S.I.F. (Specialized Investment Funds) in Luxembourg: An opportunity for the fund industry & the wealth management
Legal Aspects

- **Regulated vehicle** designed for investments in private equity and venture capital;

- May be structured as a **SICAV** (variable capital) or **SICAF** (fixed capital);

- **Corporate forms:**
  - Public limited company (S.A);
  - Limited liability company (S.à r.l.);
  - Partnership Limited by shares (S.C.A);
  - Common Limited Partnership (S.C.S);
  - Special Limited Partnership (S.C.Sp);
  - Cooperative in form of public limited company;

- Contractual form: FCP acting by management company;

- Creation of **compartments and or cross sub-funds** (separate portfolios) under umbrella structure;

- Possibility of classes of shares;

- **Authorisation and supervision** of the Luxembourg supervisory authorities ("C.S.S.F.");

- **Registered office, control and central administration** (agent appointment subject to prior consent from the C.S.S.F. in Luxembourg);

- Company name shall include the identifier “**SIF**” (e.g. “SICAV-SIF”);

- **Directors** shall comply with honorability criteria, have professional sustainability and be authorized by the C.S.S.F.;

- **Investment managers** and delegation of portfolio management are subject to C.S.S.F consent;

- Independent auditor requirement;

- **Custody** – depositary must be a Luxembourg based bank (prior consent from C.S.S.F.);

- **Minimum capital**: EUR 1,250,000 to be reached within 12 months following the C.S.S.F initial authorisation (only 5% minimum at incorporation);

- **Risk management policy** to put in place for measuring and detecting the risks related to the portfolio activities and for complying with conflict of interests requirement;

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**SIF Law dated 13 February 2007, as amended from time to time**
**AIF requirement (if applicable):**

SIFs qualifying as AIFs (SIF AIFs) pursuant to the Luxembourg law dated 12 July 2013, shall appoint an AIFM (Alternative Investment Fund Manager) duly authorized by the Luxembourg supervisory authorities (C.S.S.F.). They may either appoint an external AIFM or choose being internally managed. In this last case, the SIF AIF will itself be considered as the AIFM. As a consequence, all of the AIFM regulatory obligations applying to the AIFM will have to be complied by the SIF AIF;

The Luxembourg supervisory authorities have issued several circulars concerning AIFM status, authorisation or registration process (see details on [www.cssf.lu](http://www.cssf.lu));
**Eligible Investors:**

Shareholders shall be qualified as “Qualified Investors” which means:

- Institutional investors;
- Professional investors;
- Private investors qualified as well informed investors since they proof their status, invest at least EUR 125,000 or provide certification from a bank or MiFID firm attesting their experience & knowledge of the risk associated with investing in a SICAR;

- Investors contributions by way of **capital and/or debt**;
- Flexible rules with respect to **issue and redemption** of shares/stock;
- Investment policy: a SIF can invest in all types of assets (traditional or alternative), **without borrowing limitations**, by complying with risk spreading criteria;
Features

- Eligible Investor 1
- Eligible Investor 2
- Eligible Investor ...

SIF (SICAV-SIF) Luxembourg

- Comp. 1
- Comp. 2
- Comp. 3

SPV

- Asset 1
- Asset 2
- Asset 3
- Asset 4

Central Administration
- Custodian Banks
- External Auditor
- Registrar & Transfer Agent
- Domiciliation Agent

Global Advisor
- General Partner
- External AIFM

Risk Management Officer
- Investment Manager
- Valuation
Contractual freedom

- The limited partnership agreement („LPA“) governs the terms and conditions between the investors (the „Partners“) and the manager (the „GP“), the governance, the contributions (capital, bridge financing), the distributions (waterfall), type of financial instruments (securities or not), entry/exit of Partners, GP powers and duties, defaulting investors rules, advisory & supervisory board (if any), investment strategy and financial limits. The Luxembourg corporate law dated 10 August 1915 as amended (the „Company Law“) is applicable if the LPA is silent.

- Regulated entities shall integrate and comply with the terms and conditions of the SIF law dated 13/02/2007 („SIF Law“) and the SICAR law dated 15/06/2004 („SICAR Law“).

Confidentiality

- No disclosure of the Partners, no reference to their commitment, no disclosure of the LPA rules. Only the denomination, the GP designation and its powers shall be published to the Luxembourg Trade Register.

- No filing of the annual accounts but regulated entities shall report to the Luxembourg supervisory authorities (C.S.S.F.).
Fast set up/implementation

The LP or the SLP may be incorporated by way of private deed (no Notary requirement) or public deed (same advantage for disclosure and registration);

Assets protection for SLP

Any investment completed by a SLP (i.e. without legal personality) is registered in the name of the SLP and not in the name of the GP or the Partners. Creditors of the Partners cannot have any recourse against the SLP’s assets.
Accounting rules & Valuation

If unregulated

- Luxembourg GAAP (historical cost or fair value option) or IFRS or any accounting framework defined in the LPA (US GAAP, UK GAAP; any tailored GAAP for complying with GP and investors requirements).
- Value of investments (methodology) may be freely determined in the LPA.
- Audit and Consolidation could be required if criteria of the Company Law are met.

If regulated

- Luxembourg GAAP (historical cost or fair value option) or IFRS, AND any regulatory requirement related to the SIF Law and the SICAR Law.
- Value of investments may be freely determined in the LPA but shall comply with the SIF Law and the SICAR Law.
- Exemption for consolidation.
- External auditor shall be appointed and duly approved by C.S.S.F.
Tax

Income tax (CIT), wealth tax (NWT) and municipal tax (MBT)

- Full tax transparency and neutrality if (i) GP organized under the form of a Luxembourg company owns less than 5% of the partnership interest, and (ii) LP or SLP is strictly limited to private wealth management, including alternative investment fund activities (no business income model, no commercial activity performed on a permanent basis).

  ⇒ No CIT, no NWT, no MBT.

- Dividends distributed or interests (subject to rules arising from EU Directive 2003/48) paid by LP or SLP (unregulated or regulated) to the Partners are not subject to withholding taxes in Luxembourg.

VAT

- If the LP or SLP qualifies with the investment vehicle status as governed by art. 44.1.d) of the Luxembourg VAT law, it would be exempt from VAT. Since some cases could lead to different interpretation (e.g. debt fund activities, non performing loans management) and eventual VAT obligations, each structure shall be carefully analysed from the VAT view point prior setting up the proposed activities.

- Advisory and or management services provided to VAT exempted LP or SLP, shall be exempted of VAT as a consequence.
**Other specificities**

- Carried interest: asset managers will be very interested by the flexibility and the tax efficiency of the LP or SLP for structuring carried interest scheme or management incentive program;

- Compartments: if not regulated, a LP or SLP cannot be divided in several compartments but could be structured in a efficient way for complying with the promoters’ requirements.
“Luxembourg is the second largest investment fund centre in the world after the United States, the premier captive reinsurance market in the European Union and the premier private banking centre in the Eurozone. The financial sector is the largest contributor to the Luxembourg economy. From its origins as a Euroloan centre, the city subsequently developed as a private banking centre and then, from the 1980s, as a leading domicile for investment funds. The success of the financial centre is founded on the social and political stability of the Grand Duchy and on a modern legal and regulatory framework that is continuously updated, inspired by regular consultation between the government, the legislator and the private sector. Thus, over the years, specific regulatory frameworks have been created for alternative investment funds, venture capital investment funds, international pension funds, specialised investment funds, captive reinsurance companies, covered bond issuing banks, securitisation vehicles and family wealth management companies. This legal framework, combined with Luxembourg’s openness to the world, has attracted banks, insurance companies, investment fund promoters and specialist service providers from all over the world. The Luxembourg financial centre is characterised by a strong culture of investor protection and rigorous anti-money-laundering policies. Its specialist teams are multilingual and multicultural, with a long tradition of financial expertise and extensive knowledge of the needs of an international clientele.”

Source: www.luxembourgforfinance.lu
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Our experienced team is dealing with:

- complex and common investment policies in the alternative investment fund industry,
- a challenging corporate industry,
- diversified private client requirements, and
- a new financing sources environment

in close relationship (fast and proactive) with our clients and in accordance with an increasing regulated environment.

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