Your investment fund in Luxembourg

November 2021
“You only have to do a very few things right in your life so long as you don't do too many things wrong.”

Warren Buffet
Glossary

1915 Law: Luxembourg law of 10 August 1915 on commercial companies

2004 Law: Luxembourg law of 15 June 2004 relating to investment company in risk capital

2007 Law: Luxembourg law of 13 February 2007 relating to specialised investment fund

2010 Law: Luxembourg law of 17 December 2010 relating to undertakings for collective investment

2013 Law: Luxembourg law of 12 July 2013 on alternative investment fund managers

2016 Law: Luxembourg law of 23 July 2016 on reserved alternative investment funds

AIF: alternative investment fund within the meaning of the 2013 Law

AIFM: Alternative Investment Fund Manager

AIFMD: Alternative Investment Fund Managers Directive

CLP: société en commandite simple – common limited partnership

EU: European Union

FCP: fonds commun de placement – common fund

Limited Partnerships: CLP or SLP not qualifying as a Part II Fund, SIF, SICAR or RAIF

RAIF: Reserved Alternative Investment Fund

SA: société anonyme – public limited company

SCA: société en commandite par actions – corporate partnership limited by shares

SARL: société à responsabilité limitée – private limited liability company

SICAR: Société d'Investment en Capital à Risque – Investment Company in Risk Capital

SIF: Specialised Investment Fund

SLP: société en commandite spéciale - special Limited Partnership

UCI: Undertaking for Collective Investment

UCITS: Undertaking for Collective Investment in Transferable Securities

Well Informed Investors: institutional investors, professional investors, investors subscribing at least EUR 125,000 or benefiting from a certification

Your investment fund in Luxembourg

PwC Legal

November 2021
I. Why Luxembourg? ................................................................. 5

II. The different regimes in Luxembourg ..................................... 12

   1. UCITS ................................................................. 15
   2. Part II Funds .......................................................... 18
   3. SIF ................................................................. 21
   4. SICAR ............................................................. 24
   5. RAIF ............................................................... 28
   6. Limited Partnerships ............................................. 31

Contact ............................................................................. 35
I. Why Luxembourg?
Why Luxembourg?

**Macro economical factors**
- A stable political and social environment
- A strong economy and sound public finances (AAA by Standard & Poor’s; Aaa by Moody’s)
- Founding member of the EU
- International and multilingual workforce

**Investment Funds related factors**
- Largest European fund domicile and second largest fund centre in the world
- Largest global distribution center for investment funds
- Early adopter of European legislation with no gold plating
- Trend-setter for the investment funds industry offering innovative solutions and products
Key figures on the market place
as of August 31st, 2021 (source: CSSF)

Average assets under management per UCI

+1,5 Bn € since 2019

x 2,7 over 10 years (2011 – 2021)
Supervised Investment Funds by Regime and by initiators country of origine as of August 31st, 2021 (source: CSSF)

Your investment fund in Luxembourg
PwC Legal

November 2021
AIF market in Luxembourg
Investment structures in Luxembourg

Regulated : Evolution of the number of Part II, SIF and SICAR

Non-regulated : Evolution of the number of RAIF and SCsp

Source: PwC Market Research Centre based on Monterey, CSSF, LFF, ALFI, ABBL.

Your investment fund in Luxembourg
PwC Legal

November 2021
Focus on RAIF as of November 1st, 2021 (source: LBR ; PwC Legal)

Your investment fund in Luxembourg
PwC Legal

1468 RAIF
Meeting your specific needs

From unsupervised to supervised investment funds

- When designing your project, you will take into consideration a certain number of criteria:
  - your regulatory status;
  - your targeted investors, their nature and constraint;
  - your marketing means;
  - regulatory or tax constraints related to your investment strategy and/or the underlying assets…

- The devil being in the details, if (the popular) unsupervised funds have your favour, we will walk you from the Luxembourg regime derived from the AIFMD and help you determine, depending on your assets under management and the specific features of your fund, whether you will be qualified as:
  - a “sub-threshold AIFM”, that will be subject to a few obligations under the AIFMD but will not benefit from the management and marketing passports under the AIFMD; or
  - an authorised AIFM subject to the full scope of the obligations of the AIFMD and benefiting from the passports.

PwC Legal will help you analyse these criteria and choose within the broad range of investment vehicles in Luxembourg the one that best fits your need, from unsupervised funds to heavily regulated funds.

- Unsupervised funds:
  - Limited Partnerships
  - RAIF

- Supervised funds:
  - SICAR
  - SIF
  - Part II Fund
  - UCITS
II. The different regimes in Luxembourg
## Key Features of the different regimes in Luxembourg

<table>
<thead>
<tr>
<th>Prudential Supervision by the CSSF</th>
<th>UCITS</th>
<th>Part II</th>
<th>SIF</th>
<th>SICAR</th>
<th>RAIF</th>
<th>Limited Partnership</th>
</tr>
</thead>
<tbody>
<tr>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Eligible Assets</th>
<th>Restricted</th>
<th>Unrestricted</th>
<th>Unrestricted</th>
<th>Limited to investments in capital at risk</th>
<th>Unrestricted</th>
<th>Unrestricted</th>
</tr>
</thead>
<tbody>
<tr>
<td>Risk spreading requirements</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes (unless if falls within the SICAR like regime)</td>
<td>No</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Dividend</th>
<th>No restriction within the minimum capital limit</th>
<th>No restriction within the minimum capital limit</th>
<th>No restriction within the minimum capital limit</th>
<th>No restriction within the minimum capital limit</th>
<th>No restriction within the minimum capital limit</th>
<th>No restriction</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Corporate Form</th>
<th>Yes (usually SA)</th>
<th>Yes (usually SA)</th>
<th>Yes (usually SA, SCA, CLP or SLP)</th>
<th>Yes (usually SA, SCA, CLP or SLP)</th>
<th>Yes (usually SA, SCA, CLP or SLP)</th>
<th>Yes</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Contractual Form</th>
<th>Yes (usually FCP)</th>
<th>Yes (usually FCP)</th>
<th>Yes (usually FCP)</th>
<th>No</th>
<th>Yes (usually FCP)</th>
<th>N/A</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Capital</th>
<th>Variable / Fixed</th>
<th>Variable / Fixed</th>
<th>Variable / Fixed</th>
<th>Variable / Fixed</th>
<th>Variable / Fixed</th>
<th>Capital accounts or unitised structure</th>
</tr>
</thead>
</table>

Your investment fund in Luxembourg

PwC Legal

November 2021
## Key Features of the different regimes in Luxembourg (c’d)

<table>
<thead>
<tr>
<th>Feature</th>
<th>UCITS</th>
<th>Part II</th>
<th>SIF</th>
<th>SICAR</th>
<th>RAIF</th>
<th>Limited Partnership (LP)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Minimum Capital</strong></td>
<td>EUR 1.25 Mo to be reached within 6 months</td>
<td>EUR 1.25 Mo to be reached within 6 months</td>
<td>EUR 1.25 Mo to be reached within 12 months</td>
<td>EUR 1 Mo to be reached within 12 months</td>
<td>EUR 1.25 Mo to be reached within 12 months</td>
<td>None</td>
</tr>
<tr>
<td><strong>Multiple compartments</strong></td>
<td>Possible</td>
<td>Possible</td>
<td>Possible</td>
<td>Possible</td>
<td>Possible</td>
<td>Not Possible</td>
</tr>
<tr>
<td><strong>Share Classes</strong></td>
<td>Possible</td>
<td>Possible</td>
<td>Possible</td>
<td>Possible</td>
<td>Possible</td>
<td>Possible</td>
</tr>
<tr>
<td><strong>Eligible investors</strong></td>
<td>Unrestricted</td>
<td>Unrestricted</td>
<td>Well-Informed</td>
<td>Well-Informed</td>
<td>Well-Informed</td>
<td>Unrestricted</td>
</tr>
<tr>
<td><strong>Marketing passport in the EU</strong></td>
<td>Available</td>
<td>Professional investors only (with a full-fledged AIFM)</td>
<td>Professional investors only (if SIF AIF with a fully-fledged AIFM)</td>
<td>Professional investors only (if SICAR AIF with a fully-fledged AIFM)</td>
<td>Professional investors only</td>
<td>Professional investors only (if LP AIF with a fully-fledged AIFM)</td>
</tr>
<tr>
<td><strong>Listing</strong></td>
<td>Possible</td>
<td>Possible</td>
<td>Possible under certain conditions</td>
<td>Possible under certain conditions</td>
<td>Possible under certain conditions</td>
<td>Possible</td>
</tr>
<tr>
<td><strong>Minimum redemption frequency</strong></td>
<td>Twice a month</td>
<td>Once a month (derogation possible)</td>
<td>No minimum requirement</td>
<td>No minimum requirement</td>
<td>No minimum requirement</td>
<td>No minimum requirement</td>
</tr>
</tbody>
</table>
1. UCITS in a nutshell
Your investment fund in Luxembourg

UCITS ( Governed by the 2010 Law)

- Subject to the supervision of the CSSF
- Require the prior approval of the CSSF for the launch and any subsequent modifications
- Must appoint a UCITS Management Company (can be self-managed in certain circumstances) in the EU (with possibility of delegations for certain functions whether in the EU or not) and a depositary in Luxembourg (in charge of the safekeeping of the assets, certain oversight duties and cash-flow monitoring)

- Shall offer a liquidity to their investors at least twice a month
- Are eligible for all kind of investors and benefit from a marketing passport for all kind of investors across the EU through a standard notification procedure

- Can only invest in certain categories of liquid assets (transferable securities, money market instruments, UCITS and other UCIs, bank deposits, derivatives) meeting strict criteria prescribed by law
- Are subject to strict diversification and concentration requirements

- If non-Luxembourg ManCo: split supervision between CSSF (fund rules) and home supervisory authority (delegation/organisational requirements of the ManCo)
UCITS typical structure

CSSF

Sponsor / Investors

UCITS management company

Depositary

Admin Agent

Auditor

Registrar/TA

Investor(s)

Investors

Portfolio Manager

Investment Advisor

Your investment fund in Luxembourg

PwC Legal

November 2021

17
2. Part II Funds in a nutshell
PART II Funds (Governed by the 2010 Law)

- Subject to the supervision of the CSSF
- Require the prior approval of the CSSF for the launch and any subsequent modifications
- Must appoint an AIFM (can be self-managed in certain circumstances). Depending on the assets under management and the features of the fund, the AIFM can be a “sub-threshold AIFM” or must be an authorised AIFM
- Have to appoint a depositary in Luxembourg – Duties of the depositary will depend on the AIFMD status of the AIFM and whether Luxembourg retail investors can subscribe into the fund (in such case, application of a UCITS-like regime)

- Eligible for all kind of investors but can only benefit from a marketing passport for professional investors across the EU through a standard notification procedure (if managed by an authorized AIFM – otherwise no passport available)

- Can invest in large categories of assets and are subject to more flexibility than a UCITS when it comes to diversification and liquidity requirements
- If non-Luxembourg AIFM: split supervision between CSSF (fund rules) and home supervisory authority (AIFM rules)
PART II Funds typical structure

- CSSF
- Sponsor / Investors
- AIFM
- Distributor(s)
- Investors
- Portfolio Manager
- Investment Advisor
- Part II Fund
- Depositary
- Admin Agent
- Auditor
- Registrar/TA
3. SIF in a nutshell
Your investment fund in Luxembourg

Incorporation

- Subject to the supervision of the CSSF
- Require the prior approval of the CSSF for the launch and any subsequent modifications
- If qualify as AIF, must appoint an AIFM (can be self-managed in certain circumstances). Depending on the assets under management and the features of the fund, the AIFM can be a "sub-threshold AIFM" or have to be an authorised AIFM
- Have to appoint a depositary in Luxembourg – Duties of the depositary will depend on the AIFMD status of the AIFM

Investors

- Are eligible to Well Informed Investors only and can only benefit from a marketing passport for professional investors across the EU through a standard notification procedure (if managed by an authorized AIFM – otherwise no passport available)

SIF

Assets

- Can invest in large categories of assets and are subject to flexible diversification requirements (in principle 30% of the assets or commitments in the securities of the same kind issued by the same issuer).
- Liquidity can be tailor-made.

Non-Luxembourg AIFM

- For SIFs AIFs with non-Luxembourg AIFM: split supervision between CSSF (fund rules) and home supervisory authority (delegation/organisational requirements of the AIFM)

Can either be AIF or not

November 2021
SIF typical structure

Your investment fund in Luxembourg
PwC Legal

November 2021

23
4. SICAR in a nutshell
Your investment fund in Luxembourg

SICAR (Governed by the 2004 Law)

- Are subject to the supervision of the CSSF
- Require the prior approval of the CSSF for the launch and any subsequent modifications
- If qualify as AIF, must appoint an AIFM (can be self-managed in certain circumstances). Depending on the assets under management and the features of the fund, the AIFM can be a "sub-threshold AIFM" or have to be an authorised AIFM
- Have to appoint a depositary in Luxembourg – Duties of the depositary will depend on the AIFMD status of the AIFM

- Are eligible to Well Informed Investors only and can only benefit from a marketing passport for professional investors across the EU through a standard notification procedure (if managed by an authorized AIFM – otherwise no passport available)

Incorporation

- Can only invest in assets qualifying as risk capital under the 2004 law. Liquidity can be tailor-made.
- No risk spreading requirement

Assets

- For SICARs AIFs with non-Luxembourg AIFM: split supervision between CSSF (fund rules) and home supervisory authority (delegation/organisational requirements of the AIFM)

Investors

Non-Luxembourg AIFM

Can either be AIF or not

November 2021
SICAR typical structure (2/2) – AIF

- Sponsor / Investors
- AIFM
- Distributor(s)
- Investors
- Portfolio Manager
- Investment Advisor
- CSSF
- Admin Agent
- Auditor
- Registrar/TA
- Depositary

Your investment fund in Luxembourg
PwC Legal
November 2021
5. RAIF in a nutshell
RAIF (Governed by the 2016 Law)

- Are not subject to the authorization or supervision of the CSSF
- Must appoint an external authorized AIFM in the EU and a depositary in Luxembourg (in charge of the safekeeping of the assets, some oversight duties and cash-flow monitoring)
- Very limited taxation for SICAR-like regime

- Can opt for a SIF-like or SICAR-like regime
- Eligible assets and risk spreading requirements depend on whether the SIF-like or SICAR-like regime has been adopted (see above for details on the SIF and SICAR regimes)

- For RAIFs non-Luxembourg AIFM: split supervision between CSSF (fund rules) and home supervisory authority (delegation/organisational requirements of the AIFM)

- Are eligible to Well Informed Investors only and can only benefit from a marketing passport for professional investors across the EU through a standard notification procedure

- Incorporation
- Assets
- Investors
- Non-Luxembourg AIFM

Automatically considered as AIF

November 2021
RAIF typical structure

- Sponsor / Investors
  - AIFM
  - Distributor(s)
    - Investors
  - Portfolio Manager
  - Investment Advisor
- RAIF
  - CSSF
  - Depositary
  - Admin Agent
  - Auditor
  - Registrar/TA
6. **Limited Partnerships in a nutshell**
Great flexibility as characterized by contractual freedom
- Can have the legal personality (CLP) or not (SLP)
- If qualify as AIF, must appoint an AIFM (can be self-managed in certain circumstances). Depending on the assets under management and the features of the fund, the AIFM can be a “sub-threshold AIFM” or have to be an authorised AIFM
- May have to appoint a depositary in Luxembourg if managed by an authorized AIFM

- Are eligible for all kind of investors but can only benefit from a marketing passport for professional investors across the EU through a standard notification procedure (if managed by an authorized AIFM – otherwise no passport available)

- No restriction on eligible assets and no risk spreading requirements
- For Limited Partnerships with non-Luxembourg AIFM: split supervision between CSSF (fund rules) and home supervisory authority (delegation/organisational requirements of the AIFM)
Contact

Mathieu Scodellaro
Principal
+352 26 48 42 35 51
mathieu.scodellaro@pwclegal.lu

Olivier Amrein
Senior Associate
+352 26 48 42 35 29
olivier.amrein@pwclegal.lu
We are here to help!

Discover our services visiting our website page
https://www.pwclegal.lu/expertise/investment-funds.html