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LUXEMBOURG ALTERNATIVE INVESTMENT VEHICLES

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LUXEMBOURG ALTERNATIVE INVESTMENT VEHICLES

I. The Favourable Luxembourg Environment for Investment Transactions

The Grand-Duchy of Luxembourg offers investors and promoters a very efficient and flexible jurisdiction for investment vehicles. Although Luxembourg is well-known for regulated investment funds of the UCITS variety, this brochure covers the alternative investment regimes available in Luxembourg and their salient features as well as the impact of the transposition of the AIFMD Directive into Luxembourg law.

Luxembourg provides a favourable tax environment with numerous attractive characteristics, such as no withholding tax on most interest payments and exemptions from corporate taxation of dividends and capital gains received on the holding of significant equity participations.

Moreover, Luxembourg enjoys a very flexible regulatory environment that encourages the undertaking of investment transactions through either (a) unregulated vehicles (unregulated special purpose vehicles, securitisation vehicles, and private wealth management companies) or (b) vehicles subject to reasonably light regulatory supervision (SICARs and Special Investment Funds).

II. The Five Key Vehicles for Investment Transactions

A. UNREGULATED SPECIAL PURPOSE VEHICLES IN CORPORATE FORM (SPVs), INCLUDING HOLDING COMPANIES

Luxembourg has a long-established reputation as a favourable jurisdiction for holding companies (which are often known as SOPARFIs, or *sociétés de participations financières*). In addition to holding equity stakes in portfolio companies, a SOPARFI can hold other assets, such as intellectual property as well as real estate, and can undertake financing and investment management activities. Moreover, the share structure can accommodate different classes of shares as well as tracking shares that "track" identified underlying assets. A SOPARFI typically requires neither a business license nor other regulatory approval (see applicability of AIFM, *infra*.); however, a VAT identification number may be necessary, depending on the circumstances.

1. Legal Forms of SPV

Although a variety of legal forms are available in Luxembourg, the three most common legal forms for SPVs are the public limited company (*société anonyme,* or *S.A.*), the private limited liability company (*société à responsabilité limitée,* or *SARL*), and the partnership limited by shares (*société en commandite par actions,* or *S.C.A.*).

The fundamental differences between an SARL and an S.A. are that (i) the initial capital for the SARL, which must be paid in in its entirety, is €12,400, whereas the initial capital of an S.A. is €31,000 (but only 25% need be paid in upon creation), (ii) an S.A. may issue bearer shares, whereas an SARL may not, and (iii) an S.A. may list securities, whereas as SARL may not do so. There are no significant differences between the two forms in respect of corporate governance or management, assuming that there is a sole shareholder. The S.C.A. is quite similar to an S.A. in most respects, but requires a general partner with unlimited liability that is responsible for managing the S.C.A. The general partner will often take the form of an SARL.

The choice of corporate form depends on corporate law and corporate governance considerations. The flexibility of Luxembourg's law on commercial companies allows customised solutions on a case-by-case basis.

2. Regulatory Aspects

The setting-up of an SPV does not require a regulatory license, approval or authorisation so long as its activity is not deemed by the Luxembourg financial sector regulator (*Commission de Surveillance du Secteur Financier,* or *"CSSF"*) to constitute banking activity or another regulated activity of the financial sector. SPVs will also typically not require a business license from the Luxembourg Ministry of Middle Classes, which is required of companies carrying out commercial activities in Luxembourg.

3. Tax Aspects

Upon incorporation, there is a modest registration duty of €75, but no capital duties are payable in Luxembourg. There is also a minimum annual corporate income tax in the aggregate amount of €3210, if the holding company's financial assets, transferable securities, and cash exceed 90% of the company's balance sheet.

The income generated by the SPV (if any) is subject to corporate/municipal income tax at the rate of 29.22%. However, there is a broad exemption from corporate tax on dividends, capital gains, and liquidation proceeds received by the SPV (as described below under "Participation Exemption").

The SPV is also subject to net worth tax

amounting to 0.5% of the net assets as calculated on January 1st. However, equity participations held by the SPV that qualify under the participation exemption (see below) are exempt from the calculation of net worth tax.

A leveraging of the investments through a combination of equity and debt investments can be achieved, and the Luxembourg SPV may take advantage of tax exemptions on income through applicable double taxation treaties or the EU Parent-Subsidiary Directive if more favorable than those available under Luxembourg domestic legislation.

Generally, there is no withholding tax in Luxembourg on interest or royalty payments made to corporate entities. Withholding tax could, however, under certain circumstances be due on interest paid by the SPV to individuals residing in Luxembourg or in another EU Member State (EU Savings Directive).

Shares, bonds and other securities issued by the SPV are exempt from any stamp duty.

As mentioned above, the SPV can be used for intra-group financing activities. In this respect, one should note that any intra-group lending activities through a Luxembourg entity could be subject to the transfer pricing guidelines issued by the Luxembourg tax authorities in Circular L.I.R. number 164/2. If such entity is "principally" engaged in intra-group financing transactions (holding company activities are disregarded for this purpose), then the vehicle must meet "substance" requirements in Luxembourg, have equity "at risk", and be compensated on "arm's length" principles (generally following the OECD guidelines). If all criteria are met, including having real substance in Luxembourg and sufficient equity to assume the risks connected with its business (both as further described in the Circular), the entity may request an "advanced pricing agreement" from the tax authorities that is binding for five years.

4. Participation Exemption

One aspect of Luxembourg taxation deserves particular attention. While the SOPARFI is a fully-taxable company under Luxembourg law, under the "participation exemption" no corporate tax or municipal business tax is imposed in Luxembourg on inbound dividends received by the SOPARFI from an affiliate operational or holding company, on capital gains generated from the sale of its shareholding in an affiliate company, or on liquidation proceeds from an affiliate company. If the affiliate company is abroad, the withholding regime of country where the affiliate is domiciled must be considered, including any double tax treaty.

The foregoing exemption applies so long as the Luxembourg company (i) holds at least 10% of the share capital of the paying entity (or, alternatively, the minimum acquisition cost was at least €1.2 million (for dividends and liquidation proceeds) or €6 million (for capital gains)), and (ii) holds such participation for at least 12 months, provided that such paying entity is an EU-resident company or, if not, subject to tax that corresponds to the Luxembourg corporate tax (i.e., determined to be at least 10.5%). However, any expenses directly related to the shareholding that have reduced the tax base of the Luxembourg company (e.g., interest) are disallowed up to the amount of the exempt dividends.

Moreover, if the SOPARFI holds at least 10% of the capital of a company (or if the acquisition price was at least € 1.2 million), then the value of such holding is exempt from the calculation of net worth tax.

Additionally, there is no withholding on distributions made to the shareholders of the SOPARFI as follows: (1) No withholding on dividends so long as the shareholder is a fully-taxable company resident in the EU (or, if not, resident in a country with which Luxembourg has a tax treaty and is subject to a tax of at least 10.5%) and holds at least 10% of the share capital for a minimum of 12 months or has purchased the participation for at least €1.2 million; (2) no withholding on capital gains so long as the shareholder is resident in a country with which Luxembourg has a tax treaty, or, holds either less than 10% of the share capital, or more than 10% for at least 6 months; (3) no withholding on liquidation proceeds regardless of the status of the shareholder or of the SOPARFI.

Finally, as a corporate entity under Luxembourg law, the SOPARFI is entitled to benefit from the highly favourable network of 70 (to date) tax treaties that Luxembourg has entered into. This permits significant tax planning for non-resident investors.

5. Applicability of AIFM

In principle, SOPARFIs fall within the scope of the law of 12 July 2013 regarding alternative investment fund managers ("**AIFM Law**"), which transposed the Alternative Investment Fund Managers Directive into Luxembourg law (See F., *infra*.) Although the AIFMD law exempts "holding companies" from its scope, a "holding company" is defined to include companies (i) with shareholdings in other companies and either (ii) whose shares are listed on a regulated market in the EU or which is not established for the main purpose of generating returns for its investors. That is, unless the shares of the SOPARFI are listed on the Luxembourg Stock Exchange or another regulated market in the EU or unless the SOPARFI is not-for-profit - - - neither condition is met by a typical SOPARFI - -

- then the SOPARFI falls within the scope of the AIFM Law. However, if the entirety of the shares of the SOPARFI is held by a single shareholder, the SOPARFI would not be considered an "alternative investment fund" under that Law, as such definition requires the raising of capital from a "number of investors." Hence, a SOPARFI can be structured to avoid the application of the AIFM Law.

B. SECURITISATION VEHICLES

1. The 2004 Securitisation Law

The Luxembourg Securitisation Law of 22 March 2004 ("Securitisation Law") is generally considered one of the most attractive regimes for securitisations in Europe, permitting a very broad range of assets to be securitised through either a regulated (by the CSSF) or unregulated structure. The unregulated structures enjoy substantial cost savings, as very few filings are required.

2. Definition of a Securitisation under the 2004 Securitisation Law

The 2004 Securitisation Law defines a securitisation as a transaction by which a "securitisation undertaking" assumes, directly or through another undertaking, risks relating to claims, other assets, or obligations assumed by third parties or inherent in all or part of the activities of third parties, and issues securities, whose value or yield depends on such risks".

The possibility for the securitisation vehicle to acquire a very broad range of underlying assets makes this vehicle very attractive for investment transactions. The CSSF considers both the structure of the transaction and the origin of the risk when considering whether a transaction qualifies as a securitisation undertaking. The specific examples of assets provided for by the CSSF include loan portfolios, goods and equipment, and the securitisation of shares in investment funds, hedge funds, and companies. The main funding source of a securitisation undertaking must come from the issuance of securities.

3. Securitisation Companies

Luxembourg securitisation vehicles in corporate form may be organised as a public limited company (*société anonyme*), a corporate partnership limited by shares (*société en commandite par actions*), private limited liability company (*société à responsabilité limtée*), or a cooperative company (*société coopérative* organised as a *société anonyme*).

4. Securitisation Funds

Securitisation funds have no status as a legal entity. Rather, they constitute a pool of assets managed by a management company.

They can take the form of either (i) a co-ownership of assets (*copropriété*) where the investors have a right *in rem* to the relevant underlying assets or (ii) a fiduciary property where the management company holds the underlying assets as such (and segregated from its other assets).

5. Creation of Multiple Compartments

The Securitisation Law allows the setting-up of securitisation vehicles with multiple compartments that can be efficiently "ring-fenced" by an effective segregation of assets as regards investors' and creditors' rights.

6. Issuance of Debt and Equity Securities

A securitisation vehicle may in principle issue any kind of transferable debt or equity securities. It is not unusual for a securitisation vehicle (whether regulated or unregulated) to list its debt in Luxembourg.

7. Regulated or Unregulated Securitisation Vehicles

Securitisation vehicles that issue securities (i) to the public and (ii) "on a continuous basis" are regulated by the CSSF. Only if both conditions are met does the vehicle fall within the regulatory oversight of the CSSF.

However, the great majority of Luxembourg securitisation vehicles remain unregulated, as no issuance of securities to the public takes place in most cases.

8. Bankruptcy Remoteness

The Securitisation Law ensures bankruptcy remoteness by expressly recognising the validity of non-petition clauses, as well as limited recourse and subordination clauses. Such clauses are typically found in the Articles of Incorporation and/or the offering document of the securitisation vehicle.

9. Tax Treatment

Securitisation companies are subject to corporate/municipal income tax, which currently amounts in the aggregate to 29.22%. However, the Securitisation Law allows the deduction from income of all commitments vis-a-vis investors and creditors.

Securitisation vehicles organised as funds are not subject to (i) income tax, (ii) subscription tax (which distinguishes it from investment funds), or (iii) net worth tax.

Currently, distributions made by securitisation vehicles to their investors and creditors are exempt from Luxembourg withholding tax (subject to the provisions of the EU Directive on

the taxation of savings and, in particular, in the event of payments made by a Luxembourg paying agent to individuals who are residents in Luxembourg or in another EU Member State)

Agreements or transaction documents relating to a securitisation transaction do not need to be registered (except agreements transferring rights in respect of real estate located in Luxembourg or ships, airplanes or boats registered in Luxembourg).

Management services provided to a securitisation vehicle are VAT-exempt.

10. Applicability of AIFM

Securitisation special purpose entities are expressly excluded from the scope of the AIFM Law.

C. THE SICAR

In a further effort to meet market expectations in the Luxembourg financial sector and to boost its competitiveness vis-à-vis its European neighbours in that space, Luxembourg introduced in 2004 a risk capital regime specifically targeting private equity and venture capital (the "SICAR Law"). The Parliament sought to encourage private equity and venture capital vehicles by combining light regulatory oversight with reasonable investor protection and a favourable tax status.

1. Purpose of the SICAR Regime and Eligible Investments

The purpose of the SICAR *(société d'investissement en capital à risque)* regime is to promote the pooling of funds from sophisticated investors in a single vehicle, which then invests in securities (of entities) having a certain risk profile deemed to be "risk capital". Investment in "risk capital" is defined by the SICAR Law as the direct or indirect investment in entities with a view to their launch, development, or listing on a stock exchange. The CSSF, the regulatory body with oversight of SICARs, has provided some clarification of the concept of risk capital in a circular of April 2006.

2. Necessity of Risk Capital

The CSSF specifically identifies the elements of high risk and the intention to develop the target entities as characterising investments in "risk capital". In practice, the SICAR is often at some level actively involved in the management of the target entities in an advisory capacity or as Board representative with a goal to create added-value, maximise profits, and to sell the investments at a profit.

In terms of the form of investment, the CSSF construes this very broadly, although hedge funds are specifically excluded. All types of exit are permissible, and there are no restrictions regarding risk diversification. Therefore, unlike investment funds, SICARs can invest in only one target company.

3. Investments in Real Estate

SICARs cannot hold real estate directly. However, it is permissible for a SICAR to hold real estate indirectly through affiliate companies, provided that the real estate has risk capital characteristics. In this respect, the underlying real estate assets must be shown to represent a particular risk (above the normal real estate risk) and be developed to create added value (construed in a broad sense). Generally, the CSSF has indicated that "opportunistic" real estate investment strategies characterised by the transformation of the premises or the building of new premises (rather than a simple rental strategy) are acceptable.

4. Eligible Investors

Investment in SICARs is limited to sophisticated investors that the law defines as (i) institutional investors, (ii) professional investors, and (iii) investors confirming in writing that they are well-informed investors and either invest €125,000 or produce an evaluation by a financial professional attesting to their expertise and investment knowledge. Nevertheless, for an individual a minimum investment of €125,000 is effectively the threshold for investment in a SICAR.

5. Organisation of SICARs

Like most Luxembourg regimes, the SICAR is not a type of company, but, rather, an elected status, which must appear in the company's Articles of Incorporation. In this respect, there is a wide range of business forms eligible for SICAR status, including the typical capital companies (public limited company, private limited company, partnership limited by shares, and cooperative company), as well as the limited partnership (*société en commandite simple or "s.c.s."*), which is not a capital company, but a vehicle that is treated from a tax perspective as a look-through entity, and a special limited partnership (*société en commandite spéciale* or *s.c.s.p.*), which is similar to an s.c.s., except that it is created by contract between the partners and has no legal personality (in this sense, it is similar to the Anglo-Saxon notion of a limited partnership) (see below.). The public limited company (*société anonyme*) and partnership limited by shares (*société en commandite par actions*) have historically been the preferred vehicles for SICARs.

6. Multiple Compartments

Like a securitisation vehicle or a SIF, the SICAR can have multiple compartments thereby allowing for segregation of assets and risks. Each compartment may have its own investment policy, and may be liquidated independently of the others or of the SICAR itself.

7. Capitalisation

SICARs must be capitalised with at least €1 million, which must be reached within 12 months of the CSSF's authorisation. In-kind capital contributions are permissible. However, the SICAR can elect in its Articles of Incorporation to have a variable share capital equal to net asset value (SICAV). In this event, none of the typical formalities of publication is required each time the share capital is increased. Moreover, there are no "thin capitalization" criteria for the SICAR requiring a minimum debt-to-equity ratio.

8. Regulation and Reporting

As mentioned above, SICARs are regulated by the CSSF, which specifically authorises their activities. The SICAR must have its registered office and central administration in Luxembourg. Once the CSSF approves the application, the SICAR is entered on a list of such approved vehicles. And once on such list, the SICAR can, in principle, be listed on the Luxembourg Stock Exchange, if it is in the form of an S.A. or S.C.A.. However, to comply with the SICAR law, it will need to ensure that only eligible investors acquire the shares.
The SICAR has various reporting requirements to the CSSF and to the investors, including annual reports on the valuation of its assets (which is based on fair value), and an updated offering circular every time there is an issuance of additional securities. The SICAR must also appoint an independent auditor (*réviseur d'entreprises*) for the annual accounts, as well as a custodian, which must be a credit institution in Luxembourg or the Luxembourg branch of an EU credit institution.

9. Taxation

There are two regimes for taxing SICARs, depending on whether the SICAR takes the form of a capital company (public limited company, etc.) or a limited partnership (S.C.S. or S.C.S.P.), which is considered as a look-through entity for tax purposes. If a capital company, the income of the SICAR (if any) will, in principle, be subject to corporate and municipal tax at a combined rate of 29.22%. However, with the following available exemptions, the SICAR is effectively exempt from tax in Luxembourg. It will also be able to take advantage of the vast network of double taxation treaties that Luxembourg has entered into, which provides opportunities for tax planning. Moreover, the SICAR is exempt in Luxembourg from corporate income tax, net worth tax, and municipal business tax on income from transferable securities as well as on income from their sale or liquidation, including dividends, interest, and capital gains. Finally, any income arising from funds awaiting investment in risk capital is also exempt from tax.

If in the form of a limited partnership (*s.c.s.*) or special limited partnership (*s.c.s.p.*), the SICAR is not liable for corporate or municipal business tax or net worth tax, as it is considered transparent, and all income is deemed taxable directly at the shareholder level. However, this applies to the s.c.s.p. in respect of MBT only to the extent that any general partner that is a Luxembourg company holds less that 5% of the partnership interests of the *s.c.s.p.* Shareholders can, in principle, themselves take advantage of the double taxation treaty provisions between their countries of fiscal residence and the domicile of the portfolio company.

Regardless of the form of business organisation the SICAR opts for, it will be exempt from subscription tax. The SICAR is, however, liable for a minimum annual fee of €3,000 to the CSSF.

10. Applicability of AIFM

SICARs, as typical alternative investment vehicles, fall within the scope of the AIFM Law. However, if the entirety of the shares of the SICAR is held by a single shareholder, then such SICAR should not be considered an "alternative investment fund" for purposes of the AIFM Law. If a self-managed SICAR is an AIFM for purposes of the AIFM Law, its initial capital must be € 300,000. (For more information regarding the AIFM Law, See F., *infra*.)

D. SPECIALISED INVESTMENT FUND

With the Luxembourg law on Specialised Investment Funds (the "SIF Law"), which came into effect on 13 February 2007, the Luxembourg legislators responded to the demands of the investment community and created a legal framework for lightly-regulated investment fund vehicles for all types of alternative investment fund products, including hedge funds, private equity and real estate funds.

1. Eligible Investors

Like the SICAR law, the SIF Law limits the scope of eligible investors to sophisticated investors. In addition to institutional and professional investors, the law deems a sophisticated investor any person who confirms

in writing that he is a sophisticated investor and either invests a minimum of €125,000 in the specialised investment fund or - in the event that the invested amount is lower - that he has been subject to an assessment made by a credit institution, an investment firm or by a management company.

2. Organisational Flexibility

A SIF may be structured as either:

- A common fund (*fonds commun de placement* or "FCP") managed by an investment company
- An investment company with variable capital (*société d'investissement à capital variable* or "SICAV") to be established in the form of either a public limited company (*société anonyme*) or a partnership limited by shares (*société en commandite par actions*) or a private limited company (*société à responsabilité limitée*) or a cooperative in the form of a public limited company (*société coopérative sous forme de société anonyme*), or
- Any other legal form available under Luxembourg law, including an *s.c.s.* or an *s.c.s.p.*, even though the latter is created by contract and has no legal personality.

The words "*fonds d'investissement specialisé*" or the abbreviation "FIS" must be added to the name and the title of the particular investment fund.

3. Capital and Payment of Dividends

The central administration of the SIF must be situated in Luxembourg. The minimum capital must reach €1,250,000 within a period of 12 months following the approval by the CSSF. Although there are in principle no restrictions on the payment of dividends, such payments to investors must not result in a decrease of the SIF's capital below the minimum level of €1,250,000. The SIF must appoint a custodian having its registered office in Luxembourg or being the Luxembourg branch of a bank with its registered office in another Member State of the EU.

4. Investment and Leverage Restrictions

A SIF may issue either equity or debt, and may borrow for investment purposes. Generally, borrowing is limited to 200% of the SIF's NAV, but may be increased to 400% if there is a high level of correlation between long positions and short positions. The rules applicable to subscription, redemption and distributions, valuation of assets and the compartmentalisation of assets may be freely determined by the creator of the SIF in the articles of incorporation (if a SICAV) or in the management regulations (if a FCP). The SIF may create sub-funds, each with a different investment policy. As regards the valuation of the SIF's assets, the only requirement provided by the SIF Law is that the valuation of its assets be made in accordance with the accounting principle of "fair value" (*juste valeur*).

5. Investment Policy

Although the principle of risk diversification remains applicable in general, the CSSF interprets this in a flexible way. The offering document (PPM) should include quantifiable restrictions evidencing that the SIF is engaged in risk-spreading. Specifically, (i) with limited exceptions, a SIF may not invest more than 30% of its assets/commitments in securities of the same type issued by the same issuer, (ii) a SIF should not hold a short position in securities of the same type issued by the same issuer representing more than 30% of its assets, and (iii) the SIF must ensure, when using financial derivatives, risk-spreading via appropriate diversification of the underlying assets. Otherwise, the creator of a SIF is free to determine the investment policies of the SIF.

SIFs may be launched with specific investment purposes such as the investment in transferable securities, money market instruments, real estate, hedge funds, funds of funds, private equity, commodities, financial derivative instruments, debts, microfinance, etc.

6. Management and Investment Manager

The management of the SIF must be approved by the CSSF, and will be, in principle, subject to the Alternative Investment Fund Managers Law (see 10 infra). The persons constituting the Board must be of sufficiently good repute and sufficiently experienced, and particularly regarding the type of investments the SIF intends to make. In addition, the investment manager, entrusted with managing the investment portfolio, is subject to the prior approval of the CSSF. The investment manager must demonstrate his good repute and professional experience, and must be authorized or registered to carry out portfolio management and be subject to "prudential supervision".

7. Supervision

To acquire the authorisation of the CSSF, the founding documents as well as the choice of the custodian of the SIF must first be approved by the CSSF.

The SIF Law does not require specialised investment funds to have a promoter with significant financial resources that would be subject to the approval of the CSSF. Consequently, SIFs may be created not only for but also by sophisticated investors within the

scope of the Law. The legal representatives of a SIF (the "Directors") are, however, required to obtain the CSSF's approval. To obtain such approval, the Directors of each SIF must submit evidence of their professional qualification, good standing and integrity to manage the SIF.

A SIF needs to develop a conflict of interest policy as well as a risk management system.

8. Disclosure and Reporting

Each SIF must establish an offering document. Such offering document need not have any required minimum content and must be updated in the event of a new issuance of securities. Subject to the applicability of the Luxembourg Prospectus Law of 10 July 2005 (which would in principle apply only in the event of a listing or public offering), the SIF Law does not prescribe any particular minimum content. It must, in principle, contain information necessary for an investor to be able to make an informed judgment of the investment proposed and the risks involved.

In respect of disclosure and reporting requirements, a SIF is required only to produce an annual audited report covering the relevant financial year and that must be made available to investors within six months of the end of the financial year. It should be noted that neither a long-form report nor semi-annual report is required.

9. Taxation

In principle, no withholding tax on capital gains is levied on non-resident investors beyond the scope of the EU Savings Directive. Consequently, non-resident investors are typically not subject to capital gains taxation in Luxembourg on the disposal of shares in a SIF.

SIFs are subject to an annual subscription tax (*taxe d'abonnement* of 0.01 %) levied on the basis of the value of the entire net assets on the last day of each quarter of the year. However, certain institutional cash funds and pension pooling funds are exempt from the subscription tax.

The Grand-Duchy of Luxembourg has entered into 70 double taxation treaties (to date), and a SIF in corporate form is covered by many of them. As a FCP under Luxembourg law has no fiscal status as a legal entity, a SIF organised in the form of a FCP should typically not be able to benefit from such double taxation treaties. This applies as well to SIFS in the form of an *s.c.s.* or *s.c.s.p.*, which are deemed transparent for tax purposes. If in the form of a limited partnership (*s.c.s.*) or special limited partnership (*s.c.s.p.*), the SIF is not liable for corporate or net worth tax; however, this applies in respect of MBT only to the extent that any general partner that is a Luxembourg company holds less that 5% of the partnership interests of the *s.c.s.* or *s.c.s.p.* Instead, the investors should directly claim any treaty benefits under the particular double taxation treaty concluded between their countries of residence and the domicile where the underlying assets are located.

The SIF is liable for a minimum annual fee of € 3,000 to the CSSF.

10. Applicability of AIFM

SIFs, as typical alternative investment vehicles, fall within the scope of the AIFM Law. However, if it is in the form of a SICAV/SICAF, is self-managed, and if the entirety of its shares is held by a single shareholder, then such SIF should not be considered an "alternative investment fund" for purposes of the AIFM Law. If a self-managed SIF is an AIFM for purposes of the AIFM Law, its initial capital must be €300,000. (For more information regarding the AIFM Law, See F., *infra*.)

E. PRIVATE WEALTH MANAGEMENT COMPANY

The Luxembourg vehicle known as a private wealth management company (*société de gestion de patrimoine familial*), or "SPF," was introduced into Luxembourg law in May of 2007 in order to replace the 1929 holding company, which regime was repealed as of the end of 2010.

1. Permitted Investments

The SPF is intended as a tax-efficient entity for the management of private wealth, whose sole purpose is to acquire, hold, manage, and dispose of financial instruments, cash, and other assets, but without carrying out a commercial activity.

An SPF may hold participations in other entities, provided that it is not involved in or interferes in their management. Furthermore, an SPF may not hold real estate directly, but it may hold real estate indirectly through a fiscally-opaque subsidiary.

An SPF is not required to entrust its assets to a custodian.

2. Lending Transactions

An SPF may borrow funds, and, in this respect, is not subject to a specific maximum debt ratio. The amount of debt, however, may have an impact on its fiscal status (see below "Taxation"). An SPF may not engage in remunerated lending, regardless of whether the entity to whom it lends is an affiliate company. It may, however, make advances and provide guarantees to an affiliate company as an ancillary activity and without remuneration.

3. Business Organisation

Like most Luxembourg regimes, the SPF is not a type of company, but, rather, an elected status, which must appear in the company's Articles of Incorporation. An SPF, whose registered office must be in Luxembourg, may take any of the following forms: public limited company (*société anonyme*), private limited liability company (*société à responsabilité limitée*), partnership limited by shares (*société en commandite par actions*), or a cooperative in the form of a public limited company (*société coopérative sous forme de société anonyme*).

4. Eligible Investors

Investors that are permitted to hold shares in an SPF are the following: (i) individuals acting in the context of the management of their private wealth, (ii) wealth management entities acting exclusively in the interest of the private wealth of one or more persons, and (iii) intermediaries acting on behalf of the above.

It should be noted that shares issued by an SPF cannot be offered to the public or be listed.

5. Supervision

The SPF is not regulated by the CSSF, but, rather, is subject to the supervision of the indirect tax administration (*Administration de l'Enregistrement et des Domaines*). Oversight is limited to the certification each year by the domciliation agent, independent auditor, or chartered accountant of the SPF that the investors of the SPF fall within the scope of the SPF law, as amended.

6. Taxation

An SPF is exempt from Luxembourg corporate income tax, municipal business tax, and net weath tax.

An SPF is subject to an annual subscription tax (*taxe d'abonnement*) of 0.25% on the amount of (1) its paid-in capital, plus (2) its share premium, plus (3) the amount by which its debt exceeds eight times the amount of (1) and (2), subject to a maximum of € 125,000 and a minimum of € 100.

Dividend distributions by an SPF to its shareholders (and capital gains earned on the sale of shares in an SPF by non-resident investors) are exempt from withholding in Luxembourg. However, as paying agent, an SPF must withhold 10% on interest payments made to Luxembourg residents and 35% on interest payments made to individuals resident in another EU Member State.

Because of its special tax status, an SPF cannot take advantage of double tax treaties.

As an SPF is not engaged in commercial activity, it is not subject to VAT.

7. Applicability of AIFM

As private wealth management companies are intended to manage the private wealth of individuals, and to the extent that they do not raise external capital, they should not fall within the scope of the AIFM Law.

F. ALTERNATIVE INVESTMENT FUND MANAGERS LAW

For those alternative investment vehicles that fall within the scope of the AIFM Law, they will need to either engage an authorized alternative investment fund manager ("**AIFM**") as management company or seek authorization themselves from the CSSF as AIFMs (i.e., internally-managed AIFs). However, there are two important exemptions from the authorization requirement:

1) The AIFM Law does not apply to AIFMs established in Luxembourg if they manage AIFs whose only investor is the AIFM, the parent or a subsidiary of the AIFM, provided that none is itself an AIF.

2) No authorization is required of those AIFMs (including self-managed AIFs) whose assets under management, including through the use of leverage, do not exceed €100,000,000 or whose assets under management, unleveraged and with no redemption rights exercisable for 5 years from the initial investment, do not exceed €500,000,000.

However, such AIFMs set forth in 2) above will need to register with the CSSF and provide it information regarding investment strategies and other information on a regular basis. It should be noted that a self-managed AIF can engage only in activities of internal management of the AIF (i.e., portfolio management, risk management, administration, marketing, and activities related to the assets of AIFs).

For all other AIFMs that manage or market units or shares of a Luxembourg AIF or are themselves a Luxembourg AIF, authorization by the CSSF is required, if the AIFM is based in Luxembourg. If the AIFM is domiciled in another EU Member State it is authorized by the regulatory authority of the country of its domicile. The latter can manage Luxembourg AIFs on the basis of a "European passport."

The authorization process of a Luxembourg-based AIFM is beyond the scope of this brochure. DSM can provide further information regarding the authorization of AIFMs upon request.

III. COMPARATIVE TABLE

The following comparative table sets out the main differences between the five vehicles analysed above.

	Unregulated Special Purpose Vehicles in Corporate Form	Unregulated Securitisation Vehicles	Risk Capital Structures (SICAR)	Specialised Investment Funds (SIF)	Private Wealth Management Company (SPF)
Relevant Legislation	Law of 10 August 1915 on commercial companies	Law of 22 March 2004 on securitisation	Law of 15 June 2004 regarding investment companies in risk capital	Law of 13 February 2007 on specialised investment funds	Law of 11 May 2007 on the creation of a private wealth management company
Supervision by the CSSF	No (except for banking activity or another regulated activity of the financial sector)	No	Yes No approval of: • Promoter • Investment Manager	Yes No approval of: • Promoter	No
Eligible Assets / Strategies	Unrestricted within the scope of its articles of incorporation	Almost any kind of risks related to any kind of assets and obligations	Risk capital as defined by the Law and the CSSF. No direct investment in real estate	Unrestricted within the scope of its management regulations, subject to risk-spreading principles	Financial Instruments, cash, and other assets held in an account
Risk Diversification Requirement	No	No	No	Yes. As determined in the management regulations (if organised as FCP). Also, applicable for each compartment.	No
Entity Type	Typically, a public limited company or a private limited company	Either a securitization company in the form of a • Partnership limited by shares • Public limited company • Private limited company • Co-operative company organised as public limited company or a securitization fund	• Common limited partnership • Partnership limited by shares • Public limited company • Private limited company • Co-operative company organized as public limited company • Special limited partnership (contractual)	• Common Funds managed by a Luxembourg management company • Investment companies with variable share capital • Any other legal form available under Luxembourg law, including common limited partnership and special limited partnership	• Partnership limited by shares • Public limited company • Private limited company • Co-operative company organised as public limited company
Eligible Investors	No restrictions	No restrictions	Sophisticated investors as defined by the Law	Sophisticated investors as defined by the Law	• Individuals • Wealth management entities • Intermediaries

	Unregulated Special Purpose Vehicles in Corporate Form	Unregulated Securitisation Vehicles	Risk Capital Structures (SICAR)	Specialised Investment Funds (SIF)	Private Wealth Management Company (SPF)
Substance in Luxembourg / Nationality or Residency Requirements	Registered office in Luxembourg. No nationality/ residency requirement for shareholders and directors/managers	Registered office in Luxembourg. No nationality/residency requirement for shareholders and directors/managers	Registered office in Luxembourg. No nationality/residency requirement for shareholders and directors/managers	Registered office in Luxembourg. No nationality/ residency requirement for shareholders and directors/ managers	Registered office in Luxembourg. No nationality/ residency requirement for shareholders and directors/ managers
Segregated Sub-Funds	No	Yes	Yes	Yes	No
Capital	Fixed capital	Fixed capital	Fixed or variable capital	Fixed or variable capital	Fixed capital
Risk Calculation of NAV	Not applicable	Not applicable	The NAV must be determined at least once a year based on fair value	The NAV must be determined at least once a year based on fair value	Not applicable
Minimum Capital / Net Assets Requirements	Upon incorporation: • SA/SCA: € 31,000 • S.àr.l: € 12,400	Upon incorporation: • SA/SCA: € 31,000 • S.àr.l: € 12,400 • SCoSA: no requirement	Subscribed share capital must reach €1M within 12 months from autorisation	For FCPs: Net assets must reach €1.25M within 12 months from authorisation. For SICAV/Fs: Subscribed share capital and share premium must reach €1.25M within 12 months from authorisation.	Upon incorporation: • SA/SCA: € 31,000 • S.àr.l: € 12,400 • SCoSA: no requirement

TAX REGIME

	Unregulated Special Purpose Vehicles in Corporate Form	Unregulated Securitisation Vehicles	Risk Capital Structures (SICAR)	Specialised Investment Funds (SIF)	Private Wealth Management Company (SPF)
Tax Regime	SPVs are subject to: • Corporate Income Tax • Municipal Business Tax (combined rate of 29.22%) The SPV is subject to net worth tax amounting to 0.5% of the net assets. However, equity participations held by the SPV which would qualify under the participation exemption are exempt	Securitisation vehicles in the form of companies are subject to: • Corporate Income Tax • Municipal Business Tax (combined rate of 29.22%) Deduction of all operational costs. SPVs are exempt from: Subscription tax. Agreements relating to a securitisation transaction need not be registered (except those transferring rights in real estate located in Luxembourg or in vessels or aircrafts registered in Luxembourg). Management services are VAT-exempt	SICARs organised as capital companies are subject to: • Corporate Income Tax • Municipal Business Tax (combined rate of 29.22%) SICAR is exempt in Luxembourg from corporate income tax on income from transferable securities as well as on income from their sale or liquidation, including dividends, interest and capital gains. Income arising from funds awaiting investment in risk capital is also exempt from tax. If a scs or scsp, the SICAR is not liable for corporate or net worth tax or municipal business tax, as it is considered a look-through entity, and all income is deemed taxable directly at the partner level (so long as any general partner that is a Luxembourg company holds less than 5 % of the scsp). SICARs are exempt from net worth tax and subscription tax. The SICAR must pay to the CSSF a minimum annual fee of € 3,000	In principle, no withholding tax on capital gains for non-resident investors SIFs are subject to an annual subscription tax of 0.01 % levied on net asset value on the last day of each quarter of the year. The SIF Law, however, provides for several exemptions. If a limited partnership (*s.c.s.*) or special limited partnership (*s.c.s.p.*), the SIF is not liable for corporate or net worth tax; however, this applies in respect of MBT only to the extent that any general partner that is a Luxembourg company holds less that 5% of the partnership interests of the *s.c.s.* or *s.c.s.p.* The SIF must pay to the CSSF a minimum annual fee of € 3,000	Not subject to CIT, MBT, or NWT. In principle, no withholding tax on dividend distributions or on capital gains to non-resident investors. SPFs are subject to an annual subscription tax of 0.25% levied on paid-in capital plus share premium plus an amount by which its debt exceeds eight times the amount of capital plus share premium

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