



CHEVALIER & SCIALES  
LUXEMBOURG LAW FIRM

# Luxembourg specialised investment fund (SIF)

January 2022



## INVESTMENT FUNDS

*'Independent business law boutique Chevalier & Sciales provides 'solution-oriented' advice to managers, promoters and investors across a range of UCITs and alternative investment funds-related matters. Founding partner Olivier Sciales excels in the structuring and implementation of UCITS and SIF funds and is appreciated for his ability 'to anticipate clients' needs and to easily drive the client to the safest solution, even in the most complex and stressed situations.'*

*'The team is very responsive and well-organised.'*

*'The legal products provided are always precise, clear and exhaustive; the client always receive solution-oriented advice with high accuracy.'*

## BANKING, FINANCE & CAPITAL MARKETS

*'Although the firm is undoubtedly best known for its investment funds expertise, Chevalier & Sciales also handles capital markets and securitisation work. Rémi Chevalier is the main contact.'*



*'Well-positioned to handle alternative funds, whether first-time managers or historical players, the firm advises on time-to-market vehicles with a high demand for RAI Fs and SCSps. Concerning asset classes, Chevalier & Sciales practice covers a diversity of assets, such as PE and real estate and is increasingly active in relation to crypto, hedge and debt funds.'*



*'Chevalier & Sciales Litigation practice with values of certain litigations exceeding a billion US dollars, has successfully created a strong and reputable presence in the Luxembourg courts as well as abroad. Combining creative litigation strategies with business practicality, the boutique consistently resolves high-stake disputes for private entities, companies, and investors in sectors such as investment funds and private banking.'*

## OTHER 2022 RANKINGS:

*Private equity  
Restructuring & Insolvency  
Mergers & Acquisitions  
Banking & Finance*



# CONTENT TABLE

01 INTRODUCTION	PAGE 5
02 WHAT IS THE BACKGROUND TO THE ESTABLISHMENT OF THE SIF REGIME?	PAGE 6
03 WHO MAY INVEST IN A SIF?	PAGE 6
04 WHAT ARE THE AUTHORISATION REQUIREMENTS FOR A SIF?	PAGE 7
05 WHAT ARE A SIF'S SERVICE REQUIREMENTS?	PAGE 8
06 WHAT INVESTMENTS MAY A SIF UNDERTAKE?	PAGE 8
07 WHAT LEGAL FORMS MAY A SIF ADOPT?	PAGE 9
08 CAN SIFS HAVE MULTIPLE SUB-FUNDS?	PAGE 9
09 WHAT CORPORATE RULES APPLY TO A SIF?	PAGE 10
10 HOW TO HANDLE RISK MANAGEMENT, CONFLICTS OF INTEREST AND THE DELEGATION IN A SIF?	PAGE 10
11 WHAT TAXATION IS A SIF SUBJECT TO?	PAGE 11
12 WITH WHAT DOCUMENTATIONS AND REPORTING REQUIREMENTS MUST A SIF COMPLY?	PAGE 11
13 WHAT IS THE PRACTICAL USE OF A SIF?	PAGE 12
14 CONCLUSION	PAGE 12
15 HOW CAN WE ASSIST YOU?	PAGE 13



## INTRODUCTION

The Specialised Investment Fund is a lightly regulated and tax-efficient regulatory regime aimed mainly but not exclusively at promoters and managers of alternative investment products including hedge funds, private equity funds, real estate and infrastructure funds, but also financial advisers and private investment managers, family offices and high net worth individuals. At the end of November 2021, 1,376 SIFs with total assets under management of €694.254bn were authorised by the Luxembourg regulator, the Financial Sector Supervisory Authority (CSSF).

The SIF regime was established in 2007 to offer fund promoters and managers an onshore, regulated alternative to traditional offshore fund jurisdictions such as the Cayman Islands, British Virgin Islands and Bermuda when deciding on the jurisdiction in which to set up a fund and the type of fund vehicle to use.

The SIF regime offers broad flexibility in terms of eligible assets and investment strategy, as well as less restrictive rules on eligible investors than earlier regimes designed for institutional investors. SIFs may be created as investment companies with variable capital (SICAVs), investment companies with fixed capital (SICAFs) or contractual funds (FCPs), and take any legal form available under Luxembourg law.

SIFs that qualify as alternative investment

funds and that are managed by an EU authorised AIFM benefit from the European passport allowing to market fund's shares to professional investors. The Luxembourg law of 21 July 2021 which transposes Directive EU 2019/1160 on Cross border distribution of Collective investment schemes and the directly applicable cross border funds regulation (CBRD), aim to enhance the cross-border distribution of alternative investment funds by harmonising rules governing the launch and discontinuation of marketing, retail marketing and the content and supervisory review of marketing communications. It notably creates a new harmonised regulatory regime defining and implementing a notification process for pre-marketing of AIFs throughout the EU. Pre-marketing was not defined in the original AIFMD and was left to rules and guidance applicable in individual member states, leading to inconsistencies and uncertainty.



## WHAT IS THE BACKGROUND TO THE ESTABLISHMENT OF THE SIF REGIME?

The implementation of the European Union's UCITS III directive in Luxembourg through the collective investment legislation on December 20, 2002 resulted in the replacement of the previous legal framework for collective investment undertakings, dating back to the law of March 30, 1988. This resulted in the need to create a new regulatory framework for funds aimed at institutional and other sophisticated investors before the expiry of a transition period in February 2007.

The legislation of February 13, 2007 introduced a new investment vehicle to Luxembourg in the Specialised Investment Fund, providing a more flexible framework than the previous regime for institutional funds under Part II of the December 2002 legislation, as well as broadening the potential investor base.

The SIF legislation was amended just over five years later by the law of March 26, 2012, adapting the regime to European and international developments regarding regulation and transparency of alternative investments, including the EU's Directive on Alternative Investment Fund Managers, in areas including delegation, risk management and the handling of actual or potential conflicts

of interest.

The revisions also aligned the SIF rules in some areas with the UCITS IV directive and the Luxembourg legislation of December 17, 2010 transposing it into national law. The SIF regime was also modified in some areas by the law of July 12, 2013 adopting the AIFMD directive in Luxembourg.

## WHO MAY INVEST IN A SIF?

The SIF legislation offers a broader scope of application regarding investor eligibility than the 1991 law on institutional funds that it replaced, replacing the notion of institutional investors with that of well-informed investors.

A well-informed investor is defined as:

- Any institutional investor;
- Any professional investor; or
- Any other investor that confirms in writing that they are a well-informed investor and either invests a minimum of €125,000 in the SIF or is certified by a credit institution, investment firm or management company (as defined by EU directives) as possessing expertise, experience and knowledge to conduct an adequate appraisal of an investment in the SIF. These restrictions do not apply to directors and other individuals involved in management of the SIF.

The SIF Law therefore extends access to these funds beyond institutional and professional



investors to other investors capable of taking an informed decision to accept a lower level of protection than that offered to retail investors through their status, wealth, experience or understanding of the risks investment in a SIF can entail.

## WHAT ARE THE AUTHORISATION REQUIREMENTS FOR A SIF?

SIFs must receive approval from the regulator before they can be launched, based on approval of its constitutional documents, of its managers or directors, and of its choice of depositary bank.

Managers and directors (who do not need to be Luxembourg residents) must be able to demonstrate their professional qualifications and experience, good standing and reputation. However, there is no requirement for approval of the promoter – indeed, there is no requirement for a promoter at all.

Unlike in the case of UCITS funds, the promoter does not have to meet a minimum capital requirement.

There is no requirement either for approval of the investment manager, but the CSSF does require notification of the persons responsible for management of the SIF's investment

portfolio, so that the regulator can ensure they are of good reputation and have the experience necessary to manage the type of alternative investment strategy followed by the SIF. Any changes in the identity of the fund's portfolio managers must also be reported to the regulator.

The CSSF's approval is required for any substantive change made to the SIF's offering documents, such as the name of the fund or sub-funds, the replacement of the custodian, administrator, auditor or investment manager, the creation of new sub-funds or a significant change to its investment policy. The regulator may withdraw authorisation for one or more sub-funds of a SIF while maintaining the authorisation for other sub-funds within the same structure.

The 2012 amendments to the legislation stipulate that the activity of management of a SIF must comprise at a minimum management of the investment portfolio. This excludes from the SIF regime passive funds that seek to create value solely by the long-term holding of assets and to create a distinction between SIFs and private wealth management companies governed by Luxembourg's law of May 11, 2007, but not private equity or real estate funds.



## WHAT ARE A SIF'S SERVICING REQUIREMENTS?

A Luxembourg depositary bank, administrator and auditor must be appointed. The depositary bank only needs to know at any time of how the assets of the SIF are invested and where, and how the assets are available. Unlike with other Luxembourg funds, the depositary (unless the SIF is managed by an authorised alternative investment fund manager and is subject to the full scope of the country's AIFM legislation) does not have to monitor that the sale, issue, redemption and cancellation of shares or units are carried out in accordance with the law and the articles of incorporation, or that the fund's income is allocated in accordance with the management regulations or the articles of association.

## WHAT INVESTMENTS MAY A SIF UNDERTAKE?

The SIF regime offers a broad scope of eligible assets; any type of asset can be held by a SIF and any type of investment strategy can be pursued. Assets may include equities, bonds, derivatives, structured products, real estate and shareholdings in unlisted companies.

There are no leverage restrictions.

The approach to risk spreading is more flexible than for other types of investment scheme, under regulatory guidelines set out in CSSF Circular 07/309 of August 3, 2007, which states that in principle, a SIF may not invest more than 30% of its assets or commitments in securities of the same type issued by the same issuer, subject to certain exceptions. Equally, in principle short sales may not result in the SIF holding a short position in securities of the same type from the same issuer representing more than 30% of its assets.

This restriction does not apply to 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, nor to investment in other funds subject to risk-spreading requirements at least comparable with those applicable to SIFs. Each sub-fund of an umbrella structure is considered as a separate issuer as long as the liabilities of individual sub-funds toward third parties are segregated.

The SIF must ensure a similar level of risk-spreading when investing through derivatives via appropriate diversification of the underlying assets. The counterparty risk in an OTC derivative transaction must, where applicable, be limited with regard to the quality and qualification of the counterparty.

In principle, these guidelines apply to all SIFs. The CSSF may grant exemptions where justified, although in practice it does not permit a higher level of concentration than 40%. In



certain cases, the regulator may require the SIF to comply with additional investment restrictions.

The revised SIF law follows the 2010 fund legislation in allowing one sub-fund of a SIF to invest in another, clarifying that the rules set out in Luxembourg's 1915 company law regarding a company's investment in its own shares do not apply to SIFs. Sub-funds of the same SIF may not cross-invest in each other, and voting rights of shares held by one sub-fund in another are suspended.

Furthermore, the CSSF clarified in its FAQ on virtual assets (UCIs) that an AIF with an authorised AIFM may invest in virtual assets directly or indirectly as long as the fund's shares or units are marketed only to professional investors, and the AIFM obtains an extension of authorisation from the CSSF for the new investment strategy.

## WHAT LEGAL FORMS MAY A SIF ADOPT?

A SIF can be created in different forms, notably as a contractual fund (fonds commun de placement or FCP), an investment company with variable capital (Société d'investissement à capital variable or SICAV) or an investment company with fixed capital (Société d'investissement à capital fixe or SICAF). The FCP has no legal personality and must be managed by a management company, while a

SICAV or SICAF can be either self-managed or have an external management company.

A SICAV or SICAF may adopt most of the corporate and partnership forms available in Luxembourg, including public limited liability company (société anonyme or S.A.), private limited liability company (société à responsabilité limitée or S.à.r.l.), corporate partnership limited by shares (société en commandite par actions or S.C.A.), common limited partnership (société en commandite simple or SCS), special limited partnership (société en commandite spéciale or SCSp), or co-operative company organised as a public limited liability company (société coopérative organisée comme une société anonyme or SCoSA).

This flexibility of form and structure means, for example, that a private equity fund can be established with a structure and attributes familiar to managers and investors familiar with the Anglo-Saxon limited partnership model.

## CAN SIFS HAVE MULTIPLE SUB- FUNDS?

These entities may be set up as a single fund or as an umbrella fund with multiple sub-funds, each with a different investment policy, if this is authorised by the SIF's constitutional documents, denominated in different

currencies, available to different types of investor or subject to different liquidity rules. A fund or sub-funds may have an unlimited number of share classes, according to the needs of the promoter or investors.

Unless otherwise provided for in the SIF's constitutional documents, sub-funds within an umbrella fund are governed by the principle of compartment segregation, which means that each sub-fund is treated as a separate entity making distinct transactions, and the rights of creditors are applicable only to the particular sub-fund incurring the liabilities in question.

## WHAT CORPORATE RULES APPLY TO A SIF?

The SIF legislation sets a minimum capital requirement of €1.25m, which must be reached within the 12 months following authorisation by the CSSF, compared with six months for other funds governed by the 2010 fund legislation. An S.A. must have a minimum capital of €30,000 on incorporation and an S.à.r.l €12,000.

At least 5% of the value of each share must be paid up, in cash or in kind, upon subscription. SIFs do not have to comply with any debt/equity ratio, nor are they subject to issue, redemption or distribution restrictions, but the net assets or capital may not fall below €1.25m.

## HOW TO HANDLE THE RISK MANAGEMENT, CONFLICTS OF INTEREST AND THE DELEGATION IN A SIF?

The revised law requires SIFs to put in place systems to monitor, measure and manage the investment risk of its individual positions and their contribution to the portfolio's overall risk profile. They must also be structured and organised to minimise the risk of conflicts of interest that could arise between the SIF and any person involved in its business activity, or linked to it directly or indirectly, that could have a negative impact on investors' interests; procedures must be drawn up to manage such conflicts as do arise.

The delegation of tasks and functions to third-party providers will not affect regulation of the fund. As a rule, external providers of portfolio management services to the SIF must be approved for that function and subject to prudential regulation, although the CSSF may grant exemptions to this requirement.

The board of directors of the SIF must be able to ensure that the delegated provider is qualified and capable and must retain ultimate control over the fund's activities. Delegation should not create conflicts of interest – investment management may not be delegated to the fund's custodian, for instance – and the



delegation of functions must be made clear in the fund's offering documents.

## WHAT TAXATION IS A SIF SUBJECT TO?

SIF promoters have a choice between a tax-transparent SIF, set up in the form of an FCP, or a non-tax transparent SIF, set up in the form of a SICAV or SICAF. SIFs are subject to an annual subscription tax (taxe d'abonnement) of 0.01% on their net asset value, calculated at the end of each quarter, compared with a rate of up to 0.05% for other types of fund. The tax does not apply to SIFs investing in other funds that are subject to the subscription tax, that invest only in money-market instruments, or that are pension pooling schemes.

They are not subject to corporate income tax nor net worth tax in Luxembourg, and they enjoy an exemption from VAT on management fees. Non-resident SIF investors are not subject to Luxembourg capital gains tax; distributions are generally exempt from withholding tax.

SIFs may enjoy access to the benefits of certain double taxation avoidance treaties signed by Luxembourg that cover investment companies with fixed or variable capital.

Furthermore, the Luxembourg law of 19 December 2020, provided for a reduction in subscription tax by progressively reducing the tax from the standard rate of 0.05% of assets

to just 0.01% for funds in which at least 50% of assets are classified as sustainable.

## WITH WHAT DOCUMENTATION AND REPORTING REQUIREMENTS MUST A SIF COMPLY?

The SIF must issue an offering document and an audited annual report. The offering document, which may be a private placement memorandum, offering memorandum or prospectus, is not subject to minimum content requirements, but it must include all information necessary to enable investors to make an informed judgment about the proposed investment and in particular its risks. It is recommended that the offering document meet all legal requirements imposed on prospectuses.

SIFs are exempt from the obligation to consolidate their accounting. Valuation of the assets is based on fair value. There is no obligation to publish a half-yearly report, only an annual one, which must be provided to investors and the CSSF within six months of the end of the period to which it relates. A SIF does not have to publish its net asset value.



## WHAT IS THE PRACTICAL USE OF A SIF ?

As result of its flexibility, the SIF offers the possibility to be used to structure a hedge fund, private equity fund, venture capital fund, real estate fund, crypto fund, infrastructure fund, distressed debt fund, Islamic finance fund, socially responsible investment fund, tangible assets fund, and any other type of alternative fund.

## CONCLUSION

The SIF legislation offers a regime for the establishment of onshore, regulated alternative funds that has been tried, tested and refined over more than twelve years, and that is now aligned with the requirements for regulation of alternative managers, and, indirectly their funds, under the AIFM Directive as of July 22, 2013.

The establishment of a SIF does not require approval of the promoter or of the investment manager. Even with prior authorisation now required, the SIF regime offers a light-touch regulatory regime with no obligation to publish the fund's NAV.

With the broad flexibility available to promoters regarding the fund's investment policy and the range of qualifying options opening up a wide investor base, the SIF offers a well-established vehicle for promoters targeting European institutions and individuals while offering investors sound and effective oversight.



## HOW CAN WE ASSIST YOU?

Our investment management team:

- Helps you find the most suitable investment vehicle to meet your requirements and your goals from a marketing, regulatory, legal and tax perspective.
- Introduces you to suitable service providers to meet your requirements, namely custodian bank, AIFM, administration agent, registrar and transfer agent, and auditor.
- Provides assistance with the establishment of the fund, including drafting of the private placement memorandum, assistance with the incorporation of the fund and its general partner, and regulatory filings with the CSSF.
- Assists with the conversion of offshore funds into SIFs.
- Provides corporate support services throughout the lifetime of the fund, including amendment of fund documentation, restructuring, or launching and closing of sub-funds.
- Provides help with changes of service providers including the custodian bank, fund administrator, auditor or registrar and transfer agent.
- Assists with the listing of the fund's shares or units on the Luxembourg Stock Exchange's regulated or EURO MTF market.
- Provides support with the registration of the fund in other jurisdictions, in co-operation with local service providers.

- Provides advice on AIFMD-related issues.
- Provides advice to fund promoters on local private placement rules for marketing their funds in Luxembourg.
- Keeps you up to date on the latest legal and regulatory developments.



### **OLIVIER SCIALES**

Head of Investment Management

Partner

Tel: +352 26 25 90 30

[oliviersciales@cs-avocats.lu](mailto:oliviersciales@cs-avocats.lu)



### **CECILE RECHSTEIN**

Investment Management

Partner

Tel: +352 26 25 90 30

[cecilerechstein@cs-avocats.lu](mailto:cecilerechstein@cs-avocats.lu)



**CHEVALIER & SCIALES**  
LUXEMBOURG LAW FIRM

Chevalier & Sciales is a Luxembourg law firm established 16 years ago with specialist expertise in investment management, corporate transactions, banking and finance as well as high-level litigation and dispute resolutions. Our dynamic litigation and transaction teams have an international reputation for bringing together excellence and intellectual rigour with a practical and business-minded approach in serving our clients.

Our aim is to offer a one-stop shop service to our clients and to provide tailored solutions to meet their needs, responsively and cost-effectively. Our practice areas are structured to ensure a comprehensive understanding of our clients business and markets. We work with recognised tax experts and other service providers to provide you with the assistances and services you require through every aspect of your transactions and business.

Chevalier & Sciales is recommended and listed in the area of investment funds, litigation and dispute resolution and banking and finance.

#### **LUXEMBOURG**

36-38 Grand-Rue  
L-1660 Luxembourg  
Grand Duchy of Luxembourg

Tel : +352 26 25 90 30  
Fax : +352 26 25 83 88

[www.cs-avocats.lu//](http://www.cs-avocats.lu//)

#### Disclaimer

The information contained herein is of general nature and is not intended to address the circumstances of any particular individual or entity. Although we have taken care when compiling this document, there can be no guarantee that such information is accurate at the date it is received or that it will continue to be accurate in the future. No one should act on such information without appropriate professional advice after a thorough examination of the particular situation. Chevalier & Sciales does not accept any responsibility whatsoever for any consequences arising from the information in this publication being used.