

Government Adopts Law on Specialized Investment Funds

by Jean-Luc Dascotte

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Luxembourg on February 13 replaced its 1991 law on undertakings for collective investment (UCIs) related to institutional investors with a new law on specialized investment funds (SIFs). The investment policies of SIFs may be flexible, as the range of eligible assets is not limited. Although the risk diversification requirement still remains a criterion for a SIF, the requirements are now less stringent.

Tax Provisions

The SIF is not subject to corporate income tax or net wealth tax. However, the SIF law states that the following operations will be subject to a fixed capital duty (as determined by Grand Ducal decree) not to exceed €1,250:

- incorporation of a SIF;
- conversion of a UCI into a SIF;
- contribution to a SIF;
- conversion of a SIF into another SIF;
- conversion of a SIF into a UCI; or
- merger of a SIF with another SIF or with a UCI.

The Grand Ducal decree, issued February 27 and published March 2, states that the capital duty due on the incorporation of a SIF is a fixed amount of €1,250 and covers any capital transaction to be realized by the SIF at a later stage. Therefore, the fixed capital duty of €1,250 is a nonrecurring tax charge for the SIF. The SIF is also subject to a yearly subscription tax of 0.01 percent of its net asset value. However, units owned by a SIF in another UCI that has already been subject to subscription tax may benefit from a subscription tax exemption. The subscription tax exemption also may apply to SIFs investing in monetary market instruments and to SIFs the shares in or units of which are sub-

scribed by pension funds. Unless the EU savings tax directive (Council Directive 2003/48/EC) applies, no withholding tax is due on distributions made by a SIF.

Extension of the Notion of Investor

Compared to the law of 1991, the new law broadens the concept of investor by adopting the approach of the SICAR (*sociétés d'investissement en capital à risque*, or venture capital investment vehicle). An investor is any person classified as an institutional investor, a professional investor, or a qualified investor — that is, an investor who declares in writing his adherence to the status of a qualified investor, invests at least €125,000 in the SIF, or, if he invests less, has received a certificate of qualification from a credit institution, investment firm, or asset management company confirming the expertise of the investor and his knowledge to adequately appreciate the investments made by the SIF.

Investors may invest in the SIF through equity or debt.

Investment Funds (FCPs)

A SIF may exist under the legal form of an FCP (mutual fund). Unlike traditional FCPs, the depositary bank of a SIF does not have to verify certain transactions executed by the SIF. Though the minimum net assets of the FCP cannot be lower than €1.2 million, that minimum must be reached within 12 months of the date of approval of the SIF. The capital must be completely subscribed and paid in at a level of at least 5 percent, either by payment in cash or contribution in kind.

Legal Forms

A SIF may also exist under the legal form of a SICAV or SICAF (in the form of a public limited

company, a limited partnership limited by shares, a limited liability company, or a cooperative company organized in the form of a public limited company), with either fixed or variable capital. The minimum capital requirements are identical to those of an FCP. However, the depositary bank does not have to verify certain transactions. The valuation of assets of an FCP, SICAV, or SICAF must be based on the fair value of its assets, unless there are derogative provisions in the management regulations.

Approval and Observation

A SIF must be approved by the CSSF (the Luxembourg supervisory authority for the financial sector) to exercise its activities. Approval will be granted on examination of the constitutional documents of the SIF and its choice of depositary bank. Unlike with traditional investment funds, the notion of a promoter no longer exists for the SIF, and

the investment manager is not subject to CSSF approval. However, the directors of the SIF must be approved by the CSSF. It is possible to start the activities of a SIF without prior approval from the CSSF, if the application for approval is filed with the CSSF within one month after setting up the SIF.

Constitutional Documents and Annual Report

The constitutional documents and annual report must be accessible to investors. The annual report must be made available to investors within six months from the end of the period to which the report refers. The publication of a semiannual report, a long-form report, or the net asset value of a SIF is unnecessary. ◆

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