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Specialized investment funds

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On February 13 2007, a new law concerning specialised investment funds (SIFs) came into force. Born of a demand for a less regulated onshore investment vehicle, as well as a desire on the part of Luxembourg to further enhance its position as a desirable state for the domiciliation and administration of investment funds, the SIF Law replaces the 1991 Law on institutional investor funds.

Scope

The SIF Law defines as an SIF any undertaking for collective investment located in Luxembourg:

- (i) the exclusive object of which is the collective investment of funds in assets with the aim of diversifying investment risks and ensuring that investors benefit from the management of their investment;
- (ii) the securities of which are reserved for informed investors; and
- (iii) the constitutional documents of which provide that the SIF is subject to the provisions of the SIF Law.

Thus the SIF Law introduces the concept of the informed investor, which broadens the scope of eligible investors in investment funds. An informed investor is:

- (a) an institutional investor;
- (b) a professional investor; or
- (c) any other type of investor who has declared in writing that he is an informed investor, and either invests a minimum of €125,000 or has a certificate from a bank, investment firm or management company stating that he has the appropriate expertise, knowledge and experience to understand the investment made in the fund.

Legal form

The central administration of the SIF must be located in Luxembourg; however, the fund itself may take several forms. It may be struc-

tured as a *société à capital variable* (Sicav, variable capital fund), a *société à capital fixe* (Sicaf, fixed capital fund), or as a *fonds communs de placement* (common fund), which must have a management company. Sicavs and Sicafs in turn may be set up as a private limited liability company, a public limited liability company, a corporate partnership limited by shares, or a cooperative company organized in the form of a public limited liability company.

The SIF must have a minimum of €1.25 million within the first 12 months of its authorization. There are no restrictions on dividend payment, but any such payment must not allow the size of the fund to fall below €1.25 million.

Supervision and regulation

The SIF Law introduces a lighter regulatory regime than that under the 1991 Law. An SIF must have a Luxembourg custodian who acts as a supervisor, and who must know at all times where the assets and funds are, as well as how they are invested. However, he is not required to ensure the regularity of certain operations, such as the sale, issue, and redemption of shares.

The Commission de Surveillance du Secteur Financier (CSSF) does not require a promoter for the SIF, and it is the investors who are charged with ensuring that the portfolio managers are up to scratch. This makes it easier for small groups and managers to set up investment funds in the form of an SIF. The CSSF will not perform checks on the SIF directors, but it does require that their names, and the names of any successors, be communicated to it.

An interesting aspect of the SIF Law is that the CSSF does not have to authorize the establishment of the SIF prior to its setting up. The constitutional documents, the identity of the custodian and the names of the directors and officers must be communicated to the CSSF within one month of the establishment of the fund. The SIF must also draw up and communicate to the CSSF an issuing document, designed to provide potential investors with adequate information to make

an informed investment decision. Although the SIF Law does not specify any details of investment restrictions, the SIF will be required to apply the principle of risk diversification.

The reporting requirements for a SIF are also eased by the Law, as it simply requires an annual report made available to investors and the CSSF alike.

Beneficial tax regime

SIFs are not subject to Luxembourg capital gains or income tax. They are, however, subject to capital duties, but this will be at a fixed rate not to exceed €1,250. The SIF is also subject to a subscription tax of 0.01%, levied based on the quarterly net asset value of the fund (subject to limited exceptions).

Given the fact that Luxembourg has concluded numerous double taxation treaties, it should be possible for the fund to benefit from them.

The SIF Law offers flexibility on several fronts to a broader class of investors, with less intrusive CSSF regulation than under the 1991 Law that it replaces, which can only lead to the further proliferation of investment funds in Luxembourg.

Capital markets

Recommended firms

Tier 1

Allen & Overy Luxembourg
Arendt & Medernach
Elvinger Hoss & Prussen
Linklaters

Tier 2

Bonn Schmitt Steichen
Kremer Associés & Clifford Chance
NautaDutilh

Banking

Recommended firms
Allen & Overy Arendt & Medernach Elvinger Hoss & Prussen Linklaters
Tier 2
Bonn Schmitt Steichen Kremer Associés & Clifford Chance
Tier 3
Loyens Winandy Wildgen & Partners

Mergers and acquisitions

Recommended firms
Tier 1
Allen & Overy Arendt & Medernach Bonn Schmitt Steichen Elvinger Hoss & Prussen Linklaters
Tier 2
Kremer Associés & Clifford Chance Oostvogels Pfister Feyten
Tier 3
Loyens Winandy Mollitor Fisch & Associés Wildgen & Partners
Tier 4
Kleyr Collarini Grasso NautaDutilh

Luxembourg has been buzzing with activity following a surge of takeover activity. Private-equity firms in particular have used the jurisdiction to structure buyouts due to Luxembourg's friendly regulatory framework.

"Luxembourg is now being used for doing acquisitions outside of Europe due to the Luxembourg environment – the combination of a good tax regime, investment funds experience and M&A expertise," said one partner.

The real-estate sector has been the most active in this sense, with many private-equity firms acquiring real-estate portfolios in increasingly complex transactions. Real-estate financing has also flared up of late, with many companies structuring their financing in Luxembourg to acquire property in foreign countries.

Elsewhere, law firms noted a resurgence of equity capital markets work this year. Traditionally a slow area, the last 12 months have seen firms land roles on some high-profile initial public offerings (IPOs) on foreign

stock exchanges, such as Gagfah's IPO on the Frankfurt Stock Exchange.

Allen & Overy

Allen & Overy's Luxembourg office retains its place in tier one on the back of its highly regarded financial and corporate work. The firm boasts a strong international network which appeals to its international client base.

The firm's banking and capital markets team is led by Henri Wagner, who is described by one rival partner as "nice to work with on the other side". Real-estate financing is a cornerstone of the practice, with the team this year acting for the Royal Bank of Scotland on a £910 million credit facility for the acquisition of 47 hotels and guiding Deutsche Bank on a series of real-estate financings to Fortress totalling €2.26 billion.

Allen & Overy acted for Barclays Capital on the setting up of nine master credit facility agreements in relation to the financing of real-estate acquisition in a variety of countries. In one innovative transaction, the firm acted for Citibank on the financing of a Belgian property company by a €26.8 million *murabaha* (deferred sale) Islamic financing agreement.

The firm was also active in the acquisition finance market, acting for UBS and Mediobanca on a €35 billion facility for Endesa's acquisition of Italian power company Enel. Allen & Overy also acted on straight bank lending deals for Caylon's €4.3 billion letter of credit facility to the Bombardier group and for a consortium of banks on the provision of a €2 billion multicurrency credit agreement to Merlin Entertainments Group.

Henri Wagner's team had its share of debt capital markets deals, with highlights including acting for Deutsche Bank Luxembourg on setting up a \$2 billion loan participation notes programme and a €650 million debt securities facility for Bonaventura for the financing of the A5 motorway concession in Austria. The firm also acted for Dresdner Bank on a €900 million debt securities financing for the acquisition of shares in a Chinese credit institution.

Structured finance transactions are another strength of the firm, which was mandated by Deutsche Bank on the securitization of a €2.3 billion acquisition loan and the securitization by palladium securities of interests in a German limited partnership. The firm also advised Morgan Stanley on a \$99 million loan securitization for BlueOrchard, and set up securitization vehicles for Oaklet as well as WestLB and SachsenLB.

Allen & Overy's corporate department is headed by Marc Feider, who is described by

peers as "very, very active" and "very pleasant to work with", while clients praise him for his "deep knowledge of Luxembourg corporate law".

The firm has recently focused on private equity, acting for 3i on its €50 million acquisition of ABX Logistics, advising JC Flowers on the buyout of Luxembourg insurance company PanEuroLife from Nationwide Global Holdings and guiding Pamplona Capital Partners on the £153 million buyout of the ceramics division of Johnson Matthey. The firm also acted for scrap dealers Dietiker and Non-Ferrous International on the €280 million sale of the Dietiker-Metallo group to French private-equity firm Alpha Associés.

Leading lawyers

Marc Feider
Henri Wagner

Arendt & Medernach

Arendt & Medernach has been on a recruiting spree, hiring 45 associates for its corporate, tax and intellectual property teams and adding 15 legal professionals to its financial department. The firm has held its position in the top tier after receiving unanimous acclaim from peers and clients alike.

The corporate department is headed by Guy Harles, who leads a team which has been extremely busy in the private-equity market over the past 12 months. One of the firm's highlights was acting for TPG and Apax funds on their €3.4 billion sale of TIM Hellas Telecommunications to Weather Investments in April 2007. The sale price included €500 million of equity and €2.9 billion of debt as at the end of 2006.

The firm landed a role representing CVC Capital Partners on its A\$2.7 billion (€1.67 billion) acquisition of Australian healthcare company DCA and was mandated by LBO France on its \$2.7 billion sale of the Actaris Group to Itron, which included the purchase of \$1.7 billion of bank debt.

Partner Jean-Marc Ueberecken led Arendt & Medernach when it advised Apollo on its £1.1 billion acquisition of British real-estate provider Countrywide in May 2007, while the firm also guided Bain Capital on its sale of German chemical company Brenntag to BC Partners for an undisclosed sum.

The firm was also active on the bank lending side, with Phillipe Dupont singled out by peers as an "excellent technical lawyer". One standout role for Dupont was leading a team which advised Mediobanca on Luxembourg aspects of the financing for Santé Développement Europe's €1.49 billion purchase of shares in Générale de Santé and its subsequent takeover bid.

Rival lawyers noted that partner Ari Gudmannsson was particularly visible in the lending market this year. Gudmannsson led a team which advised Deutsche Bank for the financing of Metaldyne's \$1.2 billion acquisition of Asahi Tec. The team was also mandated by ABN Amro to advise on the financing for the €751 million acquisition of the Max Bahr real-estate portfolio.

Gudmannsson also scored a role acting for a consortium of investment banks as lead arrangers on a €815 million refinancing of the acquisition of Amadeus. The additional senior facilities were used to refinance the subordinated bridge facility, which was put in place as part of the original financing of the bid by BC Partners and Cinven.

Structured finance was another strong area for the firm. Gudmannsson again led a team which advised a consortium of banks on a securitization of Russian consumer loans through a Luxembourg special-purpose vehicle. He also acted for Bayerische Hypo- und Vereinsbank and Geldilux on the securitization of receivables from short-term Euro-dominated loans issued by HVB Luxembourg to mid-size German companies.

One innovative deal saw the firm act for European Investment Fund and Symbiotics on the raising of €30 million through the capital markets for micro-finance institutions in the Balkans.

On the regulatory side Arendt & Medernach worked on the creation of a bank for internet payment company Paypal and assisted in the sale of insurance company PanEuroLife to JC Flowers, which was the first transaction in Luxembourg where a private-equity fund has obtained regulatory approval for the acquisition of a majority shareholding in a financial institution.

Leading lawyers

Phillipe Dupont
Guy Harles
Paul Mousel

Bonn Schmitt Steichen

Bonn Schmitt Steichen received wide praise for it is work across the financial and corporate category, but one transaction dominated the firm's deal list this year: Alex Schmitt led a team which represented the buyer Mittal Steel on the landmark €32.2 billion transaction, which is the largest deal ever in the steel industry and involved a number of different European countries. The takeover was *IFLR's* European deal of the year in 2007. The firm also acted for Mittal on its listing of shares on the Luxembourg Stock Exchange (LxSE) and represented both Mittal and Arcelor on the subsequent merger operation between the two firms.

Elsewhere in M&A, the firm acted for Leasinvest on the €42 million tender offer for the shares of Dexia Immo Lux and also advised on the €100 million sale of the share capital of a real-estate company.

Schmitt was also busy with equity capital markets transactions this year, leading a team which advised Dufry South America and Wilson and Sons on their listing of shares on the Euro MTF market of the LxSE, raising €331 million and €173 million respectively. The firm demonstrated its cross-border capabilities when it acted for ACE and the selling shareholders in Automotive Components Europe's €13 million initial public offering (IPO) on the Warsaw Stock Exchange.

The well regarded Laurent Lizard leads the firm's substantial structured finance practice, which acted for Citigroup on a €25 billion securitization package. Lizard again led when the firm advised DaimlerChrysler Bank on its €1.5 billion issue of notes with respect to loan receivables and guided Volkswagen Leasing on the issue of €970 million notes with respect to lease receivables.

The firm also showed its international capabilities when it advised Gazprombank on a €2 billion issue of mortgage-backed notes originated by Commercial Bank Sovfintrade, a subsidiary of Gazprombank.

Leading lawyers

Laurent Lizard
Alex Schmitt

Elvinger Hoss & Prussen

Elvinger Hoss & Prussen occupies the top tier yet again after winning nearly unanimous praise for its quality of work. The firm is seen as traditionally strong in its banking and finance work, but it was its corporate work which stood out this year.

The firm's acted for Arcelor on its ultimately unsuccessful takeover defence against Mittal Steel. Elvinger must have impressed because it was mandated again by Arcelor to work on its post-merger restructuring.

Elvinger Hoss & Prussen acted on the Baur Group's takeover of Luxembourg real-estate fund Immo Crossiance and also advised Mobistar on its acquisition of Vox Mobile. The firm also acted for Gemplus on its merger with Gemalto and in the subsequent squeeze-out transaction, which was one of the first under the country's new legislative framework for takeovers.

On the finance side, André Hoffman was singled out as "a very nice guy to work with and clearly a clever lawyer". Elvinger Hoss & Prussen's other highlights included acting for Gagfah on its high-profile IPO and advising

Caylon in the restructuring of Occitane International Cosmetic Group.

Leading lawyers

Phillipe Hoss
Yves Prussen
Pit Reckinger

Linklaters

Formerly known as Linklaters Loesch, the firm changed its name to Linklaters as part of a global branding strategy in 2007. The firm is very well regarded by the market for its cross-border international work, linking up with its UK base and various international offices.

The corporate department is led by Tom Loesch, who is described by peers as "an all-rounder, very responsive and [who] provides a correct counterpoint". The department consists of three partners who act on M&A and equity capital markets deals.

One of the firm's corporate highlights was advising Pai Partners on its €2.4 billion purchase of Lafarge subsidiary Lafarge Roofing, which was one of the largest leveraged buy-outs in continental Europe. The firm also acted for Kohlberg Kravis Roberts & Co (KKR) on Luxembourg aspects of its A\$735 million (€453 million) second investment in the joint venture between Australia's Seven Network and Yahoo!7, which was structured through Luxembourgian acquisition and finance companies.

Linklaters further demonstrated its prowess representing the Royal Bank of Scotland as part of a consortium's acquisition of a £3.1 billion stake in the Bank of China. The firm also acted for Montagu Private Equity on the sale of a stake in Actaris to LBO France.

The firm was active in the equity capital markets, acting for ECM Real Estate Investments on its €75 million offering of shares on the Prague Stock Exchange, which was the first ever retail share offering in the Czech Republic. Linklaters also acted for Espirito Santo Financial Group on a €150 million offering of new shares, followed by a €500 million issue and listing of notes and attached warrants.

Janine Biver heads the capital markets and banking group and is singled out by peers as a "very bright and responsive person". Biver led the team when it advised a consortium of banks in setting up a €5 million programme for the issuance of listed debt instruments by NordLB, which included mortgaged bonds and subordinated notes.

Linklaters also won a role representing JSC Bank on the issue of €1 billion floating-rate notes and a £3 billion loan participation note.

The firm again showed its skill at international work by acting for Actelion Finance on SFr460 million (€283 million) senior unsecured zero-coupon convertible bonds.

The firm also landed a significant deal on the lending side when it was mandated to represent Citigroup on its €17 billion refinancing of the facilities of Mittal Steel and Arlecor prior to their high-profile merger.

Leading lawyers

Janine Biver
Tom Loesch

Kremer Associés & Clifford Chance

While Kremer Associés & Clifford Chance is noted as a very solid firm across the board, the market believes the firm hasn't made the step up to tier one just yet. Well regarded name partner Christian Kremer heads up the firm, while partner Steve Jacoby is described by peers as "really brilliant".

The firm was active in the corporate field, mainly advising on Luxembourg aspects of international deals. The firm advised Bridgepoint Capital on its acquisition of a majority stake in German pharmaceutical company Dragenopharm Apotheker Püschl, and was also involved in Veronis Suhler Stevenson's sale of its shares in Berliner Verlag.

Kremer Associés & Clifford Chance's structured finance practice was also active, with one notable deal seeing the firm act as Luxembourg counsel on Bayerische Hypo- und Vereinsbank's securitization of a German ground leasing portfolio.

Leading lawyers

Steve Jacoby
Christian Kremer

Wildgen & Partners

Wildgen & Partners is not noted for its visibility in the market, but it has still managed to win roles on a range of significant transactions in the last year.

Wildgen's main strength is in corporate work. The firm acted on the €110 million acquisition of an investment company and provided assistance to a listed company in a friendly takeover bid and the company's subsequent delisting. Wildgen also acted on the €75 million acquisition of a listed company and provided advice on the takeover bid for a Russian group.

The firm was also active in the capital markets, especially on the debt and structured finance side. Wildgen advised on a €6 billion issue of Eurobonds for the financing of an UK telecoms company, a €1.4 billion Eurobonds

financing and a \$1 billion issuance of listed notes.

François Brouxel and Michel Bulach led the firm when it advised on the structuring of the participation of an investment fund in several securitizations of a portfolio of loans for a wind farm structure, and also advised on the its subsequent sale to a private-equity group.

Wildgen participated in a number of banking transactions, including guiding a Luxembourg special-purpose vehicle on its €1.2 billion acquisition of real estate and assisting a Luxembourgian bank in the negotiation and structuring of €215 million commercial and syndicated loans. The firm also assisted a British bank in structuring its €600 million credit facility and advised on the renewal of a €140 million facility granted to a European industrial group.

Finally, the firm worked on the restructuring of a group of companies held by private-equity groups and the restructuring of a pan-European group of companies.

Other notable firms

Loyens Winandy is traditionally noted for its tax practice, but the firm has developed its financial and corporate abilities to become visible on a number of recent deals. "They had a fabulous year in 2006, and they should at least be in tier three," said one rival partner.

Oostvogels Pfister Feyten has had a name change after the addition of tax partner Frédéric Feyton in September 2006. The firm is seen as strong in M&A, moving up a tier on the back of strong support from peers.

Investment funds

Recommended firms

Tier 1

Arendt & Medernach
Elvinger Hoss & Prussen
Linklaters

Tier 2

Allen & Overy
Bonn Schmitt Steichen
Kremer Associés & Clifford Chance
Loyens Winandy

Luxembourg's traditional role as a place to route investments from private-equity funds to target companies is changing. Rising interest in regulated funds and an increasingly friendly regulatory market has meant the country is increasingly being seen as a place to collect as well as transfer capital.

One of the main drivers of this is the updated Specialised Investment Funds (SIF) structure. The new draft has given a wider

range of investors access to the market and given the country an edge over its onshore and offshore competitors in the battle for investor funds.

The real-estate sector has been another cause of the surge. Many property funds have used a *société d'investissement en capital à risqué* (Sicar, venture capital investment fund) structure as it provides a tax-efficient onshore vehicle which can take advantage of EU directives and tax treaties. Combined with the passporting benefits of the Undertakings for Collective Investment in Transferable Securities (Ucits) III framework, Luxembourg is more than holding its own in the battle of the funds domiciles.

Arendt & Medernach

Arendt & Medernach has retained its status as one of the leading funds practices in Luxembourg after unanimous support from peers and clients. The firm is one of the market leaders in terms of numbers of domiciled funds advised as well as assets under management.

The practice is headed by Claude Kremer and Claude Niedner and consists of six partners and 65 associates. Kremer has recently been elected as chairman of the board of the Association of the Luxembourg Fund Industry, while Niedner has a regular role advising Prologis.

Arendt & Medernach advises on the listing of both domestic and foreign investment funds on the Luxembourg Stock Exchange and provides assistance in registering Ucits in other EU countries.

The firm has an association with Irish boutique funds practice Dillon Eustace, which allows Arendt & Medernach to provide its clients with access to the fast-rising Irish investment funds market.

Leading lawyers

Claude Kremer
Claude Niedner

Elvinger Hoss & Prussen

Jacques Elvinger heads up the firm's investment funds department, which is notable for advising a high number of domiciled funds and assets under management. The firm is well regarded by the market, with Jacques Elvinger coming in for particular praise.

Elvinger Hoss & Prussen boasts a strong Ucits practice, advising on the creation of a range of sophisticated products. The firm was involved in the drafting of the SIFs legislation, and often advises on the creation and management of funds under the new structure.

The firm also provides advice to Luxembourg banks and asset managers in relation to the creation of Ucits, Sicars, SIFs and pension funds.

Leading lawyers

Jacques Elvinger

Linklaters

Linklaters' funds practice is headed by Freddy Brausch, who is seen by the market as one of the market leaders in funds work. While not involved with as many domiciled funds as some of its peers, the firm is seen as strong in establishing Sicars and Ucits.

The firm was involved in a number of Ucits structures, including a €10 billion Ucits III fund for Deutsche Bank and a Ucits III platform for Merrill Lynch – both of which made extensive use of over-the-counter derivatives and provided exposure to a number of asset classes.

Linklaters was also mandated on a number of fund restructuring programmes, acting on the conversion of Sicars, Ucits III funds and *sociétés d'investissement à capital variable* (Sicavs, variable capital investment vehicles) into alternative vehicles for a variety of investment managers and banks.

The firm continues to advise on a number of real-estate funds, including a €1 billion Euro-dominated Luxembourg property fund for Morley and Pradera. Linklaters was also involved in the listing of funds, such as acting for Matrix Property Fund Management on the listing of an investment trust in Luxembourg and the Channel Islands.

Leading lawyers

Freddy Brausch

Allen & Overy

Peers noted that Allen & Overy hasn't been as visible in the market as in some previous years, but the firm's deal list shows it has been working on a number of regulated, unregulated and semi-regulated funds and other investment vehicles.

Allen & Overy advised Vista on its pan-European investment vehicle – a closed-ended *société d'investissement à capital fixe* (Sicaf, fixed-capital investment vehicle) listed on the London Stock Exchange. The firm also acted for Ventobel Asset Management and Harcourt Investment Consulting on the setting up of a Ucits III Sicav.

Other notable activities included acting for Schroders on the establishment of European real-estate funds and advising BNP Paribas on the launching of two specialized investment funds.

Leading lawyers

Pierre Schleimer

Bonn Schmitt Steichen

Bonn Schmitt Steichen is regarded as one of the leading firms outside of the top tier, with Corinne Philippe singled out by the market for her solid work with Ucits and Sicav structures.

The firm was busy in the market this year, acting on various mergers of Sicavs and the migration of Cayman and British Ucits to Luxembourg. Bonn Schmitt Steichen manages a large number of domiciled funds, and has a strong expertise with venture capital and pension funds.

Leading lawyers

Corinne Philippe

Other notable firms

MNKS has grown in recent years and was fairly active with investment funds this year, acting on a number of Ucits, institutional and pension funds. The firm also advised various investment managers on setting up a range of Luxembourg investment vehicles, as well as Sicar fund structures and SIF vehicles.

Clients like the firm as it provides a high-quality of work and a close relationship between the teams on both sides of the table.

"When we have the choice, we usually work with mid-sized firms that prove to be more efficient, responsive and cost-effective compared to large ones," said one client.

"We have been working with the major ones but are definitely more comfortable and appreciate working with firms such as this."