



Amended Luxembourg regulatory regime for Specialised Investment Funds

On 6 March 2012, the Luxembourg Parliament voted on and approved the Bill n°6318 amending the Law of 13 February 2007 on Specialised Investment Funds (hereafter, the "Law"). The new Law contains some significant changes that in effect tighten Luxembourg regulatory regime for Specialised Investment Funds (hereafter, "SIFs").

The Law has been inspired by EU Directive 2011/61/EU on Alternative Investment Managers (hereafter, the "AIFMD") and aims to align the current SIF regime with the AIFMD. Yet, the Luxembourg legislator also took this opportunity to improve the existing SIF regime by taking into account the practical experience of financial sector piled up since 2007 in its dealings with SIFs, and by making available to SIFs some of the advantages introduced for UCITS by the Law of 17 December 2010 on Undertakings for Collective Investments.

The Law will come into force on the first day of the month after its publication in the Luxembourg official journal (*Mémorial*) and will apply directly to all new SIF structures. Certain transitional provisions are applicable to existing SIFs.

The main new rules introduced within the Law are set out below.

Increased regulation and supervision

Active portfolio management

The Law expressly requires SIFs to have their investment portfolio managed actively. The aim here is to exclude from the SIF regime purely passive investment vehicles, such as Luxembourg private asset management companies (*Société de Gestion de Patrimoine Familial*). This amendment does not, however, intend to inhibit the set-up of specialised private equity or real estate SIFs.

Compulsory pre-approval by CSSF

It will no longer be possible to launch the SIF prior to the approval by CSSF.

Change notifications

SIFs will have a duty to notify CSSF in writing and to obtain its prior approval for any material changes of the information or documentation on which CSSF founded its approval of the SIF, its directors and the investment managers.

Rules of delegation

CSSF will have to be adequately informed of all delegations made by the SIF.

The Law further puts forward specific requirements with respect to the delegation of portfolio management: the mandate may only be granted to persons or entities that are authorized or registered for the purpose of asset management and subject to prudential supervision (in Luxembourg or a foreign country if CSSF cooperates with the authority of such country). If the above conditions are not met, the entity or person to whom the investment management is intended to be delegated will have to obtain a prior approval from CSSF, on a case by case basis.

The Law expressly excludes the delegation of the investment management function to the SIF's custodian.

In all cases, SIF's directors will have to be in a position to demonstrate that the selection of the delegate was made with sufficient care and that the expertise and ability of the delegates are appropriate for the delegated functions.

Existing SIFs should comply with this new requirement **by 30 June 2013**.

Supervision of investors

SIFs will have to implement the appropriate means to monitor the eligibility of their investors (qualified as well-informed investors under the Law).

Existing SIFs will have to put in place such procedures **by 30 June 2012**.

New managing standards

SIFs will be required to put in place risk management policy and appropriate systems to detect, measure and manage the risks associated with the portfolio positions and the impact of these positions with respect to the general risk profile of the portfolio.

SIFs are further obliged to be structured and organised so as to restrain risks of any conflict of interest.

CSSF will have to provide further clarifications on the implementation of these new requirements.

Existing SIFs will have to conform to these obligations **by 30 June 2012**.

Cross investment

Subject to certain conditions, sub-funds of a multiple compartment SIF will be permitted to make investments within other sub-funds of the same SIF.

Relaxed corporate requirements

Translation of corporate documents

The Law provides for an exemption to translate the articles of incorporation or any modification to the articles of incorporation or any notarial deeds into French or German in case these documents have been originally drafted in English.

Reporting

SIFs, taking certain corporate forms, will no longer be required to send to the shareholders, the annual accounts, the auditor's report, the management report and the comments of the supervisory board together with the convening notice to the annual general meeting.

Convening notices

SIFs, taking certain corporate forms, may provide in the convening notices that the quorum to the shareholder meetings will be determined on the basis of the shares issued and in circulation 5 days before the date of the meeting.

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