

Art and other emotional investments

Ever considered investing in art, wine or diamonds? The Luxembourg Sif could be the structure, says Adriano Picinati di Torcello, of Deloitte

Art is increasingly thought of as an alternative asset class with interesting investment opportunities, notably because it is characterised by a low correlation relative to other asset classes and can be integrated into portfolios pursuing a diversification strategy.

In the financial industry, we have seen interest in art materialise through the development of art advisory services within the wealth management sector, as well as through the use of the true value of works of art as financial guarantees.

In such a context investment funds investing in art masterpieces began to appear and around 50 of them are at various stages of development in several jurisdictions worldwide. We have also observed that Intrade, in collaboration with professors Mei & Moses from New York University, recently announced the creation of the world's first publicly traded futures contracts written on the global fine art market.

Such events demonstrate the need for specialised financial services to further support the development of this new and growing segment of the financial industry. From this perspective, Luxembourg is ideally positioned to address this requirement.

Among the various solutions that Luxembourg can offer to structure investment vehicles suitable for investing in works of art, the specialised investment fund (Sif) represents a flexible and tax-efficient investment tool, well adapted to alternative asset classes. While benefiting from the stable and robust Luxembourg regulatory environment, the Sif regime offers a level of flexibility, both in terms of eligibility of investments and the legal forms it may adopt, making it a credible alternative for investments in works of art, similar to offshore jurisdictions. Sifs are subject to supervision by the Luxembourg financial supervision body (Commission de Surveillance du Secteur Financier – CSSF), but the regulatory constraints and supervision level is more lenient than for standard funds that target the retail market.

The Sif must reach a minimum capital of €1,250,000 within one year following regulatory approval. A local custodian duly approved by the CSSF is to be appointed for the safekeeping and supervision of the Sif's assets; however, the scope of its responsibilities does not include additional monitoring duties, as is the case for funds

The Sif law offers high flexibility in terms of structural set-up and investment rules. Sif vehicles are regulated by the CSSF, but enjoy a very flexible supervisory regime

established under the law of 20 December 2002.

The Sif must issue an offering document allowing investors to make an informed judgment on their investment, but no minimum content is required by the law. This preserves flexibility and allows for future innovation. Frequency of the NAV calculation (once a year at a minimum) and practicalities for issuing and repurchasing shares/units should be defined in the offering documents, as well as the principles upon which assets shall be valued.

Sifs have to comply with the principle of risk spreading in the implementation of their investment policy. CSSF Circular 07/309 provides that a Sif may, in principle, not invest more than 30% of its assets in securities issued by the same issuer; however, the regulator reserves the right to grant derogations and apply the diversification principle in a manner that is suitable for the investments envisaged and their actual phasing.

The Sif can be structured either in the form of a mutual fund without corporate form (Fonds Commun de Placement – FCP) or of a Sicav/F having a corporate form.

Since the FCP is not a company, it has to be represented by a management company. Investors are considered to directly own their share of the assets of the FCP, meaning the tax treatment will depend upon the country of the investors and the country where the Sif invests, and the tax treaties between them.

From a tax perspective, the Sif is a vehicle with an attractive tax regime. For example,

there is no proportional capital duty upon capitalisation or incorporation of the Sif.

Unlike other Luxembourg vehicles such as the Soparfi, the Sicar, or the family asset management company (Société de Patrimoine Familial), where exemption is limited to certain types of income in shareholdings, securities or financial assets, the absence of income tax for the Sif is of general nature.

As a matter of fact, after only two years of existence, the Luxembourg Sif regime has already proven its attractiveness as an alternative investment vehicle in various and diverse fields such as prestigious wines or works of art.

Given the provisions in the Luxembourg Sif law, a Sif is an onshore alternative investment vehicle in a highly reputable market worth considering for structuring art investment funds and other emotional investment vehicles dedicated to tangible assets such as wines, memorabilia, photography, coins, stamps, contemporary design, musical instruments, vintage jewellery and diamonds. The Sif law offers high flexibility in terms of structural set-up and investment rules. Sif vehicles are regulated by the CSSF, but enjoy a very flexible supervisory regime.

This combination gives Luxembourg a competitive edge compared to the other fund centres.

• Adriano Picinati di Torcello is a senior manager, investment management, at Deloitte. Jacques Linon and Raphael Glohr, tax partners, and Fabrice Delacourt, director, Deloitte, co-authored this article