



Your investment fund in Luxembourg

October 2023



PwC Legal



“

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 September 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

CSSF: *Commission de Surveillance du Secteur Financier*

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

SARL: *société à responsabilité limitée* – private limited liability company

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

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 100,000 or benefiting from a certification

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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

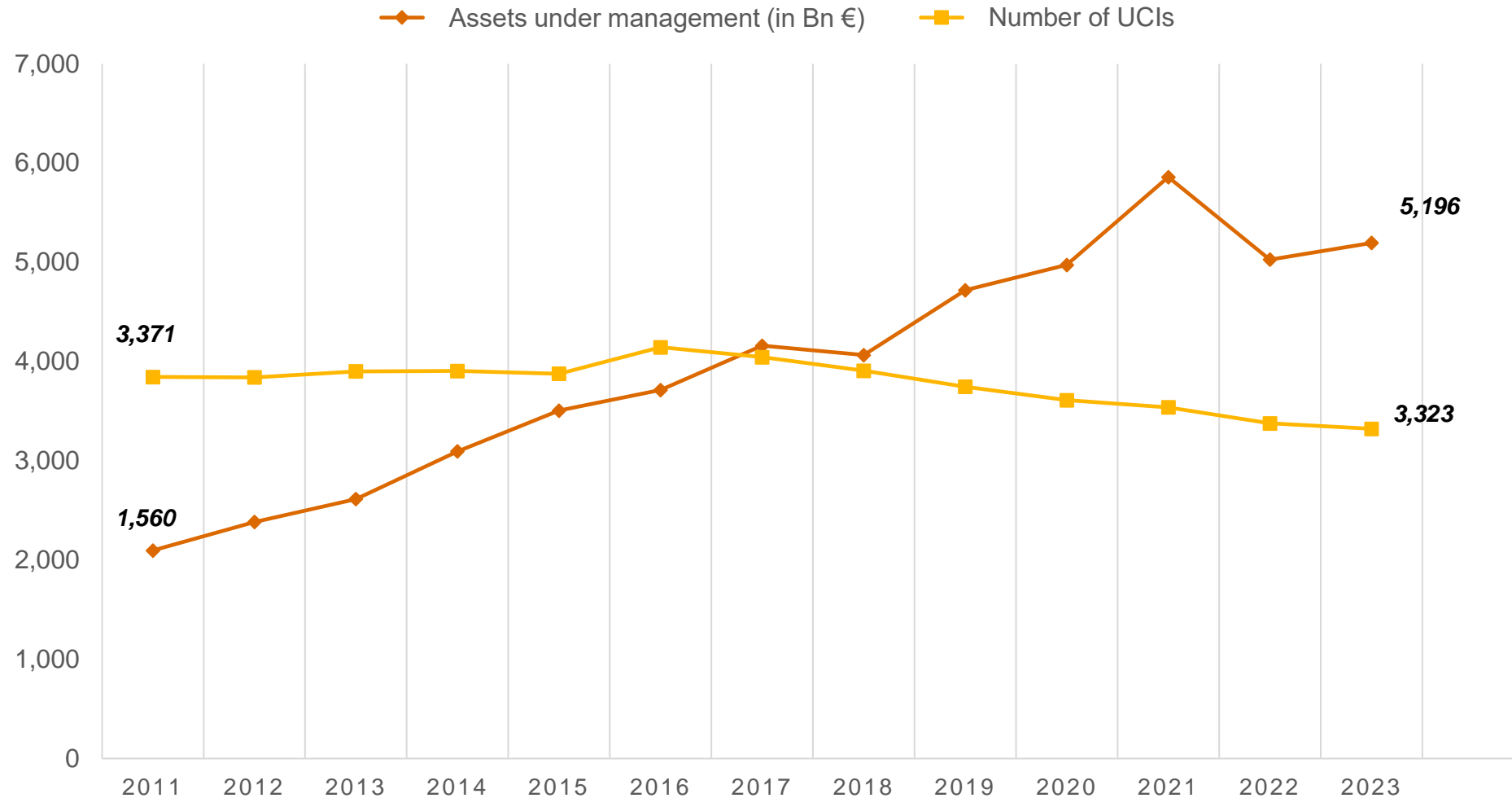
Investment Funds related factors

- 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

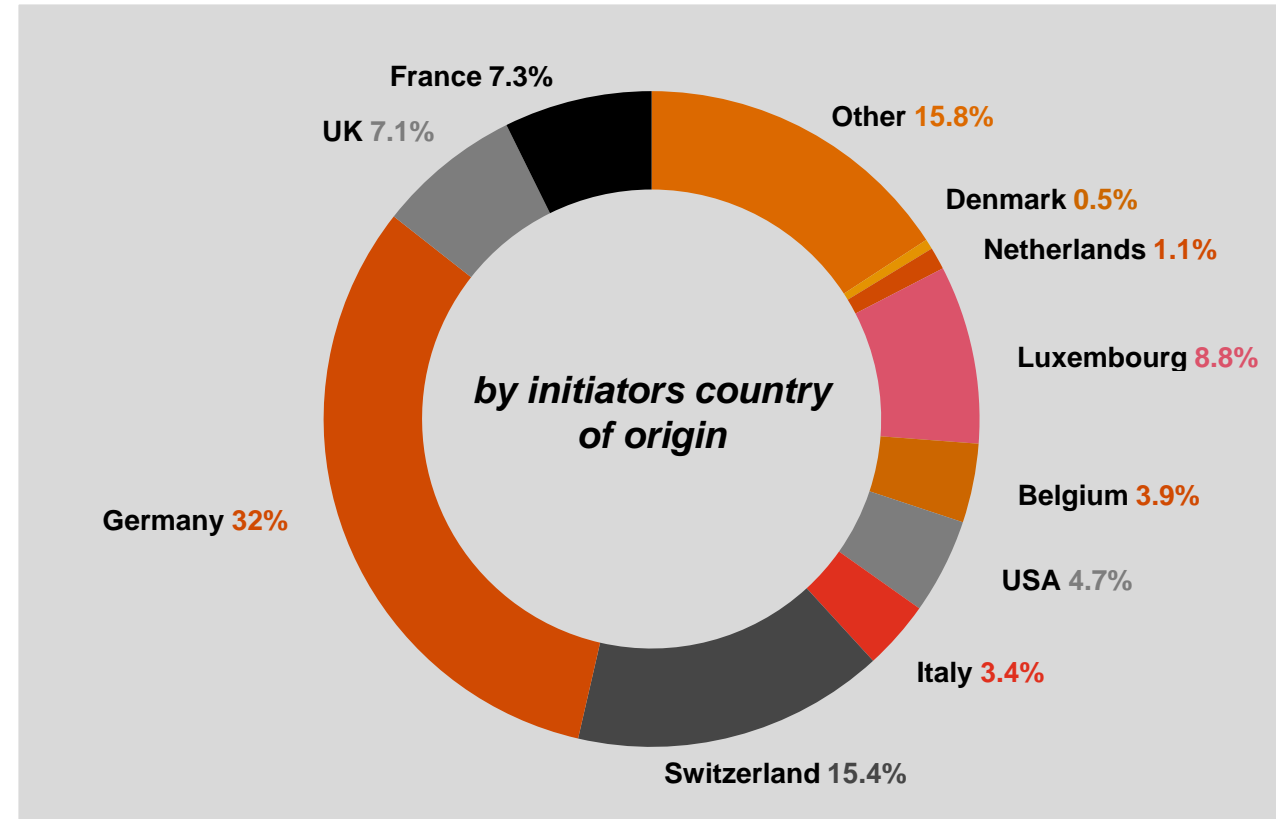
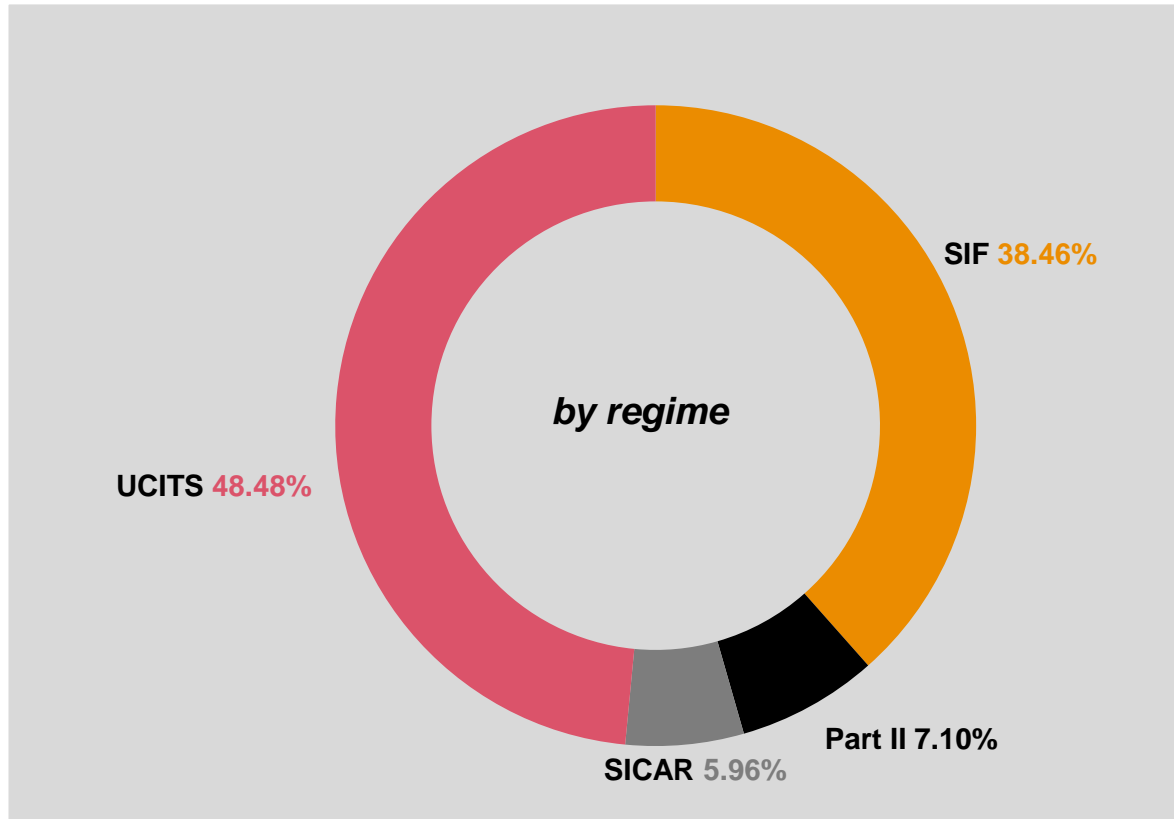
as of August 31st, 2023 (source: CSSF)



Average assets
under management
per UCI

x 2
over 10 years (2013 – 2023)

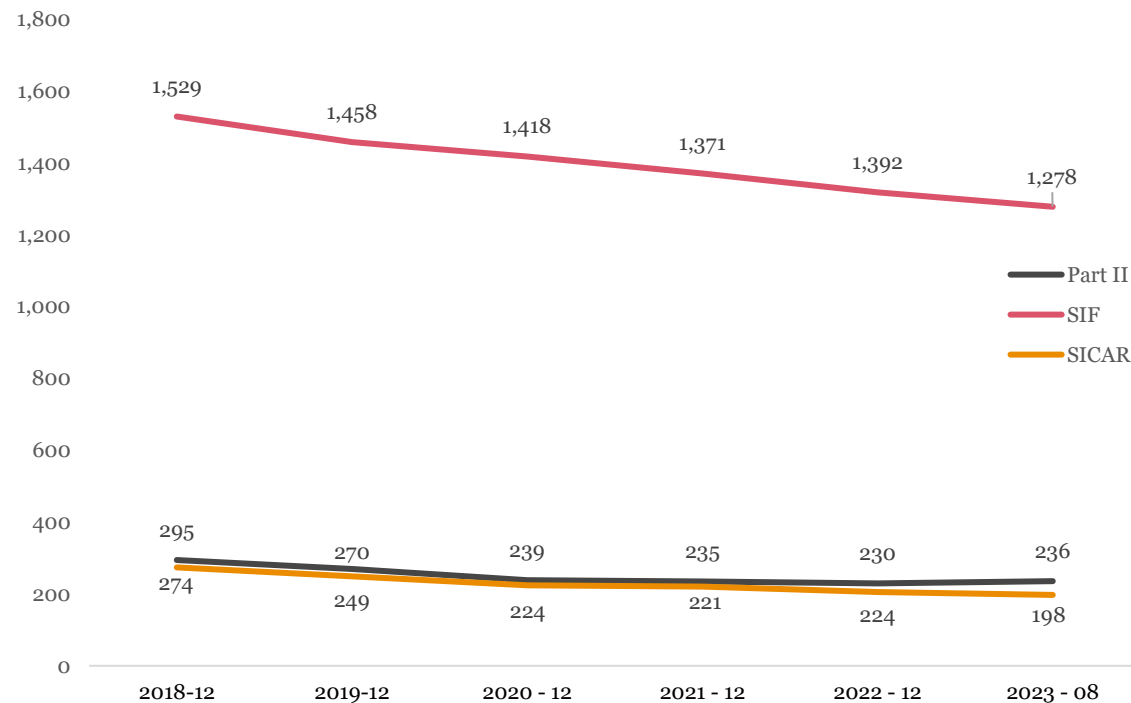
Supervised Investment Funds by Regime and by initiators country of origin *as of August 31st, 2023 (source: CSSF)*



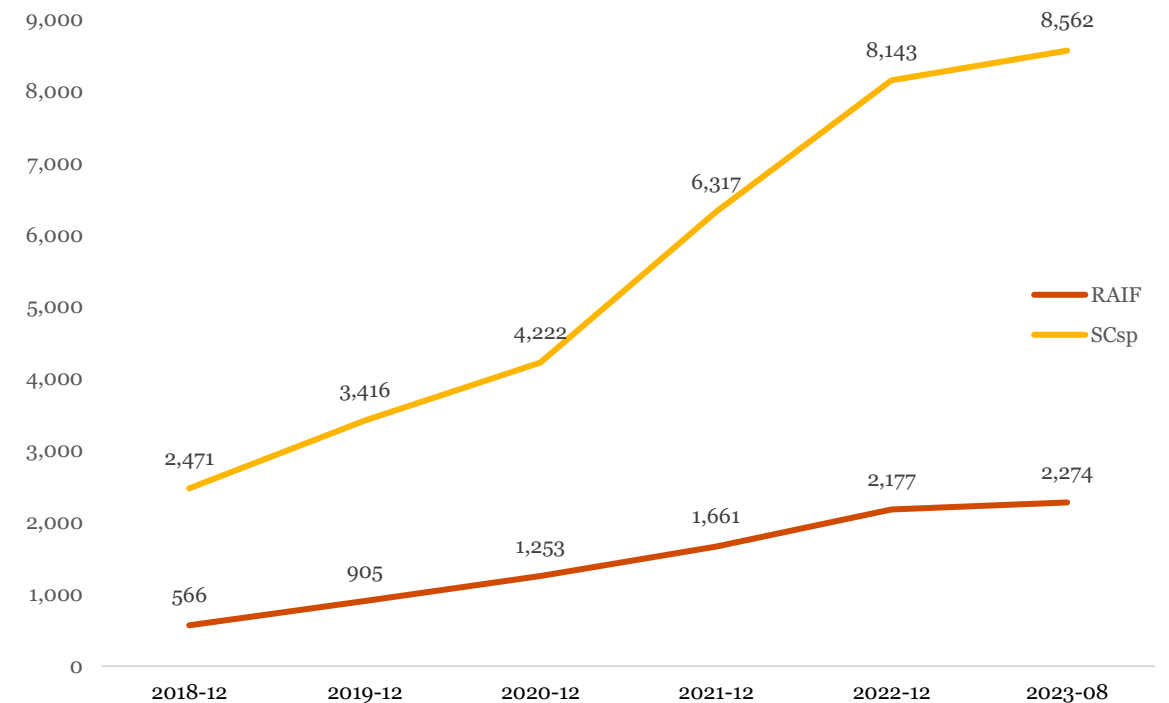
AIF market in Luxembourg

Investment structures in Luxembourg

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

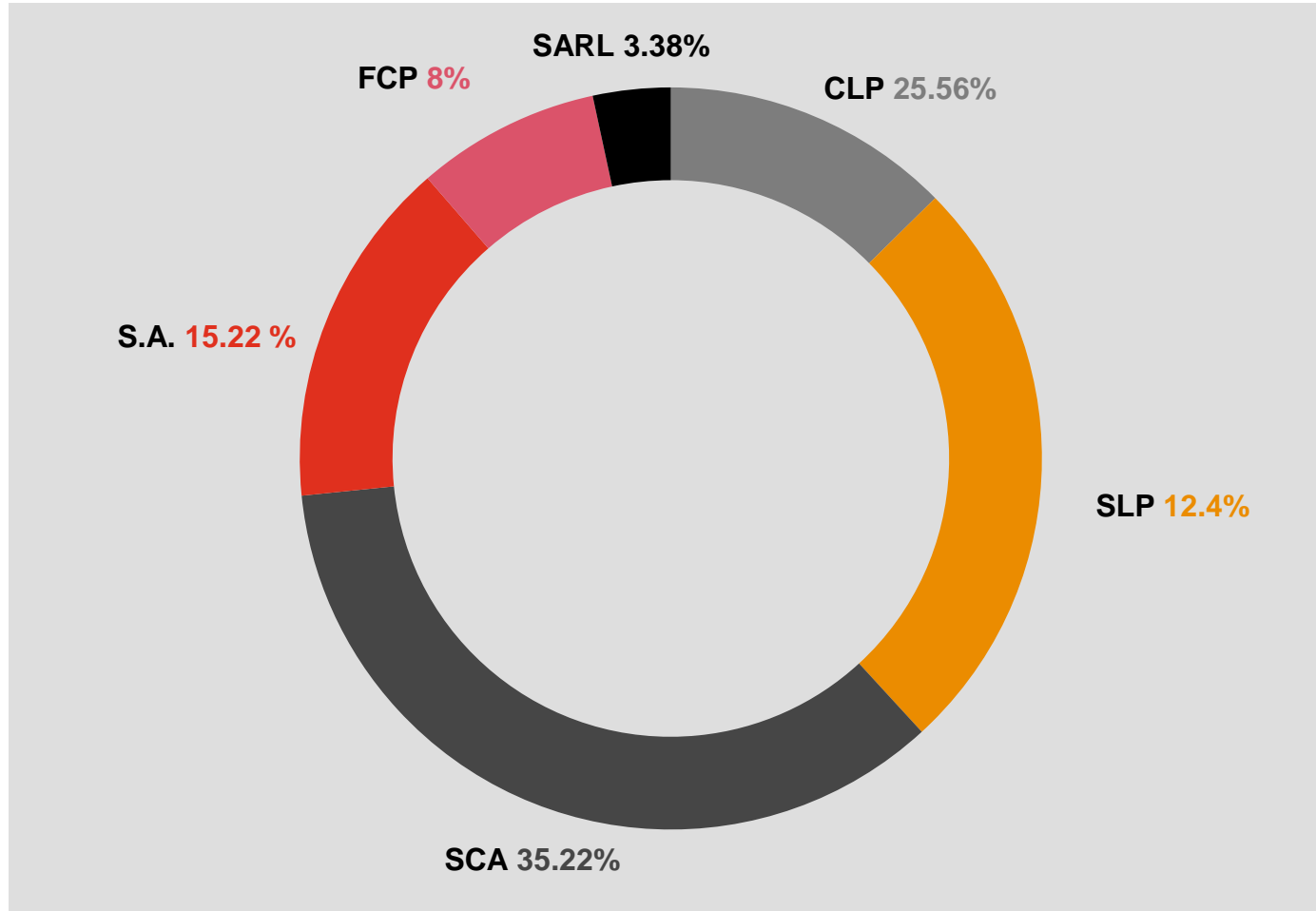


Non-regulated : Evolution of the number of RAIF and SCSp



Source: PwC Market Research Centre based on Monterey, CSSF, LFF, ALFI, ABL, LPEA

Focus on RAIF as of August 31st, 2023 *(source: LBR ; PwC Legal)*



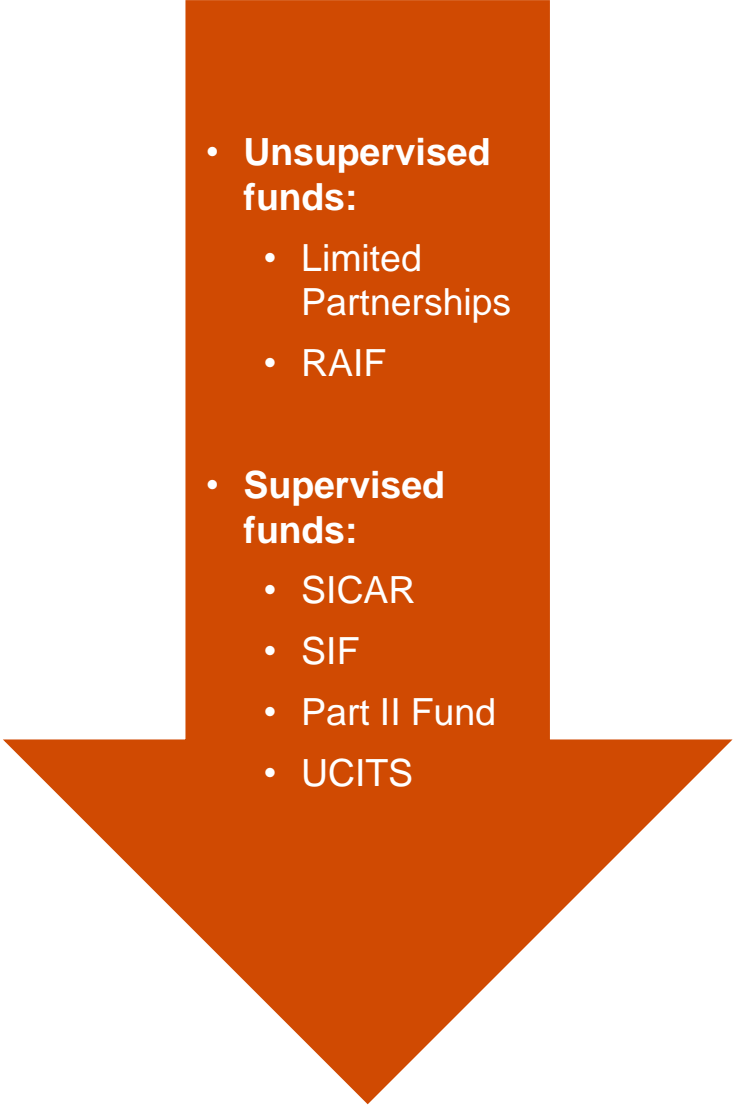
2274 RAIF

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

	UCITS	Part II	SIF	SICAR	RAIF	Limited Partnership
Prudential Supervision by the CSSF	Yes	Yes	Yes	Yes	No	No
Eligible Assets	Restricted	Unrestricted	Unrestricted	Limited to investments in capital at risk	Unrestricted	Unrestricted
Risk spreading requirements	Yes	Yes	Yes	No	Yes (unless if falls within the SICAR like regime)	No
Dividend	No restriction within the minimum capital limit	No restriction within the minimum capital limit	No restriction within the minimum capital limit	No restriction within the minimum capital limit	No restriction within the minimum capital limit	No restriction
Corporate Form	Yes (usually SA)	Yes (SA, SCA, CLP, SLP or SARL)	Yes (usually SA, SCA, CLP or SLP)	Yes (usually SA, SCA, CLP or SLP)	Yes (usually SA, SCA, CLP or SLP)	Yes
Contractual Form	Yes (usually FCP)	Yes (usually FCP)	Yes (usually FCP)	No	Yes (usually FCP)	N/A
Capital	Variable / Fixed	Variable / Fixed	Variable / Fixed	Variable / Fixed	Variable / Fixed	Capital accounts or unitised structure

Key Features of the different regimes in Luxembourg (c'd)

	UCITS	Part II	SIF	SICAR	RAIF	Limited Partnership (LP)
Minimum Capital	EUR 1.25 Mo to be reached within 6 months	EUR 1.25 Mo to be reached within 12 months	EUR 1.25 Mo to be reached within 24 months	EUR 1 Mo to be reached within 24 months	EUR 1.25 Mo to be reached within 24 months	None
Multiple compartments	Possible	Possible	Possible	Possible	Possible	Not Possible
Share Classes	Possible	Possible	Possible	Possible	Possible	Possible
Eligible investors	Unrestricted	Unrestricted	Well-Informed	Well-Informed	Well-Informed	Unrestricted
Marketing passport in the EU	Available	Professional investors only (with a full-fledged AIFM)	Professional investors only (if SIF AIF with a fully-fledged AIFM)	Professional investors only (if SICAR AIF with a fully-fledged AIFM)	Professional investors only	Professional investors only (if LP AIF with a fully-fledged AIFM)
Listing	Possible	Possible	Possible under certain conditions	Possible under certain conditions	Possible under certain conditions	Possible
Minimum redemption frequency	Twice a month	Once a month (derogation possible)	No minimum requirement	No minimum requirement	No minimum requirement	No minimum requirement

1. UCITS in a nutshell



UCITS (Governed by the 2010 Law)



Incorporation

- 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 **depository** in Luxembourg (in charge of the safekeeping of the assets, certain oversight duties and cash-flow monitoring)



Assets

- 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



Investors

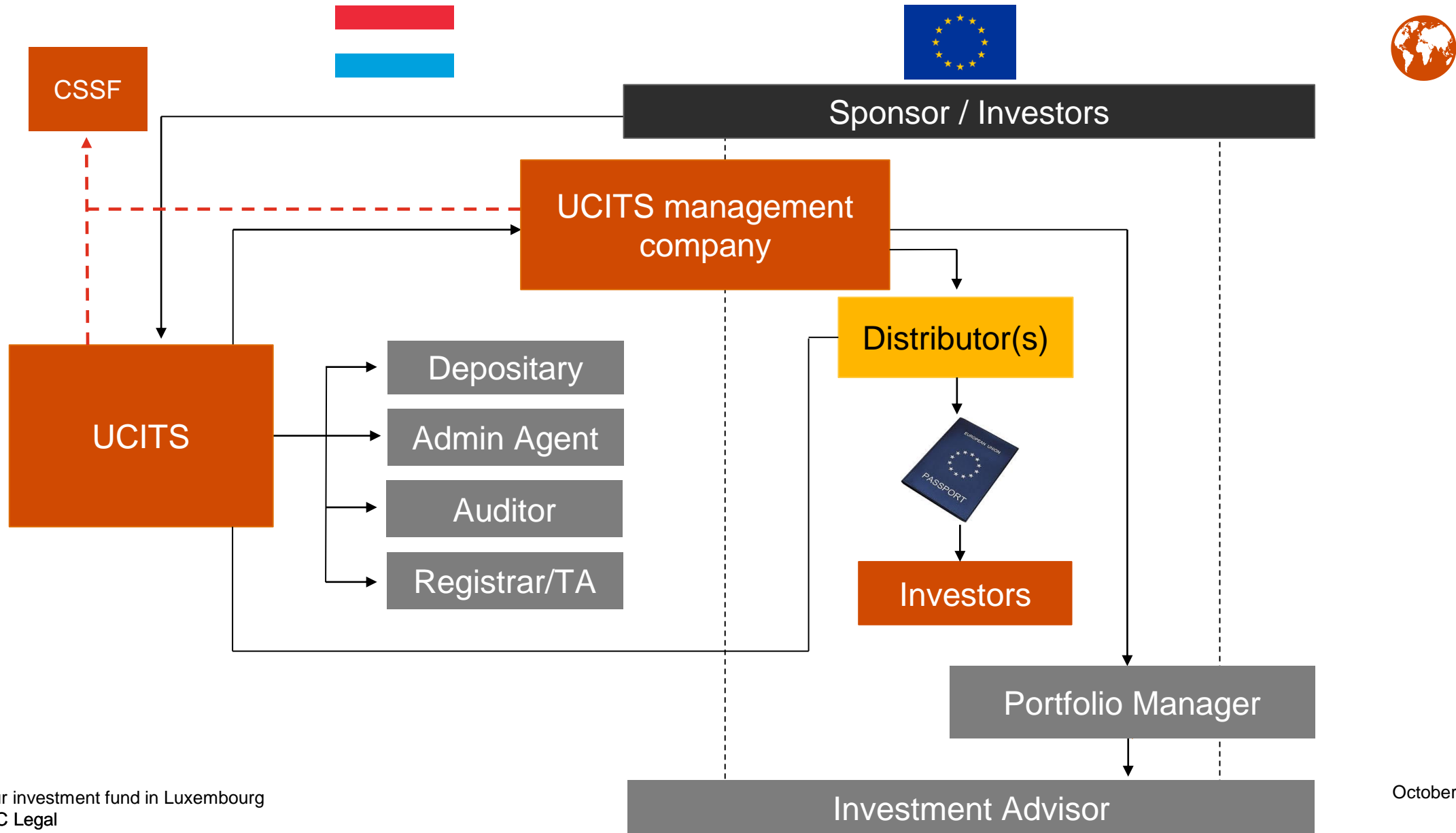
- Shall offer a liquidity to their investors at least twice a month
- Are eligible for all kind of investors and benefit from a marketing passport for all kind of investors across the EU through a standard notification procedure



Non-Luxembourg ManCo

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

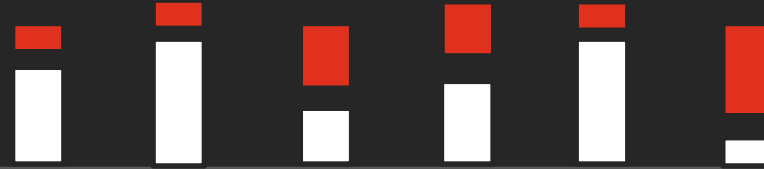
UCITS typical structure



2. Part II Funds in a nutshell



PART II Funds (Governed by the 2010 Law)



Incorporation

- 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 **depository** in Luxembourg – Duties of the depository 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)



Assets

- Can invest in large categories of assets and are subject to more flexibility than a UCITS when it comes to diversification and liquidity requirements



Investors

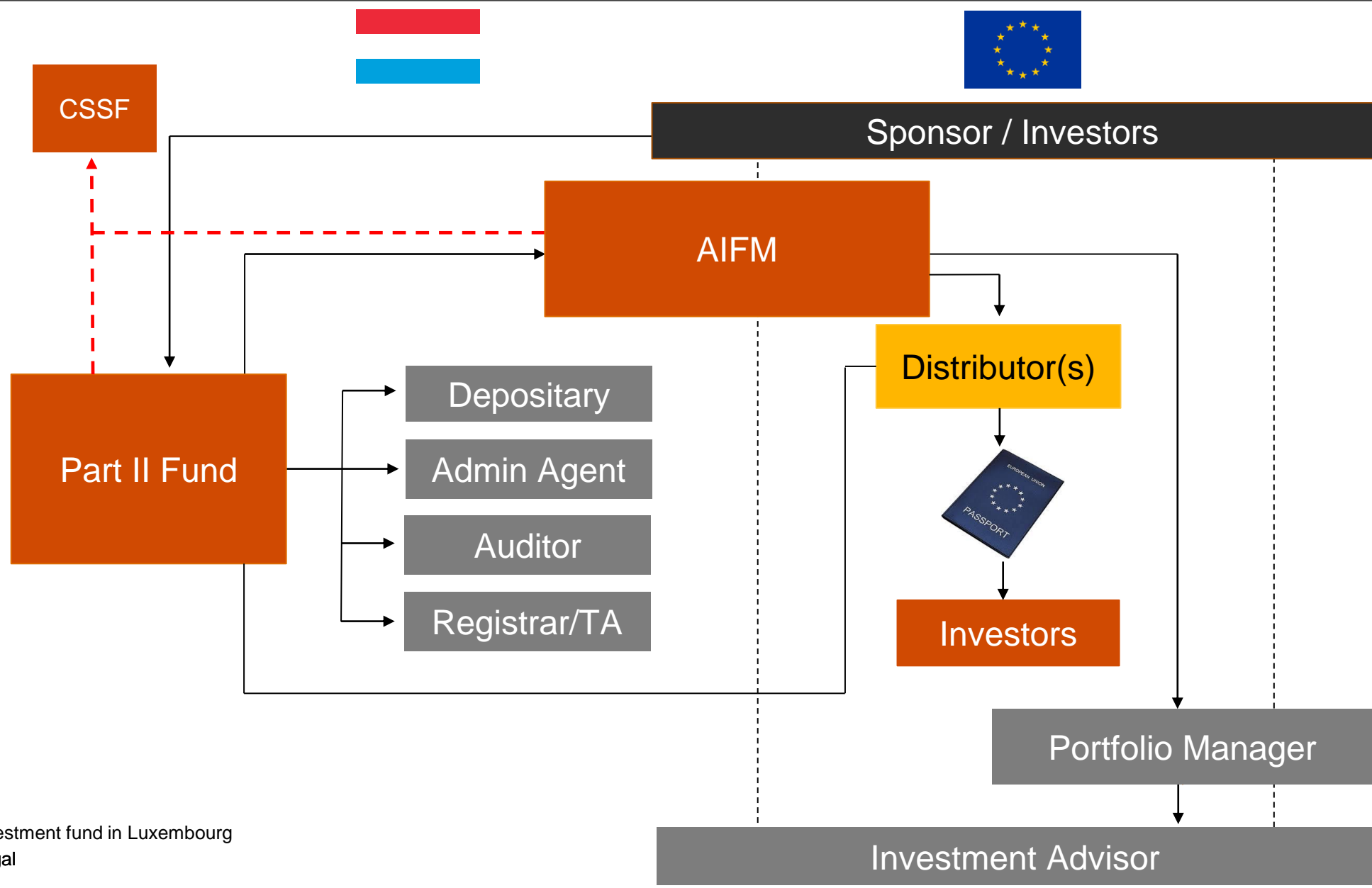
- Eligible for all kind of investors but can only benefit from a marketing passport for professional investors across the EU through a standard notification procedure (if managed by an authorized AIFM – otherwise no passport available)



Non-Luxembourg ManCo

- If non-Luxembourg AIFM: split supervision between CSSF (fund rules) and home supervisory authority (AIFM rules)

PART II Funds typical structure



3. SIF in a nutshell





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



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.



Investors

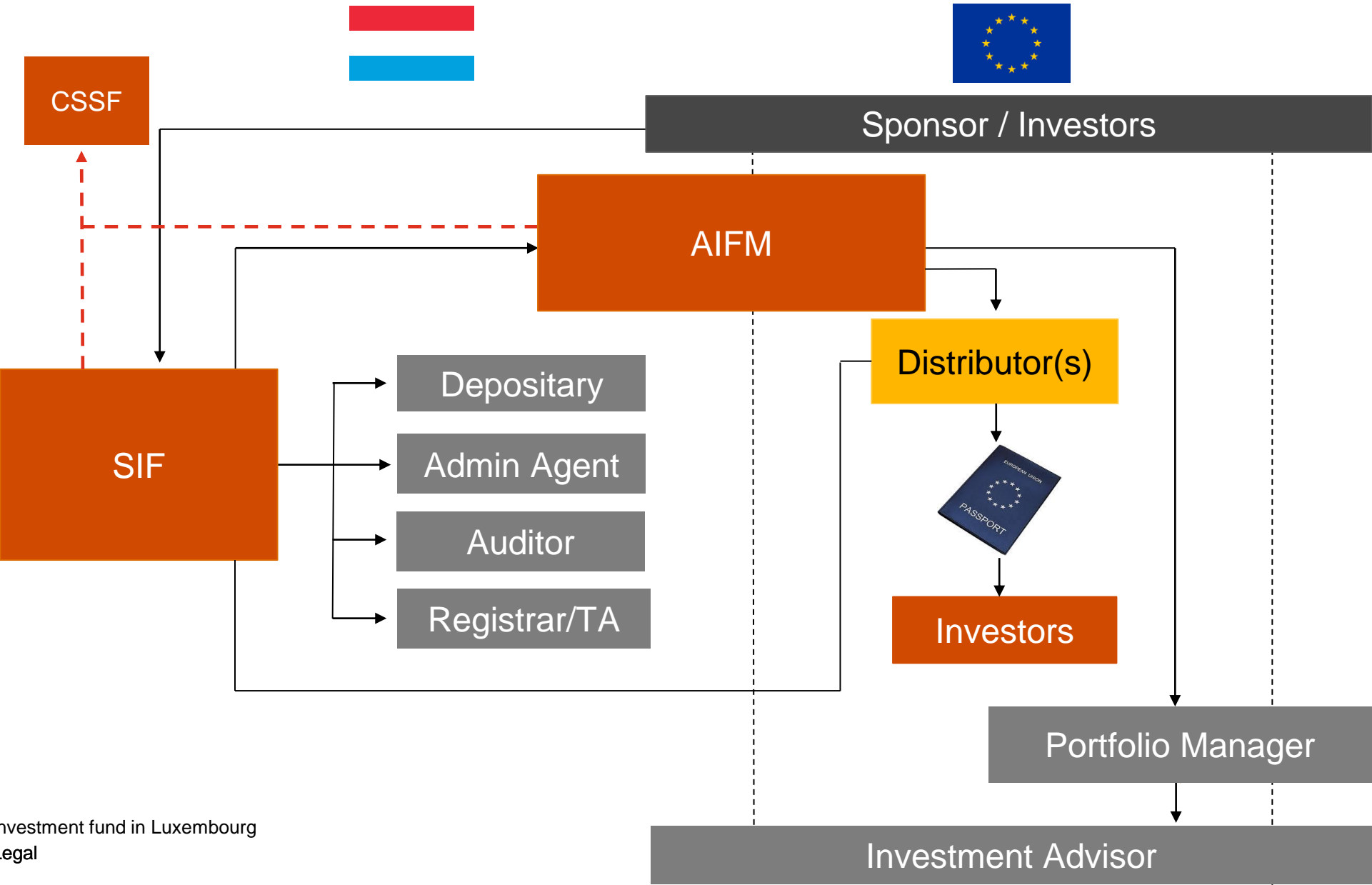
- Are eligible to Well Informed Investors only and can only benefit from a marketing passport for professional investors across the EU through a standard notification procedure (if managed by an authorized AIFM – otherwise no passport available)



Non-Luxembourg ManCo

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

SIF typical structure



4. SICAR in a nutshell





Incorporation

- 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



Assets

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



Investors

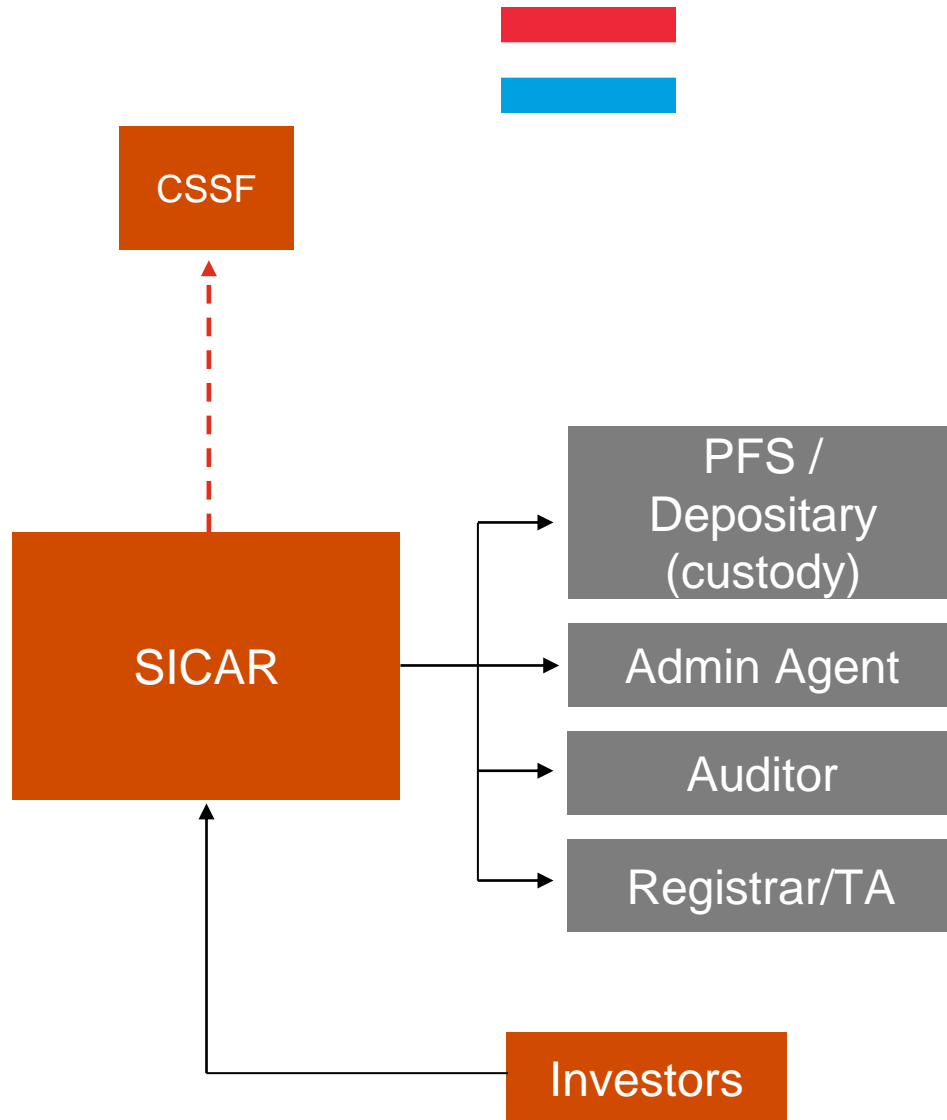
- Are eligible to Well Informed Investors only and can only benefit from a marketing passport for professional investors across the EU through a standard notification procedure (if managed by an authorized AIFM – otherwise no passport available)



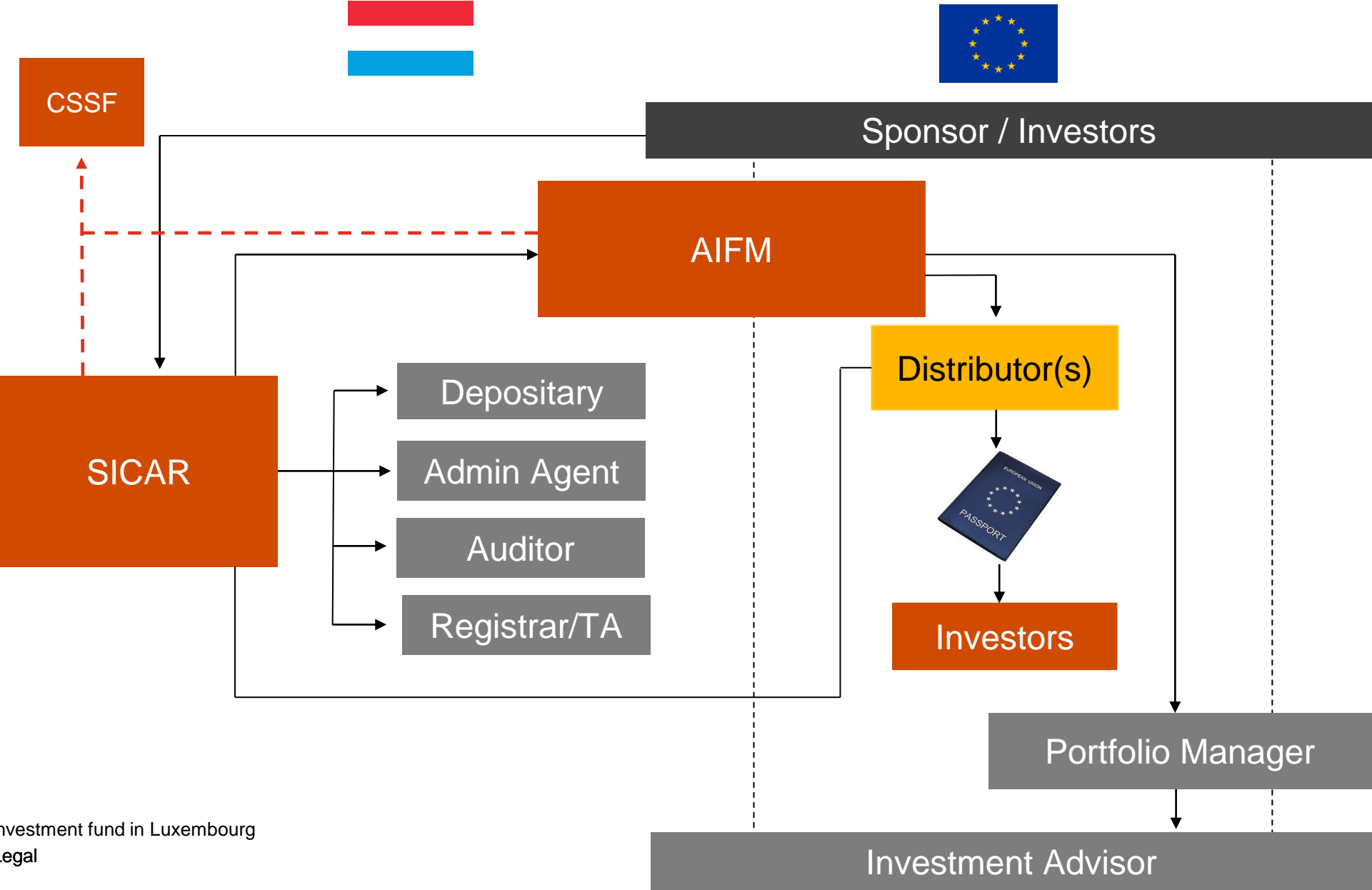
Non-Luxembourg ManCo

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

SICAR typical structure (1/2) – non AIF



SICAR typical structure (2/2) –AIF



5. RAIF in a nutshell





Incorporation

- Are not subject to the authorisation 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



Assets

- 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)



Investors

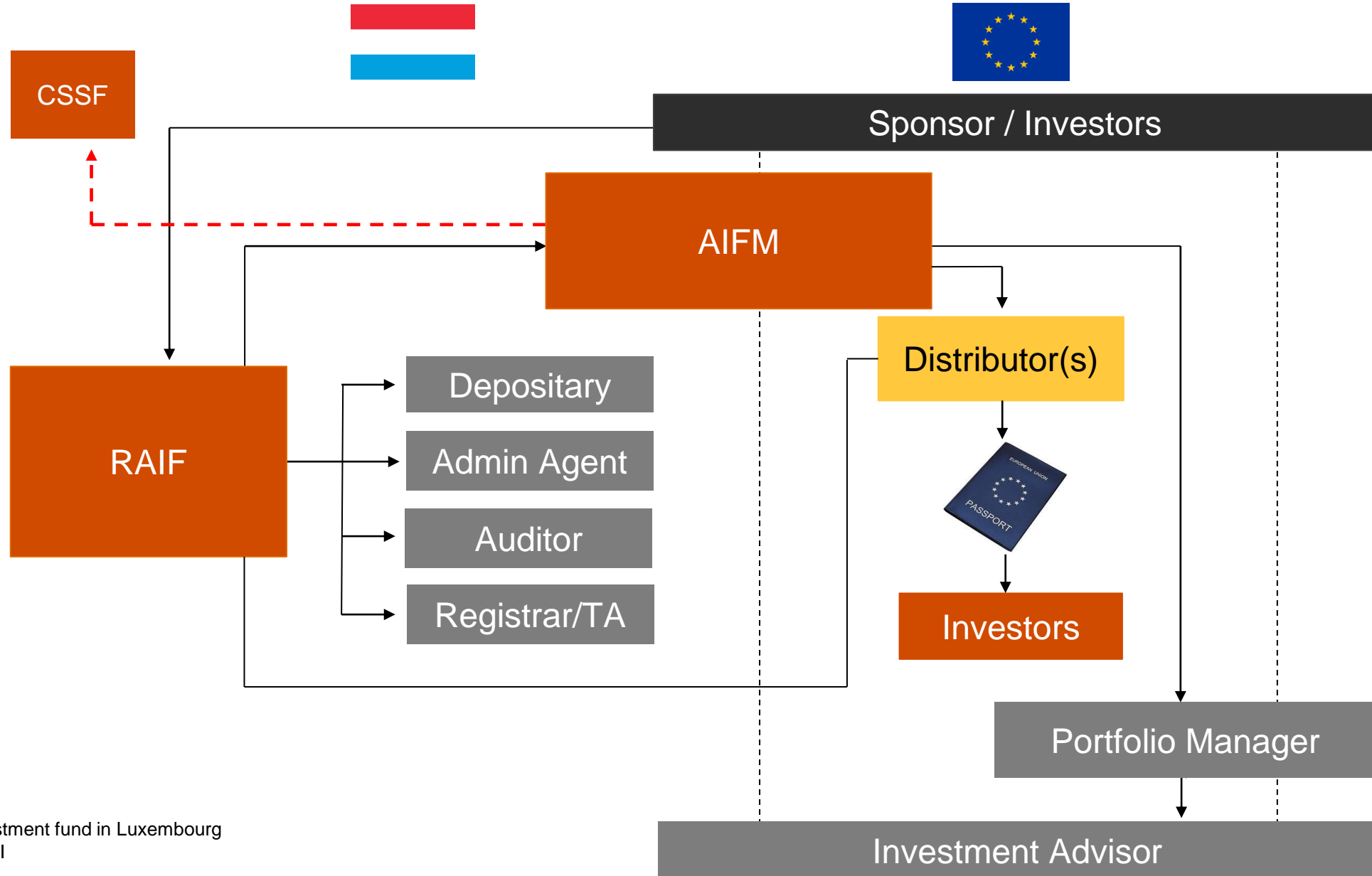
- Are eligible to Well Informed Investors only and can only benefit from a marketing passport for professional investors across the EU through a standard notification procedure



Non-Luxembourg ManCo

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

RAIF typical structure



6 Limited Partnerships ■ in a nutshell



CLP or SLP (Governed by the 1915 Law)



Incorporation

- 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



Assets

- No restriction on eligible assets and no risk spreading requirements



Investors

- 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)



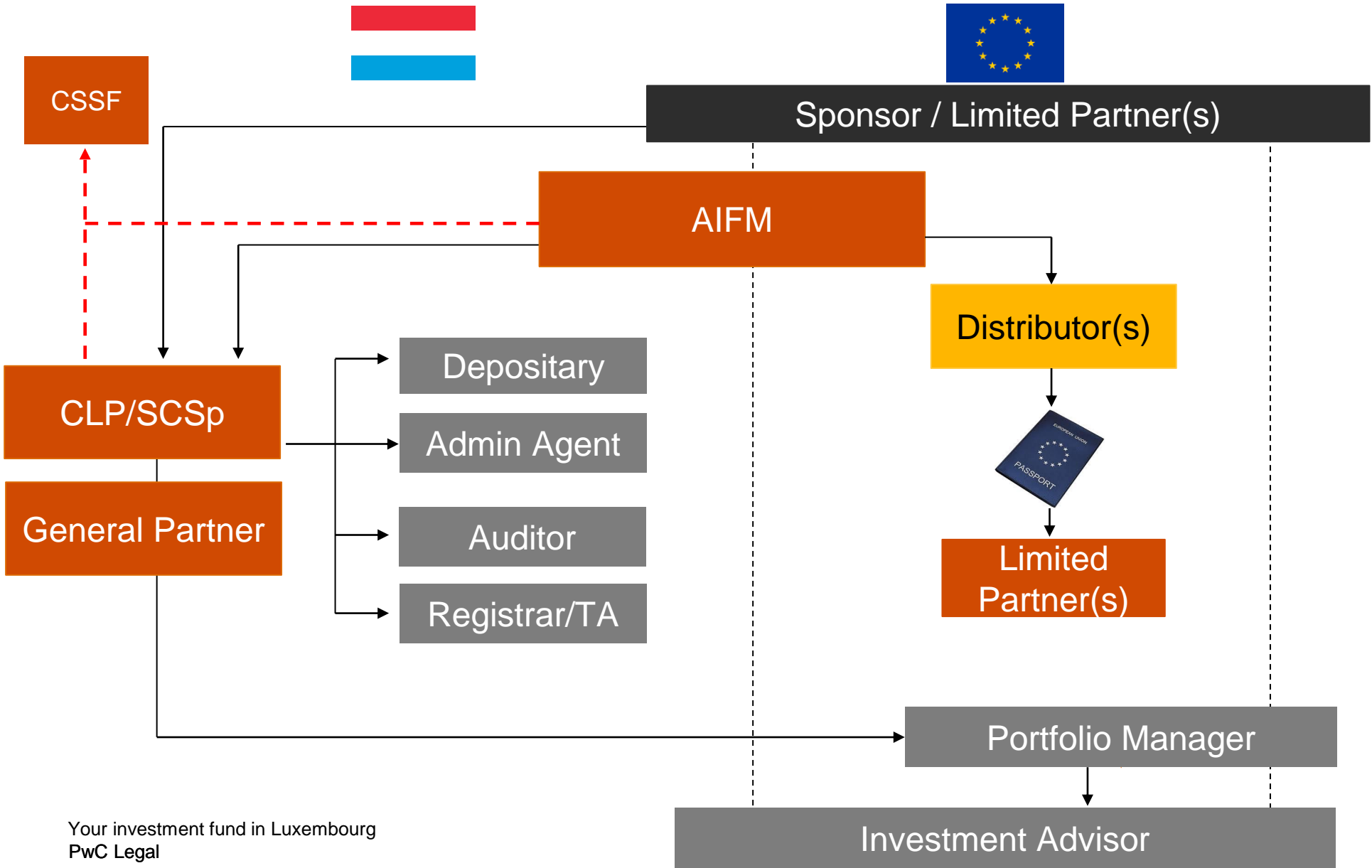
Non-Luxembourg ManCo

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

CLP or SCSp – non AIF



CLP or SCSp –AIF



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We are here to help !

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

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