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**The Luxembourg  
Specialized Investment Fund  
(SIF)**

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## Preliminary remarks

The document at hands is published for information and for the exclusive use of the person to whom it was handed. It is neither a brochure, nor an offer, nor an incentive, nor a recommendation. It has for purpose to briefly describe the characteristics and the benefits in relation to the creation and to the use of Specialized Investment Funds under Luxembourg law. It is not a legal advice describing exhaustively the legal and tax regime of such vehicles.

The document at hands is not intended to deal in an exhaustive way with all the categories of Luxembourg specialized vehicles, nor with all the risks inherent to an use or to an implication in / via the above specialized vehicles.

Besides, we also draw your attention on the fact that you have to drive your own analysis on the financial, legal, accounting, tax and statutory aspects resulting from the use or from the implication in / via such a Luxembourg specialized vehicle in order to define the benefits, the disadvantages and the consequences of the latter and measure the risks for you.

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## Introduction

The Specialized Investment Fund is ruled by the following laws:

- the amended law of February 13, 2007 on Specialised Investment Funds (“SIF” or “FIS”(Fonds d’Investissement Spécialisé))
- the amended law of December 17, 2010 concerning undertakings for collective investment (“UCI”)
- the amended law of August 10, 1915 on commercial companies (“the Luxembourg Company Law”)

The SIF is a Luxembourg UCI. The primary objective of a SIF must be the collective investment of the funds in securities while applying the principle of risk spreading. The shares/units are reserved for “well-informed investors”.

A well-informed investor shall be:

- institutional or professional investors (for examples see Chapter 3)
- any other investor who has confirmed that he adheres to the well-informed investor statute and who meets the following requirements :
  - (i) invests a minimum of EUR 125.000,00; or
  - (ii) has been subject of an assessment certifying his expertise in appraising an investment in a SIF

A SIF may be created under contractual form or corporate form. For contractual form, we speak of common contractual SIF (common fund) or “Fonds Commun de Placement” (FCP)). The SIF under corporate form is a “SICAV-FIS” (*société d’investissement à capital variable*) or “SICAF-FIS” (*société d’investissement à capital fixe*) which both may be structured as a public limited company (*société anonyme*), a partnership limited by shares (*société en commandite par actions*), a common limited partnership (*société en commandite simple*), a special limited partnership (*société en commandite spéciale*), a private limited liability company (*société à responsabilité limitée*) or a cooperative in the form of a public limited company (*société coopérative organisée sous forme de société anonyme*) and is submitted to the general provisions of the Luxembourg law on commercial companies (law of 10 August 1915 as amended).

The SIF is an interesting vehicle for at least four reasons:

- Flexibility
- Efficiency and proactivity of Luxembourg authorities
- Stability of Luxembourg
- Professionalism of different parties of the financial sector

This presentation is built as questions/answers to help you understand the particularities and advantages of the SIF.

The list of questions hereafter is not exhaustive.

We are at your disposal to answer any questions or issues you may have.

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## 1 Why Luxembourg?

### \_\_\_ A strategic geographic situation

Member of the European Union and co-founder of the common market, the Grand-Duchy of Luxembourg is located at intersection of Europe, between Belgium, France and Germany and offers a good accessibility and modern infrastructures (in IT matters).

### \_\_\_ An economical, political and social attractive situation

The laws and the close communication between the financial place and the authorities allow a great reactivity and a quick set-up of positive innovations.

### \_\_\_ A tax and legal attractive framework

The simplicity, the efficacy and the stability of the laws allow Luxembourg to be competitive in comparison to other financial centers. The laws are in favor of the investment and of the economic development.

### \_\_\_ A highly-qualified and multilingual staff

Luxembourg is a multilingual and multicultural country with high-qualified staff. Multilingualism is a massive and rich advantage in Luxembourg

This multilingual environment makes Luxembourg a very interesting and varied country – both at the level of business and business communication.

### \_\_\_ Financial products changing and with a high added-value

The size of Luxembourg facilitates the exchange of information between the different actors and promotes the development of variety of a wide range of competitive products.

### \_\_\_ The financial sector (150 banks)

Luxembourg has been developing its know-how in the financial matters since 40 years.

### \_\_\_ A regulation's system efficient

The *Commission de Surveillance du Secteur Financier* (CSSF) strictly controls the wholeness of the financial sector which is in constant change, first pillar of the Luxembourg economy.

The CSSF participates to the expansion of the financial sector and to the enhancement of the regulations.

### \_\_\_ The fight against money-laundering

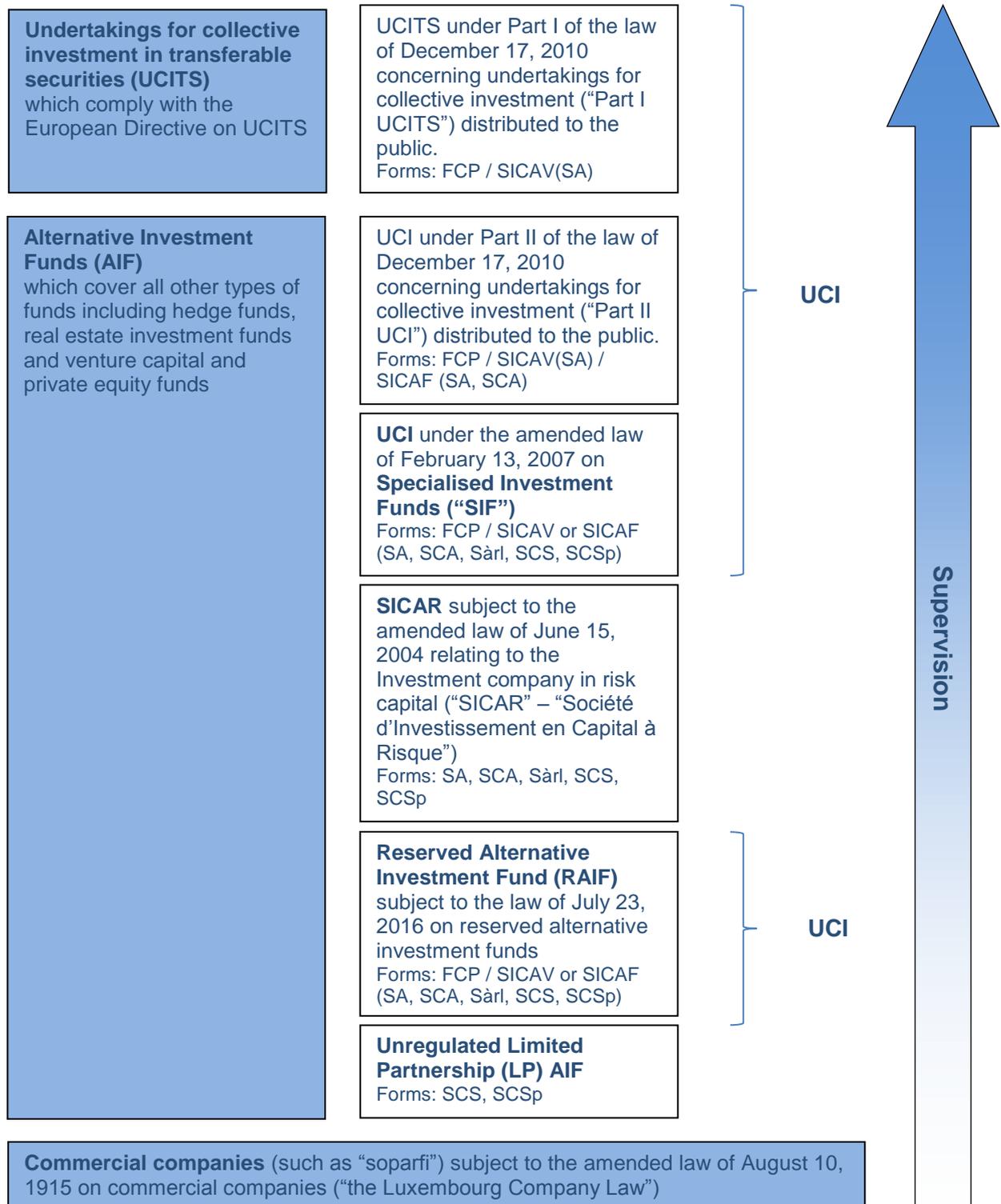
Luxembourg has been one of the pioneers in the fight against money-laundering. Luxembourg laws settle strict conditions for the access to the financial sector, notably concerning the identity and the honorability of the shareholders and managers of the Professionals of the Financial Sector (PSF).

Luxembourg is member of the FATF (Financial Action Task Force on Money Laundering) / GAFI (*Groupe d'Action Financière*), inter-governmental body developing and promoting policies to combat money laundering and terrorist financing ([www.fatf-gafi.org](http://www.fatf-gafi.org)).

## 2 What are the advantages of the Luxembourg SIF?

### Advantages regarding Luxembourg laws

Luxembourg offers **various structures for undertakings for collective investment (UCI)**, which are subject to different levels of regulation and supervision. In principle, the choice of a structure is driven by the investment policy and the distribution strategy of the fund.



## \_\_\_ **The respect of European Regulation**

Luxembourg is always reactive on the European Regulation and transposes European Directives in time and in respect of the practice of Financial Sector.

## \_\_\_ **The transferability of shares/units**

The issuing document of a SIF may allow the transferability of shares / units / partnership interests to well-informed investors (see Chapter 3).

## \_\_\_ **The supervision of the Financial Sector**

The Luxembourg laws, regulations and the different circulars of the regulator grant a solid supervision of the Financial Sector.

## **Advantages regarding tax matters**

SIF incorporated as FCP are treated as tax transparent. However, in practice, the Luxembourg tax authorities will consider that the SIF's income is only transferred to its investors at the time profits are distributed.

Generally, SIF set up as a SICAV or a SICAF are considered opaque for tax purposes.

## \_\_\_ **Exemption from Luxembourg income taxes**

A SIF is exempt from Luxembourg income taxes (Corporate Income Tax, Municipal Business Tax and Net Wealth Tax).

Dividends and interest payments received by the SIF from investments may be subject to foreign withholding taxes, possibly reduced under tax treaties, to the extent they are applicable.

In Luxembourg, there is no withholding tax applied on distributions from a SIF.

There is no stamp duty in Luxembourg on share issues or transfers.

The taxation at the level of the investors has to be studied according to the country of residence.

## \_\_\_ **Subscription Tax**

A SIF is liable to pay an annual subscription tax of 0,01 % of the value of the SIF's net assets (art. 68 of the SIF Law). This tax is payable quarterly based on the SIF's net asset value as calculated at the end of each quarter. Exemption from the subscription tax exists for the portion of assets

invested in other Luxembourg UCIs subject to this tax, certain institutional cash funds, microfinance funds and pension pooling funds.

## \_\_\_ Value Added Tax

No VAT is payable in Luxembourg in connection with the issue of shares / units / partnership interests of SIF.

SICAV/SICAF are considered a taxable entity for VAT purpose. The management company and the FCP are considered to be a single legal entity for VAT purposes. The fee perceived by the « management and the administration » of the SIFs are exempt from VAT in Luxembourg (see Chapter 7).

### 3 Who can create a Luxembourg SIF?

The shares / units / partnership interests of a SIF are reserved to “well-informed investors”.

#### \_\_\_ Who is considered a “well-informed” investor?

A well-informed investor shall be:

- \_ An institutional or professional investor

For example, are institutional investors: banks, insurance companies, pension funds, commercial companies, investments funds and certain holding structures.

For example, are professional investors: investors who possess the experience, knowledge and expertise to make their own investment decisions and properly assess the risks. They must be able to judge and manage such vehicle.

- \_ Any other investor who has confirmed that he adheres to the well-informed investor statute and who meets the following requirements :

(i) invests a minimum of EUR 125.000,00

OR

(ii) has been subject of an assessment certifying his expertise is appraising an investment in a SIF

#### \_\_\_ Number of shareholders / unit holders / partners

Number restrictions depends of the form under which the SIF is created.

	FCP-SIF		SICAV-SIF / SICAF-SIF				
		S.A.	S.à R.L.	S.C.A.	S.C.Sp.	S.C.S.	S.Co.S.A.
<b>Minimum</b>	1	1	1	2 (1 general partner and 1 limited partner)	2 (1 general partner and 1 limited partner)	2 (1 general partner and 1 limited partner)	7
<b>Maximum</b>	Unlimited	Unlimited	40	Unlimited	Unlimited	Unlimited	Unlimited

#### \_\_\_ Do the shareholders / unit holders / partners have to meet regularly in Luxembourg?

The general meetings of the SICAV-SIF have to be held in Luxembourg, in principle at the registered office. There is no general meeting for FCP-SIF.

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## 4 Which legal formalities are to be respected to create a SIF?

### \_\_\_ Under which legal form to create a SIF?

A SIF may be created under contractual form or corporate form. For contractual form, we speak of common contractual SIF or “Fonds Commun de Placement” (FCP).

A FCP does not have a legal personality. The FCP is an undivided collection of assets made-up and managed by a management company, which acts on behalf of the FCP in its own name and which operates under the principle of risk spreading.

The SIF under corporate form is a “SICAV-SIF” (*société d’investissement à capital variable*) or “SICAF-SIF” (*société d’investissement à capital fixe*) which both may be structured as a public limited company (*société anonyme* (S.A.)), a partnership limited by shares (*société en commandite par actions* (S.C.A.)), a common limited partnership (*société en commandite simple* (S.C.S.)), a special limited partnership (*société en commandite spéciale* (S.C.Sp.)), a private limited liability company (*société à responsabilité limitée* (S.à R.L.)) or a cooperative in the form of a public limited company (*société coopérative organisée sous forme de société anonyme* (S.Co.S.A.)) and is submitted to the general provisions of the Luxembourg law on commercial companies (law of 10 August 1915 as amended).

### \_\_\_ What are the conditions relating to the net asset / the share capital?

For a FCP-SIF, the net asset of a collective investment may not be less than EUR 1.250.000,00.

For a SICAV-SIF / SICAF-SIF, the share capital may not be less than EUR 1.250.000,00.

### \_\_\_ Subscriptions

The capital of a SICAV-SIF must be entirely subscribed, and at least 5 % of the subscription amount for shares or units must be paid-up in cash or by means of a contribution other than cash. Contributions in kind are permitted as long as the contribution assets are eligible.

### \_\_\_ Which assets of the SIF can be held?



A SIF may invest its funds in many kinds of assets.

A SIF can not invest more than 30 % of its assets in securities of the same nature issued by the same issuer (CSSF Circular 07/309). This diversification ratio is more lenient than the one for UCITS part I and part II.



**NB:** In the case of an umbrella fund, the risk diversification rule applies to every single compartment that has to be considered individually.

## Exceptions

- i. Securities issued or guaranteed by OECD Member States or its public organization
- ii. Investment into UCIs that are subject to risk diversification rules that are at least comparable to those relevant to SIFs.

## \_\_\_ **Which approval and supervision?**

A SIF must be approved by the CSSF and is submitted to its supervision. The CSSF approves the constitutive / issuing documents of each SIF, the choice of the depositary, the directors of both the SIF and the depositary, the auditors and the central administration. The approval materialises into the entry of the SIF on the official list held by the CSSF.

The SIF is submitted to the permanent supervision of the CSSF through monthly and annual reporting.

The CSSF may temporarily or permanently remove the approval of a SIF. The entering and the maintaining of the list referred to above shall be subject to observance of all legislative, regulatory or contractual provisions relating to the organisation and operation of the SIF and the distribution, placing or sale of their securities or partnership interests.

## \_\_\_ **Under which form does the act of creation have to be established?**

A FCP-SIF is created by simple contract.

Except for the SICAV-SIF under the form of common limited partnership (S.C.S.) or special limited partnership (S.C.Sp.), the SIF under corporate form has to be incorporated by notarial deed.

## \_\_\_ **Could the SIF be organized under an umbrella fund?**

The prospectus of a SIF can allow the set up of multiple sub-funds. Each sub-fund is considered a separate entity distinct from the other sub-funds of the SIF. Each sub-fund has its own investment policy and its specific aspects and its own IM/IA if required. The liquidation of a sub-fund does not impact the remaining other sub-funds.

## \_\_\_ **The “Nominee” option**

The registrar of the SIF must, for each investor, comply with the KYC – AML-TF regulation and ensure of their status of well-informed investor in the meaning of the SIF law.

A nominee is an intermediary who invests into the SIF in its name and on behalf of investors (CSSF IML 91/75 circular).

When the intervention of a nominee is an integral part of the distribution arrangement, the relations between the SIF, the nominee, the central administration and the investors must be determined by a specific agreement.

- (i) The role of a nominee must be adequately described in the prospectus of the SIF.
- (ii) Investors must have the right to directly invest in the SIF without using a nominee.
- (iii) The nominee agreement must include a termination clause.

## 5 Who are the main intervening parties?



### \_\_\_ Management of the SIF

#### **Management company (ManCo) for FCP-SIF only**

The ManCo has its registered seat in Luxembourg and must be approved by the CSSF. It has the following missions:

- \_ constitutes the management regulations
- \_ acts in its own name on behalf of the FCP-SIF
- \_ shall manage the FCP-SIF in accordance with the management regulation (i.e. investment policy mentioned in the management regulation) and the AIFM rules (if applicable)

#### **Management for a SIF under corporate form**

The SIF is managed by its management body, depending on the form of the company. If the SIF is qualified as authorised Alternative Investment Fund (AIF), an Alternative Investment Fund

Manager (AIFM) has to be designated (unless the SIF is self-managed as authorised AIFM).

## \_\_\_ **Central Administration & Registrar**

The central administration must be approved by the CSSF, licenced by the Ministry of Finance and must either have its registered office in Luxembourg or be established in Luxembourg.

The central administration is in charge of the following missions:

- all legal follow-up of the fund
- accounting and NAV calculation
- relations with CSSF
- establishment of the annual and monthly reports
- keeping of the register of shareholders/unitholders

## \_\_\_ **Depositary**

The depositary of the SIF must be a credit institution or an investment firm (restricted conditions) within the meaning of the amended law of 5 April 1993 on the financial sector. Furthermore, it must be approved by the CSSF and must either have its registered in Luxembourg or be established in Luxembourg.

It has in custody the assets it has been entrusted with by the SIF (custody and safekeeping of assets).

The depositary is liable for any loss suffered by the ManCo (FCP-FIS only) and the investors as a result of its failure to perform its obligations or its improper performance thereof. The liability of the depositary is different from a fully authorised AIFM regime SIF and a registered AIFM regime SIF.

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## 6 How is the SIF managed?

### \_\_\_ What are the different kinds of management?

With the law of 12 July 2013 concerning the alternative investment funds managers, as amended (AIFM Law), SIFs are either registered AIF (simplified regime for the SIF which does not exceed a certain threshold and respect conditions of the article 3 (2) of the AIFM Law) or authorised AIF.

As registered AIF, a SIF (SICAV-FIS / SICAF-FIS) may either :

- have an internal management (board of directors / managers);
- have a board of directors / managers which appoints an external investment manager.

As authorised AIF (full regime), a SIF (SICAV-FIS / SICAF-FIS) may either :

- have an internal management (board of directors / managers) AIFM authorised ;
- have a board of directors / managers which appoints an authorised AIFM (Luxembourg / EU / EEA<sup>1</sup>).

A FCP is managed by a Luxembourg authorised management company who may either:

- manage the AIF itself. If the assets of all the FCP-SIF managed by the management company exceed certain thresholds, the management company will be required to obtain authorization as an AIFM ;
- appoint a Luxembourg/EU/EEA authorised AIFM.

### \_\_\_ What are the Alternative Investment Fund Manager (AIFM) rules?

The Law of July 12, 2013 transposes the Alternative Investment Fund Manager Directive 2011/61/UE dated June 8, 2011 (AIFMD). This Directive creates a harmonised legal framework ruling all investment fund manager other than a UCIT manager. It fixes the conditions of approval for managers, requirements in matter of organisation, capital, liquidity, risks, delegation of management, information disclosure, asset valuation for AIF, depositary and limitation to leverage.

The investment management of a SIF consists in providing the services of portfolio management.

The SIF and the persons who are in charge of the portfolio management, the depositary and the identity of the directors must be approved beforehand by the CSSF.

A risk management function & policy and appropriate systems have to be put in place to detect, measure and manage the risks associated with the portfolio positions with respect to general risk profile of the portfolio.

The SIF must be organised and structured so that risks of conflict of interest are reduced to minimum.

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<sup>1</sup> European Economic Area (EEA) : EU Member States and Island, Norway and Liechtenstein.

A sub-fund of a SIF may under certain conditions invest in one or several other sub-funds of the same SIF.

The CSSF can cancel its approval and remove a sub-fund from its official list without impacting the other sub-funds of the same SIF.

Summary of marketing of Luxembourg SIF in the European Union / European Economic Area:

Regulatory framework	Marketing regime	Investors
<b>Full AIFM regime AIF</b>	EU/EEA “passeport”	Professional
<b>Simplified AIFM registration regime AIF</b>	National private placement regimes	Professional
<b>Full AIFM regime AIF and, if relevant, simplified AIFM registration regime AIF</b>	National retail distribution regimes, where applicable	Retail (well-informed investors)
<b>Any AIF (Full AIFM regime or simplified AIFM registration regime)</b>	Reverse solicitation	Professional

Marketing outside the EU/EEA is subject to each country’s national regulation.

\_\_\_ **Where do the meetings of the board of directors / managers have to be held?**

In order to avoid any requalification from foreign authorities, the meetings are to be held in Luxembourg, normally nearby the registered seat of the central administration.

\_\_\_ **Are the Net Assets Values (NAVs) and annual accounts controlled?**

Luxembourg SIF must have the accounting information given in their annual report audited by a *réviseur d’entreprises agréé* (approved statutory auditor). Every Luxembourg SIF must communicate to the CSSF the reports and written comments issued by the auditor in the framework of its audit of the annual accounting documents.

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## 7 What are the VAT obligations?

SICAV/SICAF are considered a taxable entity for VAT purpose; the management company and the FCP are considered to be a single legal entity for VAT purposes (Circular n°723 dated 29th December 2006).

The fees invoiced for the « management and the administration » of the SIF are exempt from VAT in Luxembourg (Art 44§ 1.d of the VAT Law). The « management and administration» of the SIF has been defined through circulars n°723 and n°723bis from the Luxembourg VAT Administration.

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## 8 What is the tax regime of a SIF?

SIF incorporated as FCP are treated as tax transparent. However, in practice, the Luxembourg tax authorities will consider that the SIF's income is only transferred to its investors at the time profits are distributed.

Generally, SIF set up as a SICAV or a SICAF are treated as opaque for tax purposes.

### \_\_\_ Exemption from Luxembourg income taxes

A SIF is exempt from Luxembourg income taxes (Corporate Income Tax, Municipal Business Tax and Net Wealth Tax). Therefore, they are not entitled to tax credits.

Dividends and interest payments received from their investments may be subject to foreign withholding taxes, possibly reduced under tax treaties, to the extent they are applicable.

There is no withholding tax applied on distributions from Luxembourg SIF, except in situations where the Savings Directive applies.

There is no stamp duty in Luxembourg on share issues or transfers.

The taxation of the investors has to be studied according to the country of residence.

### \_\_\_ Subscription Tax

A SIF is liable to pay an annual subscription tax of 0,01% of the value of the SIF's net assets (art. 68 of the SIF Law). This tax is payable quarterly based on the SIF's net asset value as calculated at the end of each quarter. The SIF Law exempts from the subscription tax the portion of assets invested in other Luxembourg UCIs subject to this tax, certain institutional cash funds, microfinance funds and pension pooling funds.

### \_\_\_ Value Added Tax

No VAT is payable in Luxembourg in connection with the issue of shares / units / partnership interests of SIF.

SICAV/SICAF are considered a taxable entity for VAT purpose. The management company and the FCP are considered to be a single legal entity for VAT purposes. The fee perceived by the « management and the administration » of the SIFs are exempt from VAT in Luxembourg (see Chapter 7).

### \_\_\_ Tax Authority for the tax control

The tax authority responsible for the tax control of the SIF is *Administration de l'Enregistrement et des Domaines*.

If the Administration considers the SIF is engaging in operations which fall outside the framework of the activities authorized by the Law, the tax provisions of the SIF Law shall cease to be applicable.

A fine of 0,2 % can be levied on the amount of the assets of the specialized investments funds.

### \_\_\_ Taxation of the Management Company

The management company of a SIF is fully taxable (Corporate Income Tax in Luxembourg, Municipal Business Tax and Net Wealth Tax).

### \_\_\_ Regulator fees

The CSSF authorization fee amounts to EUR 3.500. This fee increases up to EUR 7.000 for a SIF with multiple sub-funds (regulations of the Grand-Duchy dated October 28, 2013).

The CSSF annual fee amounts to EUR 3.000 for each SIF. This fee increases up to EUR 6.000 in the event of a SIF with 1-5 sub-funds (up to 12.000 with 6-20 sub-funds, 20.000 with 21-50 sub-funds and up to EUR 30.000 if more than 50 sub-funds).

The CSSF annual fee amounts to EUR 15.000 for Management Companies Chapter 16 of the law of December 17, 2010.

### \_\_\_ Does a SIF benefit from tax treaty?

SICAV/SICAF can benefit from some double tax treaties ("DTTs") concluded with Luxembourg (<http://www.impotsdirects.public.lu/conventions/index.html>).

Some countries with which Luxembourg has concluded a double tax treaty, have not yet clarified if the SICAV/SICAF could benefit from the DTT.

Finally, SICAV/SICAF cannot benefit from some other DTTs concluded by Luxembourg.

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## 9 AML / CFT rules – FATCA – CRS?

The Registrar has to communicate to the CSSF the identity of each investor holding more than 25%.

The external auditor (*réviseur d'entreprises agréé*) has access to the identity of investors.

The Registrar has to organise an exhaustive and permanent knowledge of the investors.

FIS are considered a Foreign Financial Institution (FFI) with regards to the FATCA Law and Financial Institution (FI) with regards to the CRS Law (Common Reporting Standard).

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## 10 What are the advantages and disadvantages of set-up a compartment of an existing SIF?

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Advantages	Inconveniences
Quick set-up (+/- 2 weeks)	Established structure (no choice on legal form, central administration, transfer agent, legal counsel, external auditor, depositary)
Mutualising of fees	Member of the board of directors already defined
	Less flexible
	As there is a single board of directors for the whole vehicle, even if the assets are segregated, certain problematics with respect to the managing of another compartment can negatively influence the compartment

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## 11 About FIDUPAR

FIDUPAR was incorporated in the year 2000 by the contribution of the activity of the financial engineering departments of two major banks of the Luxembourg financial center, as Professional of the Financial Sector, and benefit of more than 50 years of experience in Luxembourg. Since 2014, FIDUPAR acquired its independence and is part today of Elate Group.

FIDUPAR is authorised by the Luxembourg authorities and regulated by the Luxembourg regulator of the financial sector ("*Commission de Surveillance du Secteur Financier*"). FIDUPAR as the following authorised status in accordance with the law of 5th April 1933 relating the financial sector, as amended :

- \_ Commission agent, broker in financial instruments,
  - \_ Registrar agent,
  - \_ Corporate domiciliation agent,
  - \_ Professional providing company incorporation and management services,
- and any other side business to the authorised status.

Focusing on our clients' needs, we have considerably developed with deep commitment to our historical values: reactivity, creativity, engagement and ambition, while maintaining high level ethics.

With a staff of multilingual employees specialized in different fields, we provide tailor made services for our international clients.

Our multi-disciplinary teams work in close cooperation with our clients in the realization of their projects.

FIDUPAR has more than 40 multilingual employees divided into multi-disciplinary teams.

FIDUPAR bases its know-how on an overall view and in-depth knowledge of the demands of its clients - private individuals, entrepreneurs, institutionals and international corporates.

FIDUPAR is specialized in the study and set-up of financial engineering projects including Luxembourg structures, specifically the creation of legal structures to hold and finance participations, patents, brands, securities, private equity, real estate and infrastructure. FIDUPAR has been providing central administration services including transfer agent for "Fonds d'Investissement Spécialisés" (FIS - Specialised Investment Funds) and for "Société d'investissement en capital risque" (SICAR - risk capital investment companies) since 2008, and for "Fonds d'Investissement Alternatifs Réservés" (FIAR – Reserved Alternative Investment Funds) since 2016.

FIDUPAR offers its expertise for the transformation and reorganization of companies and other structures, as well as in every form of administrative, account or tax services or the elaboration of financial solutions.

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