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SPECIALISED INVESTMENT FUNDS

Luxembourg law on flexible investment funds aimed at professional and HNWI investors

Luxembourg Parliament has voted on 13 February 2007 the law on Specialised Investment Funds (SIF). The law, which has come into effect on the same day it was voted, replaces the law of 1991 on Institutional Investor Funds. All existing institutional funds that were governed by the 1991 law were all automatically converted, by operation of law, to SIFs.

In addition to providing more flexibility in terms of product structuring, the law extends the concept of eligible investors for specialised funds beyond institutional buyers to include professional and sophisticated investors. Before 2007, it was only possible for funds to be launched by institutions approved as promoters by the CSSF. Thus managers could not launch funds without the backing of an established and financially robust co-promoter. However, under the SIF regime, investment managers wishing to launch funds do not need to meet specific capital requirements. This was a profound change and has opened up the doors to small and medium-sized asset managers to launch funds targeting the professional and sophisticated investor markets. The SIF law has been very well received.

Product possibilities

The SIF is a regulated entity offering many possibilities in terms of product definition and structuring. As vehicles investing in all types of assets can be created under the SIF law, both traditional funds (e.g. equity funds, bond funds, money market funds) as well as more sophisticated funds (e.g. real estate funds, private equity funds, hedge funds) can be launched.

Similar to other funds, SIFs are required to adhere to the principle of diversification. The CSSF has clarified the diversification requirements in Circular CSSF 07/309.

Investors

The SIF law extends the target investor base of institutional and professional investors to other investors who confirm in writing that they are well-informed and who invest at least EUR 125.000 or who have their experience confirmed by a credit institution or another professional of the financial sector.

Simplified approval process

Promoters and investment managers do not require the approval of the CSSF in order to launch SIFs. The CSSF focuses on the experience and the reputation of the directors in light of the investment policy of the fund. It is also necessary to appoint a custodian bank with responsibility for the safe-keeping of the assets. To facilitate the approval process further, SIFs can also be launched prior to the approval of the fund by the CSSF.

The law merely requires for the application to be submitted to the CSSF within one month of its formation.

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Corporate flexibility

SIFs can be set up under a contractual form, the so-called “Fonds Commun de Placement” (“FCP”), or under a corporate form as a “Société d’Investissement à Capital Variable” (“SICAV”) or a “Société d’Investissement à Capital Fixe” (“SICAF”).

SIFs incorporated as SICAVs are no longer required to have the legal form of a public limited liability company (“société anonyme”). In addition, they can be incorporated as a private limited liability company (“société à responsabilité limitée”), a partnership limited by shares (“société en commandite par actions”) or a cooperative organised under the form of a public limited liability company (“société cooperative organisée sous la forme d’une société anonyme”).

Rules governing the issue and redemption of shares are relaxed. The management regulations or the articles of incorporation of the SIF will determine which rules will apply. In particular, issue and redemption at a value other than the net asset value is allowed. SIFs are also authorised to issue other types of securities, including bonds and profit shares.

Minimum capital of 1.250.000 euros has to be raised within 12 months, compared to six months for other funds.

Light reporting and disclosure requirements

The law does not explicitly describe the list of information to be included in the “issue document” (nb the term “prospectus” is not used). Unlike the prospectuses of other investment funds, the issue document of a SIF is a confidential document that only needs to be updated when new securities are issued.

SIFs are not required to publish a semi-annual financial report. Audited annual reports need to be prepared within six months following the end of the respective financial period (compared to four months for other investment funds). SIFs also generally are not required to publish a Long Form Report.

Taxation

SIFs are subject to the subscription tax (“taxe d’abonnement”) of 0.01% (compared to 0.05% for most Luxembourg investment funds). Similar to other Luxembourg investment funds, SIFs are also exempt from income taxes. As from 1 January 2009, capital contribution duty has been abolished. A fixed registration fee of EUR 75 is levied at the incorporation of the SIF. This fee is also levied each time the articles of association are amended.

Conclusion

SIFs complete the range of Luxembourg investment fund products by filling the gap between pure institutional funds and funds aimed at retail investors. By offering high flexibility in terms of product structuring as well as simplified approval procedures, the law chiefly addresses asset managers that are eager to design products that are better suited to the needs of their sophisticated institutional and HNWI clientele.

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