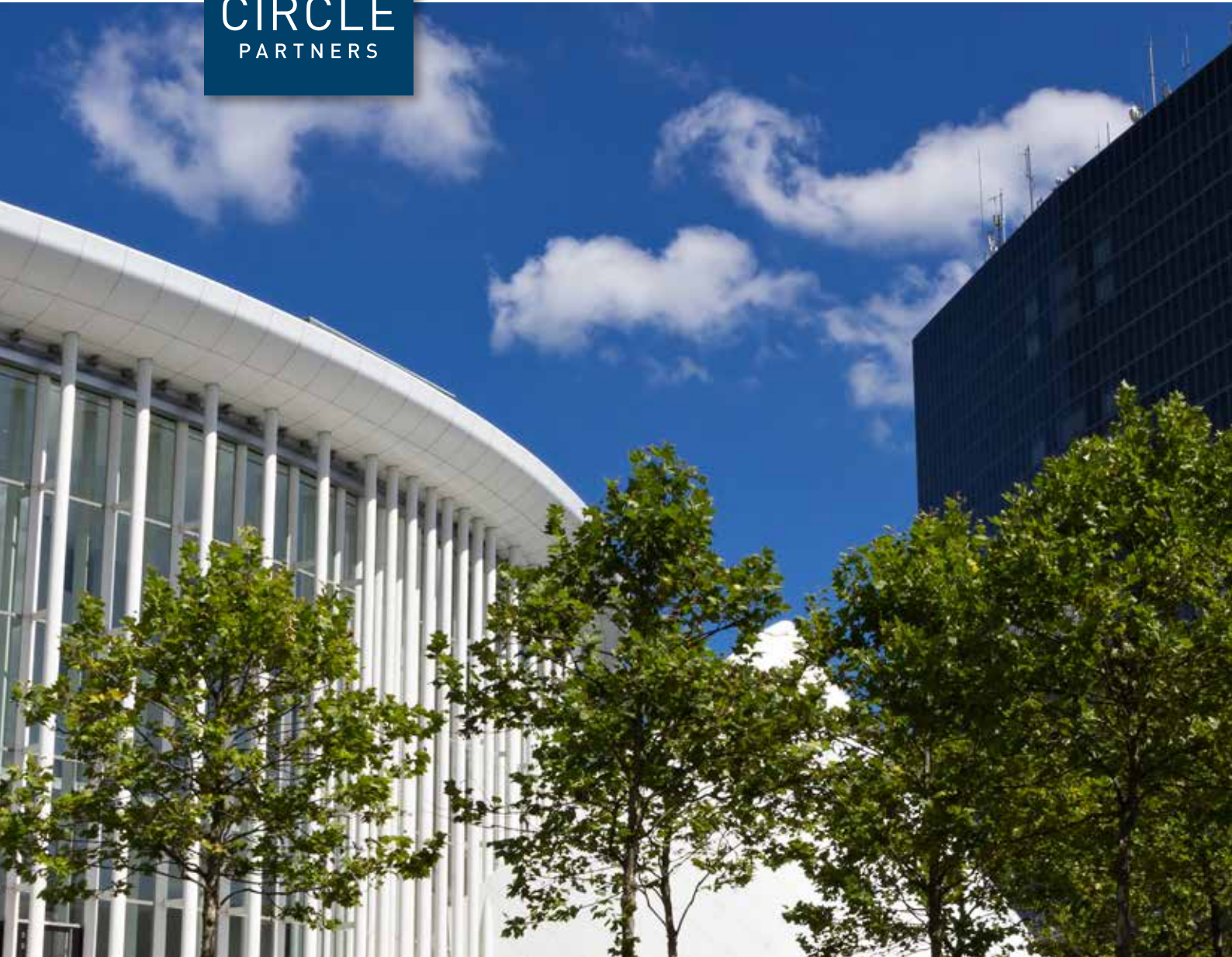




CIRCLE
PARTNERS

Your true partner to progress



Guide to Investment Funds in Luxembourg

Global reach, local expertise and presence



Circle Partners is a global fund administrator providing a comprehensive range of fund administration and corporate services to investment funds.

Company profile

Established in 2000 with our first office in the Netherlands, we presently offer our fund services from the world's major financial jurisdictions. Our clients range from asset managers, banks to family offices and are primarily based in Europe, Asia and the Americas. We service both traditional and alternative investment funds, based onshore and offshore. Our fund accounting and investor services teams are supported by in-house legal and IT specialists. We use state-of-the-art accounting and shareholder systems, enabling easy processing of data and swift financial reporting to both fund managers and investors. Circle Partners is privately owned and fully independent.

WHY LUXEMBOURG?

Luxembourg is the leading global location for investment funds. Its success in attracting investment funds and becoming a major financial center may be attributed to a number of factors such as:

- reputation of the Luxembourg brand in the investment fund industry;
- attractive range of investment fund solutions;
- regulatory environment including accessibility, knowledge and responsiveness of the regulator as well as local practice in areas such as outsourcing;
- political, economic and social environment's stability as well as stable legal environment and taxation regime;
- ability to achieve tax neutrality for products by considering direct and indirect taxation implications at fund and investor level;
- operational factors such as relocation costs, local infrastructure and the qualifications and knowledge of the workforce;
- central location, language and cultural alignment;
- attractive jurisdiction for institutional investors.

The first Luxembourg fund was established in 1959 and there are now nearly 4,000 funds (referred to as Undertakings for Collective Investments, or UCIs) registered in the jurisdiction. Luxembourg investment funds are authorized and supervised by the Commission for the Supervision of the Financial Sector (Commission de Surveillance du Secteur Financier, or CSSF).

The Luxembourg fund industry has, since 1988, been successfully represented and promoted by the Association of the Luxembourg Fund Industry (ALFI).

REGULATORY FRAMEWORK

Regulated Luxembourg open-ended investment funds can be established under either of the following regimes:

- Undertakings for Collective Investment in Transferable Securities (UCITS); and
- Alternative Investment Funds (AIFs).

Many Luxembourg investment funds –UCITS and AIFs- benefit from a product passport, enabling them to be marketed to investors in the European Union (EU) and European Economic Area (EEA), following a notification procedure. Marketing of funds which do not benefit from a product passport is subject to the national regimes of the country where the marketing takes place.

The shares or units of UCITS can be marketed to all investors in the EU/EEA, both retail and professional. The marketing and passporting of AIFs depends on whether or not their managers are subject to, the full requirements as laid down by the European Alternative Investment Fund Managers Directive (AIFMD), which is transposed in Luxembourg by the AIFM Law. AIFs include hedge, real estate and private equity funds and funds investing in AIFs.

The vast majority of Luxembourg investment funds are retail funds, regulated as UCITS. However, the focus of this brochure is on managers of alternative asset funds and the products available for them in the Luxembourg jurisdiction.

AIFMD

The AIFMD regulates the managers of alternative investment funds and its objectives include enhancing investor protection, increasing transparency for investors and regulators, and better managing systemic risks. The directive lays down requirements which must be met, relating to authorization and registration, minimum capital, marketing, organization, remuneration, conduct of business, conflict of interest, functions, service providers and transparency.

All funds that are in scope of the AIFMD will have to ensure that an authorized AIFM is appointed and identified, or comply with the requirements of the AIFMD as an internally managed AIF.

The Directive imposes additional requirements on AIFs relating for example to the depositary, the valuation function, portfolio and risk management, reporting and disclosure to investors, as well as reporting to the regulators.

AIFs are generally set up as Specialized Investment Funds (SIFs) or created under Part II of the Law of December 17, 2010 on undertakings for collective investment (Part II funds). In comparison with a Part II fund, the SIF is characterised by greater flexibility with regard to the investment policy and a

more relaxed regulatory regime. As a result, the number of SIFs being created has increased over the years, whereas there is a decline in the set-up of Part II funds. This brochure therefore elaborates only on the SIF.

It is worth mentioning, however, that a bill of law has been submitted for the introduction of the Reserved Alternative Investment Fund (RAIF), an unregulated AIF with features similar to those of the SIF.

Specialized Investment Funds

The SIF is a regulated, operationally flexible and fiscally efficient investment fund for an international qualified investor base.

The SIF Law of February 13, 2007 was amended by the AIFM Law of 12 July 2013 and is now divided into two parts: (i) general provisions applicable to all SIFs and (ii) specific provisions applicable to SIFs which qualify as AIFs and which are required to be managed by an authorised AIFM. Due to the broad definition of AIFs, most SIFs will qualify as SIF AIFs.

The setting up and launching of a SIF requires the approval of the CSSF and its articles of association, the choice of depositary and information regarding the directors and officers must be submitted to the CSSF prior to the formation of the vehicle.

The SIF is required to constitute an issuing document which must include the information necessary for investors to be able to make an informed judgement. Approval by the CSSF is required for any material change in a SIF's offering documents.

A SIF is required to produce an annual report following a reporting template, providing for a minimum level of disclosure. This annual report has to be provided to the fund's investors and to the CSSF within six months of the end of the financial year it relates to.

Investment in a SIF is reserved for "well-informed" investors, comprising institutional investors, professional investors and investors who confirm in writing that they are a "well-informed" investor and who either (i) invest a minimum of EUR 125,000 or have (ii) been assessed by a credit institution, investment firm or management company which certifies the investor's ability to understand the associated risks of investing in the SIF.

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There are currently no restrictions as to the eligible assets of a SIF, but SIFs are subject to the principle of risk-spreading. Risk diversification requirements are defined by CSSF Circular n° 07/309 and are less stringent than the ones in application for Part I (UCITS) and Part II funds. SIFs are not subject to detailed investment or borrowing rules.

A SIF may take the basic structure of a common fund (fonds commun de placement - FCP) or an investment company with variable capital (société d'investissement à capital variable - SICAV), or fixed capital (société d'investissement à capital fixe - SICAF). Other legal forms are possible.

These different vehicles may be set up as a single fund or as an umbrella fund consisting of multiple compartments, each with a different portfolio of assets and liabilities. Under certain

conditions, a compartment of an umbrella SIF may invest in one or more other compartments of the same SIF. The fund and compartments respectively may have an unlimited number of share classes, depending on the needs of the investors to whom the fund is distributed. The structures may be open-ended or closed-ended.

The net assets of a SIF may not be less than EUR 1,250,000. This minimum must be reached within a period of twelve months following its authorization. Unless otherwise provided for, the assets of a SIF must be valued at fair value.

SIFs must have appropriate risk management systems in place to identify measure, manage and monitor the risks associated with the positions and their contribution to the overall risk profile of the portfolio. Moreover, SIFs are required to establish a conflict of interest policy. Further details are provided by CSSF Regulation N° 12-01.

Reserved Alternative Investment Funds

The RAIF is regulated under the AIFMD, but its creation, launch, offering documentation and activities will not be supervised by the CSSF, making it an attractive vehicle from a cost and time-to-market perspective.

The RAIF will be considered as an AIF, and, as such, will have to be managed by an authorised AIFM within the meaning of the AIFMD. The AIFM may be established in Luxembourg or in another EEA state. A RAIF may not be managed by a registered AIFM.

Due to the necessity for the RAIF to be managed by an authorised AIFM, it will be indirectly supervised through the prudential supervision exercised by the competent authority of its AIFM. For the same reason, the RAIF will benefit from the European passport for marketing to professional investors in the EU. The AIFM may delegate portfolio management or risk management in accordance with the provisions of the AIFMD.

The other features of the RAIF are substantially identical to those of the SIF and the SICAR. Thus, the RAIF may invest in all asset classes, subject only to the principle of risk-spreading and its shares, units or partnership interests are reserved for well-informed investors (as described above). Assets of the RAIF must be entrusted to a depositary for safe-keeping in Luxembourg. Depositaries of RAIFs must comply with the



regime as provided for by the AIFM law. A prime broker which acts as counterparty to a RAIF is only allowed to act as a depositary for that RAIF if it has functionally and hierarchically separated its functions. Finally, an auditor and administrator must be appointed in Luxembourg.

The constitutive documents must expressly provide that the investment vehicle is subject to the RAIF Law.

It is worth mentioning that a phased approach can be chosen, whereby a RAIF can be converted into a SIF later on. In such way, there can be a fast first closing as a RAIF with investors not requiring a product subject to direct supervision and a conversion into a SIF once CSSF approval is obtained.

The RAIF Law specifically refers to the FCP and the SICAV, but does not limit the legal forms a RAIF may take.

INVESTMENT FUND VEHICLES

The decision as to create an investment fund in contractual form or in corporate form is primarily based on tax, operational and marketing considerations.

Common Fund

An FCP is a co-proprietorship of assets which has no legal personality and is governed by a contractual arrangement. The investors' liability is limited to the amount they have contributed and their rights are represented by units. It must be managed by a Luxembourg management company on behalf of the joint owners and is deemed in most cases to be tax transparent. The co-ownership is established under Luxembourg law by its constitutional document, the management regulations.

Investment Company (SICAV or SICAF)

A SICAV is a company whose capital is at any time equal to its net assets: its capital increases and decreases automatically as a result of subscriptions or redemptions, and variations in its net asset value, i.e. no formalities are required for increases and decreases in capital. A SICAF is a company subject to formalities (notarization and publication) when changes are made to its capital. In light of this, most funds are set up in the form of a SICAV, rather than a SICAF.

Subject to some restrictions for UCITS and Part II Funds,

investment companies can take the form of a (i) public limited company, (ii) private limited company, (iii) partnership limited by shares, or (iv) cooperative company in the form of a public limited company. They can also be formed as common or special limited partnerships

An investment company must either designate itself as a self-managed investment company or appoint a Luxembourg management company. An investment company is not tax transparent (with limited exceptions).

TAXATION

A SIF (and a RAIF which does not elect to be treated as a SICAR) are tax exempt in Luxembourg with the exception of the registration duty, which is fixed and does not vary with the number of compartments, and an annual subscription tax. There is no stamp duty in Luxembourg on the issuance or transfer of shares or units. Taxation in relation to SIFs can be summarized as follows:

- Annual subscription tax of 0.01% on the net asset value;
- No capital gains or income tax;
- No wealth tax;
- No capital gains tax for non-resident investors;
- VAT exemption on management fees;
- Access to Luxembourg's double taxation treaties in some cases; and
- Choice between tax transparent (for FCP, common or special limited partnerships) or non-tax transparent regimes (for other investment companies).

A RAIF (other than an FCP) investing in risk capital will be entitled to opt for a special tax regime, which will be identical to that applicable to the SICAR, and would therefore not be subject to the subscription tax.

KEY SERVICE PROVIDERS

The registered office of a UCI (or its management company in case of an FCP) must be in Luxembourg.

Management Company

An investment company must appoint an approved management company in Luxembourg or designate itself as being self managed.

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An FCP must be managed by a Luxembourg management company since it has no legal personality.

The AIFM must be authorized if the AIF assets it manages are above the AIFM Law minimum thresholds. In absence of an own AIFM authorization, the management company must designate another management entity as AIFM. This AIFM can be based in Luxembourg or in another EU/EEA member state. The AIFM (whether appointed directly or by the management company) must perform at least the portfolio management and the risk management functions of the AIF.

It is necessary to distinguish between authorized AIFMs, which are required to comply fully with the AIFM Law, and registered AIFMs, which are only required to comply with limited provisions of the AIFM Law.

Depository

A depository must be appointed for each Luxembourg UCI. The appointment and any replacement of the depository must be approved by the CSSF. Depository contracts of full AIFM regime AIFs must meet minimum content requirements.

Eligible for appointment as depository of an AIF, are, in general, bank or other credit institutions with their registered office in Luxembourg. For AIFs holding assets other than financial instruments (i.e. mainly private equity and real estate funds), a specialized professional of the financial sector (PSF) may also act as depository.

In general, the depository should perform the following duties:

- Safekeeping of financial instruments and other assets belonging to the investment fund;
- Cash flow monitoring; and
- Carrying out monitoring and oversight duties.

As a general rule, the depository is liable to an AIF, or its investors, for the loss of financial instruments held in custody, irrespective of whether custody of assets has been delegated to a third party.

Administrator

Administration is one of the management company's or AIFM's functions, but in practice is generally delegated to a third party administrator. The administrator must be located in Luxembourg and will be appointed to carry out the activities of:

- Fund administration (covering, for example, accounting services and calculating Net Asset Values);
- Registrar and transfer agent (covering, amongst others, the maintenance of the shareholder or unitholder register, processing of subscriptions and redemptions and carrying out anti-money laundering procedures); and
- Domiciliation agent.

Auditor

The financial statements of a UCI must be audited by an independent auditor. The auditor of the fund must be based in Luxembourg. The independent auditor is obliged to promptly inform the CSSF of any fact or decision of which it becomes aware while auditing the accounting data contained in a UCI's annual report, in the event that such fact or decision:

- constitutes a material breach of the law or the regulatory provisions adopted for its execution;
- threatens the continuity of operations of the UCI; or
- may lead to a refusal to certify the accounts or to the expression of qualified opinions relation thereto.

Directors

The SIF Law requires that directors of a SICAV or SICAF are of good reputation and are sufficiently experienced in relation to the type of business carried out by the SIF. The directors are not subject to any residency requirements. In practice, the appraisal of the CSSF will consider the qualifications and experience of the management team in its entirety. The board of directors controls the day-to-day affairs of the investment company and is responsible for the investments and the appointment and supervision of its service providers.

SET-UP TIME

Many factors will play a role in assessing the time-frame for launching a SIF, not in the least the drafting of the fund's offering memorandum, the selection of and entering into agreements with service providers and the opening of bank and brokerage accounts, but also the approval process with the CSSF. Obviously, the time to market for a RAIF, once introduced, is expected to be substantially reduced and can probably be accomplished in less than 6 weeks.



HOW CAN CIRCLE PARTNERS HELP YOU?

We are a global, independent fund administrator with over 15 years of experience in fund administration, fund set-up and fund structuring. We offer services from most of the world's major financial jurisdictions. We provide investment managers with practical advice and assistance in setting up their fund in Luxembourg and will introduce them to specialized legal and tax advisers, banks, brokers and auditors.

Our range of services includes:

- advice and assistance in setting-up investment funds in Luxembourg;
- on-going corporate and legal support for the fund;
- fund accounting and administration services;
- registrar and transfer agency services; and
- financial, regulatory and tax reporting services, including FATCA, CRS and Annex IV reporting.

Our office in Luxembourg has a dedicated team that is focused on delivering a responsive and personalized service and is committed to going the extra mile in satisfying our clients' needs and exceeding their expectations.

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