Luxembourg
Private Equity and Venture Capital
Investment Vehicles
Foreword

This brochure has been prepared jointly by Luxembourg for Finance (LFF) and the Association of the Luxembourg Fund Industry (ALFI) in order to provide general background information on the legal and tax aspects of regulated and unregulated private equity and venture capital vehicles domiciled in the Grand Duchy of Luxembourg.

Luxembourg today offers a whole platform of services and structuring opportunities to the private equity 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), and structures for pan-European private equity and venture capital acquisitions.

Luxembourg based service providers have teams specialised in servicing the private equity and venture capital industry and today offer a wide range of customised services in fund and acquisition structuring, transaction advisory, fund administration, custody and audit services.

This publication is intended to provide comprehensive information on Luxembourg’s state-of-the-art fund vehicle for private equity and venture capital projects, the SICAR, as well as a summary of the key characteristics of other Luxembourg structuring solutions for private equity and venture capital.

LFF and/or 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 structure.
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The context

Luxembourg

Luxembourg has won international recognition as a pre-eminent jurisdiction for structuring private equity and venture capital funds and deals alike.

With the implementation of a dedicated private equity and venture capital investment vehicle, the SICAR (investment company in risk capital - société d’investissement en capital à risque) in 2004, Luxembourg confirmed its commitment to the private equity and venture capital industries.

Financial centre & investment funds centre

With more than 12,000 funds/units and assets under management in excess of 1,700 billion euros at the end of July 2009, Luxembourg is the second most important investment fund domicile in the world after the United States. The Luxembourg fund centre is the prime location for the pan-European and global distribution of investment funds under the “UCITS” brand.

Alternative investment sector

At the same time Luxembourg has developed a strong track record in alternative investment products and bespoke investment structures such as hedge funds, funds of hedge funds, private equity funds and vehicles, real estate funds, securitisation vehicles and pension pooling structures.

Private equity

The ten last years have seen record M&A transactions with massive volumes of European deals backed by private equity firms, many of them structured through Luxembourg investment vehicles. Luxembourg has thus emerged as a prime jurisdiction for the structuring of private equity acquisitions and financings.

Besides the lightly regulated Luxembourg “fund” vehicles such as the SICAR and the SIF, Luxembourg has built its market share thanks to its non-regulated special purpose companies (such as the SOPARFI - financial participation company) which are used for private equity acquisitions and financings alike.

Traditionally, private equity firms have been adverse to submitting their funds to regulation. This was driven by many legitimate factors such as the need for maximum structuring flexibility and a natural propensity towards limited disclosure. Therefore a majority of private equity funds have been incorporated in the form of private limited partnerships in jurisdictions such as the United Kingdom, the Channel Islands, the Cayman Islands, Bermuda or the State of Delaware in the United States.

With the introduction of the SICAR in 2004 and the SIF in 2007, a significant number of international private equity houses have started to shift their fund platforms from certain (unregulated) off-shore centres to Luxembourg, thereby opting for product regulation often to the benefit of their fund raising efforts. While many large private equity houses have already significantly grown their presence in Luxembourg with substantial back-office operations for their special purpose acquisition and finance vehicles, many have also begun taking advantage of the SICAR and SIF regimes.

In view of the international clamp down on certain off-shore centres and the general tendency for regulating alternative investment strategies, including private equity, Luxembourg has been identified as one of the primary jurisdictions for redomiciling (unregulated) off-shore funds.
Overview of available structures

The below table provides an overview of the Luxembourg structures which are available for private equity and venture capital investments. While the SICAR is the premier private equity/venture capital vehicle *per se*, other structures analysed herein may also be used as fund vehicles to host private equity investments, under certain conditions. The SOPARFI is further often used in combination with other structures, as an acquisition vehicle.

<table>
<thead>
<tr>
<th></th>
<th>SICAR</th>
<th>SIF</th>
<th>Part II UCI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prospectus Directive</td>
<td>Applicable (i.e., a PD Prospectus must be issued where an “offer to the public” within the meaning of the Prospectus Directive is made unless the offer is made under an exemption of the Prospectus Directive).</td>
<td>Only applicable if the SIF is closed-ended (i.e., does not offer any redemption opportunities to investors). Open-ended SIFs may make a public offer in Luxembourg on the basis of their issue document compliant with the SIF Law. This issue document must be updated each time new securities are issued to new investors.</td>
<td>Only applicable if the fund is closed-ended (i.e., does not offer any redemption opportunities to investors). Open-ended funds may make a public offer in Luxembourg on the basis of their prospectus compliant with the UCI Law. This prospectus must be updated on an ongoing basis.</td>
</tr>
<tr>
<td>Supervision by the CSSF</td>
<td>Yes (light supervision)</td>
<td>Yes (light supervision)</td>
<td>Yes</td>
</tr>
<tr>
<td>SPF</td>
<td>Securitisation vehicle</td>
<td>SOPARFI ¹</td>
<td></td>
</tr>
<tr>
<td>-----</td>
<td>------------------------</td>
<td>----------</td>
<td></td>
</tr>
<tr>
<td>Not applicable as the number of investors is limited and shares of an SPF may neither be offered to the public nor listed.</td>
<td>Applicable (i.e., a PD Prospectus must be issued where an “offer to the public” within the meaning of the Prospectus Directive is made unless the offer is made under an exemption of the Prospectus Directive).</td>
<td>Applicable (i.e., a PD Prospectus must be issued where an “offer to the public” within the meaning of the Prospectus Directive is made unless the offer is made under an exemption of the Prospectus Directive).</td>
<td></td>
</tr>
<tr>
<td>No</td>
<td>No, unless issue of securities to the public more than 3 times a year (offers to institutional investors and private placements do not constitute “public offers”)</td>
<td>No</td>
<td></td>
</tr>
</tbody>
</table>

¹ This table only refers to SOPARFIs established under the form of an SA, an SCA or an Sàrl.
<table>
<thead>
<tr>
<th></th>
<th>SICAR</th>
<th>SIF</th>
<th>Part II UCI</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Eligible investors</strong></td>
<td>Institutional investors</td>
<td>Institutional investors</td>
<td>Unrestricted</td>
</tr>
<tr>
<td></td>
<td>Professional investors</td>
<td>Professional investors</td>
<td></td>
</tr>
<tr>
<td></td>
<td>Well-informed investors</td>
<td>Well-informed investors</td>
<td></td>
</tr>
<tr>
<td><strong>Eligible assets/strategies</strong></td>
<td>All types of private equity/venture capital investments (including real estate private equity)</td>
<td>Unrestricted</td>
<td>Unrestricted (subject to CSSF prior approval)</td>
</tr>
<tr>
<td></td>
<td>Temporary investments in other non-risky assets pending investments in private equity/venture capital for a 12 month period</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Risk diversification requirement</strong></td>
<td>No</td>
<td>Yes (no detailed investment restrictions; spreading of the investments over a few targets should be sufficient)</td>
<td>Yes (in principle, investment in any target company may not exceed 20% of the NAV)</td>
</tr>
<tr>
<td><strong>Entity type</strong></td>
<td>Corporate entity (SA, SCA, Sàrl, SCoSA, SCS)</td>
<td>SICAV/SICAF (SA, SCA, Sàrl, SCoSA)</td>
<td>SICAV (SA)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>FCP</td>
<td>SICAF (SA, SCA, Sàrl)</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Other (e.g., fiduciary agreement)</td>
<td>FCP</td>
</tr>
<tr>
<td><strong>Segregated sub-funds</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Substance in Luxembourg/nationality or residency requirements</strong></td>
<td>Head office in Luxembourg</td>
<td>Head office of SIF-SICAV/SICAF (or of management company of SIF-FCP) in Luxembourg</td>
<td>Head office of SICAV/SICAF (or of management company of FCP) in Luxembourg</td>
</tr>
<tr>
<td></td>
<td>No nationality/residency requirements for directors/managers</td>
<td>No nationality/residency requirements for directors/managers</td>
<td>No nationality/residency requirements for directors/managers</td>
</tr>
<tr>
<td><strong>Required service providers in Luxembourg</strong></td>
<td>Depositary (credit institution)</td>
<td>Depositary (credit institution)</td>
<td>Depositary (credit institution)</td>
</tr>
<tr>
<td></td>
<td>Administrative agent (PSF or unregulated company)</td>
<td>Administrative agent (PSF)</td>
<td>Administrative agent (PSF)</td>
</tr>
<tr>
<td></td>
<td>Independent auditors</td>
<td>Independent auditors</td>
<td>Independent auditors</td>
</tr>
</tbody>
</table>

1 The administrative agent is not required if the administration duties are performed by the securitisation company, the SICAR, the SICAV/SICAF or the management company itself in Luxembourg.
<table>
<thead>
<tr>
<th><strong>SPF</strong></th>
<th><strong>Securitisation vehicle</strong></th>
<th><strong>SOPARFI</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Individual investors</td>
<td>Unrestricted</td>
<td>Unrestricted</td>
</tr>
<tr>
<td>Private estate management entities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Intermediaries acting on behalf of the above-referred investors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Financial assets only (no controlling activity over investments)</td>
<td>Securitisation of risks linked to any types of assets</td>
<td>Unrestricted</td>
</tr>
<tr>
<td></td>
<td>No active management of the assets</td>
<td></td>
</tr>
<tr>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Corporate entity (SA, SCA, Sàrl, SCoSA)</td>
<td>Securitisation company (SA, SCA, Sàrl, SCoSA)</td>
<td>Any corporate type of entity</td>
</tr>
<tr>
<td></td>
<td>Securitisation fund (organised under the contractual form or on a fiduciary (trust) basis)</td>
<td></td>
</tr>
<tr>
<td>No</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Head office in Luxembourg</td>
<td>Head office of securitisation company (or of management company of securitisation fund) in Luxembourg</td>
<td>Head office in Luxembourg</td>
</tr>
<tr>
<td>No nationality/residency requirements for directors/managers</td>
<td>No nationality/residency requirements for directors/managers</td>
<td>No nationality/residency requirements for directors/managers</td>
</tr>
<tr>
<td>Usually none</td>
<td>No depositary required, unless securitisation vehicle is subject to supervision of the CSSF</td>
<td>Independent auditors may be required depending on size of company and/or number of employees (if any)</td>
</tr>
</tbody>
</table>
### Luxembourg Private Equity and Venture Capital Investment Vehicles

#### Approval process by the CSSF

Launching of a SICAR is subject to prior approval by the CSSF of:
- Articles, prospectus and agreements with main service providers;
- directors/managers (must be experienced and reputable);
- choice of depositary and auditor.

No offer of securities may be made before CSSF approval.

An application for approval of the fund will need to be submitted to the CSSF within one month from the offer of securities. The CSSF will approve:
- Articles or management regulations, prospectus and agreements with main service providers;
- directors/managers (must be experienced and reputable);
- choice of depositary and auditor.

In practice, it may be advisable to seek CSSF prior approval if the SIF displays unusual features.

Launching of a fund is subject to prior approval by the CSSF of:
- Articles or management regulations, prospectus and agreements with main service providers;
- directors/managers (must be experienced and reputable);
- investment manager(s) (if any) (must be experienced and reputable);
- eligibility of promoter (financial institution with sufficient financial means);
- choice of depositary and auditor.

No offer of securities may be made before CSSF approval.

#### Capital (fixed/variable)

<table>
<thead>
<tr>
<th>SICAR</th>
<th>SIF</th>
<th>Part II UCI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fixed or variable capital</td>
<td>Fixed or variable capital</td>
<td>Fixed or variable capital</td>
</tr>
</tbody>
</table>

#### Minimum capital/net assets requirements

<table>
<thead>
<tr>
<th>SICAR</th>
<th>SIF</th>
<th>Part II UCI</th>
</tr>
</thead>
</table>
| Upon incorporation:  
SA/SCA: EUR 31,000  
Sàrl: EUR 12,500  
Subscribed share capital and issue premium must reach EUR 1 mio within 12 months of authorisation. | For FCPs  
Net assets must reach EUR 1.25 mio within 12 months from authorisation.  
For SICAVs/SICAFs  
Upon incorporation:  
SA/SCA: EUR 31,000  
Sàrl: EUR 12,500  
Subscribed share capital and issue premium must reach EUR 1.25 mio within 12 months of authorisation.  
For FCPs  
Net assets must reach EUR 1.25 mio within 6 months from authorisation.  
For SICAVs/SICAFs  
Upon incorporation:  
SA/SCA: EUR 31,000  
Sàrl: EUR 12,500  
Share capital must reach EUR 1.25 mio within 6 months of authorisation. | For FCPs  
No requirement for securitisation funds  
For SICAVs/SICAFs  
Upon incorporation:  
SA/SCA: EUR 31,000  
Sàrl: EUR 12,500 |
Launching of a SICAR is subject to prior approval by the CSSF of:
• Articles, prospectus and agreements with main service providers;
• directors/managers (must be experienced and reputable);
• choice of depositary and auditor.
No offer of securities may be made before CSSF approval.

An application for approval of the fund will need to be submitted to the CSSF within one month from the offer of securities.

The CSSF will approve:
• Articles or management regulations, prospectus and agreements with main service providers;
• directors/managers (must be experienced and reputable);
• choice of depositary and auditor.
In practice, it may be advisable to seek CSSF prior approval if the SIF displays unusual features.

Launching of a fund is subject to prior approval by the CSSF of:
• Articles or management regulations, prospectus and agreements with main service providers;
• directors/managers (must be experienced and reputable);
• investment manager(s) (if any) (must be experienced and reputable);
• eligibility of promoter (financial institution with sufficient financial means);
• choice of depositary and auditor.
No offer of securities may be made before CSSF approval.

Not applicable Not applicable for unregulated securitisation vehicles

Capital

<table>
<thead>
<tr>
<th>SPF</th>
<th>Securitisation vehicle</th>
<th>SOPARFI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Not applicable</td>
<td>Not applicable for unregulated securitisation vehicles</td>
<td>Not applicable</td>
</tr>
<tr>
<td>Fixed capital</td>
<td>Fixed capital for securitisation companies</td>
<td>Fixed capital</td>
</tr>
<tr>
<td>No requirement for securitisation funds</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Minimum capital/net assets requirements

<table>
<thead>
<tr>
<th>SPF</th>
<th>Securitisation vehicle</th>
<th>SOPARFI</th>
</tr>
</thead>
<tbody>
<tr>
<td>Upon incorporation: SA/SCA: EUR 31,000 Sàrl: EUR 12,500</td>
<td></td>
<td></td>
</tr>
<tr>
<td>For securitisation companies (upon incorporation): SA/SCA: EUR 31,000 Sàrl: EUR 12,500</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Upon incorporation: SA/SCA: EUR 31,000 Sàrl: EUR 12,500</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

For FCPs
Net assets must reach EUR 1.25 mio within 6 months from authorisation.

For SICAVs/SICAFs
Upon incorporation:
SA/SCA: EUR 31,000
Sàrl: EUR 12,500
Share capital must reach EUR 1.25 mio within 6 months of authorisation.
### Structuring of capital calls and issue of shares/units

#### SICAR
- Capital calls may be organised either by way of capital commitments or through the issue of partly paid shares (to be paid up to 5% at least).
- Existing shareholders have no pre-emptive right of subscription, unless otherwise provided for in the Articles.
- Issues of shares of a SICAR with a variable capital do not require an amendment of the Articles before a public notary.
- Issue price may be freely determined in accordance with the principles laid down in the Articles.

#### SIF
- Capital calls may be organised either by way of capital commitments or through the issue of partly paid shares (to be paid up to 5% at least) or units.
- Issues of shares of a SICAV do not require an amendment of the Articles before a public notary.
- Issue price may be freely determined in accordance with the principles laid down in the Articles or management regulations.
- For SICAVs, existing shareholders have no pre-emptive right of subscription, unless otherwise provided for in the Articles.

#### Part II UCI
- For FCPs
  - Capital calls may be organised either by way of capital commitments or through the issue of partly paid units.
  - Existing unitholders do not have a pre-emptive right of subscription in case of issue of units, unless otherwise provided for in the management regulations.
  - Units must be issued at a price based on the NAV (plus costs and actualisation interests, if appropriate).
- For SICAFs
  - Capital calls in an SA/SCA may be organised either by way of capital commitments or through the issue of partly paid shares (to be paid up to 25% at least). An Sàrl cannot issue partly paid shares.
  - Existing shareholders of an SA/SCA have a pre-emptive right of subscription in case of increase of capital by way of cash contribution (except if waived by shareholders’ meeting).
  - Issues of shares require an amendment of the Articles before a public notary.
  - Issue price is determined in accordance with the principles laid down in the Articles.
- For SICAVs
  - Capital calls must be organised by way of capital commitments (shares must be fully paid-up).
  - Existing shareholders do not have a pre-emptive right of subscription in case of issue of shares, except if otherwise provided for in the Articles.
  - Issues of shares do not require an amendment of the Articles before a public notary.
  - Shares must be issued at a price based on the NAV (plus costs and actualisation interests, if appropriate).
Capital calls may be organised either by way of capital commitments (i.e., contractual undertaking of an investor to subscribe shares of the company upon request) or through the issue of partly paid shares (to be paid up to 25%). Sàrl and SCoSA cannot issue partly paid shares.

Existing shareholders of an SA/SCA/Sàrl have a pre-emptive right of subscription in case of increase of capital by way of cash contribution (except if waived by shareholders’ meeting).

Issues of shares require an amendment of the Articles before a public notary.

No legal constraints on issue price.

**Securitisation vehicle**

**For securitisation funds**

Capital calls may be organised either by way of capital commitments or through the issue of partly paid units.

Existing unitholders do not have a pre-emptive right of subscription in case of issue of units, unless otherwise provided for in the management regulations.

Issue price may be freely determined in accordance with the principles laid down in the management regulations.

**For securitisation companies**

Capital calls in an SA/SCA may be organised either by way of capital commitments or through the issue of partly paid shares (to be paid up to 25% at least). Sàrl and SCoSA cannot issue partly paid shares.

Existing shareholders of an SA/SCA/Sàrl have a pre-emptive right of subscription in case of increase of capital by way of cash contribution (except if waived by shareholders’ meeting).

Issue price may be freely determined in accordance with the principles laid down in the Articles.

Issues of shares require an amendment of the Articles before a public notary.

**SOPARFI**

Capital calls may be organised either by way of capital commitments (i.e., contractual undertaking of an investor to subscribe shares of the company upon request) or through the issue of partly paid shares (to be paid up to 25%). Sàrl and SCoSA cannot issue partly paid shares.

Existing shareholders of an SA/SCA/Sàrl have a pre-emptive right of subscription in case of increase of capital by way of cash contribution (except if waived by shareholders’ meeting).

Issues of shares require an amendment of the Articles before a public notary.

No legal constraints on issue price.
<table>
<thead>
<tr>
<th>Distribution of dividends</th>
<th>Calculation of NAV</th>
<th>Financial reports/consolidation</th>
</tr>
</thead>
<tbody>
<tr>
<td>For SIF-FCPs and SIF-SICAVs: There are no statutory restrictions on payments of (interim) dividends (except for compliance with minimum net assets/capital requirement).</td>
<td>For SICAFs: Distributions may not reduce the SICAF's assets, as reported in the last annual reports, to an amount less than one-and-a-half times the total amount of the SICAF's liabilities to its creditors. Interim dividends are subject to statutory conditions.</td>
<td>For FCPs and SICAVs: There are no statutory restrictions on payments of (interim) dividends (except for compliance with minimum net assets/capital requirement).</td>
</tr>
<tr>
<td>For SICAFs: Distributions may not reduce the SICAF's assets, as reported in the last annual reports, to an amount less than one-and-a-half times the total amount of the SICAF's liabilities to its creditors. Interim dividends are subject to statutory conditions.</td>
<td>The NAV must be determined in accordance with the rules laid down in the Articles or management regulations. Assets are to be valued at fair value.</td>
<td>For SICAFs: Distributions may not reduce the SICAF's assets, as reported in the last annual reports, to an amount less than one-and-a-half times the total amount of the SICAF's liabilities to its creditors. Interim dividends are subject to statutory conditions.</td>
</tr>
<tr>
<td>For FCPs and SICAVs: There are no statutory restrictions on payments of (interim) dividends (except for compliance with minimum net assets/capital requirement).</td>
<td>For FCPs and SICAVs: There are no statutory restrictions on payments of (interim) dividends (except for compliance with minimum net assets/capital requirement).</td>
<td>For SICAFs: Distributions may not reduce the SICAF's assets, as reported in the last annual reports, to an amount less than one-and-a-half times the total amount of the SICAF's liabilities to its creditors. Interim dividends are subject to statutory conditions.</td>
</tr>
<tr>
<td>SCoSA: profits are distributed proportionally to investors each year, except if provided otherwise in the Articles.</td>
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</tr>
<tr>
<td>Audited annual report (within 6 months from end of relevant period) Explicit exemption from consolidation requirements</td>
<td>Audited annual report (within 6 months from end of relevant period) Explicit exemption from consolidation requirements</td>
<td>Audited annual report (within 4 months from end of relevant period). An audited long form report is required to be issued along with the annual reports. Semi-annual report (within 2 months from end of relevant period)</td>
</tr>
</tbody>
</table>
There are no statutory restrictions on payments of (interim) dividends (except for compliance with minimum capital requirement).

For SIF-FCPs and SIF-SICAVs

There are no statutory restrictions on payments of (interim) dividends (except for compliance with minimum net assets/capital requirement).

For SICAFs

Distributions may not reduce the SICAF’s assets, as reported in the last annual reports, to an amount less than one-and-a-half times the total amount of the SICAF’s liabilities to its creditors.

Interim dividends are subject to statutory conditions.

For FCPs and SICAVs

There are no statutory restrictions on payments of (interim) dividends (except for compliance with minimum net assets/capital requirement).

For SICAFs

Distributions may not reduce the SICAF’s assets, as reported in the last annual reports, to an amount less than one-and-a-half times the total amount of the SICAF’s liabilities to its creditors.

Interim dividends are subject to statutory conditions.

SCoSA: profits are distributed proportionally to investors each year, except if provided otherwise in the Articles.

For securitisation funds

There are no statutory restrictions on payments of (interim) dividends.

For securitisation companies

Distributions may not reduce the net assets of the company to less than the amount of the subscribed capital plus non-distributable reserves.

Interim dividends are subject to statutory conditions.

Distributions may not reduce the net assets of the SOPARFI to less than the amount of the subscribed capital plus non-distributable reserves.

Interim dividends are subject to statutory conditions.

SCoSA: profits are distributed proportionally to investors each year, except if provided otherwise in the Articles.

Financial reports/consolidation

Audited annual report (within 6 months from end of relevant period)

Explicit exemption from consolidation requirements

Audited annual report (within 6 months from end of relevant period)

Explicit exemption from consolidation requirements

Audited annual report (within 4 months from end of relevant period).

An audited long form report is required to be issued along with the annual reports.

Semi-annual report (within 2 months from end of relevant period)

Not applicable

Audited annual report

Audited annual report may be required if company exceeds a certain size in terms of turnover, total assets and number of employees.
### Tax regime

<table>
<thead>
<tr>
<th>SICAR</th>
<th>SIF</th>
<th>Part II UCI</th>
</tr>
</thead>
</table>

**Fiscally opaque SICARs (i.e. all SICARs except those established under the form of an SCS) are fully taxable. However, they can generally avoid any substantial tax in Luxembourg as they are authorised to exempt from their tax base all income and capital gains deriving from: i) investments in transferable securities and ii) temporary cash investments pending investments in risk capital for a maximum period of twelve months.**

Fiscally opaque SICARs may in principle claim treaty protection and benefit from the Parent-Subsidiary Directive. However, the eligibility of SICARs must be reviewed on a case by case basis depending on the jurisdiction of the target company.

SICARs established as an SCS are tax transparent and the profit share of foreign investors investing in these SICARs is not subject to any tax in Luxembourg.

SIFs are subject to an annual subscription tax (taxe d’abonnement) of 0.01% p.a. of their NAV.

Unlike SIF-FCPs, SIF-SICAVs/SICAFs can benefit from certain double tax treaties. Investments may be made through fully taxable subsidiaries benefiting from double tax treaties and the EU Parent-Subsidiary Directive.

Part II funds are subject to an annual subscription tax (taxe d’abonnement) of 0.05% p.a. of their NAV. Classes of shares which are reserved for institutional investors are subject to a subscription tax at a reduced rate of 0.01%.

Unlike FCPs, SICAV/SICAFs benefit from certain double tax treaties. Investments may be made through fully taxable subsidiaries benefiting from double tax treaties and the EU Parent-Subsidiary Directive.

\[1\] Tax authorities have accepted in certain cases that loans may be assimilated to securities for the purpose of the tax exemption, as long as the loan agreement includes a clause providing for the possibility to transfer the loan to a third party.
### SPF
SPFs are subject to an annual subscription tax (taxe d’abonnement) of 0.25% p.a. of their share capital, issue premium and debt exceeding eight times the share capital plus issue premium, with a maximum of EUR 25,000 per annum.

The SPF is exempt from corporate income tax, municipal business tax and net worth tax.

This tax regime is not applicable if for a given year, at least 5% of total dividends come from non-resident and non-listed companies that are not subject to an income tax similar to Luxembourg corporate income tax. In that case, the SPF will be fully taxable for that given relevant year.

SPFs do not benefit from double tax treaties and the EU Parent-Subsidiary Directive.

### Securitisation vehicle
Securitisation funds are considered to be investment funds. They are subject neither to corporation taxes nor to the annual subscription tax (taxe d’abonnement).

Securitisation companies are fully taxable. They may however deduct from their taxable profit payments made to investors. Basically, investors in a securitisation company may hold equity or debt securities. The Securitisation Law expressly states that for tax purposes payments made by the company are always interest, even if under the Companies Law they take the form of dividends. Thus, securitisation companies may deduct any payments to investors.

### SOPARFI
SOPARFIs are fully taxable companies, subject to an aggregate corporation tax burden which currently amounts to 28.59% for companies located in Luxembourg City.

However, SOPARFIs can benefit from exemptions from corporate tax for dividends received from share holdings, capital gains made on the sale of share holdings and gains made on liquidation of companies in which shares are held.

Exemption is granted on the following conditions:

- dividend and liquidation gains exemption on share holdings of at least 10% or the acquisition cost of at least EUR 1.2 million provided such qualifying share holding is held for at least 12 months;

- Capital gains exemption of share holdings of at least 10% or an acquisition cost of at least EUR 6 million provided such qualifying share holding is held for at least 12 months.

A 15% withholding tax will be applied on the gross amounts of dividends paid by the SOPARFI (subject to tax treaties and EU Parent-Subsidiary Directive). No withholding tax is levied on liquidation payments.

There is no formal legal rule concerning thin capitalisation. The Luxembourg tax authorities usually consider that an acceptable debt/equity ratio is 85:15. If this ratio is not complied with and the SOPARFI is over-indebted, interest paid on the excess debt on a loan received from its shareholder or to a bank, when the loan of the bank is guaranteed by the shareholder, can be considered as a hidden profit distribution subject to dividend withholding tax at a rate of 15% and such interest is then not deductible.
The investment company in risk capital (SICAR)

The SICAR has been created by the Law of 15 June 2004 on the investment company in risk capital, as amended by the Law of 24 October 2008 (the SICAR Law).

General partner access

In order to carry out its activities, a SICAR must be authorised by the Luxembourg financial supervisory authority, the CSSF.

The initiator has to submit the constitutive documents of the SICAR (i.e. the articles of association or partnership agreement), the qualification of the SICAR’s managers, the choice of the custodian bank and of the auditor to the CSSF.

The managers of the SICAR, the custodian bank and the auditor must be of sufficiently good repute and have sufficient experience in the performance of their duties. Their prior professional experience or track record should thus be in line or consistent with the projected investment policy of the relevant SICAR project.

Though the CSSF authorises neither the initiator of the SICAR nor the appointed investment manager or advisor, if any, it will perform a background check on, amongst other things, the technical qualification of those who effectively run the operations of the SICAR.

During the application process, the CSSF will thus review and approve the articles of association (or partnership agreement) of the SICAR, its prospectus (i.e. private placement memorandum), as well as any ancillary agreements with service providers.

Upon satisfactory completion of the review process, the SICAR will be included on the official SICAR list held by the CSSF. This registration is tantamount to authorisation by the CSSF.

Investors

The SICAR Law restricts access to the SICAR regime to “well-informed” investors. These include:

- institutional investors, which under current CSSF guidance include banks, insurance companies, pension funds, commercial companies, investment funds and certain holding companies;
- professional investors defined as “a client who possesses the experience, knowledge and expertise to make his/her own investment decisions and properly assess the risks that he/she incurs”;
- any other investor who a) has confirmed in writing that he/she adheres to the status of “well-informed” investor, and b) invest(s) a minimum of EUR 125,000 in the relevant SICAR.

This minimum investment amount may be waived if the investor is certified to have the requisite level of expertise, experience and knowledge in adequately appraising an investment in risk capital. This certification may be issued by a credit institution within the meaning of EU Directive 2006/48/EC, by an investment firm within the meaning of EU Directive 2004/39/EC or by a management company within the meaning of EU Directive 2001/107/EC.

The managers of the relevant SICAR as well as any other person who is involved in the management of the SICAR will not have to comply with the “well informed” investor status.

Investments

Investment scope: risk capital

The SICAR is a vehicle reserved for investment in risk capital. The purpose of a SICAR is to “invest its assets in securities representing risk capital in order to provide its investors with the

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1 The managers who formally represent the SICAR are: the general partner of the partnership limited by shares (SCA) and the limited partnership (SCS), the board members of public limited companies (S.A.) and cooperative companies organised as public limited companies (SCoSA) and the managers of private limited companies (Sàrl).

2 Definition provided under Appendix II of the EU Directive 2004/39/EEC (JOCE L 145, 30/04/2004 P.0001 – 0044). Even if parliamentary history refers to the definition included in the CSSF Circular 2000/15 referring to the FESCO recommendations, the definition given in the EU Directive prevails. For a complete definition, please refer to the EU Directive.
It is important to note that a SICAR may not be operated as a holding company substitute merely holding its assets over the medium to long term.

The following are examples of qualifying investment strategies:

- buy-out
- venture capital
- mezzanine
- opportunistic real estate
- infrastructure
- renewable energy
- microfinance
- fund of private equity funds.

No diversification rules

The SICAR Law does not impose any diversification rules. A SICAR may thus invest into a single investee company, provided the above risk capital criteria are met.

Fund of funds, master-feeder structures and umbrella structures

In addition to investing directly in investee companies, a SICAR may be organised as a fund of funds (i.e., a fund of private equity funds), provided that the underlying target funds also fulfil the risk capital criteria as defined by the CSSF.

A SICAR may also be organised as a feeder fund exclusively investing into a domestic or foreign master fund, provided that the master fund's investment policy is in compliance with the risk capital criteria.

Moreover, SICARs may be organised as multiple compartment or “protected cell” structures. The rights of investors and creditors arising in connection with the creation, operation or liquidation of a compartment are thus limited to the assets of that compartment (i.e., segregation of assets and liabilities on a compartment by compartment basis). For the purpose of the relations between investors, each compartment will be deemed to be a separate entity. Each compartment may have a different investment policy which has to be described in the prospectus and the shares of each compartment may thus be of different value.

Private equity houses thus have the possibility of packaging several investment strategies or meeting the needs of several investor groups in the same SICAR structure through the use of dedicated compartments.
Type of investment instruments
A SICAR may acquire all equity and debt instruments, including shares, bonds, notes, mezzanine loans, convertible loans or simple loans. ¹

Financing
The SICAR may issue equity and debt instruments and may be financed by shareholder and third party loans. Though the SICAR Law does not impose any leverage restrictions, the CSSF requires that the maximum leverage ratio be disclosed in the offering documentation.

Exit
SICARs are typically organised for a limited duration and must thus provide for certain exit mechanisms allowing investors to realise their investment. While the SICAR Law does not prescribe a particular exit scenario, initiators may foresee a variety of exit mechanisms such as a trade sale, an initial public offering or a liquidation of the investments and of the SICAR. Investors may be allowed to dispose of their investment in the SICAR in the secondary market, unless the terms provide for a lock-up or consent right.

Private equity real estate (PERE) investments
Opportunistic real estate projects may qualify under the SICAR regime. In order to do so, they need to meet the risk capital criteria defined by the CSSF (e.g. host country risk, market risk).

The CSSF will generally only authorise private equity real estate investments with sufficient development potential, including but not limited to construction, renovation, leasehold improvements, portfolio restructuring, etc.

It is important to note however that SICARs cannot directly hold real estate assets on their balance sheet but must invest via legal entities.

Non-eligible investments
SICARs are for example not allowed to invest in hedge funds or to pursue hedge fund investment strategies. Although the use of derivative instruments is authorised for currency hedging purposes, the use of derivative instruments is otherwise restricted and cannot form part of the investment strategy per se.

Investments in listed securities
Investments in listed securities are generally not eligible. Exceptions include investments with the intention of taking the investee company private, investments in listed securities that do not meet the requirements applicable to regulated markets and the temporary investment of available cash pending investment in risk capital assets.

More detailed information on the risk capital concept and eligible assets and investments can be found in the CSSF Circular 06/241 of 5 April 2006 on the concept of risk capital.

Legal structures
The SICAR Law offers a choice of five legal or corporate forms. For all matters that are not expressly covered by the SICAR Law, the 1915 Companies Law remains fully applicable.

A SICAR may thus adopt any of the following corporate forms:

- partnership limited by shares (Société en commandite par actions, SCA);
- private limited company (Société à responsabilité limitée, Sàrl);
- public limited company (Société anonyme, SA);
- limited partnership (Société en commandite simple, SCS);
- cooperative company organised as a public limited company (Société coopérative organisée comme une société anonyme, SCoSA).

¹ The potential tax consequences of interest income derived from simple loans to target companies must be analysed on a case by case basis (See under “Tax regime” on pages 21 to 23).
Each corporate entity has a legal personality of its own, distinct from that of its investors as from the day of incorporation. Each investment company in risk capital exists under a firm name which is followed by the “SICAR” acronym. To date, the SCA represents by far the preferred structuring option, followed by the SA and the Sàrl. It may be worthwhile noting that only the securities issued by the SCA and SA may be admitted to trading on the Luxembourg or a foreign stock exchange.

The partnership limited by shares (SCA)

The Luxembourg partnership limited by shares (SCA) is comparable to the German Kommanditgesellschaft auf Aktien. It is a corporate entity conceptually leaning on the limited partnership combining corporate and partnership features from a legal and tax point of view. Like a limited partnership, the SCA is formed by two categories of partners, i.e., at least one general partner, of which at least one is to be entrusted with the management of the SCA and who bear(s) unlimited liability with the SCA for any liabilities that cannot be satisfied out of the assets of the SCA and the limited partner, whose liability is limited to the amounts he/she has or will contribute to the SCA.

The name of the SCA must include the name of at least one general partner. The managing general partner has broad management powers and effectively controls the management and administration of the SCA. The constitutional documents of the SCA typically afford the general partner with a right to veto certain decisions thereby ensuring that the general partner remains in control of the SCA.

While the corporate governance of the SCA follows the limited partnership model, the legal regime is otherwise borrowed from the public limited company (SA).

The (limited partner) shares are in principle freely transferable though the constitutional documents may provide for transfer restrictions.

The private limited company (Sàrl)

The private limited company (Sàrl) is the most popular legal form for closely held special purpose companies, though less suitable as an investment company or fund vehicle. Its success is based on maximum structuring flexibility and its ease of administration.

Though the Sàrl is a corporate entity it embodies certain partnership features such as the importance of knowing and controlling the identity of its members (or partners). Thus, the Sàrl may not have over 40 members/partners. Its shares (or quotas) are not freely transferable to third parties but require a prior consent from members representing at least 75% of the capital.

Its management may be entrusted either to one or several managers acting alone or jointly as a collective body.

The public limited company (SA)

A Luxembourg public limited company (SA) may be incorporated with one or more shareholders. The SA is governed by European Directives and, as such, it follows the same harmonised pattern throughout the European Union.

Its shares are freely transferable, save for any restrictions that the constitutive documents contain or shareholders agree amongst themselves.

An SA is managed by a board of directors of at least 3 directors (except if the SA has a sole shareholder in which case a single director is allowed).

Besides the standard board of directors, the SA may also be organised with a two-tier governance structure whereby a supervisory board is appointed.

While the SA is subject to a very comprehensive set of rules, it is more
suitable for an investment company in risk capital the securities of which are to be offered to a broad investor base, possibly in combination with a public offering or listing.

Due to the fact that the SA is subject to more stringent rules, it is less suitable as a risk capital investment vehicle with a limited investor group.

The limited partnership (SCS)
The SCS (société en commandite simple) is the Luxembourg equivalent of the English limited partnership or the German Kommanditgesellschaft.

In order to increase its attractiveness, the recent amendments to the SICAR Law introduced certain improvements to the standard SCS provisions:

- the possibility of opting for a variable capital structure;
- clarification of claw back rules;
- clarification of disclosure rules.

The above amendments have increased the competitive positioning of the SCS. With these adjustments, the SCS now offers the same level of structuring flexibility as its English law counterpart.

Other corporate forms
Although rarely used, the cooperative company organised as a public limited company (SCoSA) may offer advantages, the analysis of which goes beyond the scope of the present publication.

Capital structure and distributions
The capitalisation of a SICAR follows private equity industry standards and generally falls under the commitment-based draw down model.

Capital structure
Minimum capitalisation
A SICAR must achieve a minimum capitalisation of EUR 1 million (issue premium included) within a period of 12 months following its authorisation as a SICAR by the CSSF.

At incorporation, the minimum capitalisation will vary with the choice of the legal form:
- SCS no minimum
- Sàrl EUR 12,500
- SA/SCA EUR 31,000

Capital contributions may be made in cash or in kind. A contribution in kind must be subject to an audit report if it is made to an SCA or SA. While no such report is required if the contribution is made to an Sàrl or SCS, best practice typically follows the rules of the SA/SCA.

Any share premium contribution will also be taken into account to compute the minimum EUR 1 million capitalisation.

The drawdown process can be organised in two ways: (i) the entire subscription commitment is immediately issued in partly-paid shares, with a minimum 5% payment upon issue or, (ii) shares are issued fully paid-up as needed and within the limits of the subscription commitment.

Variable capital
A SICAR may opt for a fixed or variable share capital structure. Where a SICAR has a variable capital structure, its capital is at all times equal to the SICAR’s net asset value.

If a SICAR has a fixed share capital, any reduction thereof requires a decision of the general meeting of shareholders/members/limited partners. Any such reduction ipso jure triggers an amendment to the articles of association or partnership agreement of the SICAR. The formalities are thus quite burdensome and the outcome of any such reduction subject to the will of the shareholders/limited partners/members. If the capital is variable, a capital reduction neither requires the intervention of the general meeting nor of a notary. In practice, the management body will have standing
authority to effect such reduction via a mere distribution of (distributable) proceeds (i.e., available cash or other distributable assets) or a redemption and cancellation of shares. The variability is thus particularly important in risk capital matters as it allows the full repatriation of any realisation proceeds including any principal amounts. The management body will thus not be bound by restrictions other than those which are self-imposed in the constitutional documents.

**Issuance of securities**

A SICAR that has opted for the SCA or SA form may issue different types of securities such as shares, bonds, founder shares, beneficiary shares or other financial instruments.

The SCS and Sàrl legal forms may be subject to certain restrictions in that respect.

The issue process can be freely organised in the constitutional documents.

**Distributions**

The SICAR Law eliminates any restrictions provided for in the 1915 Companies Law in respect of interim distributions. Distributions may thus be organised in accordance with the rules adopted in the constitutional documents.

**Tax regime**

The income tax treatment of the SICAR depends upon its legal form.

The SICAR will be considered as a transparent entity, for tax purposes, if it is set up as a limited partnership (SCS) and as a non-transparent entity (i.e. liable to tax), if it is formed as a capital company such as a partnership limited by shares (SCA), a cooperative company organised as a public limited company (SCoSA), a private limited company (Sàrl) or a public limited company (SA).

**Transparent entity**

Under the legal form of a limited partnership (SCS), the SICAR will be considered a transparent entity for Luxembourg tax purposes. Its income will be deemed to be taxed at the level of its investors. While this qualification holds true for the Luxembourg tax authorities, it also needs to be checked with the relevant source countries and any double tax treaty signed therewith. The consequences will be as follows:

**At the level of the target company**

Withholding tax, if any, on income distributed by the target company to the SICAR should be reduced in accordance with the double tax treaty between the country of residence of each investor in the SICAR and the country of residence of the target company from which the income is derived.

In principle, EU resident investors investing in a EU resident target company through the SICAR may benefit from the exemption of withholding tax in the target country, if the conditions for the application of the participation exemption regime in the relevant target country are met.

**At the level of the transparent SICAR**

The limited partnership SICAR is not subject to corporate income tax (impôt sur les revenus des collectivités). Moreover, this SICAR is never considered to be carrying out a commercial activity in Luxembourg. As a result, it is not subject to municipal business tax (impôt commercial communal).

There is furthermore no Luxembourg withholding tax on distributions made by the SICAR.

**At the level of the investors**

In principle income received by the SICAR will be taxed directly in the hands of each investor in proportion to the investor’s participation in the SICAR and in accordance with the tax regime of the investor’s country of residence. The latter may treat the SICAR either as a fiscally transparent or as a fiscally opaque vehicle.
If the transparency is recognised, double taxation of the income generated by the SICAR will generally be avoided at the level of the investor by application of the double tax treaty between his/her country of residence and the country of residence of the target company from which the income is derived.

Foreign investors are not subject to Luxembourg tax on any capital gain realised upon the sale of an interest in the SICAR.

Non-transparent entity
If the SICAR is organised in the form of a capital company, it will be considered a non-transparent entity for tax purposes. Its income is thus in principle subject to tax in Luxembourg. The SICAR Law however provides for a specific risk capital income exemption.

At the level of the target company
A corporate SICAR is in principle entitled to benefit from double tax treaties concluded by Luxembourg. Therefore, withholding tax, if any, on income derived from the target company should be reduced in accordance with the double tax treaty between Luxembourg and the relevant source country. However, the eligibility of SICARs must be reviewed on a case by case basis depending on the relevant source jurisdiction.

Furthermore, for the source countries which are Member States of the European Union and as such subject to the EU Parent-Subsidiary Directive (as implemented in domestic legislation) and provided the conditions of the Directive are met in the relevant EU source country, no withholding tax should be levied on dividends distributed by such EU target companies to the SICAR.

At the level of the non-transparent SICAR
The SICAR is subject to corporate income tax (impôt sur les revenus des collectivités) at the rate of 21.00%, to municipal business tax (impôt commercial communal) at the rate of 6.75% (in Luxembourg City) and to an additional payment of 4% of corporate income tax as a contribution to the unemployment fund. This leads to a total effective tax rate of 28.59% for 2009 in Luxembourg City.

The SICAR benefits from an exemption from corporate income tax on income resulting from transferable securities (valeurs mobilières) as well as on income resulting from the sale, contribution or liquidation of these securities. This mainly includes income from equity and debt instruments such as dividends, interest and capital gains. In addition, the exemption is extended to income arising from monies temporarily invested in other instruments for a period of up to twelve months pending their investment in risk capital.

There is no Luxembourg withholding tax on dividends and liquidation proceeds distributed by a SICAR.

The SICAR cannot apply for tax consolidation with another Luxembourg company.

At the level of the investors
Double taxation of the income generated by the SICAR may be avoided at the level of the investor by application of the double tax treaty between its country of residence and Luxembourg.

In principle, as the SICAR is subject to Luxembourg corporate income tax, certain qualifying EU resident investors may also be in a position to benefit from the participation exemption on dividends received from a SICAR.

Foreign investors are not subject to Luxembourg tax on any capital gains realised upon the sale of their SICAR shares.

VAT
The management services provided to a SICAR are exempt from VAT.

A key element to the application of this exemption is the term “management”.
The commentaries to the VAT Law indicate that the exemption means to ensure equal treatment whether the management services are rendered to a SICAR or to a UCI.

The administrative VAT practice applicable to the management of UCIs should therefore be relevant for determining the VAT treatment of management services rendered to SICARs. The day-to-day management of a SICAR is thus exempt. Special attention should however be given to sub-contracted management services which can only be exempt if certain conditions are met.

Other taxes
The following rules apply to both transparent and non-transparent SICARs.

The SICAR is exempt from net wealth tax (impôt sur la fortune).

The SICAR is not subject to any subscription tax (taxe d’abonnement).

A fixed annual fee (taxe forfaitaire annuelle) of EUR 1,500 is due by the SICAR to the CSSF; this tax amounts to EUR 2,650 for a multiple compartment SICAR. Moreover, the application for authorisation to the CSSF is subject to a one-off fixed registration fee of EUR 1,500. If the SICAR is organised with multiple compartments, the registration fee amounts to EUR 2,650.

Valuation, accounting and reporting

Valuation
Legal requirement: fair value
The SICAR Law provides that a SICAR’s assets are to be valued at their fair value. The SICAR’s constitutional documents (i.e. the articles) must describe the fair valuation methodology, introducing an expectation that such methodology will be in line with the valuation principles established by professional associations, such as the “International Private Equity and Venture Capital Valuation Guidelines”.

Practice
In practice, initiators typically opt for all or part of the International Private Equity and Venture Capital Valuation Guidelines developed by the EVCA 1, the BVCA 2 and the AFIC 3 or with another recognised set of valuation guidelines.

It is also acceptable to use an internal and robust valuation methodology that responds to the unique nature of a given SICAR’s investments.

Accounting
LuxGAAP
The SICAR reports under Luxembourg Generally Accepted Accounting Principles (LuxGAAP) as per the 2002 Annual Accounts Law. The SICAR Law however introduces a number of treatments that differ from LuxGAAP, the principal ones being (i) the reporting at fair value and (ii) the exemption from consolidation.

Consolidation exemption
The SICAR benefits from an explicit exemption from consolidation requirements. Consequently a SICAR that holds controlling interests in portfolio companies is not required to produce consolidated accounts.

Optional application of IFRS
A SICAR may upon special request and authorisation be allowed to report under IFRS 4 instead of LuxGAAP. Notwithstanding the available exemption from consolidation, IFRS will require the production of consolidated accounts.

Reporting
Format and content of the annual accounts
The SICAR Law does not prescribe a specific format or content for the preparation of the annual accounts, so that the general framework of the

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1 European Private Equity and Venture Capital Association
2 British Venture Capital Association
3 Association Française des Investisseurs en Capital
4 International Financial Reporting Standards
2002 Annual Accounts Law regulates the format and content of a SICAR’s annual accounts (save for the option of reporting under IFRS in which case IFRS accounting rules are to be applied). Sufficient information needs to be provided in the financial statements to allow the investors to gain a good understanding of the SICAR’s activities. This will typically include a detailed disclosure on the SICAR’s investments.

The annual accounts also include an activity report detailing any information of significance to investors in the SICAR, enabling them to make an informed judgment on the development and the results of the SICAR. This framework consequently offers the SICAR’s management body sufficient flexibility as to the nature and detail of the disclosures to be made in the annual accounts.

Filing deadline
A SICAR must establish its annual accounts within six months following the end of the financial year. The annual report together with the auditor’s report must be made available to investors within 6 months from the end of the period to which they relate.

A SICAR has to file its annual accounts with the Luxembourg companies and trade register. The SICAR has the option of filing an abridged version of the annual report established in compliance with the SICAR Law (for example, detailed disclosure of the name, acquisition cost and fair value of the investment portfolio are generally not required for the abridged accounts). The abridged accounts also need to be audited as per the applicable regulatory practice.

A SICAR is not required to prepare semi-annual accounts.

Net asset value (NAV)
The SICAR Law no longer refers to the NAV concept. Therefore, a SICAR is no longer obliged to prepare and publish a net asset value. It may however (continue to) do so on a voluntary basis.

Reporting to the CSSF
Each SICAR has to report to the CSSF on a semi-annual basis with the following standardised information:
- a balance sheet or statement of net assets and liabilities;
- a statement of capital subscribed, drawn down and committed;
- a schedule of investments;
- information about the type of investors in the SICAR;
- information about debt financing used by the SICAR, if applicable.

A copy of the audited annual report shall also be transmitted to the CSSF as soon as it is available and no later than within six months from the end of the period to which it relates.

The CSSF also wishes to receive the recommendation letter issued by the auditor or a “no management letter” notice.

Further details can be found in CSSF Circular 08/376.

Custodian, administrative agent and auditor

Custodian
A SICAR must appoint a custodian bank established in Luxembourg.

The custodian bank acts exclusively in the interest of the investors of the SICAR and is liable to both the SICAR and its investors for any losses suffered through the non-execution or wrongful execution of its functions. While the custodian bank can delegate certain tasks to third parties, it remains fully liable to the SICAR and its investors notwithstanding such delegation.

The custodian bank’s key mission is the safekeeping of the assets of the SICAR, which is to be understood as
a monitoring function, i.e. knowing at all times where the SICAR’s assets are invested and located.

The administrative agent

If the SICAR is not self-administered, it must appoint a Luxembourg-based administrative agent for the handling and performance of all central administration tasks and formalities.

While the administrative agent does not need to hold a special licence (i.e., under the 1993 Banking Law) to carry out its functions, the CSSF will review and approve the choice of the administrative agent based on the agent’s expertise in risk capital matters and resources.

In practice, the administrative agent’s functions include services such as accounting, the computation of the net asset value (if any) or the production of regulatory and investor reporting.

The administrative agent will normally also act as domiciliary and registrar agent for the SICAR. As domiciliary agent, it provides a registered address and certain ancillary services to the SICAR.

As registrar agent, the agent will keep the register of shareholders/partners/members and fulfil the functions ancillary thereto. The registrar’s functions may under certain conditions be subject to a special license under the 1993 Banking Law.

The auditor

A SICAR has to appoint an independent auditor (réviseur d’entreprises) in Luxembourg. This appointment requires the approval of the CSSF in order to ensure that the independent auditor has sufficient risk capital expertise.

The main role of the independent auditor is to audit the annual accounts of the SICAR. The auditor is also in charge of checking that the SICAR’s investment policy is respected and complies with the SICAR Law. Any serious breach of the SICAR Law or the prospectus shall be reported to the CSSF.
The specialised investment funds (SIF)

General legal and regulatory framework

The SIF Law introduced a self-contained body of law independent from the UCI Law by creating a specialised investment fund regime shaped on the traditional Luxembourg investment fund model.

The SIF Law replaced the institutional investment fund regime introduced in 1991 effectively addressing the shortcomings of its predecessor regime and expanding it into a comprehensive fund regime for specialised investors.

The SIF Law adopts an open architecture for different investment styles and policies. While the SIF Law potentially allows any investment policy or strategy, its structuring and regulatory flexibility is such that it is also particularly well adapted to cater to the needs of private equity and venture capital fund initiators and investors alike.

Key characteristics and advantages

The main features of the SIF Law may be summarised as follows:

Eligible investors
Investment in a SIF is restricted to “well-informed” investors. The “well-informed” investor concept is identical to the one used in the SICAR Law, i.e. institutional investors, professional investors in financial instruments as defined in Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 and other investors (i) who adhere in writing to the status of “well-informed” investor and (ii) who invest at least EUR 125,000 in a particular SIF or who have been subject to an assessment by a credit institution, an investment firm or a management company certifying their expertise, experience and knowledge in adequately appraising an investment in the relevant SIF.

Organisational flexibility

Legal structure

Unlike the SICAR Law, the SIF Law also permits the creation of specialised investment funds under a contractual arrangement, i.e., a co-ownership - fonds commun de placement - FCP.

If the SIF is organised as an FCP, it must be managed by a Luxembourg-based management company either subject to Chapter 13 or Chapter 14 of the 2002 UCI Law.

A SIF may otherwise be formed under any legal form also available under the SICAR regime. Furthermore, the SIF Law also provides for the creation of umbrella SIFs.

Initiator and authorisation

The formation and launch of a SIF does not require the backing of a promoter or sponsor with “deep pockets” as known in administrative parlance. The person or institution whose initiative it is to set up the SIF is referred to as the initiator.

While the regulator does not approve the initiator, it will nevertheless take its identity into consideration when reviewing an application.

The regulator will, however, review and approve the (proposed) members of the SIF’s management body, the custodian and the auditor.

Central administration

The central administration of the SIF must be located in Luxembourg. Unlike for SICARs, the central administrative agent must be a professional of the financial sector and thus hold a special licence pursuant to the 1993 Banking Law.

A SIF may also be self-administered, subject to satisfying the organisational requirements that the CSSF would require.

1 Please refer to section “Legal structures” (p. 18 to 20) for advantages/disadvantages of the different available types of companies.
Custodian

The custodian bank’s role is identical to the role performed under the SICAR Law.

Capital structure and distributions

The minimum capitalisation amounts to EUR 1,250,000 (including issue premium) to be reached within twelve months of approval by the CSSF.

Capital contributions may be organised in cash or in kind. A contribution in kind must be subject to an audit report, if the SIF is organised in the legal form of an SCA or SA.

Most private equity and venture capital funds will apply a commitment-based funding policy. This funding process can be organised in two ways: (i) the entire subscription commitment is paid-up with partly-paid shares, with a minimum 5% payment upon issue or, (ii) shares are issued fully paid-up as needed and within the limits of the contractual subscription commitment.

Variable capital

A SIF may opt for a fixed or variable share capital. Where a SIF has a variable capital structure, its capital is at all times equal to the SIF’s net asset value.

If a SIF has a fixed share capital, any reduction thereof requires a decision of the general meeting of shareholders or limited partners, depending on the choice of the legal form. Any such reduction ipso jure triggers an amendment to the articles of association of the SIF. The formalities may thus be more burdensome and the outcome of any such reduction is subject to a shareholder or limited partner decision.

If the capital structure is variable, a capital reduction neither requires the intervention of the shareholders or limited partners nor of a notary. In practice, the management body will have standing authority to effect such reduction via a mere distribution of (distributable) proceeds (i.e., available cash or other distributable assets) or a redemption and cancellation of shares and the payment of the relevant redemption proceeds.

This variability is thus particularly important in risk capital matters as it allows the full repatriation of all realisation proceeds including principal amounts. The management body will thus not be bound by restrictions other than those which are self-imposed in the constitutional documents.

Issuance of securities

A SIF that has opted for the SCA or SA form may issue different types of securities such as shares, bonds, founder shares, beneficiary shares or other financial instruments.

The SCS and Sàrl legal forms are subject to certain restrictions in that respect.

For all legal forms, however, the issue process can be freely organised in the constitutional documents, thus affording the requisite level of structuring flexibility.

The terms and conditions applicable to the subscription and/or redemption of shares or units of a SIF must however be described in the SIF’s constitutional documents. In particular, the issue and/or redemption prices may deviate from the net asset value concept applicable to UCIs.

Authorisation

A SIF may start its activities before its approval by the CSSF, provided that within a period of one month following the formation of the SIF a formal application request is filed with the CSSF.

Information requirements

The SIF Law does not impose any form or content requirements in respect of the “Issuing Document”, i.e. the offering document or private placement memorandum, other than that the information provided should allow potential investors to make an informed judgement about an investment in the SIF.
In addition, SIFs are only obliged to establish an annual report and may provide additional reports on a case by case basis.

Valuation, accounting and reporting

The SIF Law requires that the valuation be made in accordance with the “fair value” accounting principle and that the precise valuation methodology be set out in the constitutional documents or identified by reference to the valuation methodologies recommended by professional associations of the concerned industry or business such as EVCA, BVCA, AFIC, etc.

The SIF Law no longer requires that the net asset value be published. In practice, most private equity initiators will maintain a single net asset value calculation per year for the purpose of preparing the annual report.

Investments

Compared to the 2002 UCI Law and to the SICAR Law, the SIF Law grants maximum flexibility in terms of eligible assets in which a SIF may invest.

SIFs may thus invest in all types of transferable securities, instruments and assets, including - but not limited to - shares, bonds, derivative instruments, money market instruments, portfolio companies, real estate, hedge funds, private equity funds, real estate funds, commodities, debt instruments, etc.

SIFs may furthermore be used as a feeder fund or fund of funds.

Contrary to SICARs however, SIFs are subject to the principle of risk spreading, except where a SIF is organised as a feeder fund. In that case, the diversification requirement has to be examined at the level of the master fund.

The CSSF has issued regulatory guidance (Circular 07/309) as to the principle of risk spreading, which provides for a safe harbour 30% threshold (i.e., of the net assets or the aggregate of net assets and undrawn subscription commitments into securities/assets of the same type issued by the same issuer).

Tax regime

At the level of the SIF

SIFs are subject to a subscription tax at a rate of 0.01% levied on the fund’s net assets.

The portion of the assets invested in other Luxembourg UCIs that have already been subject to the subscription tax, as well as certain money market funds and pension pooling funds will be exempt from this subscription tax.

The SIF Law, unlike the 1991 Investment Funds Law, does not require that the participating pension funds be of the same group and thus permits that individual sub-funds/compartment or individual share/unit classes reserved to pension schemes also benefit from this exemption.

SIFs of the corporate type

SIFs of the corporate type benefit from an exemption which relates to ordinary corporate taxes on both income and capital gains. All their current income - from domestic or foreign sources - as well as capital gains (whether realised or not) are thus tax exempt in Luxembourg.

SIFs of the contractual type

SIFs of the contractual type are transparent for taxation purposes. Income is thus attributed proportionally to its investors, and any investor resident in a jurisdiction having a treaty with Luxembourg may therefore in principle and to the extent practicable, be able to take advantage of certain treaty benefits; for example, an investor may under certain conditions be able to offset his/her personal income tax liability in his/her country of residence against
withholding tax levied on distributions or gains made to or by the SIF in certain source countries where investments are located.

**At the level of the investors**

Investors are not subject to capital gains, income or withholding tax in Luxembourg, except for:

- those domiciled, residing or having a permanent establishment in Luxembourg, or
- non-residents of Luxembourg who hold more than 10 per cent of the shares of a corporate SIF and who dispose of all or part of their holdings within six months from the date of acquisition, or
- in some limited cases, some former residents of Luxembourg, who hold more than 10 per cent of the shares of a corporate SIF.

In addition, dividend payments and other distributions of income made by a contractual SIF (i.e., in the form of an FCP) or payments of sale/redemption proceeds of the units in such SIFs, may be subject to withholding tax and/or the exchange of information pursuant to the domestic implementation of Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments.
General legal and regulatory framework

Retail, institutional or professional investors alike may gain exposure to listed private equity investments by investing in a UCITS-compliant fund subject to Part I of the 2002 UCI Law.

While only a limited exposure will be possible under (non listed) private equity and venture capital investments under the UCITS regime, certain promoters have structured their private equity and venture capital funds under Part II of the 2002 UCI Law.

While a Part II UCI does not qualify as a harmonised UCITS and hence does not benefit from the European passport for cross-border distribution, Part II funds, in contrast to SIFs and SICARs, may however be marketed to retail investors by virtue of a private placement or by complying with local distribution rules.

Due to the fact that UCIs may also be placed or distributed to retail investors, the regulatory approval process and ongoing prudential supervision is stricter than for SIFs and SICARs. The foremost distinction lies in the fact that a UCI requires a promoter with “deep pockets”.

Even though UCIs are subject to a stricter regulatory regime, the 2002 UCI Law offers a great deal of structuring flexibility. A Part II UCI may thus 1) be closed-ended 2) raise its capital without promoting the sale of its shares/units to the public within the European Union 3) reserve in its constitutional documents the sale of its units/shares to the public in non-EU countries or 4) pursue investment policies for which the UCITS investment restrictions are inappropriate (i.e., such as private equity and venture capital investments).

The Luxembourg financial supervisory authority has issued several Circulars in relation to UCIs that pursue non-UCITS compatible investment strategies, most notably in relation to venture capital funds, futures and options funds, real estate funds and UCIs pursuing alternative investment strategies (hedge funds and funds of hedge funds) 1.

Circular IML 91/75 as amended by Circular CSSF 05/177 prescribes the terms and conditions for (retail) venture capital funds. The Circular prescribes that the members of the management body as well as the investment adviser must establish that they have sufficient experience in the field of venture capital investments.

In addition, the Circular prescribes minimum risk diversification rules whereby a Part II private equity/venture capital UCI may not invest more than 20% of its net assets in any single target portfolio company.

Furthermore, the shares/units issued to investors must have a minimum issue price of EUR 12,500.

The prospectus must disclose whether (potentially higher) investment management fees are also due on the portion of the assets not yet or not invested in private equity/venture capital investments. The financial reports of the UCI must contain information on the development of the portfolio companies. In the case of disposal, the UCI must separately disclose the profits or losses made in respect of each portfolio investment. In addition, the financial statements must disclose potential conflicts of interests.

In addition, the Circular clarifies that the prospectus must contain a detailed description of the investment risks (i.e., risk factors) inherent to the investment policy and of the type of conflict of interest which may arise.

Finally, the prospectus must include a clear statement that such a UCI is only suitable for persons who can afford to take such risks.

Other key characteristics

Available legal forms
UCIs may also adopt a contractual or corporate form and can be structured with multiple sub-funds/compartments.

If organised under the corporate form, the UCI however benefits from less structuring flexibility than the SIF.

If formed as a SICAV, it may only opt for the corporate form of the public limited company (SA) while if organised as a SICAF, it may opt for the public limited company (SA), the partnership limited by shares (SCA) or the private limited company (Sàrl).

Custodian bank
For all UCIs, the custodian bank must be a Luxembourg-based bank. The tasks and functions of the custodian bank are more detailed than for SIFs and SICARs.

Central administration and auditor
As is the case for SIFs, the central administration has to be located in Luxembourg and an independent auditor (réviseur d’entreprises) must be appointed.

Tax regime

UCIs are to be treated the same as SIFs in respect of their tax regime, a distinction being made between the corporate and contractual type UCI. The subscription tax regime is however slightly different.

UCIs investing in private equity and venture capital investments are thus subject to an annual subscription tax of:

• 0.05% p.a. on the net assets, such tax to be levied quarterly;
• 0.01% p.a. of the net assets of those sub-funds/compartments or share/unit classes the placement of which is restricted to institutional investors;

The subscription tax is reduced to zero in respect of investments in other UCIs which have already been subject to subscription tax. In addition certain specific subscription tax exemptions exist in respect of qualifying money market UCIs and pension pooling UCIs.

Investors are not subject to capital gains, income or withholding tax in Luxembourg, except for:

• those domiciled, residing or having a permanent establishment in Luxembourg, or
• non-residents of Luxembourg who hold more than 10 per cent of the shares of a corporate UCI and who dispose of all or part of their holdings within six months from the date of acquisition, or
• in some limited cases, some former residents of Luxembourg, who hold more than 10 per cent of the shares of a corporate UCI.

In addition, dividend payments and other distributions of income made by a contractual UCI (i.e., in the form of a FCP) or payments of sale/redemption proceeds of the units in such UCIs, may be subject to withholding tax and/or the exchange of information pursuant to the domestic implementation of Council Directive 2003/48/EC of 3 June 2003 on taxation of savings income in the form of interest payments.
## Luxembourg Private Equity and Venture Capital Investment Vehicles

### Summary table

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<thead>
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<th>SICAV</th>
<th>SICAF</th>
<th>FCP</th>
</tr>
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<tbody>
<tr>
<td><strong>Supervision by CSSF</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>CSSF approval process</strong></td>
<td>Articles of incorporation Prospectus Directors Investment manager (if any) Eligibility of promoter Choice of custodian</td>
<td>Articles of incorporation Prospectus Directors/managers Investment manager (if any) Eligibility of promoter Choice of custodian</td>
<td>Management regulations Prospectus Directors of management company Investment manager (if any) Eligibility of promoter Choice of custodian</td>
</tr>
<tr>
<td><strong>Legal entity</strong></td>
<td>SA</td>
<td>SA, SCA, Sàrl</td>
<td>/</td>
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<tr>
<td><strong>Fund management</strong></td>
<td>By board of directors</td>
<td>By board of directors or manager/general partner</td>
<td>Management company</td>
</tr>
<tr>
<td><strong>Type of fund</strong></td>
<td>Open-ended or closed-ended</td>
<td>Closed-ended or open-ended</td>
<td>Open-ended or closed-ended</td>
</tr>
<tr>
<td><strong>Minimum capital</strong></td>
<td>EUR 31,000 EUR 1.25 mio (to be attained within 6 months)</td>
<td>Upon incorporation: SA/SCA: EUR 31,000 Sàrl: EUR 12,500 EUR 1.25 mio (to be attained within 6 months)</td>
<td>EUR 1.25 mio (to be attained within 6 months)</td>
</tr>
<tr>
<td><strong>Capital (fixed/variable)</strong></td>
<td>Variable</td>
<td>Fixed</td>
<td>/</td>
</tr>
<tr>
<td><strong>Financial reporting</strong></td>
<td>Audited annual report within 4 months of end of relevant period Semi-annual report within 2 months of end of relevant period</td>
<td>Audited annual report within 4 months of end of relevant period Semi-annual report within 2 months of end of relevant period</td>
<td>Audited annual report within 4 months of end of relevant period Semi-annual report within 2 months of end of relevant period</td>
</tr>
<tr>
<td><strong>NAV calculation</strong></td>
<td>Normally once a month but derogation possible</td>
<td>Normally once a month but derogation possible</td>
<td>Normally once a month but derogation possible</td>
</tr>
<tr>
<td><strong>Required service providers in Luxembourg</strong></td>
<td>Custodian bank Administrative agent Auditor</td>
<td>Custodian bank Administrative agent Auditor</td>
<td>Custodian bank Administrative agent Auditor</td>
</tr>
<tr>
<td><strong>Eligible investors</strong></td>
<td>Unrestricted</td>
<td>Unrestricted</td>
<td>Unrestricted</td>
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<tr>
<td><strong>Diversification requirements</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

**Notes:**
- SICAV: Société d’Investissement en Capital Áléatoire de Valorisation
- SICAF: Société de Placement en Capital d’Alternance en France
- FCP: Fonds de Capital de Placement
The most common private equity vehicle for cross-border private equity acquisitions is referred to as a “SOPARFI”. While this acronym stands for “financial participation company” it is an ordinary commercial company subject to the 1915 Companies Law. It does not as such refer to a specific legal regime but merely to a marketing acronym.

The most important distinction between the SICAR/SIF/UCI and the SOPARFI is the lack of regulation or regulatory oversight.

A SOPARFI is typically used for holding and financing private equity and venture capital investments. It may thus equally serve as a special purpose vehicle, a joint venture vehicle or more rarely a private equity “fund” vehicle. While it is incorrect to label a SOPARFI as a fund, which designation is in administrative parlance reserved to the SIF and UCI, it is regularly used in practice. The reader should however be aware that from a legal and regulatory point of view, a distinction has to be made between “fund” and “non-fund” vehicles.

The success of the SOPARFI stems from its ability to take full advantage of Luxembourg’s extensive double taxation treaty network with over 60 countries and its access to the domestic implementation of the EU Parent-Subsidiary Directive. Due to these features, SOPARFIs can thus be used as stand-alone (private equity and venture capital) acquisition, holding or financing vehicles or in combination with SIFs, SICARs and UCIs.

Legal framework

The 1915 Companies Law constitutes the general legal framework applicable to a SOPARFI. A SOPARFI is a Luxembourg commercial corporate entity, which will be incorporated as a public limited company (SA), a private limited company (Sàrl) or a partnership limited by shares (SCA).

Regulatory framework

SOPARFIs are not subject to the oversight of the CSSF.

Tax regime

A SOPARFI is subject to the general corporate income tax rules. A SOPARFI is thus subject to corporate income tax and municipal business tax at an aggregate rate of 28.59% for entities located in Luxembourg City in 2009. It is also subject to net worth tax (at the rate of 0.5% assessed on its unitary value, computed on the basis of the balance sheet as of 31 December of the preceding year).

The importance of the SOPARFI for private equity and venture capital structuring lies in the application of the domestic participation exemption regime implementing inter alia the EU Parent-Subsidiary Directive. By application thereof and provided the conditions are all met, a SOPARFI will benefit from an income tax exemption on dividends and capital gains (including liquidation bonuses) derived from qualifying participations and may furthermore pay dividends to qualifying recipients without taxation at source.

Moreover, qualifying participations are furthermore excluded from the taxable base for purposes of the net worth tax computation.

As from 2009, Luxembourg has abolished its dividend withholding tax on dividend distributions to qualifying recipients in all treaty countries. This exemption enlarges the exemption previously available to EU Member States only to all treaty countries. For all other recipients, while the ordinary withholding tax rate is 15%, it may be reduced to 10%, 5% or nil under the double tax agreements in place. This represents a significant advantage for the structuring of profit repatriations as it significantly simplifies profit repatriation schemes to treaty countries.

1 Countries that have signed a double taxation treaty with Luxembourg.
While these withholding tax exemptions or reductions may not be available in all circumstances, a tax efficient repatriation may generally be achieved in a number of ways.

**Tax substance**

A rising issue in international taxation is the requirement by foreign tax administrations of real substance for private equity and venture capital vehicles in order to benefit from a desired tax status (e.g., tax treaty eligibility, application of Parent-Subsidiary Directive, avoidance of CFC rules, etc.). The lack of substance may thus lead a foreign tax administration to conclude that a recipient has merely been set up for treaty shopping purposes and in consequence should not be allowed to benefit from certain provisions or be simply disregarded from a tax point of view.

The requirements for substance are determined primarily by the tax rules of the source country (i.e., where the assets are located) rather than Luxembourg. These requirements vary from source country to source country and will therefore need to be considered on a case by case basis.

In many cases, the Luxembourg entity must be provided with sufficient “business substance” in terms of business purpose and sufficient “material substance”, i.e., office premises, equipment, staff, etc.

It is important to point out that these requirements impact not only Luxembourg, but all locations that play a role in the private equity sector and in the international tax structuring area.

Luxembourg service providers have for a long time been accustomed to providing the requisite levels of substance so as to address this structuring issue efficiently.

**Market outlook**

Many large private equity houses now have substantial presence in Luxembourg (with own offices, personnel, back-office, etc.) and SOPARFIs are used in many private equity deals such as primary or secondary Buy-Outs, refinancings or other types of transactions.

It is through the combination of the SOPARFI’s efficiency with the dedicated regulated private equity and venture capital fund vehicles such as the SICAR and the SIF, that the legislator’s willingness to promote Luxembourg as the foremost private equity structuring hub in Europe comes to its full bearing.
The SPF
(société de gestion de patrimoine familial)

The SPF Law has created a new regime for the management of individuals’ family wealth. The family wealth management company (société de gestion de patrimoine familial, SPF) is designed as a company intended solely for individuals managing their private wealth.

Just as an individual may directly invest his/hersavings or private liquid assets in shares, bonds, bank balances, undertakings for collective investment, etc., that person may wish to create one or more corporate structures to manage all or part of his/her private liquid assets. This is the aim of the SPF.

The SPF is therefore empowered to acquire, hold, manage and sell any financial asset insofar as this is possible within the framework of private wealth management for individuals, irrespective of the level of the person’s wealth or sophistication.

The private character of the SPF enables those individuals to have the assets of the SPF managed in the way they wish and, if so desired, to waive the risk-spreading requirement imposed on undertakings for collective investment.

General and legal framework

Legal form
The SPF has to adopt the form of a corporate entity. It may thus choose between the form of a private limited company (Sàrl), a public limited company (SA), a partnership limited by shares (SCA) or a cooperative company organised as a public limited company (SCoSA).

Corporate name
The SPF’s articles of incorporation must clearly indicate that it is a family wealth management company (SPF).

Supervision
Though the SPF is not subject to the prudential supervision of the CSSF, it will be subject to the fiscal supervision of the indirect tax authorities i.e., Administration de l’Enregistrement et des Domaines.

Investors
The SPF is reserved for certain qualifying investors.

Eligible investors comprise, first and foremost, any individual acting within the framework of the management of his/her private wealth.

Secondly, the SPF is open to wealth management entities acting exclusively in the interest of the private wealth of individuals. This includes entities – with or without legal personality – such as trusts, private foundations or similar entities, the object or purpose of which is to manage all or part of the private wealth of individuals, to the exclusion of any commercial undertaking. It should be added that any legal person, resident in Luxembourg or not, is included in this concept, provided that it does not exercise a commercial activity. A pure holding company not exercising an economic activity under EU laws and regulations could thus be an investor in an SPF, provided that it is itself owned by investors eligible under the terms of the SPF Law.

Finally, intermediaries acting on a fiduciary basis or in a similar capacity, on behalf of investors who are themselves eligible, may also invest in an SPF.

Capital structure and distributions

Minimum capital upon incorporation
An SPF will be subject to the minimum capitalisation required by its corporate form, i.e., EUR 31,000 for an SA or SCA and EUR 12,400 for an Sàrl.
Distributions

Since an SPF will always have a fixed capital, distributions may not reduce the net assets of the SPF to less than the amount of the subscribed capital plus non-distributable reserves.

Interim dividends are subject to statutory conditions.

Tax regime

The SPF Law introduces an exemption from corporate income tax since the SPF does not undertake a commercial activity.

At the level of the SPF

The SPF is exempt from income tax and municipal business tax on profits and capital gains. It is also exempt from net worth tax.

This tax regime is not applicable if, for a given year, 5% or more of total dividends received by the SPF come from non-resident and non-listed companies that are not subject to an income tax similar to Luxembourg corporate income tax.

In that case, the SPF will lose the benefit of its favourable tax regime for the financial year in question and will have to pay income tax and municipal business tax (i.e. a maximum combined rate of 28.59% in 2009 in Luxembourg City), as well as a net worth tax of 0.5% on its net assets as determined on 1 January of that year.

The SPF does not benefit from double tax treaties or from the provisions of the EU Parent-Subsidiary Directive.

The SPF is subject to a 0.25% subscription tax (taxe d’abonnement). The SPF Law, however, provides for minimum annual taxation of EUR 100 and a maximum annual taxation of EUR 125,000. The taxable base of the subscription tax is composed of the paid-up share capital plus, if applicable (i) the share premium and (ii) the part of the debt, in whatever form, which exceeds eight times the paid-up share capital and the share premium on 1 January or, for the year of its incorporation, existing at the date of incorporation.

Finally, the SPF is not subject to VAT.

At the level of the investors

Non-resident investors are exempt from capital gains from sales of their shareholding in the SPF or from liquidation proceeds of the SPF.

Dividend distributions by an SPF are not subject to withholding tax. However, resident individuals to whom dividends are paid are taxed at the domestic progressive rate since the exemption of the SPF excludes the application of the half-dividend system provided for in article 115 (15a) of the Luxembourg Income Tax Law (exemption up to 50% of the dividends paid by fully-taxable companies).

Interest paid by an SPF is not subject to withholding tax except if the EU Savings Directive or Luxembourg domestic withholding tax apply.
## Glossary

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<tr>
<th>Term</th>
<th>Definition</th>
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<td>1915 Companies Law</td>
<td>The Law of 10 August 1915 on commercial companies, as amended</td>
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<tr>
<td>1991 Institutional Funds Law</td>
<td>The Law of 19 July 1991 concerning undertakings for collective investment the securities of which are not intended to be placed with the public</td>
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<td>1993 Banking Law</td>
<td>The Law of 5 April 1993 on the financial sector, as amended</td>
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<td>2002 Annual Accounts Law</td>
<td>The Law of 19 December 2002 on the annual accounts of companies, as amended</td>
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<td>The Law of 20 December 2002 on undertakings for collective investment, as amended</td>
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<td>Articles</td>
<td>Articles of incorporation of a Luxembourg company</td>
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<td>CSSF</td>
<td>Commission de surveillance du secteur financier, the Luxembourg financial supervisory authority</td>
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<td>FCP</td>
<td>Fonds commun de placement, an unincorporated co-ownership of assets</td>
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<td>GP</td>
<td>General partner</td>
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<tr>
<td>Institutional investor</td>
<td>Undertakings and organisations that manage an important amount of funds and assets. This concept covers inter alia credit institutions and other financial sector professionals, insurance and re-insurance undertakings, welfare institutions and pension funds, industrial and financial groups and structures put in place by these entities to manage an important amount of funds and assets.</td>
</tr>
<tr>
<td>LuxGAAP</td>
<td>Luxembourg Generally Accepted Accounting Principles</td>
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<td>NAV</td>
<td>Net asset value</td>
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<td>Professional investor</td>
<td>Any professional investor within the meaning of Annex II to the Directive 2004/39 on markets in financial instruments (MiFID)</td>
</tr>
<tr>
<td>PD Prospectus</td>
<td>Prospectus compliant with the Prospectus Directive</td>
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<tr>
<td>PSF</td>
<td>Professionnel du secteur financier (Professional of the financial sector)</td>
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<td>SA</td>
<td>Société anonyme (public limited company)</td>
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<td>Abbreviation</td>
<td>Description</td>
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<td>Sàrl</td>
<td>Société à responsabilité limitée (private limited company)</td>
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<td>SCA</td>
<td>Société en commandite par actions (partnership limited by shares)</td>
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<td>SCoSA</td>
<td>Société coopérative organisée comme une société anonyme (cooperative company organised as a public limited company)</td>
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<td>SCS</td>
<td>Société en commandite simple (limited partnership)</td>
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<td>Société d’investissement en capital à risque (investment company in risk capital)</td>
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<td>Société d’investissement à capital fixe (investment company with fixed capital)</td>
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<td>SICAV</td>
<td>Société d’investissement à capital variable (investment company with variable capital)</td>
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<td>SIF</td>
<td>Specialised investment fund</td>
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<td>SIF Law</td>
<td>The Law of 13 February 2007 on specialised investment funds, as amended</td>
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<td>SOPARFI</td>
<td>Société de participations financières</td>
</tr>
<tr>
<td>SPF</td>
<td>Société de gestion de patrimoine familial (family wealth management company)</td>
</tr>
<tr>
<td>SPF Law</td>
<td>The Law of 11 May 2007 on the family wealth management company, as amended</td>
</tr>
<tr>
<td>UCI</td>
<td>Undertaking for collective investment</td>
</tr>
<tr>
<td>UCITS</td>
<td>Undertaking for collective investment in transferable securities</td>
</tr>
<tr>
<td>VAT</td>
<td>Value-added tax</td>
</tr>
<tr>
<td>Well-informed investor</td>
<td>Any investor who has adhered in writing to the status of well-informed investor and complies with one of the following conditions: (i) he/she/it invests at least EUR 125,000 in the special fund; (ii) or his/her/its expertise is confirmed by a Luxembourg professional of the financial sector or management company; or (iii) he/she/it has carried out a certain minimum number of significant transactions on the relevant market over the previous year.</td>
</tr>
</tbody>
</table>
The following information is as of September 30, 2009:

- SICAR:  230
- SIF:
  - SICAV:  488
  - FCP:  438
- Part II UCIs:
  - Part II SICAV:  366
  - Part II FCP:  296
  - Part II others:  8
Luxembourg for Finance is a public-private partnership between the Luxembourg Government and the Luxembourg Financial Industry Federation (PROFIL). It consolidates the efforts made by the public authorities and principal actors of the financial sector to ensure the development of an innovative and professional financial centre through a coherent and structured communications policy.

Thus Luxembourg for Finance will enhance the external presentation of the financial centre, communicating the advantages of its products and services to a wider public and highlighting the numerous opportunities available to investors and clients, whether institutional or private, from around the world.

Luxembourg for Finance organises seminars in international financial centres and takes part in selected world class trade fairs and congresses.

The agency also develops its contacts with opinion leaders from international media and is the first port of call for foreign journalists.