DENTONS

SIF
Specialized Investment Fund

LUXEMBOURG

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Specialized Investment Fund

Investment funds domiciled in Luxembourg are the main pillar of the Luxembourg financial market. In addition to the overwhelming success story of undertakings for collective investments in transferable securities ("UCITS"), specialized investment funds ("SIFs") have contributed to the importance of Luxembourg as a leading financial centre.

Introduction

Luxembourg's successful investment fund industry has been built on three regulated investment products, each subject to a specific law (the "Product Laws"):

- Specialized investment funds (SIFs) subject to the law of 13 February 2007 on specialized investment funds, as amended ("SIF Law").
- Investment companies in risk capital (SICARs) subject to the law of 15 June 2004 on investment companies in risk capital, as amended ("SICAR Law").
- Undertakings for collective investment (UCIs) subject to the law of 17 December 2010 on undertakings for collective investment, as amended ("UCI Law").

In addition to regulated investment products, subject to regulatory approval and ongoing supervision, the Luxembourg legal framework provides for products that are not subject to regulatory approval or direct supervision:

- Reserved Alternative Investment Funds ("RAIFs") subject to the law of 23 July 2016 on reserved alternative investment funds ("RAIF Law").
- Corporate funds (whether they qualify as alternative investment funds or not) subject to the law of 10 August 1915 on commercial companies, as amended ("Company Law").

Key features of a SIF

- Set up is subject to prior regulatory approval and ongoing supervision by the Luxembourg Financial Regulator (*Commission de Surveillance du Secteur Financier,* the "CSSF").
- Benefits from a wide range of corporate structures and attractive operative structuring features (umbrella structure, variable capital, share classes, specific tax regime).
- Can be set up in nearly all the legal forms foreseen by the Company Law.
- If managed by a fully authorized AIFM, a SIF benefits from the AIFMD marketing passport, which will allow for its Europe-wide marketing to professional investors.

Eligibility requirements

A SIF investment structure must:

- Obtain the CSSF's approval before it is launched.
- Be solely reserved to well-informed investors.
- Apply a risk diversification.
- Maintain a minimum capital of EUR 1.25 million (to be reached within 24 months after its authorization).

SIF as AIF

A SIF does not automatically qualify as an alternative investment fund ("AIF") within the meaning of the Luxembourg law of 12 July 2013 on alternative investment fund managers ("AIFM Law"). A SIF will only qualify as an AIF, if:

- It raises capital from a number of investors in view of investing it in accordance with a defined investment policy for the benefit of those investors.
- It does not require an authorization pursuant to article 5 of Directive 2009/65/EC on undertakings for collective investments in transferable securities (the "UCITS Directive").

In relation to the first point above, the European Securities and Markets Authority ("ESMA") has clarified which single investor structures, nevertheless, qualify as AIF. ESMA also states that structures with a general commercial or industrial purpose do not qualify as AIF.

If a SIF is considered as an AIF, it must be managed by an alternative investment fund manager ("AIFM").

The AIFM Law provides for two different AIFM regimes:

- The "Registered AIFM" (that applies below certain thresholds and is subject to lighter regulation).

- The "Authorized AIFM" (that requires a fully authorized AIFM).

Registered AIFM

Only a light registration process with the CSSF is required for a Registered AIFM below the following thresholds (the "AIFM Thresholds"):

- AIFMs established in Luxembourg that either directly or indirectly manage, through a company to which the AIFM is linked by common management or control, or by a substantive direct or indirect holding, portfolios of AIFs whose assets under management, including any assets acquired through use of leverage, in total do not exceed a total threshold of EUR 100,000,000.
- AIFMs established in Luxembourg which either directly or indirectly manage, through a company to which the AIFM is linked by common management or control, or by a substantive direct or indirect holding, portfolios of AIFs whose assets under management in total do not exceed a threshold of EUR 500,000,000, when the portfolios of AIFs consist of AIFs that are unleveraged and have no redemption rights exercisable during a period of five years following the date of initial investment in each AIF.

Registered AIFMs must:

- Apply to register with the CSSF,
- Provide information on certain regulatory requirements (e.g. AML/KYC),
- Provide information on the investment strategies of the AIFs that they manage at the time of registration,
- Regularly provide the CSSF with information on the main instruments in which they are trading and on the principal exposures and most important concentrations of the AIFs that they manage.

Where the Registered AIFM eligibility conditions are no longer met (i.e. when the thresholds are exceeded), the AIF must appoint an Authorized AIFM or the Registered AIFM must apply for authorization within 30 calendar days.

It should be noted that SIFs, like any AIF, regardless of their total amount of assets, may decide to appoint an Authorized AIFM (and thus fully fall under the scope of the AIFMD), although they could have opted for a Registered AIFM.

Authorized AIFM

If the AIF's assets exceed the AIFM Thresholds, the appointment of an Authorized AIFM, established either in Luxembourg or in another EU member state, is required.

The Authorized AIFM is, by virtue of law, responsible for the relevant AIF's:

- Asset management, and
- Risk management.

In addition, the AIFM may accept by delegation to become responsible for:

- Administration,
- Marketing,
- Activities related to the assets of AIFs, namely services necessary to meet the fiduciary duties of the AIFM, facilities management, real estate administration activities, advice to undertakings on capital structure, industrial strategy and related matters, advice and services relating to mergers and the purchase of undertakings and other services connected to the management of the AIF and the companies and other assets in which it has invested.

The AIFMD grants Authorized AIFMs the benefit of two "passports":

- to provide management services, and
- to market AIFs cross-border to professional investors in the EU based on a single authorization and through a regulator-to-regulator procedure (the "Marketing Passport").

Third party AIFM

Instead of requiring initiators to set up their own Authorized AIFM, the Luxembourg fund centre offers initiators a wide range of Authorized AIFMs that offer their services to third parties as a main business model. Therefore, there is (if any) only limited competition between the initiator and the AIFM and, depending on the set up, the initiator may benefit from the operational experience of the AIFM.

An initiator may, through its presence in the relevant decision bodies of the SIF (e.g. the board of a SIF or the general partner in case of a partnership), agree with the AIFM to appoint an investment manager or an investment advisor.

Prudential supervision and authorization

SIFs are subject to the CSSF's initial and ongoing authorization and prudential supervision. In addition, if they qualify as AIF, they are monitored through the AIFM and the AIFMD compliant depositary.

Prior to commencing its business activities, a SIF must obtain the CSSF's authorization. The authorization application must include, amongst others, the following detailed information:

- Issuing document,
- Incorporation/establishment document (e.g. articles of incorporation or limited partnership agreement),
- Service provider agreements (notably central administration, depositary, investment manager, investment advisor, engagement letter with the auditor, AIFM,

if applicable, and operating model (e.g. delegation and outsourcing, etc.),

- Information about asset management and distribution arrangements,
- Detailed information about the people in charge of the SIF or its general partner (GP) in case of a partnership,
- Information on the operative set up and the task allocation,
- Information about the initiator of the SIF and the reasons for setting it up in Luxembourg.

Based on the submitted information the CSSF will evaluate the project and revert with either questions/comments or the approval of the project.

If an EU-AIFM or an EU-asset manager is proposed, the CSSF will via a regulator-to-regulator request inquire on the standing of such entity with its home regulator.

Depending on the complexity of the project, the regulatory approval process may last from three to six months or even longer.

Upon obtaining the regulatory authorization, the SIF must inform the CSSF of any changes in its initial set up or in the information used to obtain the authorization. If the SIF does not file these changes, it may be held liable of a criminal offence and trigger personal fines at level of its managers or the GP, as well as potentially triggering the removal of its authorization.

Risk diversification

Generally, any type of investment strategy is permitted without any restriction whatsoever, provided that the SIF diversifies investment risks.

The risk diversification requirements are provided in CSSF Circular 07/309 on risk-spreading by SIFs:

- A SIF may not invest more than 30% of its assets or commitments in securities of the same type issued by the same issuer.
- Short sales must not result in the SIF holding a short position in securities of the same type issued by the same issuer, which represents more than 30% of the SIF's assets.
- When using financial derivative instruments, the SIF must ensure, via appropriate diversification of the underlying assets, a similar level of risk-spreading. Similarly, the counterparty risk in an over-the-counter transaction must, where applicable, be limited according to the quality and qualification of the counterparty.

A SIF may benefit from a ramp-up period of up to 48 months. During this period, a SIF may depart from the risk diversification rules.

A SIF may ensure the diversification under a look-through mechanism (e.g. master-feeder structure), but contrarily to a RAIF or a corporate fund, a SIF cannot invest without risk diversification requirements when investing solely in assets representing risk capital.

Marketing of SIFs

Once authorized by the CSSF, a SIF may distribute its units, shares or partnership interests to well-informed investors in Luxembourg. The legal framework of marketing and pre-marketing across the EU is provided for by the Regulation (EU) 2019/1156 on the cross-border distribution of funds (the "**CBDF Regulation**") and the Directive (EU) 2019/1160 on the cross-border distribution of funds (the "**CBDF Directive**").

Depending on whether a SIF is an AIF with an Authorized AIFM or not, there are different marketing solutions out of Luxembourg.

Well-informed investors

SIFs may only be offered to well-informed investors, who, according to the SIF Law, are defined as any institutional, professional, or other type of investor that has stated in writing to adhere to the status of a "well-informed" investor and invests either a minimum of EUR 100,000 in the SIF or has been subject to an assessment by a credit institution, investment firm, management company or authorized AIFM to confirm its expertise, knowledge and experience for correctly appraising an investment in a SIF.

Marketing and pre-marketing in Luxembourg

The definition of 'marketing' in article 1(9) of the AIFM Law is *"a direct or indirect offering or placement, at the initiative of the AIFM or on behalf of the AIFM of units or shares of an AIF it manages to or with investors domiciled or with a registered office in the EU"*.

Marketing within the meaning of the AIFM Law takes place when the AIF, the AIFM or an intermediary on their behalf seeks to raise capital by actively making units or shares of an AIF available for firm purchase by a potential investor.

In Luxembourg this does not require an investor to subscribe or commit. Making documentation available to prospective investors that can be used by them to formally subscribe or commit to subscribe shares or units of the AIF is considered marketing.

The presentation of draft documents or final documents prior to notification of marketing does not qualify as marketing, provided that no subscription in the relevant AIF becomes effective until and unless the CSSF has been duly notified. The presentation of such documents at the initiative of the AIF, the AIFM, or an intermediary appointed by

them shall no longer allow the benefit of reverse solicitation by the investors to whom they have been presented.

The CSSF defines pre-marketing as "provision of information or communication, direct or indirect, on investment strategies or investment ideas by an EU AIFM or on its behalf, to potential professional investors domiciled or with a registered office in the Union in order to test their interest in an AIF or a compartment which is not yet established, or which is established, but not yet notified for marketing in accordance with Article 31 or 32 of the AIFMD, in that Member State where the potential investors are domiciled or have their registered office, and which in each case does not amount to an offer or placement to the potential investor to invest in the units or shares of that AIF or compartment."

Marketing to professional investors within the meaning of the AIFMD

SIFs managed by an Authorized AIFM benefit from the AIFM's Marketing Passport, which enables the marketing of the SIF's shares, units, or partnership interests to professional investors across the EU, subject to a straightforward notification procedure between competent regulators.

Depending on the applicable regulation in the relevant marketing country, it may be possible to distribute to client types other than professional clients (e.g. retail, semi-professional, etc.), as long as these qualify as well-informed investors.

In case of a public offer (listing) of a closed-ended SIF in the EU, it is necessary to consider, and apply as appropriate, the marketing requirements under the so-called "Prospectus Regulation" in addition to the AIFMD marketing rules, unless the SIFs benefit from an exemption under the Prospectus Regulation.

Private placement

A passport is not available to SIFs managed by a Registered AIFM or to Non-AIF SIFs. These SIFs can only be marketed in the EU/EEA and abroad under national private placement regimes (i.e., subject to national requirements), if they exist. In fact, some European countries, (like France and Austria), no longer recognize the possibility of private placements.

It is worthwhile mentioning that Luxembourg, similarly to other EU member states, applies a reciprocity standard concerning the distribution of certain EU-AIFs managed by a EU- registered AIFM, thus enabling the distribution of non-Luxembourg EU-AIFs managed by an EU-Registered AIFM in Luxembourg, provided Luxembourg AIFs managed by a Luxembourg Registered AIFM may similarly be distributed in the home country of the above referred to non-Luxembourg EU-AIF.

Reverse solicitation

Reverse solicitation can be defined as: providing information regarding an AIF and making units or shares of that AIF available for purchase to a potential investor following an initiative of that investor, or agent of that investor, without any solicitation made by the AIF or its AIFM, or any intermediary acting on their behalf, in relation to the relevant AIF. However, this activity has been limited as of recently. More precisely, the CSSF emphasizes that any subscription to units or shares of the AIF, or to the compartment(s) referred to in the information provided in the context of pre-marketing, or of an AIF or compartment established as a result of this pre-marketing, made within 18 months of the AIFM having begun pre-marketing, by professional investors in the relevant Member State shall be considered to be the result of marketing.

EuVECA and EuSEF

A specific marketing regime exists for the managers of qualifying European Venture Capital Funds (EuVECA) and European Social Entrepreneurship Funds (EuSEF).

Available legal forms

The SIF Law provides for two types of SIF structuring options:

- Contractual funds (common fund / *fonds commun de placement* – FCP)
- Corporate funds (investment company with variable capital / *société d'investissement à capital variable* – SICAV and investment
- company with fixed capital / *société d'investissement à capital fixe* – SICAF).

When a SIF is structured as a corporate fund, it can be constituted by using the legal forms listed below and as provided by the Luxembourg Company Law.

In all cases, the designation of the SIF must be completed by adding the words "specialized investment fund" or the abbreviated form "SIF".

Common fund (FCP)

A SIF may be structured as an FCP (common fund/ *fonds commun de placement* – FCP SIF), a co-ownership of assets governed by management regulations and managed by a CSSF regulated management company. If a SIF also qualifies as AIF, the management company must either be registered or authorized in Luxembourg as AIFM or an external AIFM must be appointed. The issuance/redemption of units and the distribution rules are only subject to the rules contained in the management regulations.

Investment company with variable capital (SICAV)

A SIF may also be structured as an investment company with variable capital *(société d'investissement à capital variable* – SICAV SIF) organized under any of the available corporate forms:

- Private limited company (*société à responsabilité limitée* – S.à r.L),
- Public limited company (*société anonyme* – SA),
- Corporate partnership limited by shares (*société en commandite par actions* – SCA),
- Common limited partnership (*société en commandite simple* – SCS),
- Special limited partnership (*société en commandite spéciale* – SCSp),
- Cooperative company in the form of a public limited liability company (*société coopérative sous forme de société anonyme* – CoopSA).

Regardless of the legal form, the SICAV SIF will benefit from flexible corporate rules in terms of profit distributions and the issuance or redemption of shares. The distribution of annual or interim dividends will not be subject to any legal restrictions other than those freely determined in the SIF's constitutive documents and the ongoing minimum capital requirement of EUR 1,250,000. Shares may also be issued partly paid, provided that at least five percent of the issuance price is paid up upon issuance.

SICAV SIFs established as limited partnerships (SCS/SCSp) will benefit from enhanced flexibility, as both voting and transfer rules may be freely determined in their constitutive documents.

In addition, both the SCS and SCSp may issue partnership interests associated with capital accounts (*compte d'associés*).

Other forms of SIF

In addition to the FCP or SICAV structures, SIFs may adopt any other form, including but not limited to, the corporate forms established by the Company Law. In this case they will be referred to as SICAF (investment company with fixed capital / *société d'investissement à capital fixe* – SICAF SIF).

Legal aspects

The main differences between the different legal forms are shown in the chart below.

LEGAL FORMS	Incorporation before notary	Publicity of deed	Legal Personality	GP	Investor rights	Min. managers or directors	Minimum Capital in EUR upon incorporation[a]	Minimum Investors	Publication of investors	Public Listing	Issue of bond	Tax transparent
Common fund (*fonds commun de placement* – FCP)		✓				N/A	No legal requirements	1		✓		✓
Public limited company (*société anonyme* – SA)	✓	✓	✓		✓	1 (3)[b]	30,000	1		✓	✓	
Private limited company (*société à responsabilité limitée* – S.à r.L)	✓	✓	✓		✓	1 (3)[b]	12,000	1	✓	✓	✓	
Partnership limited by shares (*société en commandite par actions* – SCA)	✓	✓	✓	✓	✓	1 (3)[b]	30,000	2		✓	✓	
Common limited partnership (*société en commandite simple* – SCS)			✓	✓		1 (3)[b]	No legal requirements (1,000)[b]	2		✓	✓	✓
Special limited partnership (*société en commandite spéciale* – SCSp)				✓		1 (3)[b]	No legal requirements (1,000)[b]	2		✓	✓	✓

a) Minimum capital of EUR 1,250,000 must be reached within 12 months of the date of creation of the SIF

b) Figures in brackets provide the market practice and/or the CSSF requirements for a SIF upon incorporation

Establishment aspects

Establishment formalities

Establishment formalities for SIFs are as set out in the Company Law with some additional requirements for contractual or partnership forms.

The articles of association of corporate funds must be adopted by a notarial deed, which is fully published in the *Recueil électronique des sociétés et associations* – RESA), the official central electronic publication platform of companies and associations and deposited with the Luxembourg Trade and Company Register (*Registre de Commerce et des Sociétés* – RCS). For partnerships in the form of an SCS or SCSp, an extract of their limited partnership agreement must be published in the RESA and deposited with the RCS.

Finally, the management regulations of common funds must be deposited with the RCS and a notice of such deposit is published in the RESA. SIFs can publish their documents in English, French, or German.

Official list

Once the CSSF has authorized the launch of a SIF, it will be registered on a list of specialized investment funds held by the CSSF.

Umbrellas and classes

Umbrellas

A SIF may take the form of a single compartment fund (a stand-alone fund) or a multiple compartment fund (an umbrella fund with multiple compartments (sub-funds)).

Umbrella funds may comprise one or more compartments each with different features. Different policies and strategies, provide for different subscription mechanisms (commitment based vs subscription based), differ in terms of duration (closed-ended vs open-ended).

Umbrella funds are favoured by larger initiators, as this allows using the same legal structure for multiple portfolios.

The assets of each compartment of an umbrella fund are segregated by law and the accounting records of each compartment are kept separate. Hence, by way of derogation from the Luxembourg Civil Code, the rights of investors and of creditors concerning a compartment, or which have arisen in connection with the creation, operation or liquidation of a compartment, are limited to the assets of that compartment (i.e., segregation of assets and liabilities on a compartment-by-compartment basis – protected cell concept).

In addition, an umbrella fund may permit cross-investments between the different compartments (i.e. Sub-Fund 1 invests in Sub-Fund 2) subject to certain requirements being complied with.

In case of an umbrella fund, separate issuing documents per compartment may be drawn up. Each compartment sub-document should clearly state that the SIF is an umbrella structure which may be composed of one or more compartments.

Classes

It is possible to create various classes of shares, units or partnership interests in a SIF respectively within its compartments.

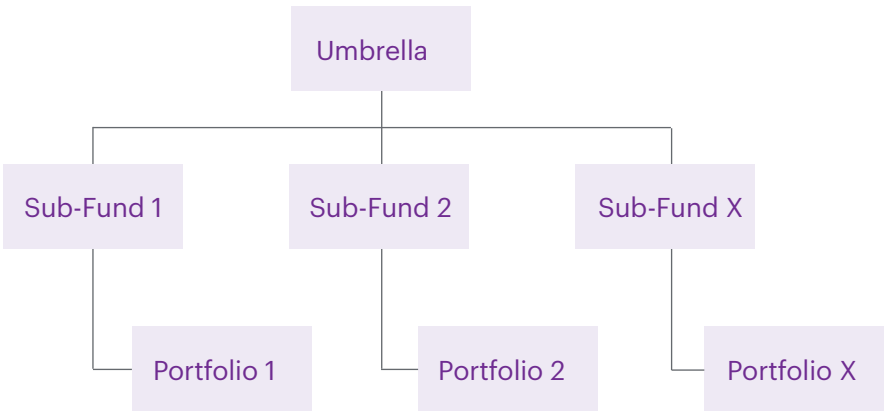
Such classes of shares, units, or partnership interests may differ, among others, in their fee structure, distribution policy, hedging policy, reference currency and type of target investors.

It should be noted that share classes are not segregated or ring-fenced.

Service providers

Depositary

The term depositary means the entity in charge of the safekeeping of the fund's assets. A SIF's depositary must be a Luxembourg credit institution as defined in the Luxembourg Law of 5 April 1993 on the financial sector, as amended (the "1993 Law") or, provided the SIF meets certain requirements, an entity incorporated under Luxembourg law which has the status of a "professional depositary of assets other than financial instruments" within the meaning of Article 26-1 of the 1993 Law ("**Professional Depositary**").





Whereas the AIFM may be located anywhere in the European Union, the depositary shall either have its registered office in Luxembourg or be established in Luxembourg, if registered in another member state.

SIFs must appoint a single depositary, which must be undertaken and evidenced by a written contract. Where the SIF has appointed an Authorized AIFM, the Commission Delegated Regulation (EU) No 231/2013 provides a comprehensive list of elements that must be included in the written contract.

Where a SIF is managed by an Authorized AIFM, the depositary is, in addition to the requirements of the SIF Law, subject to the requirements of the AIFM Law, which are different for the different asset classes. In general, a depositary of a SIF-AIF must:

- Safe keep the financial instruments acquired by the SIF.
- Verify the ownership of the SIF of other assets and possess sufficient and reliable information to be satisfied of the SIF's right of ownership.
- Monitor the cash-flows of the SIF.

In addition, the depositary has certain oversight duties:

- Ensure that the sale, issue, repurchase, redemption and cancellation of shares of the SIF are carried out in accordance with the Luxembourg law and the constitutional document.
- Ensure that the value of the shares of the SIF is calculated in accordance with applicable Luxembourg law, the constitutive documents, and that the valuation procedures adopted in respect of the SIF comply with the AIFM Law.
- Carry out authorized instructions, provided they do not violate Luxembourg law and the constitutive documents.
- Ensure that in transactions involving the assets of the SIF, the consideration is remitted to the AIF within the usual time limits.
- Ensure that the income of the SIF is applied in accordance with Luxembourg law and the constitutive documents.

Neither a management company nor an AIFM may act as depositary.

Bank

Where the depositary is a Professional Depositary, either the latter or the SIF directly needs to appoint a credit institution for the safekeeping of the financial assets and the cash. In such case, and where the SIF is within the scope of the AIFM Law, the credit institution is not required to comply with the requirements applicable to a depositary under the AIFM Law, those remain duties to be organized by the depositary.

Other service providers

The following service providers are commonly appointed to carry out the administrative tasks related to the SIF's corporate and operational activities:

- Fund administrator,
- Transfer agent,
- Domiciliation agent.

Fund administrator

A SIF's administrative duties may be exercised by the AIFM or a third-party administrator.

The administration activities required in relation to a SIF include:

- Legal and fund management accounting services,



- Customer inquiries,
- Valuation (of the portfolio) and pricing (of the units/shares), including tax returns,
- Regulatory compliance monitoring,
- Maintenance of unit-/ shareholder/partners' register,
- Distribution of income,
- Unit/share/interest issues and redemptions (and conversion),
- Contract settlements, including certificate dispatch,
- Record keeping.

The activity of fund administrator is a regulated activity within the meaning of Article 28-7 of the 1993 Law. For AIFMs and credit institutions this activity is covered by their main license.

Transfer agent

Sometimes the role of the fund administrator is divided in the separate functions of administrative agent and registrar and transfer agent.

Under this operating model, the registrar and transfer agent is in charge of dealing with unit/share/ interest issues and redemptions, AML-KYC on investors, sanction screening, the maintenance of the unit-/shareholder/partners' register and customer (investor) enquiries. Often the registrar and transfer agent function is carried out by the depositary.

The activity of registrar and transfer agent is a regulated activity within the meaning of Article 25 of the 1993 Law. For AIFMs and credit institutions this activity is covered by their main license.

Domiciliation agent

The domiciliation agent provides the registered office of the SIF (and/or the general partner).

The domiciliation agent is also responsible for providing office accommodation and other facilities to the SIF, keeping all correspondence and documentation relating to the SIF and arranging payment of bills on its behalf.

The activity as domiciliation agent is a regulated activity within the meaning of Article 28-9 and 28-10 of the 1993 Law. For AIFMs and credit institutions this activity is covered by their main license.

Auditor

A SIF needs to appoint a Luxembourg independent auditor *(réviseur d'entreprises agréé)* for the purposes of auditing its financial statements. The minimum content of the annual accounts is set out in the annex of the SIF Law.

Investment manager

A SIF may, but does not necessarily need to, appoint a third-party investment manager. Where the SIF has appointed an Authorized AIFM, the investment manager is appointed by delegation of the AIFM and such delegation is subject to the requirements of the AIFM Law and the AIFM Level II Regulation, which provide additional requirements to be complied with by the investment manager.

Where the SIF does not qualify as AIF, such appointment is made directly by the SIF. The CSSF will need to approve such appointment in advance.

In Luxembourg, the activity as investment manager is a regulated activity within the meaning of Article 24-3 of the 1993 Law.



For AIFMs and credit institutions this activity is covered by their main license.

Investment advisor

A SIF may, but does not necessarily need to, appoint a third-party investment advisor. Where the SIF appoints an Authorized AIFM, unlike the appointment of an investment manager, the appointment of an investment advisor is not subject to additional requirements under the AIFM Law, provided, however, that the SIF or the AIFM must verify that the investment advisor is authorized to exercise its activity in its home country.

In Luxembourg, the activity as investment advisor is a regulated activity within the meaning of Article 24 of the 1993 Law. For AIFMs and credit institutions this activity is covered by their main license.

Investor information

A SIF must publish an issuing document and an annual report.

Issuing document

The issuing document must include all the necessary information for investors to be able to make an informed judgement in relation to the investment offered to them, in particular the associated risks. It must be kept up to date, especially when new investors are admitted to the SIF, and must be supplied to subscribers upon request.

In case of an umbrella fund, separate appendices to the issuing document may be drawn up per compartment (usually called compartment appendix or sub-fund specification). When used only with the issuing document, each compartment appendix shall clearly state that the SIF is an umbrella fund which may be composed of one or more compartments.

Where the SIF appoints an Authorized AIFM, the information and disclosures required under article 23 of the AIFMD will generally be contained in the issuing document. Such information and disclosures are:

- Description of the SIF's investment strategies and objectives.
- The types of assets in which it may invest and the procedures by which it may change its investment strategy or investment policy.
- The identity of the service providers.
- A description of the SIF's valuation procedure and the pricing methodology for valuing assets.

Annual report

SIFs must publish an audited annual report within six months after the end of the period to which it relates.

Article 22 of the AIFMD applies to the contents of the annual report and the annex to the SIF Law provides additional information on the minimum content.

As for the issuing document, a separate set of accounts must be prepared for each compartment when a compartment's annual accounts also contain consolidated financial information concerning any other compartment in the umbrella fund.

SIFs and taxes

Direct taxes at SIF level

SIFs are subject to an annual subscription tax levied at a rate of 0.01% of its net assets (calculated on the last day of each quarter). However, SIFs, or sub-funds thereof, qualifying as European long term investment funds ("**ELTIFs**") are exempted from subscription tax.

Some exemptions from subscription tax may apply to avoid a duplication of this tax.

Regardless of the SIF's chosen legal form, it is not subject to corporate income tax, municipal business tax nor to net wealth tax. Distributions of profits by the SIF are not subject to withholding tax.

Taxes at GP level

A case-by-case analysis of the operating model, the involved parties, and their home countries is required to determine the tax situation.

VAT

SIFs should benefit from the VAT exemption on management services under the same conditions and restrictions as applicable to AIFs. For a GP, an analysis of the different services rendered and received will be required to determine the status.

Double tax treaty access

SIFs set-up under the form of a limited company may benefit from certain double tax treaties concluded by Luxembourg.

SIFs set-up in the form of a FCP, SCS or SCSp, which are tax transparent, do generally not benefit from Luxembourg's double tax treaty network. However, investors of the SIF may, in certain cases, rely on the double tax treaty concluded between their jurisdiction and the target investment jurisdiction (on a look-through approach).







Contacts



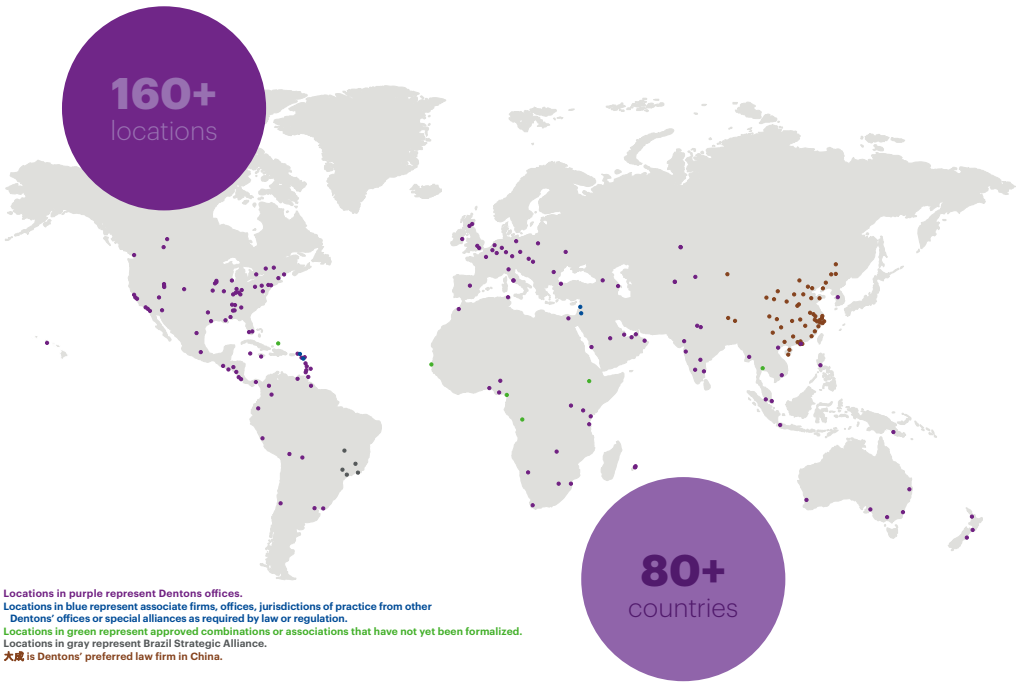
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7,490+
All timekeepers

12,000+
Total number of people

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