

ELVINGER HOSS

LUXEMBOURG LAW

Specialised Investment Funds

Luxembourg regime for investment funds
dedicated to sophisticated investors



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INTRODUCTION

The specialised investment fund (“**SIF(s)**”) was first introduced by the Law of 13 February 2007 (“**SIF Law**”)¹ and has since enjoyed great success. The SIF offers a regulated label whilst maintaining flexibility in terms of investment scope and structuring and also benefits from an attractive tax regime. The scope of eligible investors includes not only institutional investors and professional investors but also other types of well-informed investors, such as sophisticated private investors meeting certain conditions.

The SIF regime was amended among others by the Law of 12 July 2013 on alternative investment fund managers (“**AIFM Law**”) which transposes the AIFMD² into Luxembourg law. Although the AIFM Law mainly regulates alternative investment fund managers (“**AIFM(s)**”), it also contains various provisions that apply to alternative investment funds (“**AIF(s)**”), for which SIFs may qualify. The SIF regime was also amended by the Law of 21 July 2023, which modernises the Luxembourg toolbox relating to investment funds (including SIFs), namely to take into account certain legal changes and market requirements.

The SIF Law is divided into two parts. The first part contains the general provisions applicable to all SIFs, while the second part contains specific provisions applicable only to those SIFs which qualify as AIFs (“**SIF AIF(s)**”) and which are managed by an AIFM that is authorised in accordance with the AIFM Law or AIFMD provisions. SIF AIFs that are managed by an AIFM authorised in the European Union (“**EU**”)³ may benefit from the AIFMD passport in order to be marketed to professional investors in the EU through a regulator-to-regulator notification regime.

In addition, the European long term investment fund Regulation (“**ELTIF Regulation**”)⁴, the European venture capital Regulation (“**EuVECA Regulation**”)⁵ and the European social entrepreneurship Regulation (“**EuSEF Regulation**”)⁶ may also offer new opportunities as they enable AIFMs to market SIF AIFs with an ELTIF label to retail investors in the EU and SIF AIFs with a EuVECA/EuSEF label to certain eligible investors other than professional investors in the EU, provided that the relevant investors qualify as well-informed investors under the SIF Law.

¹ The SIF Law is available on our website www.elvingerhoss.lu in both English and French.

² “**AIFMD**” refers to Directive 2011/61/EU on alternative investment fund managers, as amended.

³ For the purposes of this Memorandum, the terms “European Union”, “EU” and “EU Member States” also refer to and include the European Economic Area (“**EEA**”) and the States that are contracting parties to EEA agreement other than the Member States of the European Union, within the limits set forth by this agreement and related acts.

⁴ “**ELTIF Regulation**” refers to Regulation (EU) 2015/760 on European long-term investment funds, as amended.

⁵ “**EuVECA Regulation**” refers to Regulation (EU) 345/2013 on European venture capital funds, as amended.

⁶ “**EuSEF Regulation**” refers to Regulation (EU) 346/2013 on European social entrepreneurship funds, as amended.

CHAPTER I: GENERAL PROVISIONS APPLICABLE TO ALL SIFS

The SIF regime is applicable to undertakings for collective investment (“UCI(s)“):

- whose securities or partnership interests are restricted to one or several well-informed investors;
- whose exclusive object is the collective investment of their funds in assets in order to spread investment risks and to provide their investors with the benefit of the result of the management of their assets; and
- whose constitutive documents⁷ and offering documents provide that they are subject to the SIF regime.

1. SCOPE

1.1. Undertakings for collective investment

SIFs represent a specific category of UCIs that invest in accordance with the principle of risk-spreading. They are regulated UCIs subject to prior authorisation, and thereafter permanent prudential supervision, by the Luxembourg *Commission de Surveillance du Secteur Financier* (“CSSF“).

1.2. Well-informed investors

Investment into SIFs is limited to well-informed investors that are able to adequately assess the risks associated with an investment in such a vehicle.

The SIF Law defines well-informed investors not only as (a) institutional investors and (b) professional investors within the meaning of Annex II of MiFID⁸, but also as (c) other investors who:

- confirm in writing that they adhere to the status of well-informed investors; and
- either
 - (i) invest a minimum of EUR 100,000; or
 - (ii) benefit from an assessment made by an EU credit institution, MiFID investment firm, UCITS management company or authorised AIFM certifying that they have the adequate expertise, experience and knowledge to appraise the contemplated investment in the SIF.

Therefore, sophisticated retail or private investors will be authorised to invest in SIFs through the use of this

latter category (c).

The above conditions do not apply to the directors and those other persons involved in the management of the relevant SIF.

1.3. Optional regime

The SIF regime is optional to the extent that the constitutive or offering documents must expressly provide that the investment vehicle is subject to the provisions of the SIF Law. Accordingly, any investment vehicle, which is reserved to one or more well-informed investors, will not necessarily be governed by the SIF regime. Instead it could opt to be established as an unregulated company subject to the general rules of Luxembourg Company Law⁹.

2. INVESTMENT RULES

2.1. Flexibility with respect to eligible assets

The SIF Law allows full flexibility with respect to the assets in which a SIF may invest, subject to the CSSF’s prior approval of the investment objective, strategy and policies.

The SIF regime is expressly designed to accommodate UCIs that invest in any type of assets and which pursue both traditional and alternative investment strategies. It indeed permits the structuring of, *inter alia*, equity funds, bond funds, money market funds¹⁰, real estate funds, hedge funds, private equity funds, debt funds, micro-finance funds, social entrepreneurship funds, venture capital funds, green funds, infrastructure funds, funds which invest in tangible assets such as aircraft, ships, art, etc.

2.2. Applicability of the principle of risk-spreading

The SIF Law does not provide for specific investment rules or restrictions applicable to the SIF, it only requires that SIFs are subject to the principle of risk-spreading. The CSSF has issued guidelines in its Circular 07/309 as to the meaning of risk-spreading in the context of SIFs, which are detailed below.

Circular 07/309 stipulates the following guiding principles:

- (1) A SIF may not invest more than 30% of its assets or subscription commitments in securities of the same type issued by the same issuer¹¹.

⁷ i.e. mainly the articles of incorporation (*statuts*), the management regulations (*règlement de gestion*) or the partnership agreement (*contrat social*), depending on the legal form of the SIF.

⁸ “MiFID” refers to Directive 2014/65/EU on markets in financial instruments, as amended.

⁹ “Luxembourg Company Law” refers to the Law of 10 August 1915 on commercial companies, as amended.

¹⁰ Since 21 July 2018, SIFs, which qualify as money market funds (“MMF(s)”) under Regulation (EU) 2017/1131 on MMF, must be specifically authorised as MMF. In addition, the manager of an MMF must be specifically authorised to manage a MMF (Article 5 of the MMF Regulation).

¹¹ For the purpose of this restriction, in the case where the issuer is a target UCI with multiple compartments, each compartment is deemed to be a distinct issuer if the compartments of that target UCI are “ring-fenced” against the claims of third parties.

However, this restriction does not apply to:

- (i) securities issued or guaranteed by an OECD Member State or its regional or local authorities or by EU, regional or global supranational institutions and bodies; and
 - (ii) target UCIs which are subject to risk-spreading requirements at least comparable to those applicable to SIFs¹².
- (2) Short sales may not, in principle, result in the SIF holding a short position in securities of the same type issued by the same issuer representing more than 30% of its assets.
- (3) When using derivative financial instruments, a SIF must ensure risk-spreading comparable to the above, by means of an appropriate diversification of such derivatives' underlying assets. In order to secure the same objective, the counterparty risk in an OTC transaction must, where applicable, be limited in consideration of the relevant counterparty's quality and qualification.

These guidelines shall, in principle, apply to all SIFs, although the CSSF may grant exemptions to the risk diversification requirements under Circular 07/309 on a case-by-case basis¹³.

Furthermore, the CSSF may accept a "grace period" during which SIFs may depart from the aforementioned diversification rules. This grace period should be disclosed in the SIF offering document and may vary depending on the type of assets under management¹⁴.

Whenever a SIF is structured as an Umbrella SIF (see Section 3.2 (a) of this Memorandum), any reference to the SIF in the foregoing guiding principles must be understood as a reference to any of its compartments.

3. STRUCTURAL ASPECTS AND FUNCTIONING RULES

3.1. Legal forms

The SIF Law specifically refers to a *fonds commun de placement* ("**FCP(s)**") and a *société d'investissement à capital variable* ("**SICAV(s)**"), with multiple legal forms available.

This Memorandum focuses on the legal forms most commonly used by SIF, namely the FCP and the investment company.

(a) Fonds commun de placement

An FCP itself is not a legal entity. It represents a co-proprietorship of assets which are managed, on behalf of the joint owners, by a Luxembourg management company generally established under, and governed by, either Chapter 15 of the UCI Law¹⁵ (i.e. a management company whose corporate object is to manage at least one UCITS, in addition to the management of the relevant SIF) or Chapter 16 of the UCI Law.

Under the FCP structure, investors subscribe for units in the FCP, which represent a portion of the net assets of the SIF, and they are only liable up to the amount they have contributed. The rights and obligations of the unitholders and their relationship with the management company are defined in the management regulations.

The management company on behalf of the FCP takes all decisions relating to the investments and the operations of the FCP.

Unlike investors in an investment company (as will be explained below), investors in an FCP are entitled to vote only if, and to the extent that, the management regulations provide for such a possibility.

(b) Investment company

A SIF can alternatively be established under the form of a corporate-type fund.

An investment company subject to the SIF regime can be created either with variable capital ("**SICAV(s)**") or with fixed capital ("**SICAF(s)**").

The capital of a SICAV is increased or reduced automatically as a result of new subscriptions and redemptions without requiring any formalities such as the approval of the general meeting of unitholders/shareholders/partners or the intervention of a notary.

A SIF created under the form of a SICAV can adopt any one of the corporate forms listed by the SIF Law, namely that of a public limited company (*société anonyme* or "**SA**"), a partnership limited by shares (*société en commandite par actions* or "**SCA**"), a common limited partnership (*société en commandite simple* or "**SCS**"), a special limited partnership (*société en commandite spéciale* or "**SLP**"), a private limited company (*société à responsabilité limitée* or "**Sàrl**") or a cooperative set up as a public limited company (*société coopérative organisée sous forme de société anonyme* or "**SCSA**").

¹² This flexibility allows a SIF to be structured as a feeder-fund of another Luxembourg or foreign investment fund (the master fund) provided that the constitutive or offering documents of the master fund provide sufficient evidence that it is subject to appropriate risk-spreading requirements.

¹³ For instance, the CSSF has indicated, for specific infrastructure investments, that it would relax the aforementioned maximum 30% ratio if certain conditions are met. The CSSF recognises that infrastructure funds often make very sizeable investments and may therefore have difficulties in complying with the risk-diversification ratio.

¹⁴ For example, Luxembourg investment funds investing in real estate usually benefit from a four-year grace period.

¹⁵ "**UCI Law**" refers to the law of 17 December 2010 on undertakings for collective investment, as amended.

SICAFs are not limited to specific corporate forms under the SIF Law.

There are a number of aspects to consider when making a choice between the different corporate forms available.

One consideration is the control, which the initiator of the project would like to exercise over the SIF. Whatever its form, different mechanisms may be put into place when structuring a SIF, so as to reduce the risk of an unfriendly takeover. However, should the taking of control over the SIF be a real concern, it is generally advisable to use the corporate form of an SCA, an SCS or an SLP which all provide for dissociation between the categories of partners allowing the initiator to retain control over the vehicle. Another aspect to consider is the restrictions on the transferability of the units, shares or partnership interests and the number of unitholders/shareholders/partners. The applicable tax regime may also influence the adoption of a particular corporate form.

Investment companies are subject to the provisions of Luxembourg Company Law except in those cases where the SIF Law expressly derogates therefrom. In fact, the provisions of the SIF Law applicable to SICAV-SIF deviate from the requirements of the Luxembourg Company Law on many aspects in order to offer the SIFs a more flexible corporate framework.

An investor subscribing for shares/units/partnership interests in a SICAV/SICAF-SIF becomes a unitholder/shareholder/partner of the investment company and can participate in and vote at general meetings of unitholders/shareholders/partners in accordance with the terms and conditions of the investment company's constitutive documents subject, however, to the specific requirements imposed by applicable laws. Therefore, unitholders/shareholders/partners of a SICAV/SICAF-SIF can or must decide on a variety of matters including the appointment or revocation of the members of the governing body, the approval of the annual accounts and the liquidation of the SICAV/SICAF-SIF.

(c) Focus on the special limited partnership

Among the corporate forms available for establishing an investment company, the SLP is very popular. The key characteristic, which distinguishes the SLP, is that it has no legal personality. It is very similar in structure to the Anglo-Saxon LP, which has traditionally been favoured for private equity investments.

The SLP is a partnership entered into by one or more unlimited or general partners (*associés commandités*) who will bear an unlimited joint and several liability for all of the obligations of the partnership, with one or more limited partners (*associés commanditaires*) whose liability is limited to the amount they contributed pursuant to the provisions of the limited partnership agreement (*contrat social*). An SLP can be of a limited or unlimited duration. The law, which governs SLPs,

allows flexibility and freedom in the organisation of an SLP due to the limited number of mandatory rules¹⁶.

3.2. Other structuring aspects

(a) Umbrella structure and multiple securities/partnership interest classes

The SIF Law specifically refers to the possibility of creating a SIF with multiple compartments ("**Umbrella SIF(s)**"), which compartments may differ in, *inter alia*, their investment policy, redemption policy, dividend policy, fee structure, reference currency, appointed investment manager/adviser and/or type of target investors.

The SIF Law further provides that each compartment of such a vehicle will be linked to a specific portfolio of investments segregated from the investment portfolios pertaining to the other compartments, unless a clause included in the constitutive documents provides otherwise. Pursuant to this so-called "ring-fencing" principle, although an Umbrella SIF constitutes a single legal entity, the assets of each compartment can only be used to satisfy the rights of investors in that particular compartment and the rights of creditors whose claims have arisen in connection with the operation of that particular compartment, unless a clause to the contrary is included in the constitutive documents of the Umbrella SIF.

The above structuring possibility and its terms must be expressly provided for by the constitutive documents of the Umbrella SIF and reflected in its offering document (which must also describe each compartment's specific investment policy).

The CSSF may withdraw the authorisation it granted to one compartment without automatically undermining the authorisation it granted to the other compartments of the Umbrella SIF. Moreover, each compartment of an Umbrella SIF may be liquidated separately and the liquidation of a compartment shall not involve the liquidation of another compartment. Only the liquidation of the last remaining compartment of the Umbrella SIF involves the liquidation of the SIF as a whole.

In addition, or as an alternative to the umbrella structure, different classes of securities or partnership interests can be created within the same SIF or even within the same compartment of an Umbrella SIF. Such classes may have different characteristics particularly as regards their fee structuring arrangement, their targeted investors, and/or their distribution policy.

The issue of tracking shares by a SIF, i.e. shares tracking the performance of a specific underlying asset, is also possible under certain conditions.

(b) Cross-compartment investments

A compartment of an Umbrella SIF can invest under certain conditions in one or more other compartments of the same SIF, a so-called "cross-compartment investment".

¹⁶ For more information, please see our Memorandum "Luxembourg Partnerships in the asset management industry" on our website www.elvingerhoss.lu.

This type of investment must be provided for in the SIF offering document, but not necessarily in its constitutive documents. The SIF Law does not prohibit the possibility to create a master/feeder structure within the same SIF.

(c) Capital structure and debt financing

The SIF Law provides that the minimum capitalisation of a SIF is EUR 1,250,000 which must be reached within 24 months following the authorisation of the SIF by the CSSF.

Except in the case of an FCP, the reference point for this minimum amount is the subscribed capital plus any issue premium paid or, where applicable, the value of the amount constituting the partnership interests, rather than the net assets.

A SIF set up as an investment company can issue partly paid shares, which must be paid up to a minimum of 5% per share on issue, except for certain legal forms.

A SIF may also finance its activities and the acquisition of its portfolio of investments, where appropriate, on a substantially predominant basis, via borrowings as well as via the issue of bonds or other debt instruments.

(d) Issue and redemption of securities or partnership interests

The conditions and procedures applicable to the issue and, if applicable, the redemption or the repurchase of securities or partnership interests are to be determined in the constitutive documents.

SIFs can function as either open-ended or closed-ended funds, for both subscriptions and redemptions.

Also, there is no requirement for the issue, redemption or repurchase price to be based on the net asset value, such as the requirement placed on open-ended SICAV or FCP governed by the UCI Law. SIFs can therefore issue securities or partnership interests at a predetermined fixed price or repurchase them below net asset value (for example to reduce the discount in the case of a closed-ended SIF). Similarly, the issue price may be composed of a portion of par value and a portion of issue premium.

Subscriptions in different tranches can be achieved through the successive subscriptions of new securities ascertained at the initial subscription through subscription commitments or by means of partly paid securities, the remaining amount of the issue price of the securities initially issued being payable in further instalments.

A SIF set up under the form of an SCS or an SLP may also offer partnership interests that do not take the form of securities, but which set up capital accounts for each partner (and/or if relevant loan accounts) onto which contributions, withdrawals, loans, allocation of profits and other financial movements of the partners will be recorded, and which show the financial standing of each partner *vis-à-vis* the SIF and his co-partners. The use of capital accounts may provide for more

flexibility in response to any specific requirements and/or constraints that investors in the SIF may have.

(e) Dividend policy

A SIF set up as an FCP or a SICAV is not required to maintain a legal reserve and the SIF Law does not provide for any restriction on the distribution of dividends, provided that the minimum capitalisation referred to in Section 3.2 (c) of this Memorandum is complied with.

(f) Valuation of assets

In light of the virtually unlimited types of assets in which a SIF can invest, SIFs are subject to flexible valuation rules. The SIF Law states that, unless otherwise provided for in the constitutive documents, the assets of a SIF must be valued at fair value. This value is to be determined in accordance with the rules set forth in the constitutive documents¹⁷.

SIFs are not required to calculate and publish their asset value per share on a regular basis (although some type of determination of total net assets will have to be performed on a quarterly basis for the purpose of assessing the amount of the *taxe d'abonnement* to be paid on a quarterly basis as discussed in Chapter V of this Memorandum, and that the net asset value of the SIF will, as a matter of principle, be determined at least once a year, namely at the end of the financial year).

(g) Risk management system

A SIF must employ a risk management system, which enables it to detect, measure, manage and monitor appropriately the risk of its portfolio positions and their contribution to the overall risk profile of the portfolio.

CSSF Regulation 15-07 specifies the content of the risk management system (and conflict of interest policy, see Section 3.2 (h) of this Memorandum) which must be implemented by a SIF. The Regulation makes a distinction between SIFs managed by an authorised AIFM and the other SIFs and it restricts its application to SIFs which are not managed by an authorised AIFM.

(h) Conflicts of interest

A SIF must be structured and organised so as to reduce to a minimum, the risks that any conflicts of interest, which may arise between the SIF and any person being involved in the activities of the SIF or being directly or indirectly linked to the SIF, could harm the interests of its investors. In the case of potential conflicts of interest, the SIF must ensure that the interests of its investors are preserved.

In this respect, SIFs are required to establish a conflicts of interest policy, which must be communicated to the CSSF. CSSF Regulation 15-07 further details the expectations of the CSSF as regards the conflicts of interest policy for SIFs, including the obligation to keep and regularly update a record of the types of collective portfolio management activities carried out by or on behalf of the SIF in which a conflict of interests entailing a material risk of damage to its interests has

¹⁷ For the specific valuation aspects applicable to a SIF AIF, which is managed by an authorised AIFM, see Chapter II, Section 4 of this Memorandum.

arisen or may arise. The Regulation makes a distinction between SIFs managed by an authorised AIFM and the other SIFs and it restricts its application to SIFs which are not managed by an authorised AIFM.

4. REGULATORY ASPECTS

4.1. Supervision by the CSSF

SIFs are regulated vehicles subject to the permanent supervision of the CSSF. However, due to the fact that well-informed investors do not need similar protection as non-sophisticated retail investors, SIFs may benefit from some additional flexibilities compared to UCIs governed by the UCI Law, both in terms of the approval procedure and the regulatory requirements to which they are subject.

A SIF does not necessarily need to be initiated by a financial institution with significant financial resources. The CSSF will focus on the specific professional expertise and experience of those who are in charge of portfolio management, as described below.

A SIF is obliged to obtain approval from the CSSF before its launch¹⁸. The CSSF has to approve the constitutive and offering documents, the choice of the directors/managers, the persons or entities in charge of the portfolio management function, the administration agent, the depositary and the auditor of a SIF. During the life of a SIF, any change to the constitutive or offering documents and any change of director/manager or of the aforementioned service providers will also require the CSSF's approval. In addition, a SIF set up as an FCP shall only be authorised by the CSSF if the CSSF has approved the application of the management company to manage that FCP.

As regards the choice of the SIF's directors/managers and the persons or entities who are in charge of the portfolio management function, the CSSF will check that they are of sufficiently good repute, have the required experience and can devote the appropriate time to their mandate in order to properly perform their functions in relation to the SIF.

The length of time required for the approval of a SIF by the CSSF will depend on the complexity and quality of the file and the approval process is also subject to the payment of a fixed fee, the amount of which varies depending on, among others, the stand-alone or umbrella structure of the SIF.

Once approved by the CSSF and established, the SIF is registered on the official list of SIFs by the CSSF.

4.2. Appointment of an investment manager

A SIF may appoint one or more investment managers, to whom the SIF can delegate the investment management functions.

In particular, the appointed investment managers must be authorised or registered as investment managers, be subject to the prudential supervision of their relevant supervisory authority and in the case of a delegation to a third-country investment manager, cooperation between the CSSF and the relevant supervisory authority must be ensured.

If these conditions are not met, the CSSF must specifically approve the investment manager prior to the delegation, based on the latter's experience and reputation. Any delegation arrangements must be disclosed in the offering document of the SIF.

4.3. Requirement for a depositary

A SIF has to entrust the safekeeping of its assets to a depositary, which must either have its registered office in Luxembourg or be established in Luxembourg if its registered office is located abroad.

The safekeeping of the SIF's assets is a function to be understood in the sense of "supervision", which implies that the depositary must have knowledge at all times of how the assets of the SIF are invested, where they are located and how these assets are available. However, this requirement does not prevent the physical safekeeping of the assets from being entrusted to local sub-depositaries. The depositary is liable for any losses suffered by investors as a result of a wrongful failure to perform its obligations¹⁹.

The SIF's depositary must be a credit institution or an investment firm within the meaning of the Law of 5 April 1993 on the financial sector, as amended ("**Financial Sector Law**"). Investment firms are, however, eligible to act as a depositary only if they fulfil certain conditions laid down by the AIFM Law (such as the capital and own funds requirements and the requirements to be in possession of appropriate organisational, administrative and corporate governance structures).

In addition to the type of depositary described above, a professional depositary of assets other than financial instruments²⁰ may also be appointed as depositary. Pursuant to the SIF Law, this type of depositary may only be used by SIFs which have no redemption rights exercisable during a period of five years from the date of the initial investments and that, in accordance with their core investment policy, either (i) generally do not invest in financial instruments that must be held in

¹⁸ The approval request must be completed and filed through the "UCI Approval" application available under the eDesk portal of the CSSF.

¹⁹ For more information concerning the specific duties and liability regime that apply to the depositary of a SIF AIF, which is managed by an authorised AIFM, see Chapter II, Section 3 of this Memorandum.

²⁰ The professional depositary of assets other than financial instruments is the "*dépositaire professionnel d'actifs autres que des instruments financiers*" within the meaning of Article 26-1 of the Financial Sector Law.

custody in accordance with the relevant provisions of the AIFM Law²¹, or (ii) generally invest in issuers or non-listed companies in order to potentially acquire control over such companies within the meaning of the AIFM Law²².

CSSF Circular 18/697 clarifies the organisational arrangements that need to be complied with by a depositary of UCIs other than UCITS. The depositary of a SIF (whether qualifying as an AIF or not) must comply with this Circular.

CSSF Circular 08/372 further clarifies the relationship between the depositary and any appointed prime brokers and the specific duties and liabilities that apply to the depositary in such circumstances²³.

4.4. Requirement for central administration

In accordance with the SIF Law, a SIF must have its registered office and head office (central administration) in Luxembourg.

The meaning of the central administration in Luxembourg includes registrar, accounting and net asset value calculation, as well as client communication functions.

A SIF is not, however, required to have employees or its own premises. A SIF could perform this central administration function internally (subject to CSSF authorisation and sufficient resources) but in most cases, a SIF will appoint one or more Luxembourg-based central administration agent(s) which will, among other tasks, act as domiciliary agent, registrar agent, and which will also keep the books for the SIF and calculate the net asset value.

The entity entrusted with central administration functions of a SIF needs to be authorised by the CSSF as a "UCI administrator". This entity can be, *inter alia*, an AIFM or certain other external service providers authorised under the Financial Sector Law.

CSSF Circular 22/811 clarifies further the rules applicable to the central administration of Luxembourg investment funds, including SIFs, namely in terms of authorisation, substance, internal organisation and reporting. Notably, this circular foresees that, the CSSF may, on a case-by-case basis and subject to particular requirements, authorise the UCI administrator located in Luxembourg to delegate certain tasks (including to an entity located outside Luxembourg).

4.5. Requirement for an auditor

The annual accounts of a SIF must be audited by a Luxembourg approved statutory auditor (*réviseur d'entreprises agréé*), which must provide evidence that it has an appropriate level of professional experience

and shall be approved by the CSSF.

The auditor is responsible, *inter alia*, for controlling the accounting data comprised in the SIF's annual report.

It must also report to the CSSF any findings which would constitute a material breach of the SIF Law or which would otherwise be detrimental to the operations of the SIF, and must further perform certain AML/CFT works, the scope of which will vary depending on whether the SIF has appointed an investment fund manager (in Luxembourg or abroad) or not²⁴.

4.6. AML/CFT and TFS requirements

A SIF (qualifying as an AIF or not) is a professional which is subject to, and must consequently comply with, the requirements imposed on it by applicable Luxembourg laws and regulations on the fight against money laundering and terrorist financing, including in particular the AML/CFT Law²⁵ as well as related laws and regulations, including the various regulations, circulars and guidelines issued by the CSSF with respect to AML/CFT matters²⁶ ("**AML/CFT Legislation**").

This includes, without limitation, the obligation for a SIF to define an adequate AML/CFT framework, including an AML/CFT risk appetite and risk assessment, as well as policies, controls and procedures (including in terms of investors, counterparties and assets due diligence) and training programme, in compliance with AML/CFT Legislation, to mitigate and effectively manage the risks of money laundering and terrorist financing. These policies, controls and procedures shall be proportionate to the nature, specificities and size of the SIF.

In addition, a SIF must appoint two distinct responsible persons for the purpose of compliance with its AML/CFT obligations. These persons are generally defined by the CSSF as "**RR**" (being the person responsible for the "compliance" by the SIF with its AML/CFT obligations) and "**RC**" (being the person responsible for the "control" of the compliance by the SIF with its AML/CFT obligations), and both of them must be notified to the CSSF.

CSSF Regulation 12-02, CSSF FAQ regarding the persons involved in AML/CFT for a Luxembourg investment fund or investment fund manager and CSSF FAQ on the AML/CFT RC Report provide further clarifications notably on (i) the duties and scope of functions of the RR and RC, and (ii) the content of the AML/CFT policies and procedures and annual RC report.

SIFs shall further comply with the targeted financial sanction ("**TFS**") regimes applicable in Luxembourg pursuant to the TFS Law²⁷, i.e. the TFS regimes issued

21 Typically (but not only) real estate funds.

22 Typically (but not only) private equity funds.

23 For the specific relationship between the depositary and a prime broker of a SIF AIF managed by an authorised AIFM, in the case where the CSSF Circular 08/372 does not fully apply, see Chapter II, Section 3 of this Memorandum.

24 See in particular Article 49 of CSSF Regulation No 12-02 of 14 December 2012 on the fight against money laundering and terrorist financing, as amended ("**CSSF Regulation 12-02**") and CSSF Circular 21/788.

25 "**AML/CFT Law**" refers to the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended.

26 See in particular, without limitation, CSSF Regulation 12-02.

27 "**TFS Law**" refers to the Law of 19 December 2020 on the implementation of restrictive measures in financial matters, as amended.

at the level of the United Nations, the EU and, if any, the Grand Duchy of Luxembourg, and report to relevant competent authorities accordingly, including the Luxembourg Ministry of Finance²⁸.

4.7. Information to be supplied to investors and reporting requirements

(a) Offering document

A SIF is required to produce an offering document, which must be approved by the CSSF.

The SIF Law does not impose any specific schedule with respect to the minimum content of the offering document. However, the offering document must include the information necessary for investors to be able to make an informed judgment of the investment proposed to them and, in particular, of the risks attached thereto and it must also contain any specific information as may be required by the CSSF or imposed by specific laws and regulations as may be applicable to the relevant SIF depending on, amongst other things, its legal structuring and investment policy²⁹.

A continuous updating of the offering document is not required, but the essential elements of such a document must be updated whenever new securities or partnership interests are issued to new investors. Any amendment to the offering document is also subject to the CSSF's approval.

(b) PRIIPs KID

In addition to the offering document, in the case where the units, shares or partnership interests of a SIF are available within the EU territory to well-informed investors which do not qualify as professional investors under MiFID, a key information document ('KID') must be drawn up in accordance with the PRIIPs

Regulation³⁰ and delivered to those retail investors before any offering or subscription to units, shares or partnership interests.

(c) Financial statements

The SIF will be required to publish an audited annual report within six months from the end of the period to which the report relates. The SIF Law contains an appendix, which describes the specific information to be included in the annual report. This appendix only requires qualitative and/or quantitative information to be given on the portfolio of investments in a manner which allows investors to make an informed judgment concerning the evolution of the activity and the results achieved by the SIF³¹. The SIF Law does not require a semi-annual report to be prepared and published.

SIFs are exempt from the obligation to prepare consolidated accounts, which is normally required by Luxembourg Company Law.

(d) Reporting

The CSSF has issued various circulars and FAQs, which detail the reporting duties and processes to be complied with, *inter alia*, by a SIF including (but not limited) from a financial as well as from an AML/CFT perspectives.

²⁸ Further guidance may be found on the dedicated webpages maintained by the Luxembourg Ministry of Finance and the CSSF.

²⁹ For the additional requirements regarding disclosure to investors that are applicable to a SIF AIF managed by an authorised AIFM, see Chapter II, Sections 5 and 6 of this Memorandum.

³⁰ 'PRIIPs Regulation' refers to Regulation (EU) 1286/2014 on packaged retail and insurance-based investment products, as amended.

³¹ For the additional disclosure requirements applicable to the annual report of a SIF AIF managed by an authorised AIFM, see Chapter II, Section 5.

CHAPTER II: SPECIFIC REGULATORY ASPECTS APPLICABLE TO SIF AIFS MANAGED BY AN AUTHORISED AIFM

The SIF Law makes a distinction between two SIF regimes namely:

- SIFs which do not qualify as SIF AIFs or although qualifying as AIFs fall within the small manager exemption or group exemption, and thus are only subject to Part I of the SIF Law³²; and
- SIFs which do qualify as SIF AIFs and are managed by an AIFM authorised in accordance with the AIFM Law or AIFMD, and thus are required to comply with the full AIFMD and AIFM Law product rules³³ to which Part II of the SIF Law cross-refers.

This Chapter examines the provisions contained in Part II of the SIF Law, which apply to SIF AIFs managed by an authorised AIFM in addition to (or, where applicable, by way of derogation from) the general provisions of Part I of the SIF Law, as described in Chapter I of this Memorandum.

This Chapter II is relevant because the AIF's definition is broad and as a result, most SIFs will qualify as SIF AIFs and will appoint an authorised AIFM.

1. REQUIREMENT TO APPOINT AN AIFM

Unless they can benefit from one of the limited exemptions provided for by the AIFMD and AIFM Law, SIF AIFs must be managed by an authorised AIFM, which may either be established in Luxembourg, in an EU Member State or in a third country³⁴.

According to the AIFM Law, a SIF AIF can be either (i) externally managed through the appointment of a separate AIFM responsible for managing the SIF AIF, or (ii) internally managed, where the SIF AIF's legal form permits internal management and where its governing body has chosen not to appoint an external AIFM.

1.1. Externally managed SIF AIFs

In the case of an externally managed SIF AIF, it is the governing body³⁵ of the SIF AIF which is empowered to appoint an authorised AIFM, which can either be established in Luxembourg, in another EU Member State or in a third country.

In such a case, the relevant external AIFM must be authorised and licensed to manage funds pursuing investment strategies as those pursued by the relevant SIF AIF. For instance, in Luxembourg, the AIFM licence granted by the CSSF may be limited to manage funds pursuing certain investment strategies only, such as real estate, infrastructure or private equity strategies. Moreover, if the AIFM is established in an EU Member State other than Luxembourg, it must have passported its management services in Luxembourg in accordance with the AIFMD before it may start managing the relevant SIF AIF on a cross-border basis.

1.2. Internally managed SIF AIFs

In the case of an internally managed SIF AIF, the SIF AIF will itself be considered and authorised as the AIFM. For that purposes, the SIF AIF will be required to:

- (i) have an initial share capital of EUR 300,000 and additional own funds or professional indemnity insurance in order to cover professional liability risks. Additional own funds can also be required depending on the size of the SIF AIF's portfolio;
- (ii) comply with most of the substance, organisational, operating, delegation and reporting requirements applicable to an external AIFM that is authorised under the AIFM Law. The most important of them concern, *inter alia*, the general internal governance and organisation, number of managers, conducting officers and other key personnel functions, programme of activity and appropriate internal procedures and policies such as (but not limited to) a risk management policy, liquidity risk

³² SIFs which fall under this category will comprise:

- SIFs that do not fall within the definition of AIF as contained in the AIFM Law;
- SIFs that do fall within the AIF definition but whose manager's total assets under management, including any assets acquired through the use of leverage, do not exceed EUR 100 million, or whose total assets under management do not exceed EUR 500 million and whose portfolios of AIFs consist of AIFs that are unleveraged and have no redemption rights exercisable during the 5-year period following the date of initial investment in each AIF (Article 3.2 (a) and (b) of the AIFM Law). This category benefits from the so-called "small manager" exemption; and
- SIFs that do fall within the AIF definition but whose only investors are the AIFM, the parent undertakings, the subsidiaries of the AIFM, or other subsidiaries of those parent undertakings, provided that none of those investors is itself an AIF.

³³ The AIFMD and AIFM Law include provisions, which apply to AIFs managed by authorised AIFMs. These are notably the requirements for the AIF to appoint a depositary in accordance with the AIFMD/AIFM Law provisions, to provide certain information to investors, to publish an annual report and to comply with certain valuation, investment and leverage rules all of which in accordance with the specific requirements of the AIFMD/AIFM Law.

³⁴ In the case where a SIF AIF is managed by a non-EU AIFM, specific AIFMD third country rules shall apply.

³⁵ In the case of an FCP (see Chapter I, Section 3.1 (a)), it is either its management company which acts as AIFM or another entity, as appointed by the management company.

management policy, marketing policy, valuation policy, remuneration policy and conflict of interest policy;

(iii) be authorised and obtain an AIFM licence from the CSSF in accordance with the AIFM Law.

All of the above requirements will be satisfied in accordance with the conditions set forth in the AIFM Law and CSSF Circular 18/698 on the authorisation and organisation of investment fund managers incorporated under Luxembourg law³⁶.

2. INVESTMENT MANAGEMENT FUNCTIONS

The investment management functions in relation to SIF AIFs, which are managed by an authorised AIFM (including the portfolio management and risk management functions), may be delegated (and sub-delegated) to some extent to third-party service providers with the requisite resources and expertise.

Such delegation is subject to the prior approval of the regulator (both of the AIFM and of the SIF, if they are located in different jurisdictions), the performance of appropriate due diligence on the delegate(s), appropriate disclosure of the delegation arrangements and compliance with all other AIFM legislation delegation conditions, which are nearly identical to those described under Section 4.2 of Chapter I of this Memorandum. Other conditions might apply where the AIFM is located in another EU Member State.

3. DEPOSITARY FUNCTIONS

In keeping with the regime applied to SIFs subject to Part I of the SIF Law, the depositary of a SIF AIF which is managed by an authorised AIFM may be a credit institution, an investment firm or, subject to the same conditions outlined under Section 4.3 of Chapter I of this Memorandum, a professional depositary of assets other than financial instruments³⁷.

Depositaries of SIF AIFs managed by an authorised AIFM must comply with the depositary regime as provided for by the AIFM Law and CSSF Circular 18/697.

This regime imposes specific duties on the depositary, which include:

- the obligation to safekeep the SIF AIF's assets;
- the obligation to monitor the SIF AIF's cash flow; and
- specific oversight duties.

The AIFM Law has strengthened the liability regime of the depositary. The depositary is strictly liable in the case of a loss of financial instruments it held in custody and it must, without undue delay, return financial instruments of an identical type or the corresponding amount to the SIF AIF or the AIFM, which is acting on behalf of the SIF AIF. In certain circumstances specified by the AIFM Law, the SIF AIF, the depositary and sub-depositary may contractually agree for the sub-depositary to assume liability instead of the depositary. In all other respects, the possibility of avoiding the consequences of this strict liability regime of the depositary is very limited.

In addition, the depositary is also liable to the SIF AIF or its investors for other losses suffered by them resulting from the depositary's negligent or intentional failure to properly fulfil its obligations under the AIFM Law.

A prime broker acting as counterparty to a SIF AIF, which is managed by an authorised AIFM, is allowed to act as a depositary for that SIF AIF only if it has functionally and hierarchically separated the performance of its depositary functions from its functions as a prime broker. Delegation by a depositary of its custody tasks to a prime broker is allowed only if all of the relevant conditions set forth in the AIFM Law are met.

4. VALUATION FUNCTION

For a SIF AIF managed by an authorised AIFM, the AIFM is in charge of the valuation function (namely the valuation of the assets), where appropriate with external support.

The AIFM may also, under its responsibility, delegate the valuation function to an external valuer that is subject to mandatory professional registration or to legal/regulatory/professional conduct rules. The external valuer cannot delegate its functions to a third party.

The assets must be valued and the net asset value must be calculated at least once a year³⁸.

5. ANNUAL REPORT

SIF AIFs managed by an authorised AIFM are required to disclose additional information in their annual reports in accordance with the AIFMD and AIFM Law requirements. This information includes: (i) the total amount of remuneration paid by the AIFM to its staff for the financial year (split into fixed and variable remuneration), (ii) the number of beneficiaries, and, where relevant, (iii) any carried interest paid by the SIF

³⁶ See in particular Part VII of Circular 18/698 for more information on the conditions that must be complied with by authorised internally managed AIFs, including authorised internally managed SIF AIFs.

³⁷ For a SIF AIF, which is managed by an authorised AIFM, only Luxembourg branches of credit institutions with a registered office in another EU Member State (and not in a third country) can act as depositary.

³⁸ If the SIF AIF is of the open-ended type, such valuations and calculations must also be carried out at a frequency, which is both appropriate to the assets held by the SIF AIF and its issue and redemption frequency. If the SIF AIF is of the closed-ended type, such valuations and calculations must also be carried out in the event of an increase or decrease of the capital by the relevant SIF AIF.

AIF, and (iv) the aggregate amount of remuneration, as broken down by senior management and by AIFM staff members whose actions have a material impact on the risk profile of the SIF AIF.

In addition, the annual reports of SIF AIFs must contain certain sustainability related information as imposed by SFDR³⁹ and Taxonomy Regulation⁴⁰. They must also disclose specific information as may be imposed by specific laws and regulations where applicable to the relevant SIF AIF that is managed by an authorised AIFM such as information on the use of securities financing transactions (“**SFT**”) and total return swaps under SFTR⁴¹.

6. ADDITIONAL INFORMATION TO BE PROVIDED TO INVESTORS

The authorised AIFM of a SIF AIF must provide additional information as specified by the AIFM legislation and other specific legislation as applicable to the AIFM and/or the SIF AIF, as well as any material changes thereof to the investors before they invest in the SIF AIF.

This information must be made available to investors but must not necessarily be inserted in the offering document.

This information includes, in particular, all relevant information prescribed by Article 23 of the AIFMD and Article 21 of the AIFM Law as well as the relevant sustainability related information and disclosure as required by SFDR and Taxonomy Regulation. This information must also specify the SFT and total return swaps that the authorised AIFM is authorised to use, and a clear statement that those transactions and instruments are used must be included⁴².

³⁹“**SFDR**” refers to Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector, as amended.

⁴⁰“**Taxonomy Regulation**” refers to Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment and amending SFDR.

⁴¹“**SFTR**” refers to Regulation (EU) 2015/2365 on transparency of securities financing transactions and of reuse and amending the EMIR Regulation. See SFTR, Article 13.

⁴²See SFTR, Article 14: this information must also include the data provided for in Section B of the Annex of the SFTR.

CHAPTER III: ELTIF, EuVECA AND EuSEF REGULATIONS' IMPACT AND BENEFITS

1. KEY FEATURES OF ELTIF, EuVECA AND EuSEF REGULATIONS

1.1. ELTIF Regulation

The ELTIF Regulation applies on an optional basis to EU AIFs managed by authorised EU AIFMs.

AIFs which are authorised as a European long-term investment fund ("**ELTIF(s)**"), benefit from an EU passport to market their units, shares or partnership interests to any type of investors, whether professional or retail (as defined by MiFID) within the EU.

AIFs, which apply for the ELTIF label, need to comply with the provisions of the ELTIF Regulation, which includes, amongst others, eligible assets and portfolio composition rules⁴³. The ELTIF Regulation also provides for specific diversification, concentration and borrowing limits.

1.2. EuVECA and EuSEF Regulations

Both EuVECA and EuSEF Regulations also apply on an optional basis to eligible AIFs managed by registered or authorised EU AIFMs.

These Regulations provide for a passport for the marketing of AIFs, which qualify either as European venture capital funds ("**EuVECA(s)**") or European social entrepreneurship funds ("**EuSEF(s)**"), to EU-based professional investors (as defined by MiFID) and investors who commit to investing a minimum of EUR 100,000 and who have stated in writing that they are aware of the risks associated with the investment.

A SIF may qualify as a EuVECA or as a EuSEF essentially if it invests at least 70% of its aggregate capital contributions and uncalled committed capital in qualifying investments⁴⁴.

2. ELTIF SIF

A SIF, which would like to use the ELTIF label, has to be authorised by the CSSF as an ELTIF under the ELTIF Regulation.

While the ELTIF Regulation does not impose any limitation on the type of eligible investors, an ELTIF SIF is still subject to the provisions of the SIF Law and is therefore reserved to well-informed investors⁴⁵.

In the case of an Umbrella SIF AIF with multiple compartments, the authorisations as ELTIF may be applied at the level of one or more compartments. ELTIF compartments may co-exist with non-ELTIF compartments under the same Umbrella SIF.

After authorisation, the ELTIF SIF can be marketed in the EU to both professional and retail investors, which have the status of well-informed investor, by following the notification procedure for marketing foreseen under the AIFMD. Marketing to retail investors, however, is subject to certain additional requirements including, amongst others, compliance with the MiFID suitability test requirement as well as application of the UCITS depositary regime and PRIIPs KID requirements.

3. EuVECA/EuSEF SIF

In the case where (i) the manager of a SIF intends to use the designation of EuVECA SIF (or EuSEF SIF, as applicable) for the marketing of its qualifying venture capital fund/social entrepreneurship fund, and (ii) the SIF and its manager comply with the requirements provided by the EuVECA Regulation (or the EuSEF Regulation), the manager of such a SIF will be entitled to submit a request to its competent authority in order to be registered as an EuVECA manager (or an EuSEF manager).

The CSSF must inform the manager of the registration of the SIF as EuVCA (or EuSEF) within 2 months of the request.

After registration as EuVECA SIF (or EuSEF SIF), the manager will be entitled to use the EU passport for the marketing of the EuVECA SIF (or EuSEF SIF) that it manages to eligible investors.

⁴³Please see the definition of eligible investment assets for ELTIFs in the ELTIF Regulation. For more information, please see also our Memorandum "*European Long-Term Investment Funds (ELTIFs) in a nutshell*" on our website www.elvingerhoss.lu.

⁴⁴Please see the definition of qualifying investments for EuVECAs in the EuVECA Regulation and for EuSEFs in the EuSEF Regulation.

⁴⁵It should be noted that other types of Luxembourg AIFs such as the Part II fund may also apply for an ELTIF label and may accept all types of investors.

CHAPTER IV MARKETING AND LISTING

The applicable marketing rules vary depending on whether or not the SIF is a SIF AIF, whether or not it is managed by an authorised EU AIFM, and whether the SIF is marketed to professional clients as defined in MiFID (“**Professional Investors**”) or to other well-informed investors which do not qualify as Professional Investors. In addition, specific marketing rules may apply to closed-ended SIFs.

1. MARKETING

1.1. SIF AIFs managed by an authorised AIFM

(a) Marketing/pre-marketing to EU Professional Investors

Currently, only SIF AIFs managed by an authorised EU AIFM benefit from a passport allowing the AIFM to market the SIF’s shares, units or partnership interests to Professional Investors within the EU, through a regulator-to-regulator notification regime.

SIF AIFs managed by a non-EU AIFM do not yet benefit from this EU passport. The marketing of their shares, units or partnership interests in the EU is subject to the national placement rules (“**NPR**”) (with some minimum requirements provided by the AIFMD) of the countries where the marketing is performed.

The AIFMD and AIFM Law also allow an authorised EU AIFM to perform, under certain conditions, pre-marketing activities to test an investment idea or an investment strategy with Professional Investors within the EU in order to test their interest in a SIF AIF (or a compartment thereof), which has not yet been established, or which is established but has not yet been notified for marketing in the EU Member State where the potential investors are domiciled or have their registered office. Such pre-marketing in the EU is not, however, permitted where the information presented to potential Professional Investors is sufficient to allow them to take an investment decision and to commit to acquiring units, shares or partnership interests of a particular SIF AIF.

Non-EU AIFMs may also be allowed, by an EU Member State’s national laws, regulations and administrative provisions, to carry out pre-marketing activities at national level (which is the case in Luxembourg), under the condition that such pre-marketing does not in any way disadvantage EU AIFMs *vis-à-vis* non-EU AIFMs.

(b) Marketing/pre-marketing to other well-informed investors

The marketing/pre-marketing of SIF AIFs managed by an authorised EU AIFM outside or within the EU to well-informed investors, which do not qualify as Professional Investors but comply with the other well-informed investors eligibility requirements of the SIF Law, requires compliance with the NPR of each country where such marketing/pre-marketing is done⁴⁶.

For the avoidance of doubt, SIFs may be marketed to such other well-informed investors on the territory of Luxembourg in accordance with the provisions of the SIF Law. The marketing to such other well-informed investors is also subject to the application of the PRIIPs Regulation’s requirements.

1.2. Other SIFs

SIF AIFs managed by a registered AIFM⁴⁷ do not benefit from an EU passport for the marketing of their shares, units or partnership interests and therefore remain subject to the NPR of each country where the SIF AIF is intended to be marketed⁴⁸.

The same treatment applies to SIFs that are not SIF AIFs due to the fact that they do not fall under the definition of an AIF.

1.3. Closed-ended SIFs

Closed-ended SIFs, irrespective of their qualification as SIF AIFs or not, may in addition be subject to the provisions of the Prospectus Regulation⁴⁹ in the case where they intend to carry out a public offering or admission to trading of their units, shares or partnership interests.

If they are not exempt from the Prospectus Regulation, they might have to prepare a prospectus within the meaning of the Prospectus Regulation. However, most closed-ended SIFs will benefit from an exemption in that respect.

2. LISTING

A SIF may apply for listing of its units, shares or partnership interests on the Luxembourg Stock Exchange (“**LSE**”) provided that it complies with the requirements of the LSE and in particular with the requirement that the units, shares or partnership interests are freely negotiable.

Assurance would be needed, however, that trading on the exchange does not permit non-eligible investors to become unitholders/shareholders/partners of a SIF. There is no prohibition in Luxembourg against a SIF seeking a listing on any other stock exchange.

⁴⁶Except in the case where the SIF AIF qualifies as ELTIF under the ELTIF Regulation (see Chapter III of this Memorandum).

⁴⁷“**Registered AIFM**” refers to an AIFM who manages AIFs whose total assets under management, including any assets acquired through use of leverage, do not exceed EUR 100 million, or whose total assets under management do not exceed EUR 500 million and whose portfolios of AIFs consist of AIFs that are unleveraged and have no redemption rights exercisable during a period of 5 years following the date of initial investment in each AIF.

⁴⁸Except in the case where the SIF AIF qualifies as EuVECA under the EuVECA Regulation or as EuSEF under the EuSEF Regulation (see Chapter III of this Memorandum).

⁴⁹“**Prospectus Regulation**” refers to Regulation (EU) 2017/1129 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC, as amended.

CHAPTER V: TAX FEATURES

1. TAXATION OF A SIF

SIFs are exempt from Luxembourg wealth and income taxes⁵⁰.

SIFs are subject to an annual subscription tax (*taxe d'abonnement*) charged at an annual rate of 0.01% based on the total net assets of the SIF, valued at the end of each calendar quarter.

The SIF Law exempts from the subscription tax, under certain conditions, *inter alia*, (i) the assets invested in other Luxembourg based UCIs subject to this tax, (ii) certain short-term money market funds meeting certain criteria, (iii) microfinance funds (iv) pension pooling funds and (v) ELTIF.

Individual compartments and classes, which are reserved to pension schemes, may also benefit from the subscription tax exemption.

2. TAXATION OF INVESTORS IN A SIF

Distributions made by a SIF to investors as well as any payment of proceeds made upon the redemption of SIF units, shares or partnership interests are not subject to Luxembourg withholding tax. Non-Luxembourg-resident investors in a SIF (namely those investors who are not acting via a Luxembourg permanent

establishment) will not be taxed in Luxembourg on any income or capital gains they derive from their units or shares in a SIF.

3. VAT

Management services provided to a SIF are exempt from Luxembourg VAT. This exemption covers, *inter alia*, the provision of portfolio management services, investment advisory services and certain administrative services. Mere technical services are not, however, exempt from VAT (standard rate of 17%), nor are supervision and control services supplied by a depositary bank to the SIF. Depositary bank services, however, can benefit from a reduced VAT rate of 14%.

4. INTERNATIONAL TAX ASPECTS

SIFs structured under the form of a SICAV or SICAF may benefit from a certain number of double tax treaties, which have been concluded by Luxembourg authorities.

For tax treaties purposes, SIFs, which have been established as an SLP, an FCP or an SCS are regarded as fully tax transparent from a Luxembourg tax point of view and may therefore enable investors to claim benefits of the tax treaties.

⁵⁰Anti-hybrid mismatch rules to be monitored for the SIF established as a partnership. For more information, please see our Memorandum "Luxembourg Partnerships in the asset management industry" on our website www.elvingerhoss.lu.

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