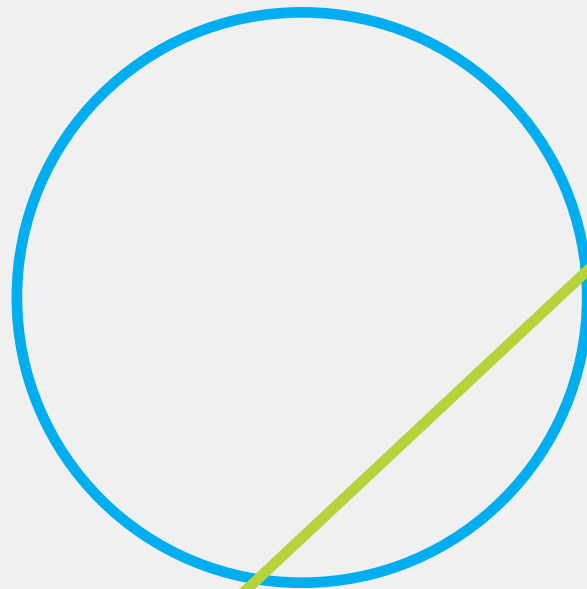




association of the  
luxembourg fund industry



# LUXEMBOURG PRIVATE EQUITY AND VENTURE CAPITAL

## Why Luxembourg ?

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- Political, legal and fiscal stability
- State-of-the-art legal and regulatory environment
- High regulatory and investor protection standards
- Solid financial sector supervision
- Rapid and innovative responses to new trends
- Highly international, in terms of origin of financial institutions and fund initiators, clients, population and workforce
- Diversified offer of financial products and services
- Europe's number one investment fund centre
- Unique concentration of investment fund industry experts in all aspects of product development, administration and distribution
- Unrivalled know-how in cross-border investment funds business
- Top-notch market infrastructure for securities trading, clearing and settlement



This brochure purports to provide general background information on the set up as well as the servicing of private equity and venture capital investment vehicles in the Grand Duchy of Luxembourg.

In terms of set up of private equity and venture capital investment vehicles Luxembourg today offers a large variety of structuring opportunities, such as the investment company in risk capital (SICAR), the specialised investment fund (SIF), the reserved alternative investment fund (RAIF), or any commercial company in particular an SCS or SCSp qualifying as an AIF and/or a holding company like the “*société de participations financières*” (SOPARFI), as the case may be. In addition, Luxembourg commercial companies can also be set up as venture capital vehicle based on the European Regulation (EU) No. 345/2013, the “EuVECA”.

Luxembourg based service providers have built up teams experienced and specialised in servicing the above mentioned private equity and venture capital investment vehicles. Against this background, they are today able to offer a wide range of customised services in fund and acquisition structuring, transaction advisory, fund administration, depositary and audit services dedicated to private equity and venture capital investment vehicles.



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## 1. Luxembourg – a conducive environment for private equity and venture capital

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Choosing the right location for the set-up of private equity or venture capital operations, and in particular private equity and venture capital investment vehicles, requires to take into consideration many different factors.

The following features are Luxembourg's strengths – the combination of these strengths makes Luxembourg a very attractive location for private equity as well as venture capital initiators.

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### Political & economic stability

The political environment in Luxembourg is very business-friendly and conducive to welcoming decision-makers and entrepreneurs. Attracting international players is considered paramount in building an efficient business framework and economic growth, and has enabled Luxembourg to establish an innovative

and diverse business community. An illustration is the special tax regime for highly skilled workers aimed at attracting a specialised workforce in areas such as private equity and venture capital.

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### A stable and rewarding tax environment

The tax framework is considered among the most stable and rewarding in Europe for companies, their shareholders and their employees. This is a key component of Luxembourg's development. The tax authorities lead a constructive dialogue with

taxpayers, have a business friendly attitude and the quick and pragmatic approach to the requirements of international investors. Luxembourg offers a flexible and attractive tax regimes in full compliance with applicable EU directives and regulations.



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## Business-friendly environment

Luxembourg was one of the pioneers to implement the AIFMD and has largely leveraged on its long-standing and recognised UCITS experience to adapt the alternative investment fund industry to the new regulatory standards and marketing or placement regimes.

Although the initial objective of the G20 and the EU Commission was principally aimed at regulating the alternative investment industry in order to control and avoid systemic risk, the AIFMD also entails a European marketing passport for AIFM. Once authorised in an EU Member country, these AIFMs can market the AIFs they manage to professional investors in all other EU Member countries. In the context

of UCITS, Luxembourg has taken advantage of the opportunities given by the passport regime and has, on that basis, become the leading jurisdiction in the world for retail cross-border distribution.

With the introduction of the AIFMD and in particular the AIFMD passport, more and more Luxembourg AIFs have been distributed cross-border.

A considerable number of Luxembourg UCITS management companies have also obtained approval to act as AIFMs, allowing them to manage both UCITS and AIF.

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## Players on the Luxembourg private equity and venture capital scene

### ■ GPs/private equity/ venture capital houses or their subsidiaries

Whilst historically a local presence in Luxembourg was limited mostly to smaller and/or emerging GPs, many large international houses have set up and conducted business out of Luxembourg since the middle of the last decade with a considerable and growing local substance.

### ■ Private equity and venture capital administrators

These service providers offer domiciliary, accounting, trust services and, since the introduction of AIFMD in 2013, depositary services for funds with a 5-year closed for redemption period investing in private equity and venture capital to the extent required.

They provide offices to conduct business from, as well as a range of additional services to private equity and venture capital houses that are conducting business out of Luxembourg. Luxembourg is home to both administrators specialised in private equity or venture capital as well as many more generalist administrators that are often part of larger financial services groups. Governance standards of private equity and venture capital investment vehicles set up in Luxembourg have undergone a significant evolution with enhanced governance having been made a priority by the supervisory authority and industry stakeholders themselves. Today, there is a high number of skilled independent directors available to serve private equity as well as venture capital investment vehicles.

## 2. Private equity and venture capital in Luxembourg

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Luxembourg offers a platform of services and structuring opportunities to the private equity as well as the venture capital industry. Products include competitive structures for setting-up private equity and venture capital funds, such as the investment company in risk capital (SICAR) or the specialised investment fund (SIF). Luxembourg has thus emerged as a prime jurisdiction for the structuring of private equity and venture capital acquisitions and financings.

Besides the SIF and the SICAR, Luxembourg has built up its market share in private equity and venture capital funds thanks to its non-regulated special purpose companies (such as the SOPARFI – the financial participation company) which are used for private equity/venture capital acquisitions and financings alike. A SOPARFI is typically used for holding and financing private equity and venture capital investments. It may thus equally serve as an SPV, a joint venture vehicle or more rarely a fund vehicle itself (in which case it may qualify as AIF). Other types of commercial companies, such as the SCA, the SCS and the SCSp, qualifying as AIF, are frequently used to structure private equity and venture capital funds.

The EuVECA Regulation (EU) No. 345/2013) provides harmonised requirements for qualified venture capital funds that intend to invest at least 70% of their aggregate capital contributions and uncalled committed capital in assets that are ‘qualifying investments’. EuVECA funds can be internally or externally managed, and managers marketing funds to professional investors benefit from an EU-wide distribution passport.

The RAIF (Reserved Alternative Investment Fund) structure, which became available in the summer of 2016, allows private equity and venture capital fund initiators to set up Luxembourg-domiciled funds that are not subject to regulatory approval by the Luxembourg supervisory authority, the *Commission de surveillance du secteur financier*, the “CSSF”). This option permits the achievement of a significantly enhanced time-to-market for new fund launches. However a RAIF must be managed by an authorized AIFM.





## 2.1. Typical Luxembourg private equity and venture capital structures

SICARs, RAIFs, SIFs, EuVECAs and SOPARFIs can take a large variety of legal forms available under Luxembourg law and thus accommodate any set of tax and governance requirements – both stemming from the investors’ as well as the initiators’ perspective – that typically arise in the context of setting up private equity or venture capital investment vehicles as well as in special situations (e.g. master-feeder structures, acquisition structures etc.).

The table below compares the five most commonly used available structures on key criteria when choosing the right form for a private equity or venture capital investment vehicle.

Besides the existing SCS, the AIFM Law introduced a new legal form, the Special Limited Partnership (SLP or in French the *Société en Commandite Spéciale*, SCSp) a limited partnership without legal personality. This legal form is comparable to the common English law limited partnership and can also be set up under a specific regulatory wrapper regime such as the SICAR, SIF, RAIF or EuVECA regimes.

Since August 2016, the Simplified limited company (in French the *Société par Actions Simplifiée*, SAS.) has offered an alternative legal form that can be used for any of the regulatory wrappers (SICARs, RAIFs, SIFs, EuVECA and also SOPARFIs).

| Flexibility  | Diversification/investment limits  |
|--|--|
| <ul style="list-style-type: none"> <li>■ SIFs and RAIFs are eligible for all asset classes.</li> <li>■ SICARs and RAIFs taking the features of a SICAR are exclusively eligible for risk capital investments.</li> <li>■ EuVECAs require an investment of the majority of their assets in venture capital investments.</li> <li>■ SOPARFIs benefit from flexible provisions of Luxembourg corporate law and offer flexibility in structuring debt and equity</li> </ul>  | <ul style="list-style-type: none"> <li>■ SIFs and RAIFs as well as EuVECAs must invest in a diversified asset portfolio and/or are subject to certain investment limits.</li> <li>■ SICARs and RAIFs taking the features of a SICAR are not subject to diversification requirements.</li> <li>■ SOPARFIs have no constraints in terms of investment policy.</li> </ul>   |
| Structuring  | Regulation   |
| <ul style="list-style-type: none"> <li>■ SIFs, RAIFs, SICARs, EuVECAs and SOPARFIs may be organised using different legal forms available under Luxembourg corporate law (private limited liability company (SARL), public limited liability company (SA), corporate partnership limited by shares (SCA), limited partnership (SCS) special limited partnership (SCSp) etc.).</li> <li>■ SICARs, SIFs, EuVECAs and RAIFs may in principle be organised in a fiscally neutral manner (to the extent due to their legal form they qualify as fiscally transparent).</li> <li>■ SIFs, RAIFs, SICARs, EuVECAs and SOPARFIs may in principle benefit from all or part of Luxembourg’s double tax treaty network (to the extent due to their legal form they are not fiscally transparent).</li> </ul> | <ul style="list-style-type: none"> <li>■ SICARs, EuVECAs and SIFs are subject to authorisation before taking up their activity and are subject to ongoing supervision.</li> <li>■ RAIFs are not subject to any prior authorisation but remain subject to indirect supervision via their authorised AIFM.</li> <li>■ SICARs, SIFs, EuVECAs and RAIFs are subject to certain minimum disclosure obligations.</li> <li>■ SOPARFIs are not subject to regulation (though they may qualify as an AIF and thus may be subject to indirect supervision and certain minimum disclosure obligations via their AIFM as well).</li> </ul> |

## 2. Private equity in Luxembourg

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### 2.2. General partners/ management

In order to set up a corporate partnership limited by shares (*Société en Commandite par Actions* or SCA), a common limited partnership (*Société en Commandite Simple* or SCS or C.L.P.) or a Special Limited Partnership (*Société en Commandite Spéciale* or SCSp or SLP), at least one general partner as well as at least one limited partner is required. The management of the SCA, SCS or SCSp can solely be entrusted to this one (or more) GP(s), itself managed by a single manager or a board of managers. Limited partners may also be entrusted with limited management functions.

The GP will always be personally liable for the partnership's debts and obligations which cannot be satisfied out of the partnership's assets. In order to limit this joint and several liability, the GP will typically be organised as a private limited liability company (SARL) or a public limited liability company (SA).

The GP may delegate some of its powers to agents that it may in principle freely determine. For example, the GP may nominate an AIFM an investment advisor as well as all service providers in Luxembourg (e.g. central administration and depositary).

It may furthermore organise various forums or committees to assist it in various functions.

SICARs, SIFs, EuVECAs and RAIFs may also be set up in the form of an SA or SARL, either with a one-tier management structure, consisting of a board of directors or a two-tier management structure comprised of a management board and a supervisory board.

### 2.3. Substance and supporting industry

The growing presence of private equity and venture capital business in Luxembourg has prompted both GPs and the services industry to develop middle office activities locally. A significant number of private equity and venture capital houses have created considerable proprietary infrastructure in Luxembourg.

Middle office services are focused on compliance, risk management and corporate governance and are used to dealing with highly complex structures, financial instruments and the active participation in the ultimate investee companies held by the entities organised and operated in Luxembourg.

The RAIF law provides that every RAIF must be managed by an authorised AIFM, which may be established in Luxembourg or in another EEA country.

The AIFMD and its implementing regulations (Level 2) impose requirements on managers of (or self-managed) SIFs, RAIFs, SICARs and unregulated vehicles captured by the AIFMD. These requirements consist of inter alia retaining eligible conducting officers, the enhancement of the central administration and substance of the private equity or venture capital structure, the necessity to introduce rules or policies on risk management, compliance, internal audit, transparency, remuneration and conflict of interest situations. The AIFMD, the Level 2 measures, the AIFM Law and CSSF circulars and regulations detail the level of functions that may be outsourced and if so, to which degree. Comparable organisational requirements are stipulated in detail by the EuVECA Regulation (EU) No. 345/2013.

## 2.4. Service providers

### 2.4.1. Administration

The Luxembourg private equity and venture capital fund administration sector basically falls into two categories: large international administrators servicing all fund ranges, including private equity and venture capital funds, as well as independent local and international specialist administrators.

Today, the vast majority of private equity and venture capital administrators offer the full range of central administration services, including domiciliation, administration, accounting, tax filing and company secretarial services to AIFs including their controlled SPVs located in Luxembourg or abroad including their controlled SPVs located in Luxembourg or abroad, as well as any additional vehicles, such as carry vehicles, for example.

### 2.4.2. Depositary services

Depositary services within the scope of the AIFM Law for certain private equity and venture capital structures, i.e. in the form of a SIF, SICAR, RAIF or any AIF managed by an AIFM comprise the following two components: the safekeeping and the monitoring of the structure's assets.<sup>(1)</sup>

It is worth noting that EuVECA do not require the appointment of a depositary. However, similar to the aforementioned duties of safekeeping and monitoring of a depositary under the AIFM Law, EuVECA do require their auditor to control at the time of their annual audit, that money and assets of the EuVECA are indeed held for its benefit.

The depositary services for the aforementioned vehicles may in principle only be performed by credit institutions. The AIFM Law permits certain closed-ended AIFs to appoint as depositary non-banking institutions or investment firms provided the relevant AIF and assimilated structures generally do not invest in assets that must be held in custody (i.e. financial instruments).

This depositary function is only open to qualifying investment firms under Luxembourg law serving as professional depositaries of assets other than financial instruments. In such case, a credit institution needs to be appointed for the handling the cash transactions.

#### 2.4.2.1. Monitoring function

As private equity or venture capital fund (to the extent the latter does not qualify as a EuVECA) assets are usually not physically safeguarded by the depositary itself, the depositary will have to focus on its oversight duties. In this case, the scope of the supervision and oversight function of the depositary implies:

- Handling of the legal documentation related to the transactions carried out;
- Compliance monitoring of the cash and securities flows linked to transactions;
- Control of any single transaction including settlement;
- Implementation of an internal verification check list and escalation procedure;
- Monitoring of subscriptions and redemptions;
- Valuation duties.

#### 2.4.2.2. Safekeeping of assets

Luxembourg based depositaries are very well positioned to perform these legal duties. The know-how of Luxembourg-based depositary institutions in providing a full range of customised services for private equity and venture capital investment vehicles is nowadays widely recognised.

The services cover the whole of the investment and divestment processes, such as:

- Follow-up of board approval process as well as collection of underlying agreements and documentation related to the transactions;
- Supervision and monitoring of investments and divestments;
- Asset registration in the name of the vehicle under the supervision of the depositary;
- Compliance checks with the investment policy as described in the information memorandum/offering memorandum/issuing document or other applicable documentation.

<sup>(1)</sup> In the rare case that a manager decides to set up a private equity or venture capital fund subject to part II of the UCI Luxembourg law of 17 December 2010, the depositary regime depends on whether the prospectus allows or prohibits marketing to retail investors, and on whether the fund is managed by an authorised or registered AIFM.

## 2. Private equity in Luxembourg

In addition, the depositary, to the extent it is also entrusted with the role of a paying agent or in cooperation with the transfer agent, may also offer amongst others, the following services:

- Processing of payments linked to the underlying investments;
- Collection of interest income and dividends from underlying investments;
- Processing of corporate events on underlying investments;
- Liaison with local correspondents, lawyers, notaries and others service providers;
- Recording of documentation and data back-up;
- Collateral management services;
- Tax reclaim management services (withholding tax treaty);
- Collection of subscription proceeds;
- Payment of redemption amounts;
- Execution of dividend payments to investors.

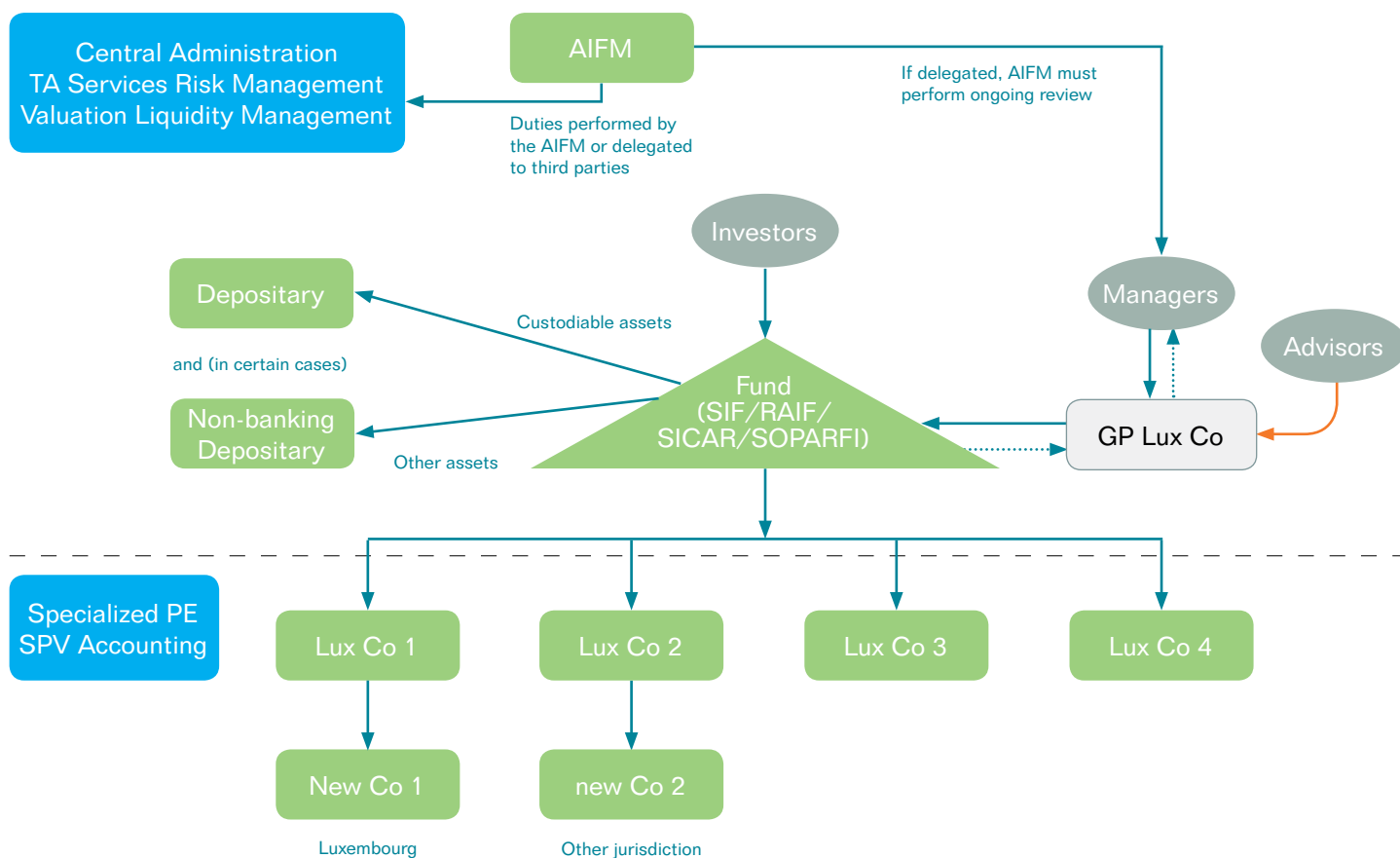
### 2.4.3. Banking services

Luxembourg banks offer cash management services, treasury, foreign exchange management, bridge financing and management of escrow accounts to their private equity and venture capital clients.

### 2.4.4. Legal, tax and audit services

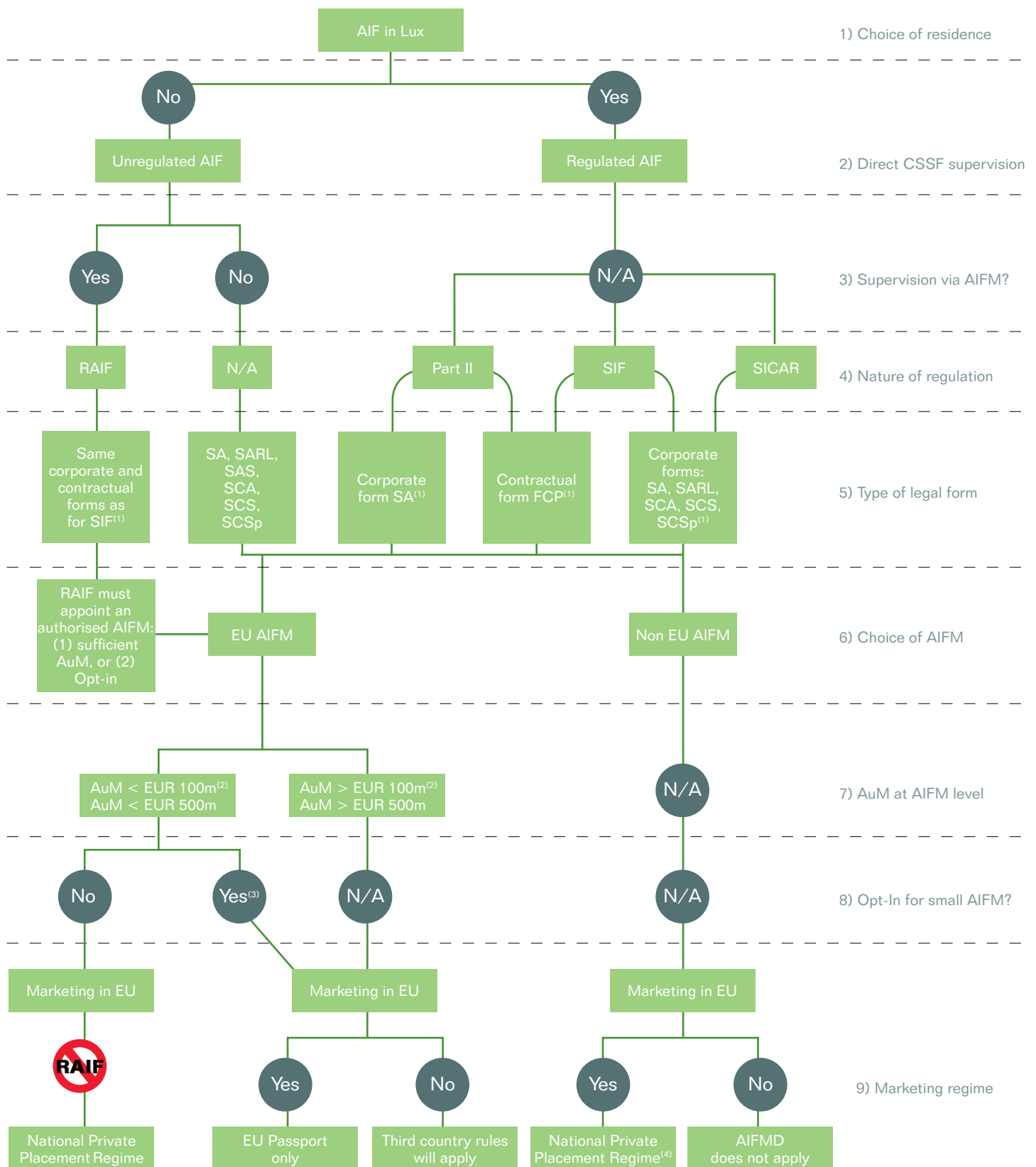
Luxembourg avails itself of significant expertise in legal and tax matters through numerous local and international law firms, tax advisors and audit firms experienced in structuring and servicing private equity and venture capital investment vehicles.

Example of a typical PE or VC structure SICAR and holding company



### 3. Private equity and venture capital – legal framework

#### 3.1. Schematic representation of principal choices to be operated when implementing a private equity or venture capital structure



<sup>(1)</sup> Other legal forms may be envisaged (for available legal forms, please refer to Appendix 1).

<sup>(2)</sup> Art. 3 (2) of the AIFM Law.

<sup>(3)</sup> Art. 3 (4) of the AIFM Law.

<sup>(4)</sup> 2015-2018: Dual Marketing regime.

- NPPR + AIFMD on transparency, reporting and controlling entities and partial 3rd country requirements
- EU Passport: accessible upon fulfillment of all AIFMD conditions.



### 3. Private equity and venture capital – legal framework

#### 3.2. Luxembourg private equity and venture capital unregulated and regulated structures

Private equity and venture capital vehicles in Luxembourg may (i) either be any normal commercial companies (as further detailed under 3.2.1 below), i.e. structures, which are not supervised at all or at least indirectly supervised by an appointed AIFM or (ii) investment structures that are (potentially in addition to the appointed AIFM) supervised by the Luxembourg *Commission de surveillance du secteur financier* (“CSSF”) and therefore regulated structures (as further detailed under 3.2.2).

The specific (legal) features of all of these structures are further explained in 3.3 below.

All of the aforementioned structures may – depending on their characteristics – qualify as an AIF under the Luxembourg implementation of the AIFMD, i.e. the Luxembourg law on alternative investment fund managers (“AIFM”)<sup>(1)</sup> of 12 July 2013, as amended (the “AIFM Law”). They would then potentially need to appoint an AIFM for the performance of the respective AIF’s portfolio and risk management services within the meaning of the AIFM Law.

##### 3.2.1. Standard commercial companies

Any standard commercial company under the Luxembourg law of 10 August 1915 on commercial companies (the “1915 Law”) can be used as a private equity or venture capital investment vehicle in Luxembourg.

- These vehicles may either be intermediate holding vehicles (such as an SARL qualifying as SOPARFI, an SCS or SCSp) for an entity located abroad (typically a non-European private equity or venture capital fund) or
- be themselves the investment vehicle for the end investors/beneficial owners of the structure (i.e. an SCS, SCSp or any other commercial company qualifying as a RAIF).

##### The SOPARFI

To the extent that the corporate object of that vehicle is limited to the holding of participations in other (asset holding) companies (be it in Luxembourg or abroad) the most common non-regulated private equity or venture capital investment structure in Luxembourg is the SOPARFI. SOPARFIs are ordinary commercial companies (in principle able to take any corporate form available under the 1915 Law, while in practice this often will be a private limited company, i.e. a *société à responsabilité limitée*, SARL or a simplified limited company, i.e. a *société par actions simplifiée*, SAS.) governed by the 1915 Law.

As an ordinary company, the SOPARFI is not subject to any risk-spreading requirements and may in principle invest in any asset class. SOPARFIs are used to invest and manage financial participations in Luxembourg or foreign companies. SOPARFIs can also undertake commercial activities which are directly or indirectly connected to the management of their holdings including the debt servicing of their acquisitions.

##### SCS and SCSp

The Luxembourg AIFM Law, revamped and updated the legal framework for limited partnerships under the 1915 Law, i.e. the *société en commandite simple* (SCS). In addition, the AIFM Law also introduced another form of limited partnership under Luxembourg law, namely the *société en commandite spéciale* (SCSp), which, unlike the SCS, does not have legal personality itself. Both vehicles have increasingly been used for structuring private equity or venture capital investments. Records of the Luxembourg trade register show that by September 2018, 2,260 SCSp have been set up since its introduction in July 2013, seemingly substituting the former vehicle of choice, the SARL. While the principal reasons for choosing the legal form of a

<sup>(1)</sup> According to Art. 1 (39) of the AIFM law, an AIF is any collective investment undertaking, including investment compartments thereof, which: (a) raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and (b) do not require authorisation pursuant to Art. 5 of Directive 2009/65/EC;

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Luxembourg private equity or venture capital investment vehicle may often be driven by considerations of applicable foreign (tax) law, the increased structuring flexibility of the SCS or the SCSp is another decisive aspect. The Limited Partnership Agreement will fix the company's operating rules and its tax-transparent status (under Luxembourg tax law and subject to appropriate structuring under applicable foreign tax law, to the extent applicable) has added to its increased popularity.

### Reserved alternative investment fund - RAIF

On 1 August 2016, the law of 23 July 2016 on reserved alternative investment funds ("RAIFs") entered into force (the "RAIF Law"). It introduced a new type of Luxembourg investment vehicle that is reserved to Luxembourg AIFs managed by an authorised external AIFM within the meaning of the AIFM Law.

To a large extent, the RAIF vehicle offers similar structuring flexibilities, i.e. the launch of sub-funds, when set up as an umbrella-fund as Luxembourg SIFs.

However, in contrast to SIFs, RAIFs are not subject to supervision of the Luxembourg supervisory authority of the financial sector (the CSSF).

Moreover, RAIFs do always qualify as AIFs and therefore, amongst others, are required to comply with the specific AIFM Law requirements such as (i) the appointment of a depositary, (ii) the appointment of an approved statutory auditor, (iii) minimum content requirements for annual report, (iv) valuation of the RAIF's assets, and (v) investment and leverage rules regarding certain type of assets. However, in exchange for complying with all the conditions laid down in the AIFM Law, RAIFs benefit from the AIFMD passport in order to be marketed to professional investors (and retail investors if permitted by the relevant Member States) in the EU.

### 3.2.2. Directly regulated or indirectly supervised structures

The CSSF regulates (i) SICARs, (ii) SIFs and (iii) EuVECAs. SIFs are regulated under the provisions of the amended law of 13 February 2007 on specialised investment funds (the "SIF Law") while SICARs are regulated under the provisions of the amended law of 15 June 2004 (the "SICAR Law") on investment companies for risk capital investment. Both SICARs and SIFs are registered on official lists maintained by and accessible on the website of the CSSF. SIFs and SICARs would typically also qualify as AIFs under the AIFM Law.

Amidst an international regulatory environment seeking to increase transparency and oversight the SICAR and the SIF are tried-and-tested regulated private equity and venture capital structures. The legal framework applicable to SICARs and SIFs offers a combination of a flexible and accessible regulatory infrastructure with strong investor protection features. They can only be subscribed to by "well-informed" investors (see the glossary for a more detailed definition).

#### SICAR

SICARs are investment vehicles designed specifically for investment in risk capital, as defined by CSSF circular 06/241. SICARs allow direct or indirect contributions of assets to be made to entities in view of their launch, development or listing on a stock exchange.

#### SIF

The SIF regime was created in 2007 in order to clearly establish Luxembourg as an AIF domicile further accommodating all alternative asset classes and hedge funds, real estate funds and private equity funds in particular. SIFs are not subject to any eligibility requirements in terms of their investments. They are however required to diversify their investments as further set out in a CSSF circular, i.e. CSSF circular 07/309.

### 3. Private equity and venture capital – legal framework

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#### EuVECA

The EuVECA Regulation (EU) No. 345/2013 has been applicable since 22 July 2013 and has been revised by Regulation (EU) 2017/1991 of 25 October 2017. It provides a (voluntary) common framework and label for venture capital funds at EU level, referred to as the “EuVECA”-label. In order to benefit from the label, EuVECA funds are subject to specific requirements regarding their investment policy. They are only allowed to invest in certain types of assets. Accordingly, only investments in equity instruments issued by or loans granted to qualifying portfolio undertakings, meaning undertakings that are at the time of the first investment by the fund in that undertaking not admitted to trading on a regulated market or multilateral trading facility, and that employ up to 499 persons, or SMEs which are listed on SME growth markets are allowed under the revised EuVECA Regulation. EuVECA funds are also subject to specific rules in respect of fund portfolio composition, investment techniques and own funds. In particular, these funds must intend to invest at least 70% of their aggregate capital contributions and uncalled committed capital in assets that are qualifying investments and, as a consequence, do not use more than 30% for the acquisition of assets other than qualifying investments. One of the defining features of the EuVECA regime is that it does not require the appointment of a depository.

The EuVECA Regulation applies to EU managers that are subject to registration with the competent authorities of their home Member State in accordance with the AIFMD and manage qualifying venture capital funds with total AuM of less than EUR 500 million. Following the aforementioned revision. The use of the EuVECA label is also open to above-threshold AIFMs, which continue to be subject to the requirements of the AIFMD while complying with certain provisions of the EuVECA Regulation (those on eligible investments, targeted investors and information requirements).

EuVECA managers can also manage and market AIFs which are not EuVECA funds. However, the EuVECA passport does not apply to these funds.

#### 3.2.3. Disclosure requirements: PRIIPs KID

Since 1 January 2018, managers of alternative investment funds intending to distribute their funds to retail investors, have to prepare a Key Information Document (KID) as defined by the EU Regulation on Packaged Retail and Insurance-based Investment Products (PRIIPs). A SIF's, RAIF's or SICAR's well-informed investors may be considered as retail investors as defined by MiFID. They must provide retail investors with key information that is easy to read, understand and compare. The person advising on or selling the fund has to provide retail investors with the KID in good time before those investors are bound by any contract or offer relating to the fund.

The KID's content includes general information such as the name of the fund or, if applicable, a comprehension alert stating that the product is not simple and may be difficult to understand. The fund's legal form, its investment objectives and how they will be achieved will have to be described.

A specific section is dedicated to the risks and returns of the PRIIP, which are outlined by means of a risk indicator and by several performance scenarios. Fund managers do also have to explain what happens if they are unable to pay out. Information on costs are included by two tables, the so called ‘Cost over time’ table, and the ‘Composition of cost’ table. The investor should also get an answer to the question of how long he or she should invest in the fund and whether he or she can take money out early. The KID concludes with information on how the investor can complain and other relevant information.

It is worth noting that PRIIPs KIDs need to be reviewed at least annually.

ALFI published to its members a Q&A documents which provides further information on how to comply with level 1, 2 and 3 rules concerning PRIIPs in the form of investment funds.

### 3.3. Features of Luxembourg private equity and venture capital vehicles<sup>(1)</sup>

| SIF<br>(CSSF regulated)   | SICAR<br>(CSSF regulated)  | EuVECA<br>(CSSF regulated)  | RAIF<br>(indirectly supervised<br>via its AIFM)   | SCS/SCSp and<br>SOPARFI<br>(unregulated/<br>corporate vehicle)  |
|---|--|---|---|---|
| <ul style="list-style-type: none"> <li>■ May qualify as an AIF under the AIFM Law<sup>(2)</sup></li> <li>■ Internal management under the AIFM Law possible; however, then the vehicle would have to seek authorisation of itself as AIFM by the CSSF unless the assets under its management are below 100 million EUR/under 500 million Euro (if AIF is unleveraged and does not grant any redemption rights during 5 years after the initial investment).</li> </ul>   |  | <ul style="list-style-type: none"> <li>■ Eligible for (i) any AIF which is a qualifying venture capital fund, i.e. a collective investment undertaking that intends to invest at least 70% of its aggregate capital contributions and uncalled committed capital in assets that are qualified investments under Regulation No. (EU) 345/2013 and (ii) which is managed by a de minimis AIFM.</li> </ul> | <ul style="list-style-type: none"> <li>■ AIF qualification under the AIFM Law mandatory</li> <li>■ Not admitted for de minimis AIFMs</li> <li>■ Not admitted for internal management under the AIFM Law.</li> </ul>   | <ul style="list-style-type: none"> <li>■ May qualify as an AIF under the AIFM Law</li> <li>■ Internal management under the AIFM Law possible; however, then the vehicle would have to seek authorisation of itself as AIFM by the CSSF unless the assets under its management are below 100 million EUR/under 500 million Euro (if AIF is unleveraged and does not grant any redemption rights during 5 years after the initial investment).</li> </ul> |
| <p><b>Choice of legal form:</b><br/>Corporate vehicles and common funds<br/><b>Corporate vehicles:</b></p> <ul style="list-style-type: none"> <li>■ Public limited company (SA)</li> <li>■ Simplified limited company (SAS.)</li> <li>■ Private limited company (SARL)</li> <li>■ Corporate partnership limited by shares (SCA)</li> <li>■ Common limited partnership (SCS)</li> <li>■ Special limited partnership (SCSp)</li> </ul> <p>The aforementioned corporate vehicles will all qualify as investment companies with variable capital (<i>société d'investissement à capital variable-fonds d'investissement spécialisé</i>, SICAV-SIF/FIS), i.e. their capital will be allowed to increase or decrease freely without the need to convene a shareholders' meeting to that effect.</p> | <p><b>Choice of legal form: only corporate vehicles</b><br/><b>Corporate vehicles:</b></p> <ul style="list-style-type: none"> <li>■ Public limited company (SA)</li> <li>■ Simplified limited company (SAS)</li> <li>■ Private limited company (SARL)</li> <li>■ Corporate partnership limited by shares (SCA)</li> <li>■ Common limited partnership (SCS)</li> <li>■ Special limited partnership (SCSp).</li> </ul> |   | <p><b>Choice of legal form:</b><br/>Corporate vehicles and common funds<br/><b>Corporate vehicles:</b></p> <ul style="list-style-type: none"> <li>■ Public limited company (SA)</li> <li>■ Simplified limited company (SAS)</li> <li>■ Private limited company (SARL)</li> <li>■ Corporate partnership limited by shares (SCA)</li> <li>■ Common limited partnership (SCS)</li> <li>■ Special limited partnership (SCSp)</li> </ul> <p>The aforementioned corporate vehicles will all qualify as investment companies with variable capital (<i>société d'investissement à capital variable-fonds d'investissement alternatif réservé</i>, SICAV-RAIF), i.e. their capital will be allowed to increase or decrease freely without the need to convene a shareholders' meeting to that effect.</p> | <p><b>Choice of legal form:</b><br/>only corporate vehicles<br/><b>Corporate vehicles:</b></p> <ul style="list-style-type: none"> <li>■ Public limited company (SA)</li> <li>■ Simplified limited company (SAS)</li> <li>■ Private limited company (SARL)</li> <li>■ Corporate partnership limited by shares (SCA)</li> <li>■ Common limited partnership (SCS)</li> <li>■ Special limited partnership (SCSp).</li> </ul>                                |

<sup>(1)</sup> Funds subject to part II of the Luxembourg UCI Law of 17 December 2017, which are no longer a preferred vehicle for private equity investments, are not dealt with separately

<sup>(2)</sup> To the extent the undertaking has one investor and the criteria of point 17 of ESMA's guidelines on key concepts of the AIFMD are met

### 3. Private equity and venture capital – legal framework

| SIF<br>(CSSF regulated)   | SICAR<br>(CSSF regulated) | EuVECA<br>(CSSF regulated)   | RAIF<br>(indirectly supervised<br>via its AIFM)  | SCS/SCSp and<br>SOPARFI<br>(unregulated/<br>corporate vehicle)   |
|---|---------------------------|--|--|--|
| Contractual form or<br>common fund:<br><i>fonds commun de<br/>placement-fonds<br/>d'investissement<br/>spécialisé</i><br>(FCP-SIF/FIS).   |                           |  | Contractual form or<br>common fund:<br><i>fonds commun de<br/>placement-fonds<br/>d'investissement<br/>alternatif réservé</i><br>(FCP-RAIF).   |  |
| <p><b>Tax Treatment</b><br/><b>Transparent:</b></p> <ul style="list-style-type: none"> <li>■ Common fund (FCS-SIF)</li> <li>■ Common limited partnership (SCS)</li> <li>■ Special limited partnership (SCSp)</li> </ul> <p><b>Not transparent</b><br/><b>(all vehicles in principle taxable in Luxembourg):</b><br/>All corporate forms (see above).</p>  |                           | <p><b>Tax Treatment</b><br/><b>Transparent:</b></p> <ul style="list-style-type: none"> <li>■ Common limited partnership (SCS)</li> <li>■ Special limited partnership (SCSp)</li> </ul> <p><b>Not transparent</b><br/><b>(taxable vehicle in Luxembourg):</b><br/>All corporate vehicles (see above).<br/>All these corporate vehicles are otherwise fully taxable in Luxembourg.</p> | <p><b>Tax Treatment</b><br/><b>Transparent:</b></p> <ul style="list-style-type: none"> <li>■ Common fund (FCP-RAIF)</li> <li>■ Common limited partnership (SCS)</li> <li>■ Special limited partnership (SCSp)</li> </ul> <p><b>Not transparent</b><br/><b>(taxable vehicle in Luxembourg):</b><br/>All corporate vehicles (see above). All these corporate vehicles are otherwise fully taxable in Luxembourg (except if they opt for the special tax status outlined in the next box below similar to the SIF and SICAR regimes only available to RAIFs).</p> | <p><b>Tax Treatment</b><br/><b>Transparent:</b></p> <ul style="list-style-type: none"> <li>■ Common limited partnership (SCS)</li> <li>■ Special limited partnership (SCSp)</li> </ul> <p><b>Not transparent</b><br/><b>(taxable vehicle in Luxembourg):</b><br/>All corporate vehicles (see above).<br/>All these corporate vehicles are otherwise fully taxable in Luxembourg.</p> |
| <p><b>SIF regime, i.e. vehicles respecting the principle of risk spreading (CSSF Circular 07/309):</b></p> <ul style="list-style-type: none"> <li>■ Annual subscription tax (taxe d'abonnement) at a rate of 0.01%</li> <li>■ Some SIFs are exempted from the subscription tax</li> <li>■ SIFs are not subject to any Luxembourg taxes on capital gains or income</li> <li>■ The corporate vehicles may in principle benefit from certain double tax treaties.</li> </ul> |                           |  | <p><b>SIF regime for RAIF respecting the principle of risk spreading (<i>mutatis mutandis</i> CSSF Circular 07/309):</b></p> <ul style="list-style-type: none"> <li>■ Annual subscription tax (taxe d'abonnement) at a rate of 0.01%</li> <li>■ Some RAIFs are exempted from the subscription tax</li> <li>■ RAIFs are not subject to any Luxembourg taxes on capital gains or income</li> <li>■ The vehicle should in principle benefit from certain double tax treaties.</li> </ul>  |  |



| SIF<br>(CSSF regulated)   | SICAR<br>(CSSF regulated)  | EuVECA<br>(CSSF regulated) | RAIF<br>(indirectly supervised<br>via its AIFM)   | SCS/SCSp and<br>SOPARFI<br>(unregulated/<br>corporate vehicle) |
|---|--|----------------------------|---|--|
|   | <p><b>SICAR regime for funds investing in risk capital (CSSF Circular 06/241):</b></p> <ul style="list-style-type: none"> <li>■ Subject to income tax in Luxembourg, but any income arising from securities held by the SICAR does not constitute taxable income</li> <li>■ May benefit from certain double tax treaties</li> <li>■ Capital gains realised by non-Luxembourg residents are not subject to tax in Luxembourg</li> <li>■ Dividend and interest payments made are exempt from withholding tax.</li> </ul> |                            | <p><b>SICAR regime for RAIF investing in risk capital (<i>mutatis mutandis</i> CSSF Circular 06/241):</b></p> <ul style="list-style-type: none"> <li>■ Subject to income tax in Luxembourg, but any income arising from securities held by the SICAR does not constitute taxable income</li> <li>■ May benefit from certain double tax treaties</li> <li>■ Capital gains realised by non-Luxembourg residents are not subject to tax in Luxembourg</li> <li>■ Dividend and interest payments made are exempt from withholding tax.</li> </ul> |  |
| <p><b>Duration</b><br/>Unlimited or limited period of time.</p>   |  |                            |   |  |
| <p><b>Form of participation</b></p> <ul style="list-style-type: none"> <li>■ (Registered) shares or units (FCP-FIS/SIF or FCP-RAIF): ordinary, preference, beneficiary (the latter not for SIFs)* Partnership interests or capital accounts (for SCS and SCSp)</li> <li>■ Redeemable</li> <li>■ Voting and non-voting (only voting for SIF) bonds and/or notes.</li> </ul> <p><i>* issuance of registered shares of any vehicle recommended in order to ensure proper monitoring of eligible investors (i.e. professional investors to the extent vehicle qualifies as an AIF).</i></p> |  |                            |   |  |
| <p><b>Listing</b><br/>In principle possible.</p>  |  |                            |   |  |
| <p><b>Redemption</b><br/>In principle possible.</p>   |  |                            |   |  |
| <p><b>Capital calls/Distributions</b><br/>Capital calls and distributions to investors are subject to the rules provided in the constitutive documents.</p> <p>Flexibility on issue price<br/>Preferential rights may be limited or cancelled.</p>  |  |                            |   |  |

### 3. Private equity and venture capital – legal framework

| SIF<br>(CSSF regulated)  | SICAR<br>(CSSF regulated)   | EuVECA<br>(CSSF regulated)  | RAIF<br>(indirectly supervised<br>via its AIFM)   | SCS/SCSp and<br>SOPARFI<br>(unregulated/<br>corporate vehicle)  |
|--|---|---|---|---|
| <b>Permissible asset classes</b><br>asset classes as set out in SIF Law (as amended by RAIF Law).  | <b>Restricted asset classes</b><br>Investment in risk capital (according to definition of "risk capital" in CSSF Circular 06/241).  | <b>Restricted asset classes</b><br>Investment in at least 70% of its monies in qualifying investments according to rules set out in Regulation (EU) No. 345/2013, as amended.   | <b>Permissible asset classes</b><br>Any kind of asset class.  |   |
| <b>Risk spreading</b><br>Risk diversification requirement (as contained in CSSF Circular 07/309).  | No risk diversification requirement.  | No risk diversification requirement, but minimum of 70% investment in qualifying investments and up to 30% in other assets according to rules set out in Regulation (EU) No. 345/2013, as amended.  | <b>Risk spreading</b><br>Risk diversification requirement ( <i>mutatis mutandis</i> CSSF Circular 07/309).<br><br>If SICAR investment policy, no need for risk diversification.   | No risk diversification requirement.  |
| <b>Compartments/Sub-funds</b><br>Possible.   |   | <b>Compartments/<br/>Sub-funds</b><br>Not possible.   | <b>Compartments/<br/>Sub-funds</b><br>Possible.   | <b>Compartments/<br/>Sub-funds</b><br>Not possible.   |
| <b>Capital</b><br><ul style="list-style-type: none"> <li>■ Fixed or variable EUR or foreign currency equivalent</li> <li>■ Minimum of EUR 1,250,000 (including share premium), to be reached within 12 months of authorisation provided at incorporation</li> <li>■ Minimum of EUR 12,000 for SARL and EUR 30,000 for SA/SCA</li> <li>■ Partly paid shares must be paid up to at least 5%</li> <li>■ No such restriction for SCS/SCSp</li> <li>■ Contribution in kind and/or in cash permissible</li> <li>■ Commitment or subscription based model.</li> </ul> | <b>Capital</b><br><ul style="list-style-type: none"> <li>■ Fixed or variable EUR or foreign currency equivalent</li> <li>■ Minimum of EUR 1,000,000 (including share premium) to be reached within 12 months of authorisation, provided at incorporation</li> <li>■ Minimum of EUR 12,000 for SARL and EUR 30,000 for SA/SCA</li> <li>■ Shares must be paid up to at least 5%</li> <li>■ No such restriction for SCS or SCSp</li> <li>■ Contribution in kind and/or in cash permissible</li> <li>■ Commitment or subscription based model.</li> </ul> | <b>Capital</b><br><ul style="list-style-type: none"> <li>■ Fixed or variable EUR or foreign currency equivalent</li> <li>■ Minimum of EUR 12,000 for SARL and EUR 30,000 for SA/SCA at incorporation only</li> <li>■ Shares must be paid up to 25% for SA/SCA and 100% for an SARL No such restriction for SCS or SCSp</li> <li>■ Contribution in kind and/or in cash permissible</li> <li>■ Commitment or subscription based model.</li> </ul> | <b>Capital</b><br><ul style="list-style-type: none"> <li>■ Fixed or variable EUR or foreign currency equivalent</li> <li>■ Minimum of EUR 1,250,000 (including share premium), to be reached within 12 months of formation as RAIF</li> <li>■ Minimum of EUR 12,000 for SARL and EUR 30,000 for SA/SCA</li> <li>■ Partly paid shares must be paid up to at least 5%</li> <li>■ No restriction for SCS/ SCSp.</li> <li>■ Contribution in kind and/or in cash permissible</li> <li>■ Commitment or subscription based model.</li> </ul> | <b>Capital</b><br><ul style="list-style-type: none"> <li>■ Fixed or variable EUR or foreign currency equivalent</li> <li>■ Minimum of EUR 12,000 for SARL and EUR 30,000 for SA/SCA at incorporation only</li> <li>■ Shares must be paid up to 25% for SA/SCA and 100% for an SARL No such restriction for SCS or SCSp</li> <li>■ Contribution in kind and/or in cash permissible</li> <li>■ Commitment or subscription based model.</li> </ul> |

| SIF<br>(CSSF regulated)  | SICAR<br>(CSSF regulated)  | EuVECA<br>(CSSF regulated)   | RAIF<br>(indirectly supervised<br>via its AIFM)   | SCS/SCSp and<br>SOPARFI<br>(unregulated/<br>corporate vehicle)  |
|--|--|--|---|---|
| <b>Management bodies</b> <ul style="list-style-type: none"> <li>Board of directors, manager(s) or managing general partner – depending on corporate form</li> <li>Approval of board members by the CSSF.</li> </ul>  |  |  | <b>Management bodies</b> <ul style="list-style-type: none"> <li>Board of directors, manager(s) or managing GP – depending on corporate form</li> <li>No approval requirements for board members by the CSSF.</li> </ul>       |   |
| <b>Supervisory reporting</b> <ul style="list-style-type: none"> <li>Monthly reporting</li> <li>Annual audited report due 6 months after year end.</li> </ul>   | <b>Supervisory reporting</b> <ul style="list-style-type: none"> <li>Semi-annual reporting</li> <li>Annual audited report due 6 months after year end.</li> </ul> | <b>Supervisory reporting</b> <ul style="list-style-type: none"> <li>In principle, annual audited report due 6 months after year end (at least for CSSF and for investors only upon request, unless required already by the corporate vehicle itself).</li> </ul> | <b>Supervisory reporting</b> <ul style="list-style-type: none"> <li>Annual audited report due 6 months after year end.</li> <li>AIFM supervised by responsible authority to report on RAIFs it externally manages.</li> </ul> | <b>Supervisory reporting</b> <ul style="list-style-type: none"> <li>Not applicable (as long as no AIF or AIFM nomination).</li> <li>Otherwise reporting rules of AIFM Law apply.</li> </ul> |
| <b>Filing requirements with trade register</b><br>Within 7 months after year end, audited annual accounts and appendix have to be filed.   | <b>Filing requirements with trade register</b><br>Within 7 months after year end, audited annual accounts have to be filed.                                      |  | <b>Filing requirements with trade register</b><br>Within 7 months after year end, annual accounts have to be filed.<br><br><b>RAIF List</b><br>RAIF will have to be registered on RAIF list kept by RCS.                      | <b>Filing requirements with trade register</b><br>Within 7 months after year end, annual accounts have to be filed.   |
| <b>Depositary</b><br>Luxembourg depositary required (regardless of AIF qualification).   |  | <b>Depositary</b><br>Not required but auditor required to check if assets of EuVECA are properly recorded as its assets.   | <b>Depositary</b><br>Luxembourg depositary required for RAIF.   | <b>Depositary</b><br>Not required unless the relevant entity qualifies as an AIF, which is not a de -minimis AIF.   |
| <b>Publication of PRIIPs KID?</b><br>A PRIIPs KID has to be published for any investment vehicle which is also offered to retail investors, unless a UCITS KIID-like document as provided for in Art. 159 of the UCI Law is published. A vehicle exclusively offered to professional investors does not have to prepare such a PRIIPs KID. The latter vehicle will have to justify to the CSSF that it is not under the obligation to prepare a PRIIPs KID or rather indeed only sold to professional investors. |  |  |   |   |
| <b>Administrator</b><br>Administrator to be appointed unless own infrastructure.   |  |  |   |   |
| <b>Auditor</b><br>Independent approved Luxembourg auditor required.  |  |  |   | <b>Auditor</b><br>Independent Luxembourg auditor in certain circumstances only (see section 5.1 of this brochure for further details).  |

### 3. Private equity and venture capital – legal framework

#### 3.4. Structuring by means of Luxembourg vehicles

The following examples illustrate how private equity (“PE”) or venture capital (“VC”) investments may be structured using a variety of Luxembourg vehicles, including options to locate PE or VC funds themselves in Luxembourg.

Luxembourg PE or VC investment structures downstream of a PE or VC fund (residing in Luxembourg or not) typically consist of either a SOPARFI, an unregulated SCS/SCSp, a SICAR, RAIF or SIF or of a combination of the latter two with one or more holding companies.

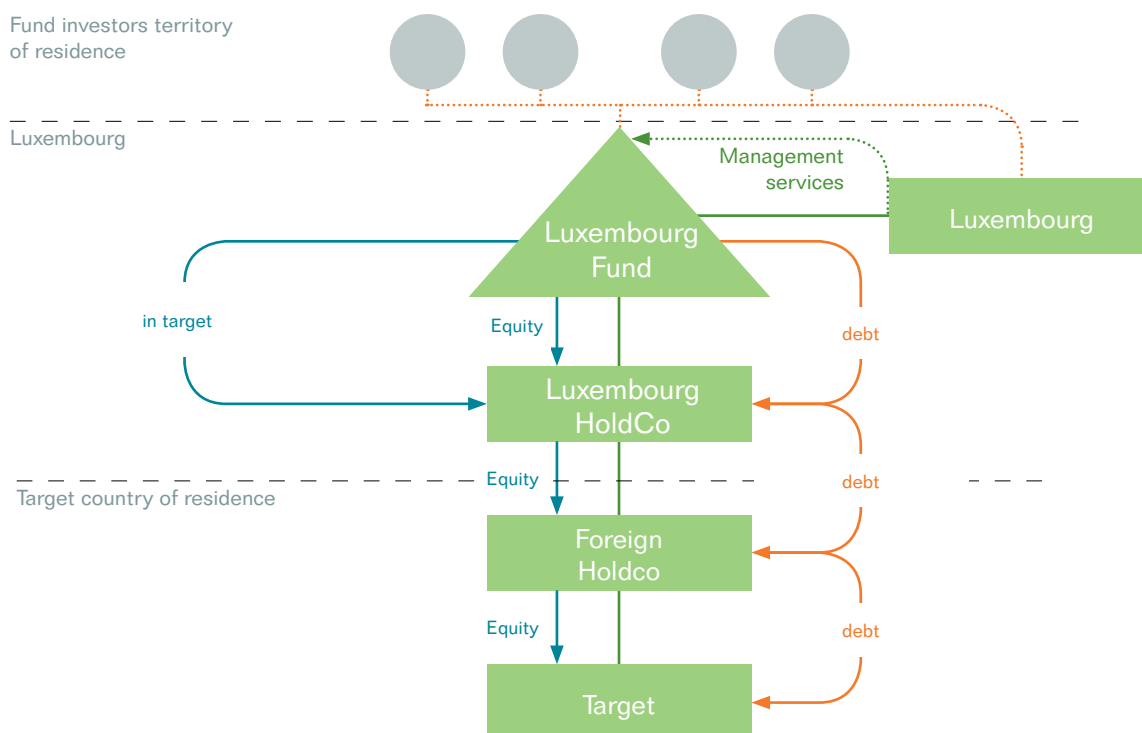
In the case of an FCP-SIF or FCP-RAIF, SCS and SCSp qualifying as a tax transparent structure, the use of intermediate companies

may (depending on the applicable tax regime to the investors and/or the investments of the relevant vehicle) prove useful to benefit from double tax treaties and EU directives that only companies can benefit from, unlike an FCP, SCS or SCSp

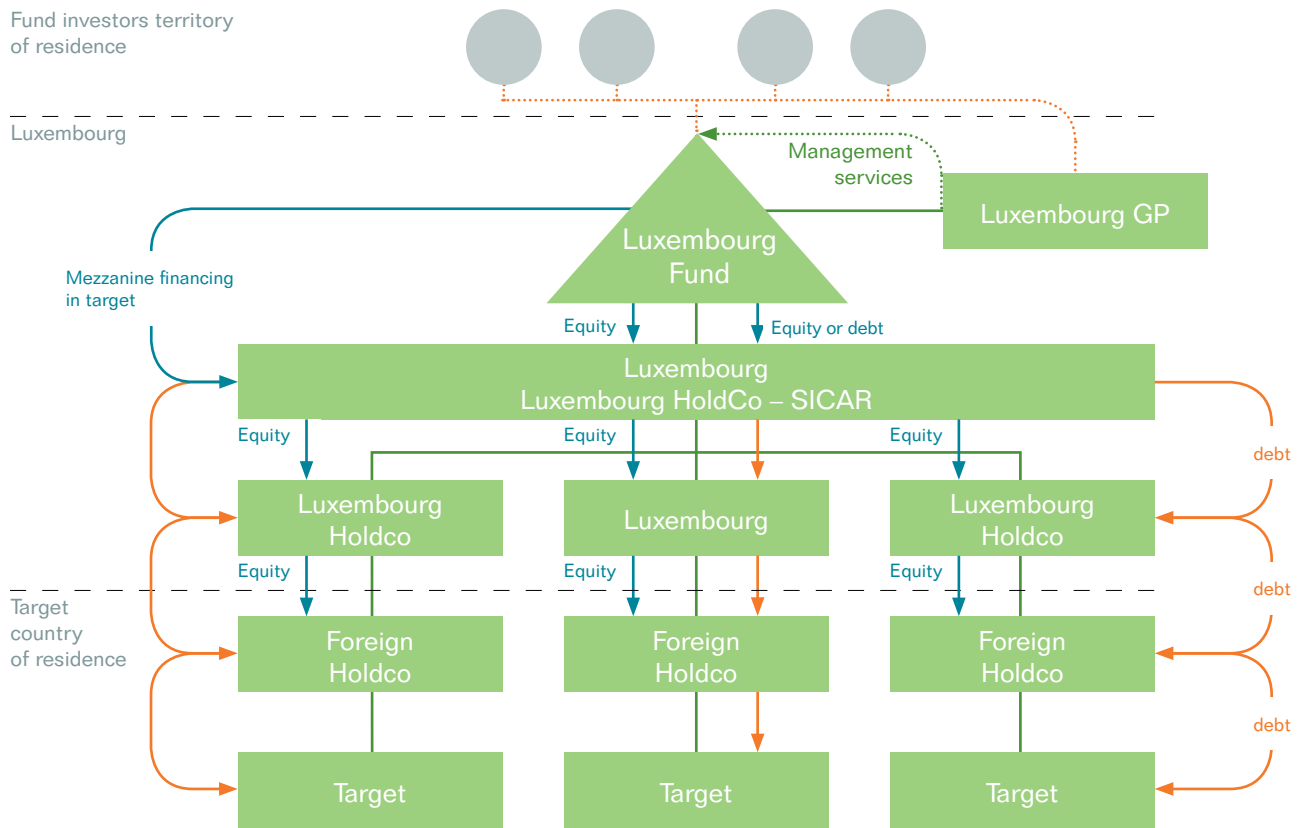
Investors can also invest either directly into the Luxembourg investment vehicle or fund or indirectly via an additional Luxembourg-based or non-Luxembourg-based feeder (fund) vehicle.

The following charts are examples of typical Luxembourg PE or VC investment structures using investment vehicles residing in Luxembourg or not:

Example 1: investment via a Luxembourg SCSp and a holding company

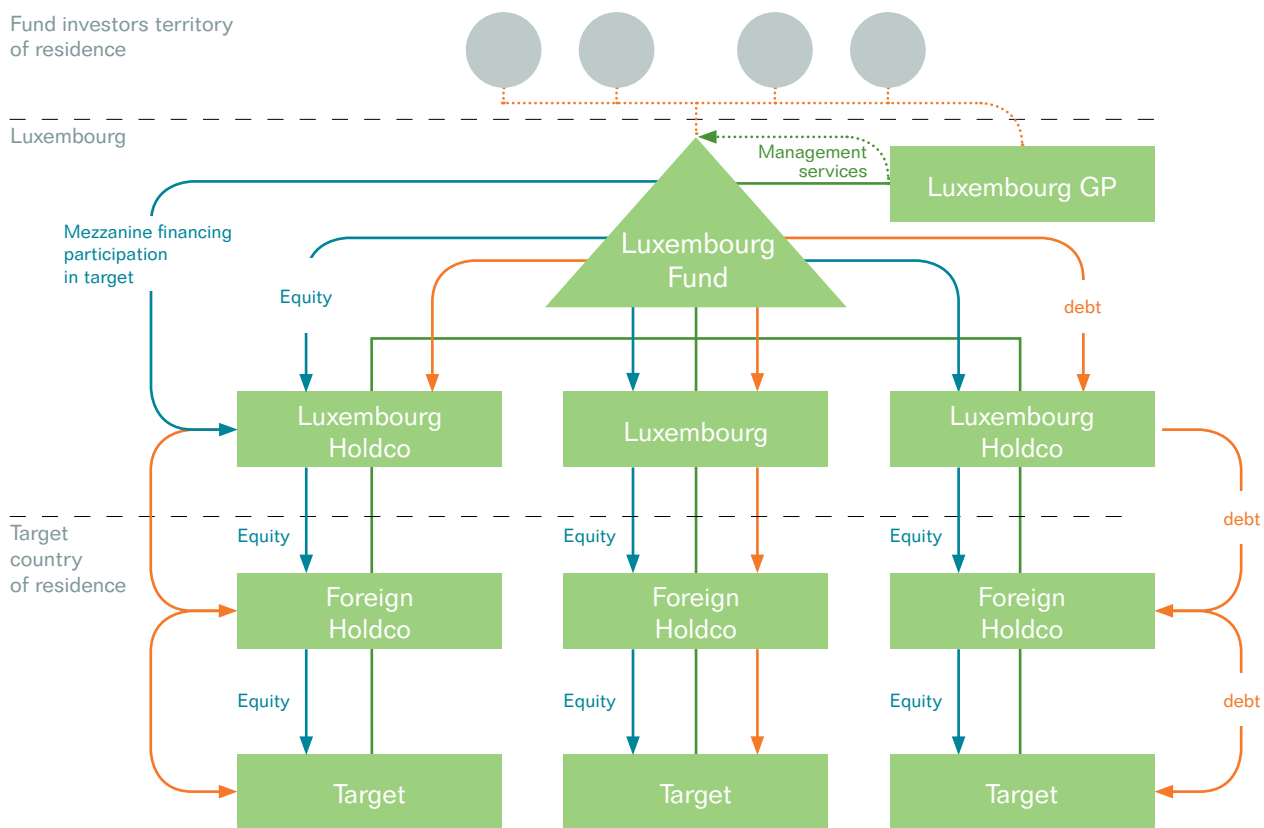


**Example 2: investment via Luxembourg SCSp and a SOPARFI, SICAR, EuVECA, RAIF or SIF with a Luxembourg General Partner**

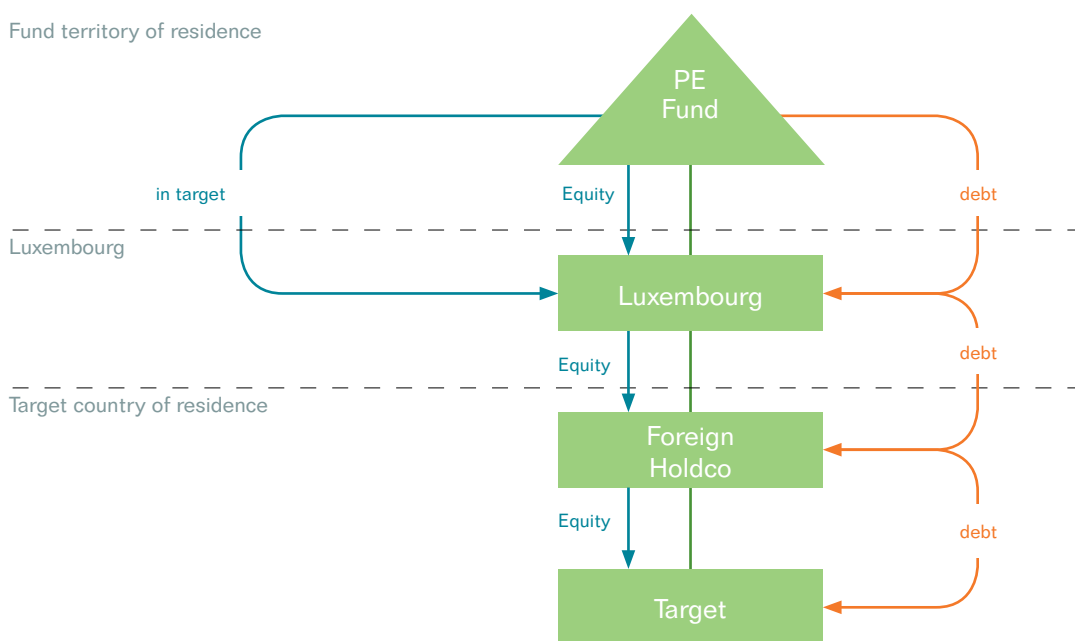




Example 3: investment via foreign feeder entities into Luxembourg SCSp and several Luxembourg holding companies



Example 4: traditional investment via a Luxembourg holding companies



## 4. Luxembourg tax environment

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One of the key factors in favour of private equity or venture capital operations in Luxembourg remains its favourable tax environment. A stable tax framework, a highly competitive social security system (for companies, employers and employees) and the lowest VAT rate in Europe greatly contribute

to making Luxembourg one of Europe's most attractive jurisdictions for private equity or venture capital operations and investments.

Of key importance remains, however, the double tax treaty network that Luxembourg has built up over many years.

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### Taxation of Luxembourg PE vehicles

The Luxembourg tax environment is extremely beneficial for private equity or venture capital investment vehicles, both regulated and unregulated.

#### ■ The SOPARFI

As a regular company subject to normal corporate taxation and not subject to a specific regulatory regime, the SOPARFI benefits from Luxembourg's extensive network of double-taxation treaties and from the EU Parent-Subsidiary Directives. Despite being a fully taxable company, the SOPARFI allows for tailor-made structuring providing, under certain conditions, for a full exemption for dividends and capital gains upon exit.

#### ■ The SICAR

SICARs can be created using different corporate forms.

The SICAR, organised in the form of an SCS or SCSp, is tax transparent and thus not subject to corporate, municipal business and net wealth tax. Income and gains received or realised are thus not subject to tax in the hands of the SICAR. Income and gains may furthermore be paid to investors without any Luxembourg source taxation.

- SICARs in the corporate form organised as an SA or an SCA, are fully taxable companies. The income from transferable securities as well as any capital gains on the disposal of such securities are however exempt under specific conditions. The SICAR in the corporate form will equally not be subject to net wealth tax (except for the minimum net wealth tax). Dividend distributions are also not subject to any Luxembourg taxation at source.

#### ■ The SIF

SIFs, irrespective of the legal form they take, are not subject to any Luxembourg taxes on capital gains or income. The sole tax due is a subscription tax of 0.01% based on the quarterly net asset value. Certain exemptions are available. SIFs in corporate form (e.g. SIFs organised as SA or S.C.A) can moreover claim access to certain double tax treaties.

#### ■ The RAIF

RAIFs are subject to the same tax regime as SIFs (see above). However, optionally, RAIFs investing in risk capital can opt for the SICAR regime (see above). It is not possible to mix the different legal regimes for one RAIF.

### Luxembourg's Double Tax Treaty Network

Luxembourg has bilateral tax treaties in force with all EU Member States and with a number of other countries (including almost all OECD Member States).

This network of tax treaties is constantly being expanded. SICARs and RAIFs which invest in risk capital, and SOPARFIs as Luxembourg taxable companies, are, from a Luxembourg perspective, entitled to treaty benefits and

therefore benefit from double tax treaties concluded between Luxembourg and third countries. The application of tax treaties to SIFs and RAIFs taking the corporate form is to be assessed on a case-by-case basis depending on the wording of the treaty provisions and their interpretation by the relevant foreign authorities. Fiscally transparent SIFs and RAIFs themselves may generally not benefit from treaty provisions due to their tax transparency.

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## 4. Luxembourg tax environment

### Highlights of Luxembourg tax framework for private equity and venture capital

- Effective carried interest structuring
- Extensive double tax treaty network
- Lowest VAT rate in the EU (17% currently), VAT exemption on management services rendered to RAIFs, SIFs and SICARs and free trade zone for valuable goods
- Competitive effective tax rates and low social security charges for individuals

### 4.1. Direct taxation of corporations

#### Luxembourg companies are subject to the following taxes:

- Income taxes at a combined rate of 26.01% in Luxembourg city in 2018, including municipal business tax and the contribution to the unemployment fund.
- Annual net worth tax levied at a rate of 0.5% on the company's worldwide net worth on 1st January up to a value of EUR 500 million, and 0.05% on any amount in excess, subject to certain adjustments (e.g. qualifying shareholdings which are exempt from net worth tax). A minimum flat net worth tax of EUR 4,815 applies to most holding and financing companies which have a low or negative net worth.

#### Corporate income tax

##### Taxation for Luxembourg entities:

Corporate income tax applies to all tax resident corporations and to Luxembourg permanent establishments of foreign corporations.

Partnerships, other than those limited by shares (SCAs), are regarded as tax transparent for Luxembourg tax purposes and are therefore not subject to corporate income tax and net worth tax at their own level. Income distributed by such entities will be considered, from a Luxembourg tax point of view, as flowing through the entity and is thus allocated directly to investors.

Resident taxpayers are liable to tax on their world-wide income, unless income is exempt under the provisions of applicable tax treaties or specific domestic tax law. There is a possibility of obtaining tax credits for foreign taxes paid.

Non-resident taxpayers are liable to tax on their Luxembourg-sourced income only, e.g. income realised by and allocable to a Luxembourg permanent establishment.

Thin capitalisation rules generally require a debt to equity ratio of 85:15 in the context of financing of participations or real estate. The Luxembourg direct tax authorities have clarified through a circular the tax treatment of Luxembourg group financing companies. Besides appropriate operational infrastructure, the relevant guidance provides that the equity of the financing company should be sufficient for the functions it performs, the assets used and the risks it assumes. No CFC rules exist in Luxembourg. It is however to be noted that draft law n° 7318 transposing Council Directive Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market has been filed with the Luxembourg Parliament on 19 June 2018. The Luxembourg tax legislation will be modified and new rules will be introduced, namely an interest limitation rule, CFC rules and rules on hybrid mismatches. The draft law will also modify existing rules on exit taxation and the general anti-avoidance rule. These provisions are to be introduced in the Luxembourg tax legislation by end of 2018 for an application as from 2019.

#### Capital gains taxation for non-residents

If a non-resident shareholder is resident (for tax purposes) in a country that has a double tax treaty with Luxembourg, the treaty will generally allocate the right to tax to the country of residence of the relevant shareholder. In the event that no such double tax treaty

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exists or can be applied, capital gains on the sale of shares in a Luxembourg company are subject to tax in Luxembourg only if the non-resident shareholder has held a substantial interest in the Luxembourg company and the transfer occurs within 6 months of the acquisition or in the event of a transfer after 6 months, the non-resident individual shareholder has been a Luxembourg resident taxpayer for more than 15 years and has become a non-Luxembourg taxpayer less than 5 years before the disposal takes place.

For this purpose, a substantial interest exists if a shareholder, either alone or together with certain close relatives, has held a shareholding of more than 10% in a Luxembourg company at any time during the five year period preceding the transfer.

### Municipal business tax

Municipal business tax varies from 6.75% to 10.5% (levied on income of businesses operating in Luxembourg), depending on the municipality where companies have their registered office. For companies operating in the city of Luxembourg, the rate is 6.75%. A deduction of EUR 17,500 applies to the municipal business tax base for entities liable to corporate income tax (EUR 40,000 for other businesses). Municipal business tax is cumulative with corporate tax and is non-deductible.

### Net wealth tax

Net wealth tax is levied at a rate of 0.5% (or 0.05% when the net worth exceeds EUR 500 million) on the company's worldwide net worth on 1 January of each year. Qualifying shareholdings under the participation exemption regime net of allocable debt (allocable debt that exceeds the value of the shareholding is deductible against other assets) are excluded from the taxable base. Luxembourg corporate income tax is creditable to the net worth tax provided certain conditions are met.

### Withholding taxes

A withholding tax of 15% is levied on dividend payments (17.65% if the dividend tax is not charged to the shareholder) unless an applicable tax treaty provides for a lower rate or the Luxembourg participation exemption regime reduces withholding tax to 0%. Liquidation proceeds are not subject to withholding tax. Arm's length fixed or floating rate interest payments are generally not subject to withholding tax. Interest paid on certain profit sharing bonds and profit sharing interest paid on loans is subject to 15% withholding tax unless a lower tax treaty rate applies. Royalty payments are not subject to withholding tax provided they are not connected with non-resident artists' performances and sportsmen's activities in Luxembourg.

### Automatic exchange of information

On 28 March 2014, Luxembourg entered into an intergovernmental agreement ("Luxembourg IGA") with the United States of America with respect to the US Foreign Account Tax Compliance Act ("FATCA"), which was implemented into Luxembourg law by the law of 24 July 2015 ("FATCA Law"). Under the Luxembourg IGA and FATCA Law, Luxembourg financial institutions (including in certain cases SICARs, SIFs, RAIFs, EuVECAs or SOPARFIs) are required to provide certain information about their US account holders to the Luxembourg tax authorities, which will share that information with the Internal Revenue Service ("IRS") on an annual basis. Luxembourg financial institutions that do not comply with their FATCA obligations risk being subject to a 30% US withholding tax on their US source income in addition to local penalties.

Largely inspired by FATCA, the OECD has developed a global standard for the automatic exchange of financial account information, the Common Reporting Standard ("CRS"). The CRS has been implemented at European Union level through the Directive on Administrative Cooperation (Directive 2014/107/UE), transposed into Luxembourg law by the law of

## 4. Luxembourg tax environment

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18 December 2015 (“CRS Law”). Under the CRS Law, Luxembourg financial institutions (including in certain cases SICARs, SIFs, RAIFs, EuVECAs or SOPARFIs) are required to collect certain information about their account holders that are fiscally resident in a EU Member State or in a country with which Luxembourg has a tax information sharing agreement, and to report this information to the Luxembourg tax authorities: The Luxembourg tax authorities will thereafter automatically exchange the information with the foreign tax authorities on an annual basis. Luxembourg financial institutions that do not comply with their CRS obligations may be subject to local penalties (no withholding tax penalty system applies).

### Value Added Tax (VAT)

The Luxembourg VAT standard rate of 17% is the lowest in the EU, compared with an average of 21% in the other EU Member States. The Luxembourg VAT regime furthermore exempts management services from VAT provided to investment funds. Since July 2013, the exemption has been available for all alternative investment funds covered by the AIFM Law, including unregulated funds. This exemption is applicable on portfolio management, risk management, advisory services and administrative services. Due to this exemption and the low VAT rate, the VAT burden of SICARs, SIFs, RAIFs, EuVECAs and other alternative investment funds is very limited. This exemption is however not available to SOPARFIs unless they qualify as an AIF.

Assuming their activity is limited to the ownership of shares, SOPARFIs are not obliged to register for VAT except in the unlikely case they acquire goods from abroad. They cannot recover the VAT incurred on their costs.

Luxembourg has no “use and enjoyment” rule obliging, as in some Member States, holding companies, which are not VAT taxable persons, to self-assess the local VAT on services received from non EU service providers without allowing the deduction of this VAT.

A Freeport, operational since September 2014, in the vicinity of the Luxembourg airport, benefits from the VAT-free zone regime on transactions in valuable goods, including their storage. Certain types of investment funds (i.e. passion funds, investing into art and other collectibles) may take advantage of the Freeport.

### Registration duty and transfer taxes

A fixed registration duty of EUR 75 is due upon incorporation and modification of the articles of incorporation of a Luxembourg company or upon transfer of the statutory seat or place of central administration of a company to Luxembourg.

Transfer taxes on the sale of local real estate amount to 7% or 10%.

### Tax treatment of carried interest

In the AIFM, a regime for the taxation of carried interest from AIFs was also introduced.

The share of profits derived from an AIF and paid to AIFM employees is taxable as miscellaneous income, i.e. either as ordinary income (up to 45.78% for 2018), or as extraordinary income (up to 22.89% for 2018). However, if the employee satisfies certain conditions, the carried interest would be taxable at one quarter of the global tax rate.

The conditions to be fulfilled are:

- The recipient was neither resident in Luxembourg nor subject to Luxembourg tax on his/her professional income during the 5 preceding years;
- The recipient becomes Luxembourg tax resident;
- No advance payments were received by the recipient;
- The entitlement to carried interest is conditional on the investors having priority in recovering their initial investment.

The individual can benefit from this tax treatment for up to 10 years after having started his/her professional activity in Luxembourg.

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The beneficial tax rates do not apply to capital gains realised on the sale of interests in the AIF, which are subject to standard capital gains rules.

Capital gains realised on investments in an AIF, including in carried interest rights may, under certain conditions, benefit from the general capital gains regime, which is usually very favourable for Luxembourg resident individuals. Indeed, capital gains on investments are generally exempt from income tax, provided that:

- the investment is not considered as a “significant” shareholding (i.e. it does not exceed 10% of the share capital of the issuer), and
- the investment is not considered as “speculative” (i.e. it is not disposed of within six months of its acquisition).

### Implications of OECD BEPS project

In February 2013, the Organization for Economic Development (OECD) issued a report entitled “Addressing Base Erosion and Profit Shifting” (BEPS), followed by an action plan with 15 actions in July 2013 (Action Plan). The BEPS project is supported by the G20 and is not limited to OECD member countries only, but also includes a number of developing countries. The Action Plan is intended to prevent taxpayers operating internationally from shifting profits to low- or no-tax jurisdictions and thereby reducing their tax base. While BEPS was not aimed at the fund sector, many of the actions and recommendations will likely have an impact on private equity and venture capital funds and/or their portfolio companies. The recommendations include rules to deal with hybrid instruments and entities, a review of harmful tax practices of Member States and associated countries, a framework for mandatory spontaneous information exchange on tax rulings covering certain regimes, rules against treaty abuse as well as an update of transfer pricing rules for intangible assets. In addition, groups would be required to draw up a “country-by-country-report” that is to be made available to tax authorities and should allow tax authorities to

get a more global view on a group’s worldwide operations, also functioning as a risk-assessment tool.

Many countries have started to consider or are already implementing some of the solutions suggested by the OECD. Many of the recommendations are primarily targeted at multinationals seeking to minimise their tax burden, rather than through-bound investment and financing structures typically used by private equity. There may be an effect on the businesses into which private equity funds invest, however the primary areas, for example deduction of interest expense and transfer pricing, had already been the subject of focus by many of the key larger economies. It will therefore be important to regularly review existing structures to ensure they are not adversely affected by tax law changes implemented as a result of the BEPS project.

In terms of the most recent implementation of some of the OECD BEPS Actions, two sets of rules are worth mentioning:

- In 2017, Luxembourg was one of the jurisdictions to sign the OECD Multilateral Convention to Implement Tax Treaty Related Measures to Prevent BEPS as promoted by the OECD BEPS Action 15 and commonly referred to as the “Multilateral Instrument” or “MLI”. On 3 July 2018, the Luxembourg Government introduced the draft law No 7333 aiming at approving the text of the MLI. Should Luxembourg ratify the MLI and deposit the ratification instrument with the OECD before 1 October 2018, changes introduced by the MLI would start to take effect as from 1 January 2019.
- Two EU Directives introducing anti-tax avoidance measures: EU Directive 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market (ATAD) and EU Directive 2017/952 of 29 May 2017 amending ATAD as regards hybrid mismatches with third countries (ATAD 2) will be transposed in Luxembourg tax law as detailed in the below paragraph.

## 4. Luxembourg tax environment

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### Transposition of the Anti-Tax Avoidance Directive:

The Council Directive (EU) 2016/1164 of 12 July 2016 laying down rules against tax avoidance practices that directly affect the functioning of the internal market will be transposed in the tax legislation of the EU Member States thus introducing new rules or modifying existing rules on limitation of deduction of interest expenses, exit taxation, general anti-avoidance, controlled foreign companies and hybrid instruments. In Luxembourg, the draft law n° 7318 transposing the above mentioned EU Directive has been filed with the Luxembourg Parliament on 19 June 2018. These rules are to be introduced in the Luxembourg tax legislation by the end of 2018 for an application as from 2019.

It is important to consider these new rules to review the existing structures and to anticipate their effects upon the implementation of new structures.

In addition, a Council Directive (EU) 2017/952 of 29 May 2017 amending Directive (EU) 2016/1164 as regards hybrid mismatches with third countries will also have to be transposed in the respective legislations of EU Member States in the coming years.

It is thus important to already consider these new rules on hybrid mismatches and anticipate their effects.

### 4.2. Miscellaneous charges and fees

#### Chamber of Commerce fee

All Luxembourg commercial companies are subject to an annual contribution (cotisation) ranging from 0.02% to 0.025% based on the relevant taxpayer's profit generated in the penultimate fiscal year before the relevant contribution generating year. This contribution is capped at EUR 3,000 for SOPARFIs, however the company in question must be coded with the correct NACE code in order to benefit from this cap.

#### CSSF fees

Prudential oversight comes at a cost to the entities supervised:

Authorisation: EUR 4,000 for single-compartment structures and EUR 7,000 for multi-compartment structures.

Annual fee: for single-compartment structures EUR 4,000. In case of SIFs, for multi-compartment structures the charge varies according to the number of compartments:

- 1-5 compartments: EUR 8,000
- 6-20 compartments: EUR 15,000
- 21-50 compartments: EUR 24,000
- More than 50 compartments: EUR 35,000

The annual fee for SICARs is fixed at

- EUR 4,000 (single-compartment) and
- EUR 8,000 (multi-compartment).

A RAIF or a SOPARFI are not subject to any supervision by the CSSF and no CSSF fees apply.

### 4.3. Personal taxation

Luxembourg is one of the EU Member States with the most stable and rewarding tax framework and lowest security charges for individuals.

#### Social security

Social security contributions are computed on the annual gross remuneration capped at EUR 119,915.16. In 2018, self-employed persons are subject to social security contributions ranging from 24.36 to 27.35% (depending on the level of mutual insurance contribution, if any);



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the social security contributions are capped, i.e. they apply up to an annual gross remuneration of EUR 119,915.16 (at index 794.54).

In addition, employees and self-employed persons are subject to a 1.4% care insurance contribution (*assurance dépendance*) assessed on their annual gross professional income (uncapped). This dependency contribution applies to all income (and not only to employment or self-employed income) in the hands of taxpayers who are subject to the Luxembourg mandatory State social security regime.

### Income tax

Resident taxpayers are subject to income tax on their worldwide income. Non-resident taxpayers are only subject to income tax on Luxembourg-sourced income. Taxable income is assessed on the basis of total income less exemptions, deductible expenses and allowances. The law provides for many exemptions and deductions especially for families with children. Income tax is progressive with rates between 0% and a maximum 42% and is assessed on the basis of the taxpayers' family status. This tax rate is itself increased by an employment fund contribution of 7% or 9% (depending on the family status and level of income) resulting in a top maximum marginal rate of 45.78% (plus a 1.4% care insurance contribution).

In principle personal tax is assessed on the basis of an annual tax return that must be lodged by taxpayers. A withholding tax is levied on employment income (progressive withholding tax scale) and director's fees (20% flat withholding under conditions). Withholding taxes on employment income and director's fees are creditable against the taxpayer's final income tax liability.

A special regime for highly skilled workers ("HSWs"), who are seconded to a Luxembourg undertaking belonging to an international group or are recruited from abroad by a Luxembourg undertaking, has been applicable since 1 January 2011. This special regime, granted for a maximum 5-years period,

consists - subject to certain conditions – of an exemption from Luxembourg personal income tax on certain expenses and allowances paid to or on behalf of HSWs due to their expatriation. However these expenses and allowances remain tax deductible costs for the Luxembourg undertaking.

### Net wealth tax

There is no net wealth tax for individuals.

### Inheritance/Gift tax

Inheritance tax is due on the value of all property inherited from a Luxembourg resident whereas transfer tax is due on the value of real property located in Luxembourg that is inherited from a non-resident.

Where the heir is a direct descendant or a spouse with children, there is in principle no inheritance tax liability.

Gift tax rates vary according to the degree of kinship between the donor and the donee, ranging from 1.8% to 14.4%.

Summary of tax-related features:

- Attractive effective tax rates;
- Broad participation exemption regime;
- Significant exemptions from withholding tax on dividends;
- No withholding tax on interest, royalties and liquidation proceeds;
- No capital/stamp duties on the sale of shares in a Luxembourg company;
- Use of international exchange of information standards;
- Extensive double tax treaty network;
- Transfer pricing and thin capitalization adhering to international standards;
- Advance tax clearance;
- Specific tax regimes for investment funds, securitisation activities, risk capital and reinsurance;
- Competitive personal income tax regime and low social security contributions for employers and employees.



## 5. Accounting framework for Luxembourg private equity and venture capital vehicles

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### 5.1. Accounting standards and audit requirements

Luxembourg vehicles may choose to adopt Luxembourg Generally Accepted Accounting Principles (“Lux GAAP”) or International Financial Reporting Standards (“IFRS”) as adopted by the EU.

Limited Partnerships (SCSp) are allowed to apply any accounting principles as described in their Limited Partnership Agreement (“LPA”) and will therefore be allowed to use Lux GAAP, IFRS, UK GAAP, US GAAP or “Other GAAP”.

Other unregulated vehicles (SARL, SA, SCA) are subject to the requirements of the 1915 Law and therefore are required to prepare their annual accounts in compliance with Lux GAAP or IFRS. A derogation can be granted in special cases, as ruled by Art. 27 of the Law of 19 December 2002, as amended.

In practice, the standalone annual accounts of Luxembourg private equity and venture capital vehicles are very frequently prepared in accordance with Lux GAAP whereas consolidated annual accounts (whether legally required – see below – or contractually required – for example as a consequence of raising external financing) are frequently prepared under IFRS as adopted by the EU.

Through its international exposure, Luxembourg service providers have significant experience in the application of IFRS.

Note that while most companies are required to prepare annual accounts there are specific size thresholds that will determine if an audit by an approved statutory auditor (*Réviseur d’entreprises agréé*) under International Standards on Auditing (“ISA”) is required by law.

The audit of the annual accounts is required for regulated vehicles, for the RAIF and in general when at balance sheet date the company exceeds the limits of two of the following three criteria, for two years in a row:

- balance sheet total: 4.4 million EUR
- net turnover: 8.8 million EUR
- average number of full-time staff employed during the financial year: 50

Since interest, dividend income and capital gain don’t qualify as net turnover, in many cases no legal audit would be required for unregulated investment vehicles, though an audit might be required by the LPA.

### 5.2. Valuation rules

Luxembourg accounting rules have always been a primarily historical cost prudence-focused framework permitting the booking of investments at cost less durable impairment with the recognition only of unrealised losses and not of unrealised gains in the profit and loss accounts of a company. With the introduction of the regulated vehicles (SIFs and SICARs), of the new limited partnership regime and with the harmonisation derived from recent EU accounting directives, the possibility of using fair value in the financial statements of Luxembourg companies has been introduced.

With regard to unregulated partnerships (SCS and SCSp) the valuation policy has to be defined within the accounting policies determined in the LPA.

Companies adopting IFRS as an accounting framework have to apply valuation policies depending on the type of instruments being valued.

The Lux GAAP accounting framework allows a certain level of additional flexibility and possible choices as outlined in the table below:



## 5. Accounting framework for Luxembourg private equity and venture capital vehicles

| Type of vehicle/<br>Regulatory framework     |  | Valuation under Lux GAAP  |
|--|--|---|
| SIF (CSSF regulated)                         |  | SIFs are required to account for investments at fair value unless their constitutional documents specify otherwise. It is good practice that the prospectus of the fund includes detailed explanations with regard to the valuation methodologies adopted.  |
| SICAR (CSSF regulated)                       |  | SICARs are obliged to account for their investments at fair value.  |
| RAIF<br>(indirectly supervised via its AIFM) |  | RAIFs are required to account for investments at fair value unless their constitutional documents specify otherwise. It is good practice that the prospectus of the fund includes detailed explanations with regard to the valuation methodologies adopted.   |
| SOPARFI<br>(unregulated)                     | Limited Partnerships<br>(SCS and SCSp)           | The valuation rules to follow can be freely determined in the limited partnership agreement. In practice, these rules will follow internationally recognised principles for determining fair value and methodologies.   |
|  | Other unregulated<br>vehicles (SARL, SA,<br>SCA) | Valuation rules are governed by the Law of 19 December 2002, as amended.<br><br>There are two valuation options:<br>a) Acquisition cost decreased by any durable impairment<br>b) Fair Value (the so called "fair value option")<br><br>The choice of which method to use is determined by the management of the company. |

The most widely accepted valuation methods are the ones set forth by the International Accounting Standard Board (IFRS13),

by Invest Europe and by the International private equity and venture capital board (IPEV).

### 5.3. Consolidation

#### 5.3.1. Regulated and indirectly supervised vehicles

The SICARs, the SIFs and the RAIFs are specifically exempted by law from the consolidation requirement.

#### 5.3.2. Unregulated vehicles

The Luxembourg law requires that limited liability companies, as well as the SCS (in the case in which its unlimited liability partners are set up as limited liability companies), that control another company prepare and publish consolidated financial statements. SCSp are not required to draft consolidated financial statements. When consolidated financial statements are required, most companies opt for their preparation to be done in Luxembourg, either internally or through specialised service providers.

Consolidation exemptions are foreseen in the following cases:

#### ■ Exemptions

##### 1. The private equity and venture capital consolidated exemption (Art. 1711-8 of the 1915 Law):

In December 2009, the Luxembourg Ministry of Justice, through the Accounting Standards Board, issued a recommendation relating to the "subsequent resale" exclusion that allows private equity companies (for which all their subsidiaries are held for subsequent resale) not to present consolidated financial statements if six conditions are fulfilled:

- The company is subject to the 1915 Law and is held by one or more well-informed investor(s);
- The company's exclusive corporate object is to invest in risk capital, which is defined as direct or indirect contribution of funds to

- one or several entities in view of their launch, development or their listing on a stock exchange. These investments are held with the intention to sell them at a profit;
- c) An ex-ante exit strategy has been formally defined and documented in writing, communicated to investors, and it is part of the investment policy, implying the intention to divest on a mid-term basis (generally 3 to 8 years);
  - d) The company's objective is to provide its investors with the benefit of the results of the management of its investments in return for the risk which they incur;
  - e) If the investments are not carried at fair value on the face of the balance sheet, the fair value is disclosed in the notes to the financial statements;
  - f) Any event, guarantee or uncertainty that might have a significant impact on the entity's ability to continue as a going concern, on its cash-flow situation, on its available liquidities or on its solvency has to be disclosed adequately in the notes to the annual accounts.
- 2. Sub-group exemption (Art. 1711-5 of the 1915 Law):** Any parent company which is also a subsidiary undertaking is exempted from the obligation to draw up consolidated accounts and a consolidated annual report if its parent undertaking is governed by the law of a Member State of the EU. This exemption is not applicable if the Luxembourg parent company has its securities (shares and/or bonds) listed on an EU regulated market.
- 3. Threshold exemption (Art. 1711-4 of the 1915 Law):** Consolidation is not required for parent companies of groups which do not exceed, on a consolidated basis, the limits of two of the three following criteria:
- balance sheet total: 20 million EUR
  - net turnover: EUR 40 million EUR
  - average number of full-time staff employed during the financial year: 250.

The "threshold exemption" is not applicable in case the relevant company has its securities (shares and/or bonds) listed on an EU regulated market.

- 4. Financial Holding exemption:** no consolidation is required if the parent company has not intervened in the management of the subsidiary, has not exercised its voting rights in respect of the appointment of the management within the current and the last 5 years, has not granted loans to the subsidiary and, if the conditions were met, has received an exemption granted by the Luxembourg authorities. This exemption is quite rare in practice.

■ **Exclusion of specific investments**

Specific investments may be excluded from the consolidation requirement if they meet one of five possible exclusions as set out by the 1915 Law.

These are: immateriality, severe restrictions or disproportionate costs on obtaining financial information, subsequent resale or diverging activities.

However, in these cases, the consolidated accounts will still have to be published in Luxembourg according to the local requirements.

■ **IFRS Exemption from Consolidation**

Under IFRS 10, an entity is exempted from consolidating its subsidiaries if it qualifies as an "investment entity".

An investment entity is defined as an entity that:

- Obtains funds from one or more investors for the purpose of providing those investor(s) with investment management services;
- Commits to its investor(s) that its business purpose is to invest funds solely for returns from capital appreciation, investment income or both and;
- Measures and evaluates the performance of substantially all of its investments on a fair value basis.

An investment entity is required to account for its investments at fair value through profit or loss.

## 5. Accounting framework for Luxembourg private equity and venture capital vehicles

### 5.4. Distributions

Profit repatriation is a key element to be considered upon the implementation of a private equity structure. The definition of the final structure will depend on the selection of

the adequate type of structure (regulated/ non-regulated) and the adequate types of financial instruments respectively at investment and investors' level.

| SIF<br>(CSSF regulated)   | SICAR<br>(CSSF regulated)   | RAIF<br>(indirectly supervised via its AIFM)   | Holding company (unregulated)   |   |
|---|---|--|---|---|
|   |   |  | Limited partnerships<br>(SCS – SCSp)  | Other unregulated vehicles (SARL, SA, SCA)  |
| Distributions to investors (*) are not subject to specific restrictions except for the compliance with minimum capital requirements and limitations provided for in the constitutional documents. | Distributions to investors are not subject to specific restrictions except for the compliance with minimum capital requirements and limitations provided for in the constitutional documents. | Distribution to investors are not subject to specific restrictions except for the compliance with minimum capital requirements and limitations provided for in the constitutional documents. | Distributions to investors, as well as the conditions under which the SCS and the SCSp may request their restitution, are subject to the LPA. Unless the LPA provides otherwise, each members' share in the partnership's gains and losses is proportional to its interests.  | Distribution of dividends are subject to the requirements of the 1915 Law.  |
| Distributions, whether paid to resident or non-resident investors, are not subject to withholding tax in Luxembourg.  | Distributions, whether paid to resident or non-resident investors, are not subject to withholding tax in Luxembourg.  | Distributions, whether paid to resident or non-resident investors, are not subject to withholding tax in Luxembourg.   | The applicable regime provides for full tax neutrality and tax transparency, subject to certain conditions:<br><ul style="list-style-type: none"> <li>- the GPs of the SCS/ SCSp taking the form of a Luxembourg limited company should hold</li> <li>- less than 5% of interest in the SCS/ SCSp</li> </ul> Moreover, the activity of the SCS and SCSp should be limited to private wealth management. | Except for specific situations, no withholding tax should apply to liquidation proceeds or interest payments. Dividend payments are subject to 15% withholding tax (exemptions are available under certain conditions). |

(\*) For vehicles with variable capital, the Luxembourg manager should pay attention to the qualification of distributions between return of capital and income. This analysis should take into account the specific tax situation of the investors in the various countries in which they are tax residents.

*ALFI cannot be held responsible for any errors or omissions or for the results obtained from the use of the information contained in this brochure. Interested parties should seek the advice of qualified professionals before making any decision as to the most appropriate Luxembourg private equity or venture capital structure.*

## Appendix I – comparative table of legal structures

The following tables provide a comparison of the main features of the most popular corporate forms:

|   | Common/special Limited partnership (SCS/SCSp)  | Corporate partnership limited by shares (SCA)  | Private limited company (SARL)  | Public limited company (SA)  | Simplified limited company (SAS)   |
|---|--|--|---|--|--|
| <b>Incorporation</b>  | Notarial deed not required   | Notarial deed required   | Notarial deed required  | Notarial deed required   | Notarial deed required   |
| <b>Minimum capitalisation (at incorporation/ launching) (EUR or equivalent in another currency)</b> | No capital required  | EUR 30,000   | EUR 12,000  | EUR 30,000   | EUR 30,000   |
| <b>Shares/interests/ beneficiary units/capital accounts</b>   | Registered partnership interests only or capital accounts  | Dematerialised or registered <sup>(1)</sup> , voting or non-voting shares, beneficiary units (with or without voting rights)           | Registered shares only, beneficiary units (with or without voting rights) | Dematerialised or registered <sup>(1)</sup> , voting or non-voting shares, beneficiary units (with or without voting rights) | Dematerialised or registered <sup>(1)</sup> , voting or non-voting shares, beneficiary units (with or without voting rights) |
| <b>"Tracking shares"</b>  | Yes (subject to terms of the partnership agreement)  | Yes  | Yes   | Yes  | Yes  |
| <b>Share Classes</b>  | Yes  | Yes  | Yes   | Yes  | Yes  |
| <b>Shareholders</b>   | Limited partners: ≥ 1<br>Unlimited partners: ≥ 1   | Limited partners: ≥ 1<br>Unlimited partners: ≥ 1   | 1 to 100  | ≥ 1  | ≥ 1  |
| <b>Transfer of shares/ interests</b>  | Freely determined by the partnership agreement   | Shares of limited partners freely transferable – shares of unlimited partners transferable subject to certain conditions               | Subject to certain conditions being shareholders' prior consent           | Free, subject to restrictions set out in articles of incorporation   | Free, subject to restrictions set out in articles of incorporation   |
| <b>Liabilities</b>  | Limited partners' liabilities:<br>Limited to the amount of their participation<br>Managing general partner(s)' liability:<br>Unlimited | Limited partners' liabilities:<br>Limited to the amount of their participation<br>Managing general partner(s)' liability:<br>Unlimited | Shareholders' liability is limited to the amount of their participation   | Shareholders' liability is limited to the amount of their participation  | Shareholders' liability is limited to the amount of their participation  |

<sup>(1)</sup> In practice, bearer shares are not advisable, because bearer shareholders will need to be registered with a professional depository, which holds the shares on behalf of the shareholder and keeps a register of the bearer shareholders.



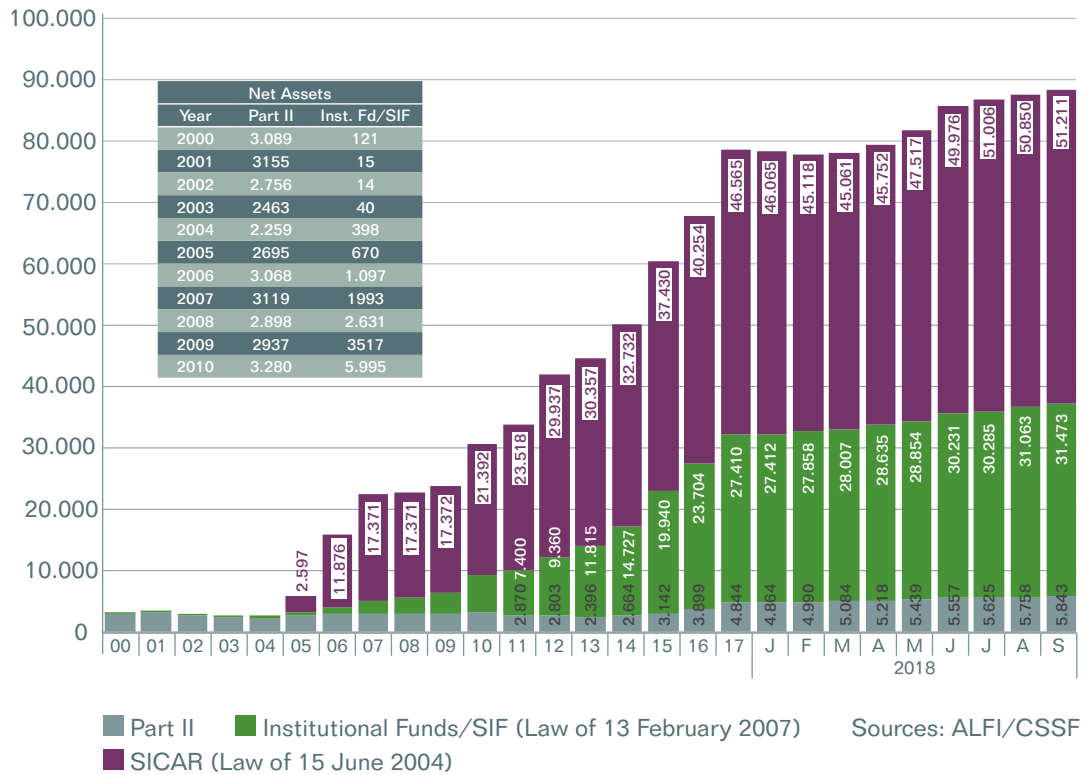
## Appendix I – comparative table of legal structures

|                                      | Common/special Limited partnership (SCS/SCSp)                               | Corporate partnership limited by shares (SCA)   | Private limited company (SARL)   | Public limited company (SA)   | Simplified limited company (SAS)  |
|--------------------------------------|---|---|--|---|---|
| Listing of shares                    | No  | Yes   | No   | Yes   | No  |
| General meeting                      | Modalities freely set in the partnership agreement                          | 1 annual general meeting required   | 1 annual general meeting required if the number of members/ partners is $\geq 60$  | 1 annual general meeting required   | Modalities freely set in the articles of incorporation  |
| Management                           | $\geq 1$ manager which does not have to be an unlimited partner             | $\geq 1$ manager which does not have to be an unlimited partner   | $\geq 1$ manager<br><br>If several managers, may be structured as a board, possibility to put in place a daily manager, ad hoc committee | One-tier management structure with a board of $\geq 3$ directors (if there is more than one shareholder) or two-tier management structure with a management board and a supervisory board<br><br>Possibility to put in place an executive committee or a chief executive, a daily manager, ad hoc committee | Managed by a chairman (president) possibility to delegate the chairman's powers to one or more officers (directors) |
| Amendments to constitutive documents | By all the partners, unless otherwise provided in the partnership agreement | Same as the SA, but the unlimited partner has a veto right (unless contrary provision in the articles of incorporation) | By a majority of the shareholders representing at least $3/4$ of the share capital   | By a quorum representing at least $1/2$ of the share capital at first call and a $2/3$ majority of shareholders   | Quorum and majority freely set in the articles of incorporation   |
| Accounts                             | Limited accounting obligation   | Annual  | Annual   | Annual  | Annual  |
| Statutory auditor                    | Required only for large companies (see section 5.1 of this brochure)        | Required only for large companies (see section 5.1 of this brochure)  | Required only if the number of partners is $\geq 60$   | Required  | Required  |
| Independent auditor's report         | Required if certain size thresholds are exceeded                            | Required if certain size thresholds are exceeded  | Required if certain size thresholds are exceeded   | Required if certain size thresholds are exceeded  | Required if certain size thresholds are exceeded  |

## Appendix II – statistics

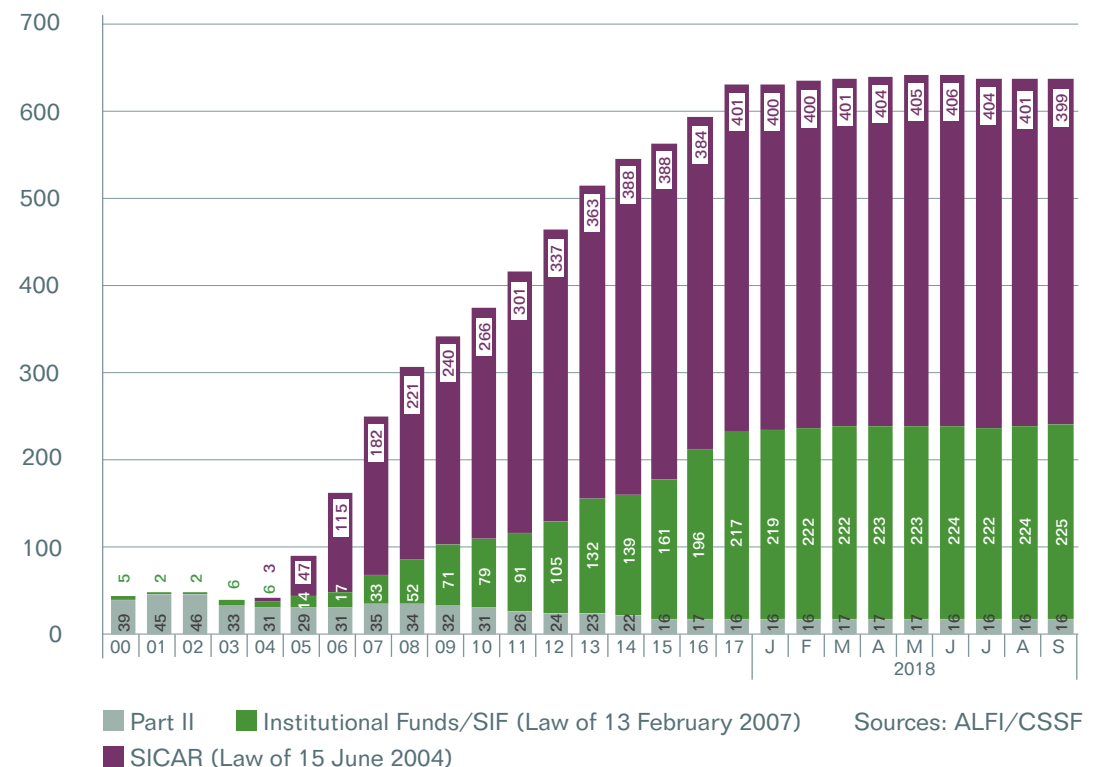
### Assets under management in Luxembourg private equity and venture capital funds (included SICARs)

EUR million



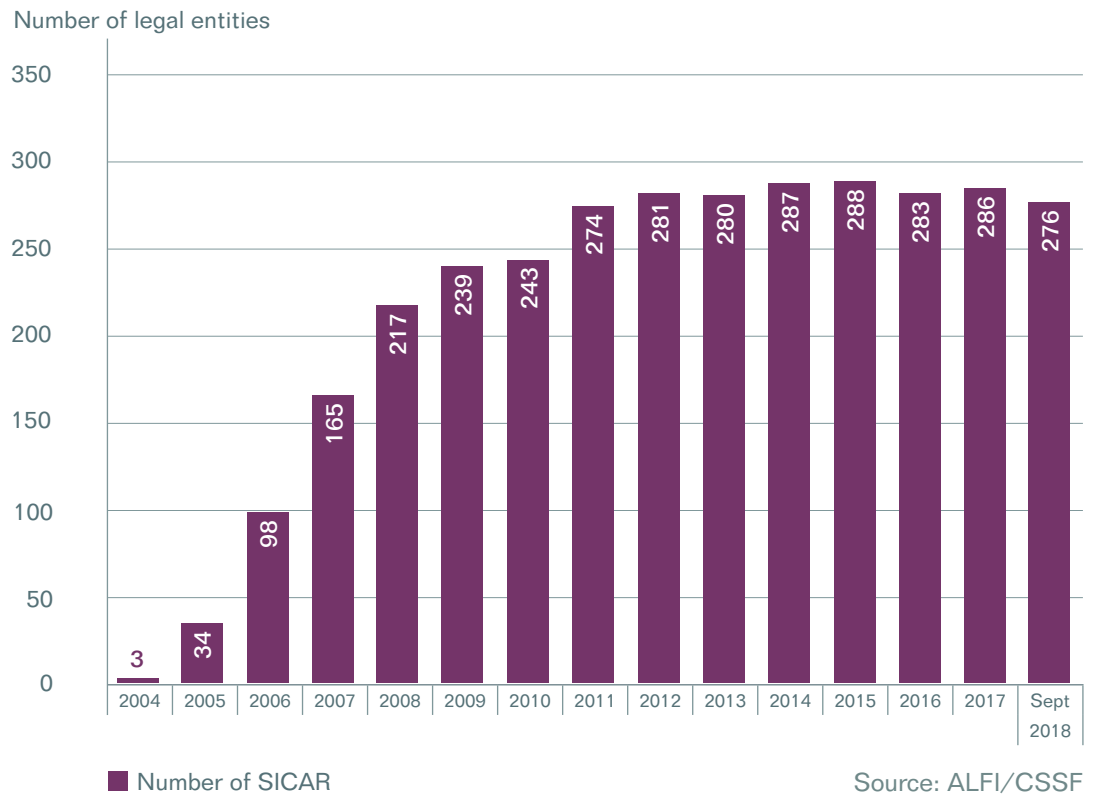
### Number of Luxembourg private equity and venture capital units (included SICARs)

Fund units

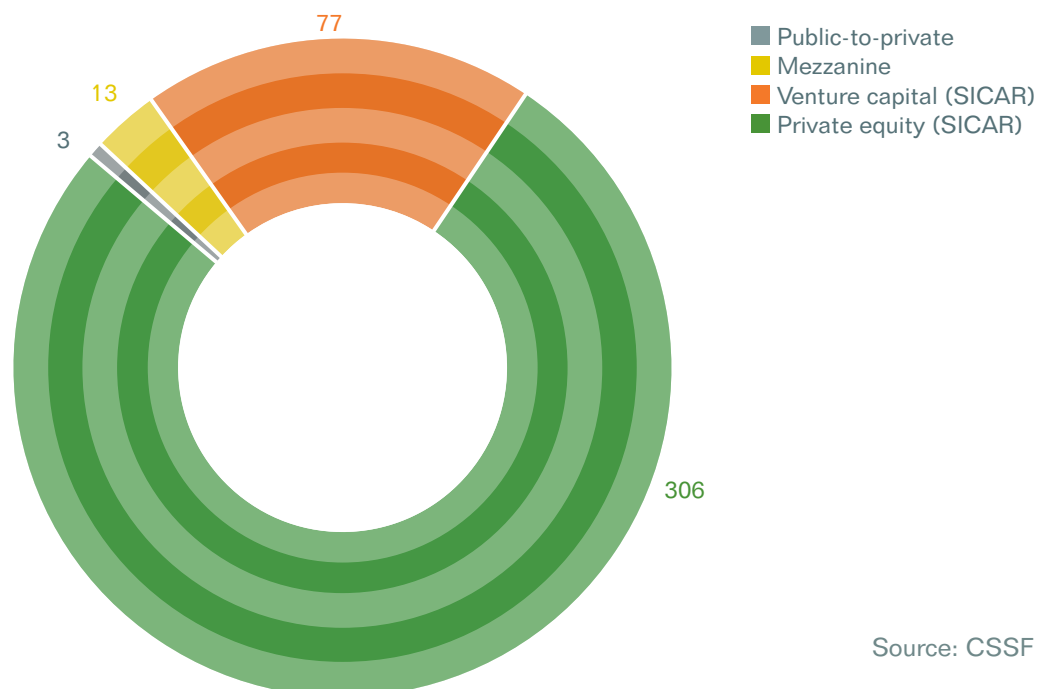


For the regulated SICARs, EuVECAs and SIFs, which will be described in further detail in section 4, the following figures have been published by the Luxembourg supervisory authority of the financial sector, the CSSF.

Growth in the number of SICARs since 2004

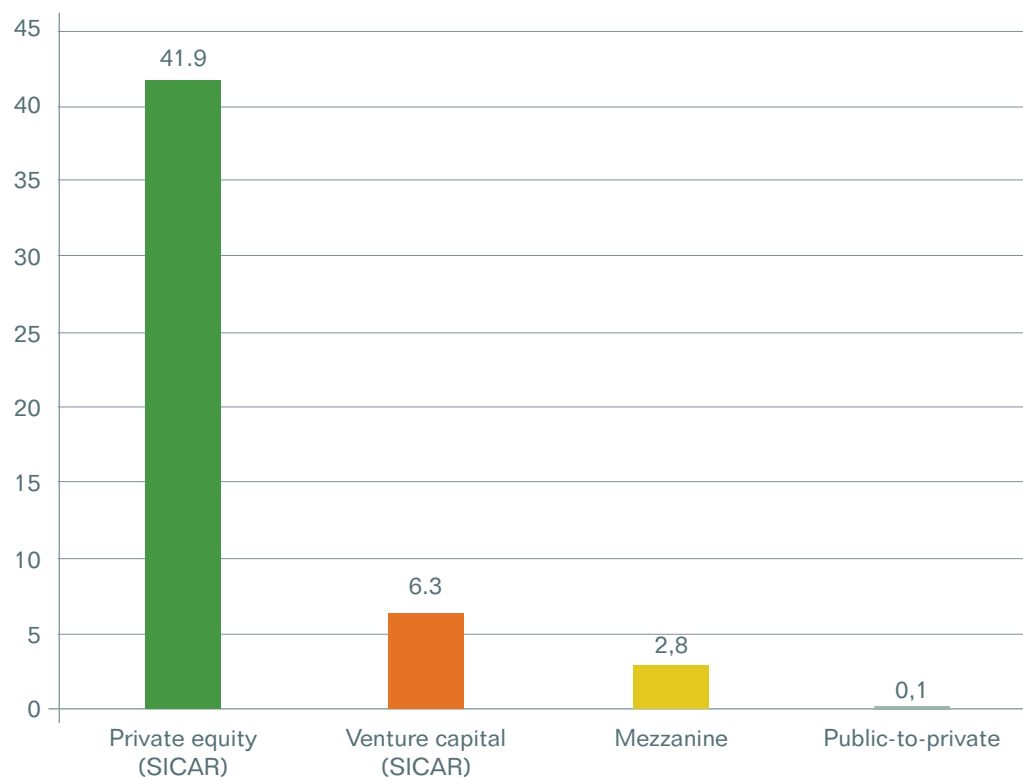


Investment policy of Luxembourg SICAR units in 2018  
(by number of SICAR units)



## Breakdown of SICARs net assets by investment policy

(in million EUR)



Source: CSSF

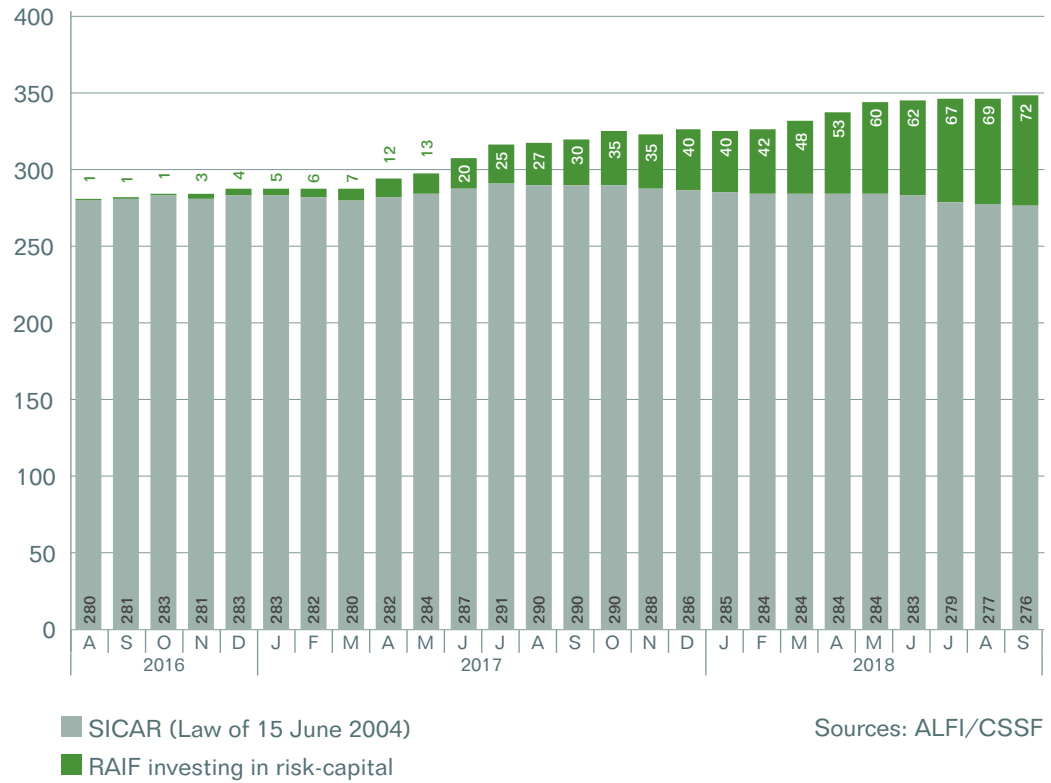
## Geographical origin of SICAR initiators

| Country      | Net assets in EUR million | in %        | Number of fund units | in %        |
|--------------|---------------------------|-------------|----------------------|-------------|
| LU           | 13.910                    | 27,2%       | 46                   | 11,4%       |
| FR           | 10.163                    | 19,8%       | 77                   | 19,3%       |
| CH           | 7.971                     | 15,6%       | 95                   | 23,8%       |
| US           | 7.694                     | 15,0%       | 27                   | 6,8%        |
| BE           | 2.478                     | 4,8%        | 18                   | 4,5%        |
| DE           | 1.773                     | 3,5%        | 28                   | 7,0%        |
| ES           | 1.140                     | 2,2%        | 23                   | 5,8%        |
| PT           | 867                       | 1,7%        | 5                    | 1,3%        |
| IT           | 723                       | 1,4%        | 15                   | 3,8%        |
| GB           | 469                       | 0,9%        | 9                    | 2,3%        |
| Other        | 4.023                     | 7,9%        | 56                   | 14,0%       |
| <b>Total</b> | <b>51.211</b>             | <b>100%</b> | <b>399</b>           | <b>100%</b> |

Source: CSSF, September 2018

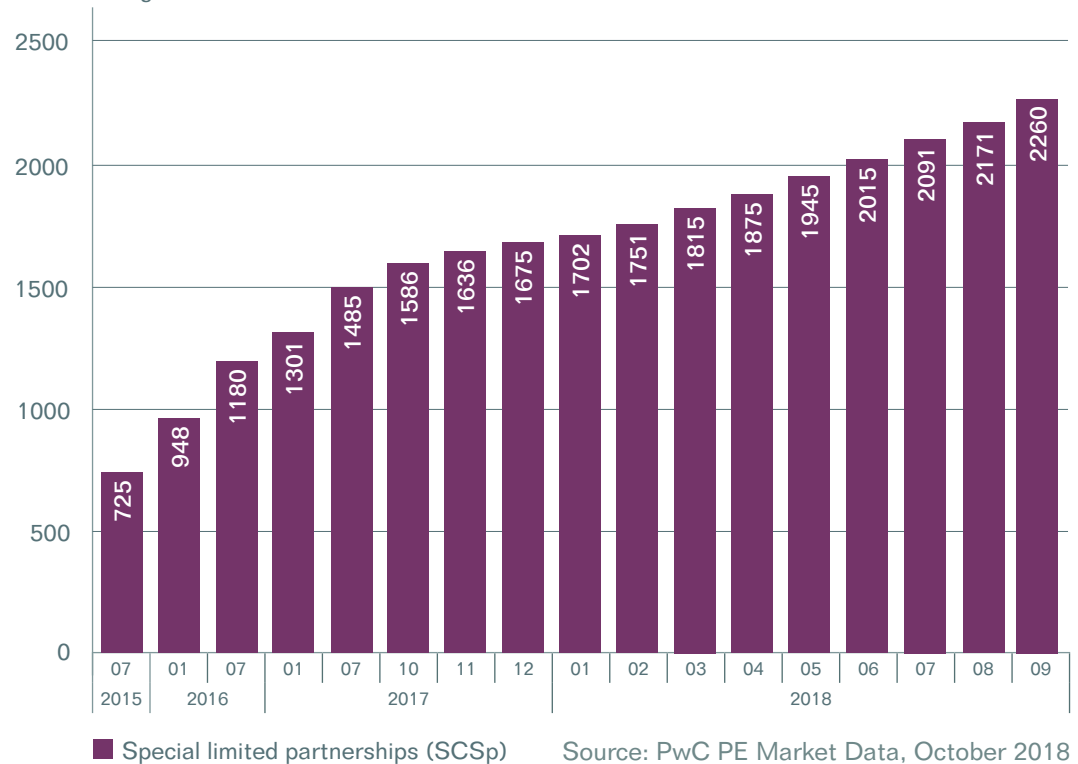
Number of SICARs and RAIFs investing in risk-capital since the introduction of the RAIF law in August 2016

Number of legal entities



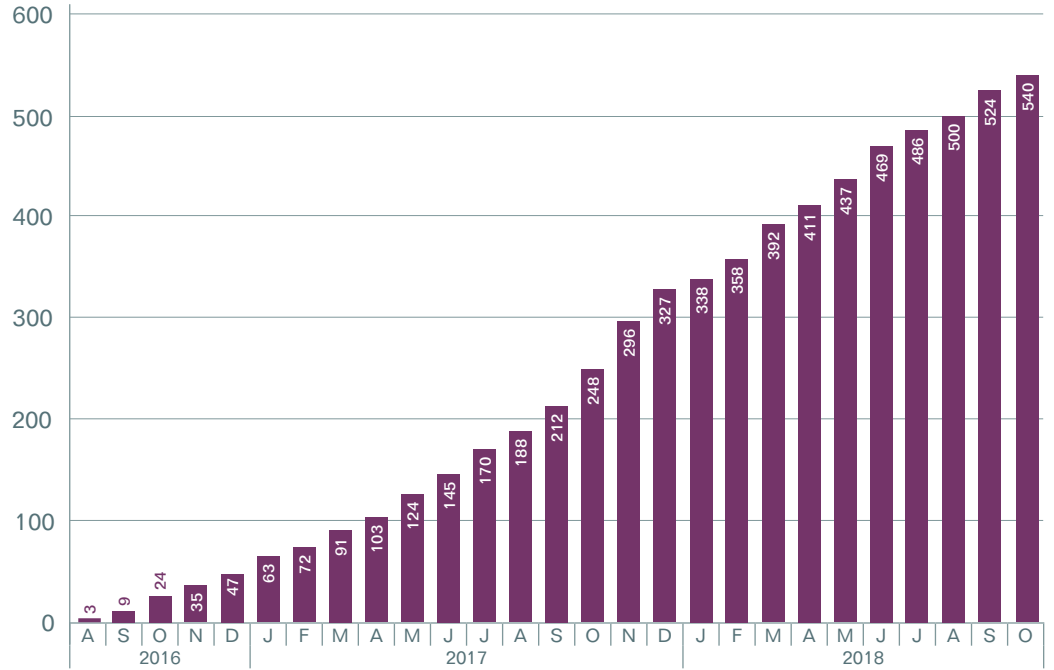
SCSp evolution in Luxembourg

Number of legal entities



## RAIFs evolution in Luxembourg

Number of legal entities

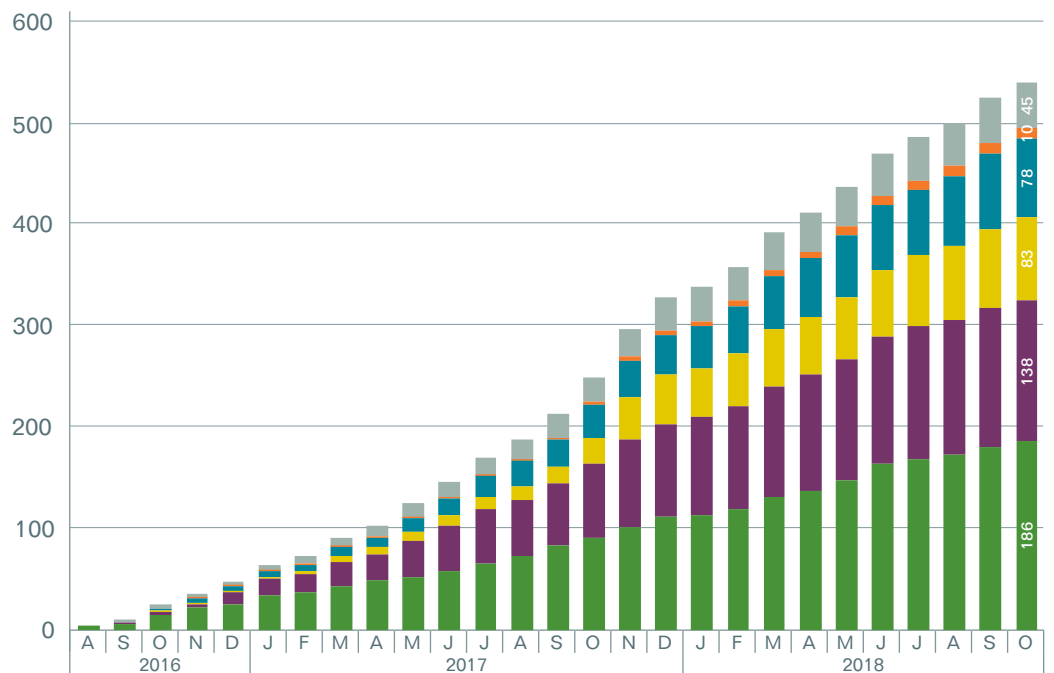


Reserved Alternative Investment Funds (RAIF)

Source: ALFI

## RAIFs registrations split by legal structure

Number of legal entities



FCP SARL SCSp SCS SA SCA

Source: ALFI





|                               |   |
|-------------------------------|---|
| <b>1915 Law</b>               | Law of 10 August 1915 on commercial companies, as amended   |
| <b>AIF</b>                    | Alternative Investment Fund as defined in the AIFMD Law   |
| <b>AIFMD</b>                  | Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010   |
| <b>AIFM Law</b>               | The Law of 12 July 2013 implementing Directive 2011/61/EU into Luxembourg law, as amended   |
| <b>Capital Call</b>           | Written notice to Limited Partners requesting them to make a capital contribution to the fund vehicle (within the limits of their subscription commitment) in order to permit the fund vehicle to pay for its investments or to pay expenses  |
| <b>Carried Interest</b>       | Carried interest or carry is a share of the profits of the fund vehicle that is paid to the general partner and/or the investment manager/ advisor in excess of the amount that the general partner/manager/ advisor contributes to the fund vehicle. In order to receive carried interest, the fund vehicle must first return all capital contributed by the investors, and, in certain cases, the fund must also return a previously agreed-upon rate of return (the “hurdle rate” or “preferred return”) to investors                                      |
| <b>CSSF</b>                   | <i>Commission de Surveillance du Secteur Financier</i> , the Luxembourg supervisory authority of the financial services sector  |
| <b>EuVECA</b>                 | European venture capital fund or manager, governed by Regulation (EU) No. 345/2013 on European venture capital funds  |
| <b>FCP</b>                    | <i>Fonds Commun de Placement</i> , an undivided co-ownership of assets or proprietorship managed by a management company  |
| <b>GP</b>                     | The general partner of either a corporate partnership limited by shares (SCA), a common limited partnership (SCS) or a special limited partnership (SCSp). The managing general partner is normally jointly and severally liable with the partnership for any liabilities which may not be satisfied out of partnership assets  |
| <b>Holdco</b>                 | Holding company   |
| <b>IFRS</b>                   | International Financial Reporting Standards   |
| <b>Internally managed AIF</b> | AIFs should be deemed internally managed when the management functions are performed by the governing body or any other internal resource of the AIF. Where the legal form of the AIF permits internal management and where the AIF’s governing body chooses not to appoint an external AIFM, the AIF is also AIFM and should therefore comply with all requirements for AIFMs under the AIFMD and be authorised as such. For further details on AIFs structured as limited partnerships, please refer to the CSSF’s FAQs concerning the Luxembourg AIFM Law. |
| <b>LP</b>                     | The limited partner, typically an investor or limited shareholder in a fund vehicle; limited partners enjoy limited liability (i.e., up to the amount invested or committed for investment)   |
| <b>LPEA</b>                   | Luxembourg Private Equity & Venture Capital Association   |
| <b>Lux GAAP</b>               | Luxembourg Generally Accepted Accounting Principles, most frequently used accounting framework in Luxembourg for PE vehicles  |
| <b>MiFID</b>                  | Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments   |

|                              |  |
|------------------------------|--|
| <b>PRIIPs</b>                | Packaged Retail and Insurance-based Investment Products governed by Regulation (EU) N° 1268/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for PRIIPs   |
| <b>Professional Investor</b> | An investor meeting the criteria laid down in Annex II of Directive of 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments.  |
| <b>PSF</b>                   | <i>Professionnel du Secteur Financier</i> , a professional of the financial services sector; each PSF is subject to the prior authorisation and ongoing prudential supervision by the CSSF   |
| <b>RAIF</b>                  | Reserved Alternative Investment Fund, a collective investment scheme governed by the law of 23 July 2016 on reserved alternative investment funds  |
| <b>RCS</b>                   | <i>Registre de Commerce et des Sociétés</i> , the Luxembourg register of commerce and companies  |
| <b>Retail Investor</b>       | An investor who is not a professional investor as defined in Annex II of Directive of 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments  |
| <b>SA</b>                    | <i>Société Anonyme</i> ; public limited liability company  |
| <b>SARL</b>                  | <i>Société à Responsabilité Limitée</i> ; private limited liability company  |
| <b>SAS</b>                   | <i>Société par Actions Simplifiée</i> ; simplified limited company   |
| <b>SCA</b>                   | <i>Société en Commandite par Actions</i> ; corporate partnership limited by shares   |
| <b>SCS/CLP</b>               | <i>Société en Commandite Simple</i> ; common limited partnership   |
| <b>SCSp</b>                  | <i>Société en Commandite Spéciale</i> , special limited partnership without legal personality introduced into Luxembourg law by the AIFMD Law  |
| <b>SICAR</b>                 | <i>Société d'Investissement en Capital à Risque</i> , investment company investing in risk capital only  |
| <b>SICAV</b>                 | <i>Société d'Investissement à Capital Variable</i> ; investment company with variable capital  |
| <b>SIF</b>                   | Specialized Investment Fund, a collective investment scheme governed by the law of 13 February 2007 on specialised investment funds, as amended  |
| <b>SOPARFI</b>               | <i>Société de Participation Financière</i> , a mere marketing acronym used to designate an ordinary commercial company governed by the 1915 Law and which is used as a vehicle for holding participations in Luxembourg or foreign companies or other instruments  |
| <b>Subscription Tax</b>      | Also: <i>Taxe d'Abonnement</i> ; a tax of 1 basis point assessed on the net asset value and payable by certain collective investment schemes only  |
| <b>UCI</b>                   | Undertakings for Collective Investments; collective investment schemes governed by the law of 17 December 2010 relating to undertakings for collective investment, as amended  |
| <b>UCITS</b>                 | Undertaking for Collective Investments in Transferable Securities; collective investment schemes organized in accordance with Directive 2009/65/EC of the European Parliament and Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) |
| <b>VAT</b>                   | Value Added Tax  |

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**Well-informed Investor For SICAR and SIF:**

Institutional investor, professional investor or any other investor who meets the following conditions:

- a) investor has confirmed in writing that he adheres to the status of well-informed investor, and
- b) (i) investor invests a minimum of EUR 125,000 in the SIF, or  
(ii) investor has been the subject of an assessment made by a credit institution within the meaning of Directive 2006/48/EC, by an investment firm within the meaning of Directive 2004/39/EC or by a management company within the meaning of Directive 2009/65/EC certifying investor's expertise, experience and knowledge in adequately appraising an investment in the SIF.

**For RAIF:**

Institutional investor, professional investor or any other investor who meets the following conditions:

- a) investor has confirmed in writing that he adheres to the status of well-informed investor, and
- b) (i) investor invests a minimum of EUR 125,000 in the RAIF, or  
(ii) investor has been the subject of an assessment made by a credit institution within the meaning of Regulation (EU) No. 575/2013, by an investment firm within the meaning of Directive 2004/39/EC, by a management company within the meaning of Directive 2009/65/EC or by an authorised alternative investment fund manager within the meaning of Directive 2011/61/EU certifying investor's expertise, experience and knowledge in adequately appraising an investment in the RAIF.



The Association of the Luxembourg Fund Industry (ALFI), the representative body for the Luxembourg investment fund community, was founded in 1988. Today it represents more than 1,400 Luxembourg-domiciled investment funds, asset management companies and a wide variety of service providers including depository banks, fund administrators, transfer agents, distributors, law firms, consultants, tax advisers, auditors and accountants, specialist IT providers and communications agencies.

Luxembourg is the largest fund domicile in Europe and its investment fund industry is a worldwide leader in cross-border fund distribution. Luxembourg-domiciled investment structures are distributed in more than 70 countries around the globe, with a particular focus on Europe, Asia, Latin America and the Middle East.

ALFI defines its mission as to “Lead industry efforts to make Luxembourg the most attractive international investment fund centre”.

Its main objectives are to:

### Help members capitalise on industry trends

ALFI’s many technical committees and working groups constantly review and analyse developments worldwide, as well as legal and regulatory changes in Luxembourg, the EU and beyond, to identify threats and opportunities for the Luxembourg fund industry.

### Shape regulation

An up-to-date, innovative legal and fiscal environment is critical to defend and improve Luxembourg’s competitive position as a centre for the domiciliation, administration and distribution of investment funds. Strong relationships with regulatory authorities, the government and the legislative body enable ALFI to make an effective contribution to decision-making through relevant input for changes to the regulatory framework, implementation of European directives and regulation of new products or services.

### Foster dedication to professional standards, integrity and quality

Investor trust is essential for success in collective investment services and ALFI thus does all it can to promote high professional standards, quality products and services, and integrity. Action in this area includes organising training at all levels, defining codes of conduct, transparency and good corporate governance, and supporting initiatives to combat money laundering.

### Promote the Luxembourg investment fund industry

ALFI actively promotes the Luxembourg investment fund industry, its products and its services. It represents the sector in financial and in economic missions organised by the Luxembourg government around the world and takes an active part in meetings of the global fund industry.

ALFI is an active member of the European Fund and Asset Management Association, of the European Federation for Retirement and of the International Investment Funds Association.

To keep up to date with all the news from the association and the fund industry in Luxembourg, join us on [LinkedIn](#) (The Luxembourg Fund Industry Group by ALFI), [Twitter](#) (@ALFI-funds), [Youtube](#), [Vimeo](#) or visit our website at [www.alfi.lu](http://www.alfi.lu).





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Luxembourg private equity