funds have been set up under it. Below we set out the main features of a SIF and its operations.

Definition

A SIF is any undertaking for collective investment set up in Luxembourg subject to the principle of risk-spreading and accordingly qualifies as a UCI and that has specifically opted into the regime by mentioning the SIF regime in its constitutive documents (articles of incorporation or management regulations) or offering documents.

Eligible Investors

SIFs are open only to well-informed investors. These are defined by law to be an institutional investor, a professional investor or any other investor who meets certain conditions.

Investment Restrictions

A SIF is not subject to any restrictions in respect of investment strategy, asset classes or geography. It is subject to limited risk spreading requirements, primarily that any investment, be it long or short, may not represent more than 30% of its assets.

Legal Forms

A SIF can be a common contractual fund (FCP) or of a corporate type.

Authorisation and Supervision

SIFs are subject to supervision and authorisation by the Luxembourg regulator, the CSSF. When setting up a SIF, the CSSF must approve both the prospectus and the choice of directors and custodian. However, it is not necessary to obtain this approval prior to launch,

but it must be done in the month following the launch date.

There is no verification or authorisation of the promoter, the fund manager, investment advisor etc.

If the SIF is structured as an FCP, then its management company must be authorised by the CSSF.

Capital

Depending on its legal form, SIFs may be financed through a variety of equity, debt and hybrid instruments.

The subscribed share capital of any corporate type SIF, increased by the share premium, must reach €1.25 million no later than 12 months following the CSSF authorisation.

Within the same timeframe, the net assets of a FCP-structured SIF must reach €1.25 million.

Redemptions of shares or units in an SIF are not subject to any restrictions described in law other than that the minimum share capital or minimal net asset amount requirement of €1.25 million remains fulfilled following cancellation of shares or units.

Custodian, Auditor and Administrator

Custodian - A SIF has to entrust the custody of its assets to a Luxembourg based custodian.

Custody of the assets is to be understood in the sense of "supervision" which implies that the custodian always knows how the assets of the SIF are invested and where and how these assets are available. Physical safekeeping the assets can still be entrusted to local sub-custodians. Use of a prime broker by a SIF is subject to approval and supervision by its custodian.

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Auditor - The annual accounts of a SIF must be audited by a Luxembourg independent auditor.

Administrator - A SIF must have its central administration in Luxembourg. Central administration's responsibilities include calculation of the NAV and investor transactions. Typically, this is outsourced to a specialized local provider, such as Praxis Luxembourg S.A.

Other Requirements

SIFs must publish a prospectus or similar offering document which requires approval from the CSSF

SIFs must issue an annual report for each financial year within six months from the end of the financial year to which it relates. They are not required to publish semi-annual reports or prepare consolidated financial statements.

Luxembourg Taxation

SIFs are exempt from Luxembourg income tax. SIFs are not subject to withholding tax on dividend distributions, liquidation proceeds, or interest payments save where the SIF is structured as a FCP.

SIFs are subject to an annual subscription tax at a rate of 0.01%, calculated and payable in quarterly instalments on the basis of the total net asset value. Exempted from the calculation base for this tax is that portion of assets invested in other Luxembourg UCIs subject to this tax, certain institutional cash funds and pension pooling funds.

SIFs are qualified as a taxable person for VAT purposes.

Investors Taxation

For foreign investors without a permanent establishment or permanent representative in Luxembourg profits derived from a SIF are in principle not taxable in Luxembourg.

Praxis Luxembourg SA Services

Praxis Luxembourg S.A. offers a full range of fund formation and administration services for SIFs that include:

- assistance/advice on set-up of the fund
- commitments, capitals and distributions
- subscriptions and redemptions
- investor due diligence
- restriction checking
- compliance
- provision of directors
- calculation of net asset value
- preparation of financial statements
- fee and expense calculation and payment
- regulatory and statutory returns
- board meetings and minutes
- subscription tax returns and payment

In addition, if the fund requires underlying Luxembourg special purpose vehicles for tax or other reasons Praxis Luxembourg will be able to provide a full package of services to these as well.

Contact

To find out how Praxis can assist you with fund formation and administration contact: Robert Kimmels at robert.kimmels@praxisgroup.lu, telephone +352 621 285 607 or Chris Gambrell at chris.gambrell@pfs.gg, telephone +44 (0) 1481 737684.