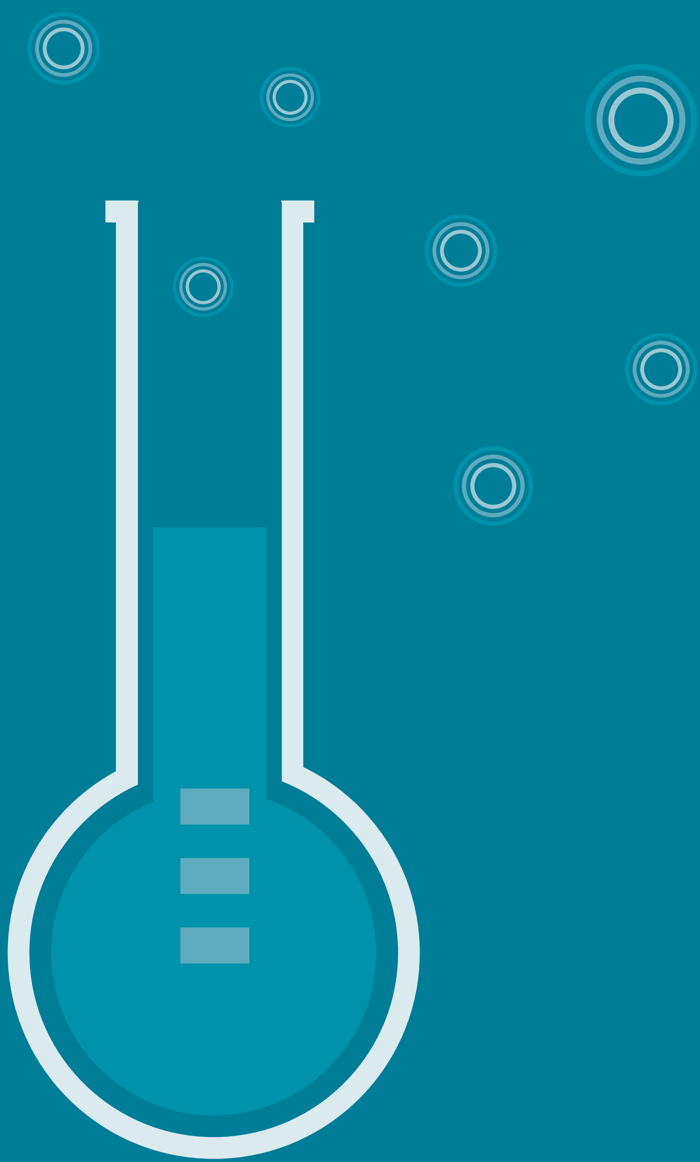
alfi association of the luxembourg fund industry

private equity

Luxembourg
Private Equity and Venture Capital Investment Vehicles



Political, legal and fiscal stability

State-of-the-art legal and regulatory environment

High regulatory and investor protection standards

Solid financial sector supervision

Rapid and innovative responses to new trends

Highly international, in terms of origin of financial institutions and fund promoters, clients, population and workforce

Diversified offer of financial products and services

Europe's number One investment fund centre

Unique concentration of investment fund industry experts in all aspects of product development, administration and distribution

Unrivalled know-how in cross-border investment funds business

Top-notch market infrastructure for securities trading, clearing and settlement

foreword

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

Luxembourg today offers a large variety 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), as well as 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.

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.

table of contents

With more than 13,500 funds/units and assets under management of over EUR 2,500 billion at the end of July 2013, Luxembourg is Europe's most important investment fund domicile and number two in the world after the United States. The Luxembourg fund centre is the prime location for the pan-European and global distribution of Undertakings for collective investment in transferable securities (UCITS).

Drawing on the success of the UCITS brand, Luxembourg has been able to build up a similar track record in alternative funds such as real estate funds and funds of funds, private equity funds and unregulated vehicles as well as hedge funds and funds of hedge funds, securitisation vehicles and pension pooling structures. Today, Luxembourg is Europe's first jurisdiction for domiciling real estate funds distributed on a pan-European basis.

The finance industry is one of the most important sectors of the Luxembourg economy. Nevertheless, the government and the legislator, business communities and large players strive to make the country also a place where new businesses can be set up and developed in the non-financial area. An attractive fiscal and regulatory environment and the availability of appropriate vehicles and instruments for private equity and venture capital investments are key elements in this context.

A broad offer of investment vehicles

Luxembourg has a long experience in offering flexible and efficient structuring options for private equity and venture capital investments. For many years, international private equity firms have been using non-regulated special purpose vehicles (such as the financial participation company SOPARFI) for private equity acquisitions and financing alike.

Luxembourg gained international recognition as a jurisdiction for launching regulated private equity funds with the implementation of a dedicated private equity and venture capital investment vehicle, the investment company in risk capital (*société d'investissement en capital à risque* - SICAR) in 2004 and with the introduction of the specialised investment fund (*fonds d'investissement spécialisé* - SIF), a regulated, operationally flexible and fiscally efficient multipurpose investment vehicle for an institutional and qualified investor base, in 2007. Both can be used for structuring private equity and venture capital investments.

These two vehicles as well as Luxembourg's attractive tax and regulatory framework and business-friendly environment have led many asset managers to expand their Luxembourg business to investments in risk capital. Others, who were not yet present, moved to the Grand-Duchy to seize the business opportunities it offers. In addition to the large private equity houses that have substantial back-office presence in Luxembourg for the administration of their SOPARFIs, an increasing number of new private equity players establish themselves in Luxembourg with SICARs and SIFs.

Private equity vs. venture capital

Luxembourg SICAR and SIF structures can accommodate both private equity and venture capital investments.
While the term "private equity" commonly covers any investment in companies that are not listed on any regular and open market and for which valuations are not readily available, venture capital has traditionally been used to mark the early stages in a life cycle of a company.

Target companies for venture capital providers can be newly created entities requiring seed money and marketing expertise – often provided inter alia through business angels networks –, start-up companies in the phase of developing their product or companies in need for expansion capital at the stage of entering the market.

The Luxembourg SICAR legislation refers to "risk capital", which means that the investments made by a SICAR have to bear a certain risk and have to be made with the aim of being disposed of with a profit after a certain period of time. This can apply to both private equity and venture capital, but also to opportunistic real estate.

The SIF legislation does not refer to risk capital, so that this vehicle can be used to structure any private equity and venture capital investment.

Private Equity in Luxembourg: a highly diversified sector

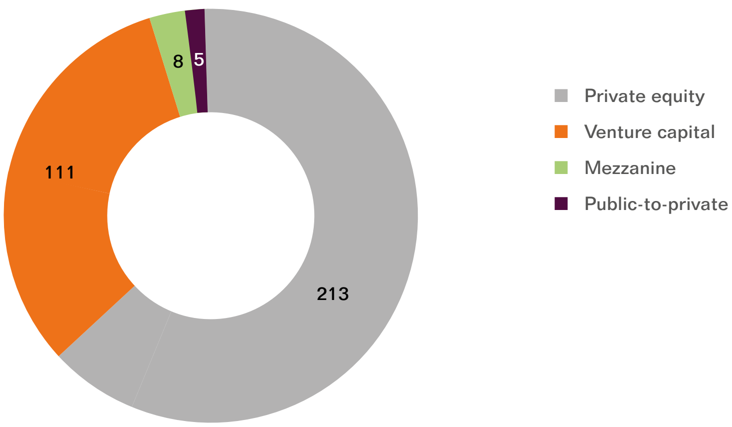
In September 2013, Luxembourg was home to 278 SICARs and more than 1,500 SIFs of which approximately 10% can be considered to be used for private equity or venture capital investments.

The vast majority (213 out of the 337 existing at the close of December 2012) of the Luxembourg SICAR is investing in private equity. 62 percent of the SICAR's net assets of some 30 billion euros were invested in this sector in 2012.

Looking at potential investment areas, Luxembourg noticed an outstanding growth in the field of renewable energy funds, frequently set up as SIFs. Further to this, the Luxembourg financial centre has carved itself a niche as fund jurisdiction for real estate and infrastructure funds, microfinance funds and funds investing in tangible assets such as forestry, plantations, art, jewelry, wines, spirits and even running horses or football players.

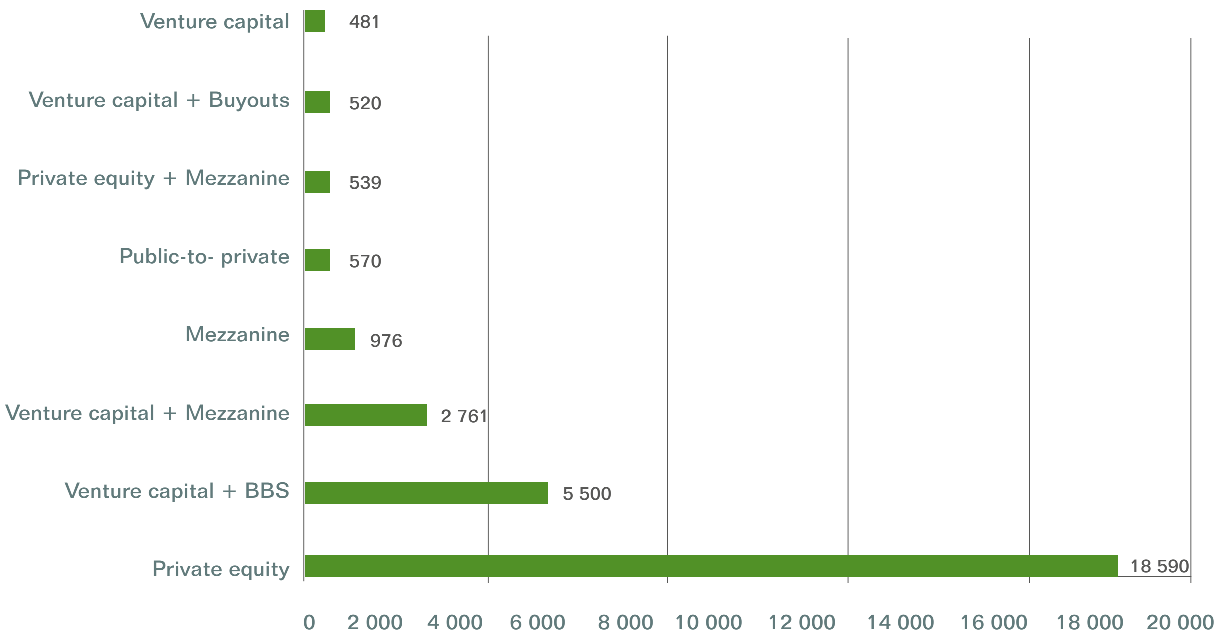
The following charts illustrate the diversity of the Luxembourg's private equity and venture capital funds and the geographical spread of their sponsors:

Investment policy of Luxembourg SICAR in 2012
(by number of SICARs)



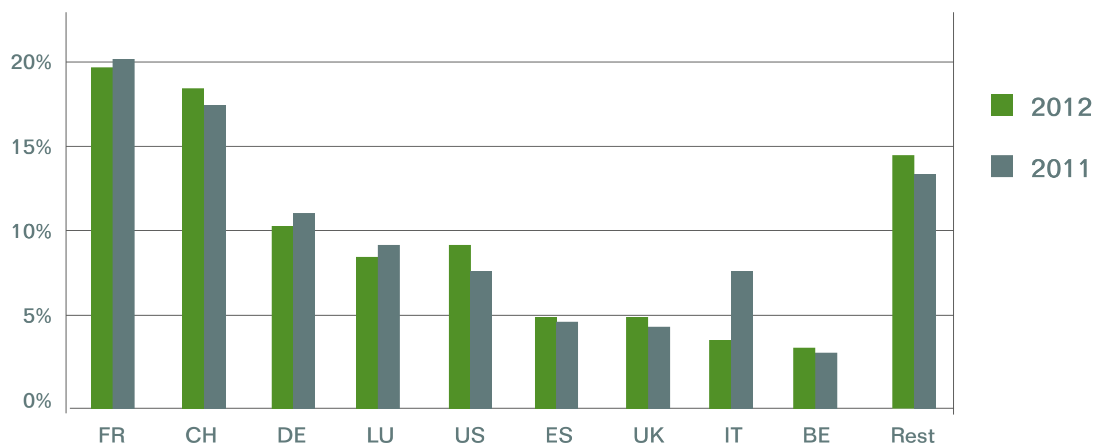
(Figures as at December 31, 2012; Source: CSSF)

Breakdown of SICAR net assets by investment policy
(EUR million)



(Figures as at December 31, 2012; Source: CSSF)

Geographical origin of SICAR initiators



(Figures as at December 31, 2012; Source: CSSF)

Today the largest private equity fund initiators come from the European continent, namely France, Germany and Switzerland, but more and more funds are being set up by non-European groups from either the USA or the Asian and Middle East countries.

The Law

The Alternative Investment Fund Managers Directive (AIFMD) has introduced a harmonised European Union (EU) regulatory and supervisory framework for alternative investment fund managers (AIFM).

The Directive lays down requirements which must be met by AIFM, covering authorisation, capital, marketing, organisation, remuneration, conduct of business, conflicts of interest, delegation and transparency. Specific provisions cover the use of leverage and acquisition of major holdings and control. In return for more regulation of AIFM, their service providers and funds, the Directive provides for the introduction of passports enabling AIFM to offer their management services and market their alternative investment funds (AIF) throughout the EU.

Although the Directive is in place to regulate primarily AIFMs and indirectly their alternative investment funds, all major stakeholders will be affected: managers, investors and service providers.

The harmonised distribution regime is an opportunity that will make private equity a more widely accessible and attractive asset class than before. It is expected that, over a period of time, the Directive will establish a quality "AIF brand" for AIFMD-compliant products, comparable to the UCITS brand established by the UCITS Directive for the traditional products.

Luxembourg transposed the Directive with the Law of 12 July 2013 on Alternative Investment Fund Managers (the Law). However, the Luxembourg regulated private equity products SICAR and SIF display already many of the features that will now become standard under AIFMD.

Luxembourg aims at duplicating the Luxembourg UCITS success story in the area of alternative investment funds.

Authorisation

The Directive applies to all

- EU AIFM that manage one or more AIFs, irrespective of whether the AIF is an EU AIF or a non-EU AIF;
- non-EU AIFM, which either
  - manage one or more EU AIF;
  - market one or more AIF in the EU, irrespective of whether the AIF is an EU AIF or a non-EU AIF.

The Law provides for several exemptions from its provisions. Full exemptions apply to holding companies, securitisation special purpose entities, institutions for occupational retirement provision (IORP) and their managers - provided that they do not manage AIF - and certain group AIFM entities (non-AIF).

Provided that certain registration and regulatory reporting conditions are met, the provisions of the Law do not apply to AIFM meeting the criteria below:

- AIFM managing portfolios of AIF whose total assets under management, including any assets acquired through use of leverage, do not exceed EUR 100 million;
- AIFM managing portfolios of AIF whose total assets under management do not exceed EUR 500 million in cases where the portfolio of an AIFM consists of AIF that are not leveraged and have no redemption rights exercisable during a period of five years following the date of initial investment in respective AIF.

The Level 2 measures precise the calculation of the assets under management of each managed AIF. AIFM may choose to opt-in under the Law in order to benefit from the rights granted to AIFM (in particular passports); in such cases, respective AIFM are bound to comply with all provisions of the Law.

AIFM in scope of the Law must be authorised and supervised in accordance with the provisions of the Law in order to obtain authorisation for the provision of management services for AIF. The Law lays down the conditions to be fulfilled in order for the competent authorities of the home Member State of an AIFM to grant authorisation. In general, the timeframe within which AIFM are required to obtain authorisation is three months. AIFM existing before 22 July 2013 will take all necessary steps to comply with the Law and must submit an application for authorisation by 22 July 2014.

Specific exemptions apply in the case of AIFM managing closed-ended AIF.

To cover potential professional liability risks resulting from professional negligence of the AIFM, both the internally managed AIF and externally appointed AIFM shall either hold an appropriate amount of additional own funds, or have appropriate professional indemnity insurance.

Own funds must be invested in liquid assets or assets readily convertible into cash.

Passport

AIFs falling under the scope of the Law will be entitled

(i) to market the AIF's shares to professional investors in Luxembourg;
(ii) to apply with the CSSF for the authorisation to market the AIF's shares to professional investors within the meaning of Annex II of the Directive 2004/39/EC on markets in financial instruments (Professional Investors) in any other European Economic Area (EEA) member state under certain conditions; and
(iii) to be authorised to market the AIF's shares to retail investors in EEA member states allowing AIFs to be marketed to retail investors in their territory, subject to applicable local requirements.

For the purpose of point (ii) above, the notification must comprise the documentation and information set out in Annex IV of the Directive. If the management of the AIF is made by the AIFM in compliance with the provisions of the Law, the *Commission de Surveillance du Secteur Financier* (CSSF) must notify the competent authorities of the EEA member states where it is intended to market the AIF no later than 20 working days after the date of receipt of the complete notification file. Upon transmission of the notification file, the CSSF will, without delay, notify the AIFM about the transmission. The AIFM may start marketing the AIF in the other relevant EEA member states as of the date of that notification.

In the event of a material change to any part of the documentation and information notified as per the above, the AIF's AIFM shall give written notice of that change to the CSSF at least 1 month before implementing a planned change, or immediately after an unplanned change has occurred. If, pursuant to a planned change, the management of the AIF by the AIFM would no longer comply with the Law or the AIF's AIFM would otherwise no longer comply with the Law, the CSSF shall inform the AIF's AIFM without undue delay that it is not to implement the change. If a planned change is implemented notwithstanding the foregoing, or if an unplanned change has taken place pursuant to which the AIFM's management of the AIF would no longer comply with the Law or the AIFM otherwise would no longer comply with the Law, the CSSF shall take all due measures laid down in the Law, including, if necessary, the express prohibition of marketing of the AIF. If the changes are acceptable because they do not affect the compliance of the AIFM's management of the AIF with the Directive, or the compliance by the AIF's AIFM with the Directive otherwise, the CSSF shall, without delay, inform the competent authorities of the EEA member states where the AIF is marketed of those changes, without that the competent authorities of such EEA member states can oppose such changes.

A list of the EEA member states in which the AIF's shares may be marketed to professional investors should be made available upon request from the AIF's AIFM.

Marketing and third countries

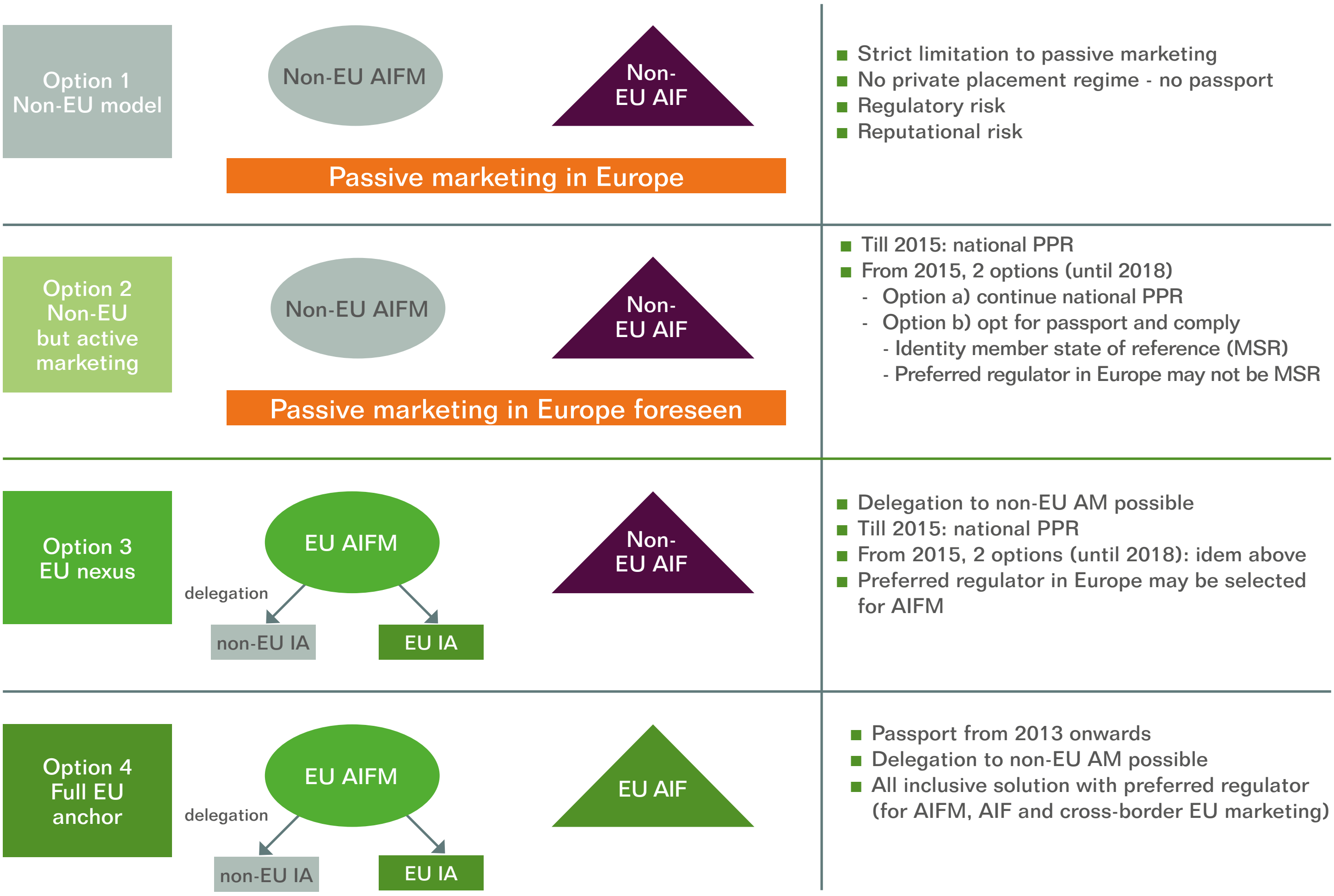
Authorised EU AIFM will benefit from a passport to market their EU AIF to professional investors in their home member state and other EEA member states after the date of transposition in their home member state’s legislation. At the same time, such AIFM will no longer be allowed to use national private placement regimes.

For non-EU AIF managed by EU AIFM and non-EU AIFM marketing EU and non-EU AIF, two regimes will coexist for marketing: national private placement regimes, which may be phased out, and a passport regime, which may be phased in, following the issue of opinions and advice by the European Securities and Markets Authority (ESMA) and the adoption of “delegated acts”.

Non-EU AIFM intending to market AIF they manage in the EU with a passport must acquire prior authorisation from an EEA member state, which will act as a member state of reference for such AIFM.

All marketing with a passport of EU and non-EU AIF to professional investors by EU and non-EU AIFM in home member state/ member state of reference or another member state is subject to a notification procedure.

Member states may permit marketing of EU or non-EU AIF by AIFM to retail investors in their territory – stricter requirements may be applied.



Remuneration

AIFM are required to have remuneration policies and practices in place that are consistent with the Law and promote sound and effective risk management that do not encourage risk-taking inconsistent with respective risk profiles, fund rules, or instruments of incorporation of the AIF it manages. The policies and practices must cover those categories of staff whose professional activities have a material impact on the risk profiles of AIF they manage. AIFM that are significant in terms of their size or the size of the AIF they manage, their internal organisation, or the nature, scope and the complexity of their activities are required to establish a remuneration committee.
The remuneration committee shall act independently and be responsible for the preparation of decisions regarding remuneration. It shall directly oversee the remuneration of the senior officers in risk management and compliance functions.

Conflicts of interests

AIFM must take all reasonable steps to avoid conflicts of interests and, where they cannot be avoided, to identify, prevent, manage, monitor, and, where applicable, disclose such conflicts of interest in order to prevent them from adversely affecting the interests of the AIF and its investors and to ensure that the AIF it manages are fairly treated. They must take all reasonable steps to identify conflicts of interests that arise in the course of managing one or more AIF.

Valuation

The AIFM is required to ensure that for each AIF it is managing, appropriate and consistent procedures are established, so that a proper, independent valuation of the assets of the AIF can be performed in accordance with the requirements of the Law and the applicable national and AIF rules.
The valuation function must be performed by either of the following:

- An external valuer subject to mandatory professional registration, independent from the AIF and the AIFM. Sub-delegation to a third party is not allowed;
- The AIFM itself, provided that the valuation task is functionally independent from the portfolio management and the remuneration policy, that other measures ensure conflicts of interest are mitigated, and that undue influence upon the employees is prevented.

The AIFM is responsible towards the AIF and its investors for the proper valuation of AIF assets, the calculation of the net asset value, and its publication. However, when an external valuer is appointed, it should be liable to the AIFM for any losses suffered by the AIFM as a result of the valuer's negligence or intentional failure to perform its tasks.

Risk and liquidity management

The Law requires AIFM to
- functionally and hierarchically separate the functions of risk management from the operating units, including the portfolio management;
- implement adequate risk management systems in order to identify, measure, manage, and monitor appropriately all risks relevant to each AIF investment strategy, as well as other risks the AIF is or could be exposed to;
- employ an appropriate liquidity management system that enables the monitoring of the liquidity risk of the AIF, except for unleveraged closed-ended AIF.

Depositary

All Luxembourg regulated vehicles are currently required to appoint a credit institution as their depositary. The provisions of the act of 17 December 2010 on undertakings for collective investment, as amended (UCI Law), the act of 13 February 2007 on specialised investment funds, as amended (SIF Law) and the act of 15 June 2004 on the investment company in risk capital, as amended (SICAR Law) has been amended so as to enable investment firms authorised to provide the ancillary services of safekeeping of financial instruments under the act of 5 April 1993 on the financial sector, as amended (Banking Law) to act as depositary of regulated vehicles.

In addition, Luxembourg exercised the option provided by the AIFMD to authorise the appointment of an entity that is neither a credit institution nor an investment firm as depositary of AIFs that display the following features:

- They offer no redemption rights exercisable during a period of five years from the date of their initial investment.
- According to their core investment strategy, they generally do not invest in "assets that must be held in custody" or they generally invest in issuers or non-listed companies to potentially acquire control over such companies.

This derogation clearly targets private equity funds, real estate funds and other funds investing in tangible assets (e.g. infrastructure).

The Law therefore contains provisions which aim at amending the Banking Act 1993 and creating a new professional of the financial sector status, i.e. the "depositary of assets other than financial instruments". Although those depositaries will not be investment firms subject to the Markets in Financial Instruments Directive (MiFID), they will be regulated under the Banking Law and subject to ongoing supervision by the CSSF. They will be subject to a minimum share capital requirement of EUR 500,000.

The AIFMD introduces a new depositary regime. In particular, the Directive

- imposes on the depositary of an AIF the obligation to monitor the AIF's cash flows and to perform specific supervisory duties; and
- clarifies the scope of the safekeeping obligation of the depositary depending on the type of assets ("financial instruments that can be held in custody" or other assets) and, so far as "financial instruments that can be held in custody" are concerned, it imposes on the depositary the obligations
  - (i) to hold in custody all these assets either by itself or through one of its delegates; and
  - (ii) to return identical financial instruments or equivalent amount of cash in case of loss of these assets.

The new regime applies to depositaries of all Luxembourg AIFs. However, the new depositary regime has not been extended to depositaries of Luxembourg regulated vehicles which are either non AIFs or small AIFs. The current rules regarding the duties and liabilities of depositaries will continue to apply to SIFs and SICARs which are either non-AIFs or small AIFs.

Delegation of AIFM functions

AIFM are required to inform their home member state's competent authorities before delegating functions. The AIFM must be able to justify its entire delegation structure with objective reasons. The AIFM must, at any time, be in a position to monitor effectively the delegated activity, to give instructions to the delegate, and to withdraw the delegation with immediate effect when this is in the interest of investors. Where the delegation concerns the portfolio management or the risk management, the mandate may be given only to delegates that are authorised or registered for the purpose of asset management, and subject to supervision. Where this condition cannot be satisfied, delegation may only be given on the condition of prior approval by the competent authorities of the home member state of the AIFM.

AIFM may not delegate both portfolio management and the totality of the risk management. An AIFM will be required to insource either portfolio management or some of the risk management.

- Internally managed AIFs and AIF + AIFM structures

  Internal management route: The AIF is structured as an internally managed AIF. In this case, compliance with all AIFMD requirements will have to be ensured at the level of the AIF itself.

- Appointment of a third-party entity as external AIFM

Service providers in Luxembourg are specialised in assisting clients in meeting applicable substance requirements under the Law.
Some of these service providers have an entity in Luxembourg duly licensed as an AIFM and can make such entity available to act as external AIFM for third-party AIFs (this solution is sometimes referred to as the "rent-an-AIFM" solution), subject to compliance with certain requirements set out in the Law (so-called "anti-letter-box provisions").

Transparency and reporting

Information to be disclosed to investors before they invest in an AIF, and where there are material changes thereto, includes *inter alia*:

- A description of the AIF investment strategy, of the types of assets the AIF may invest in and of the techniques it may employ;
- A description of all associated risks and applicable investment restrictions;
- Information about the identity of the AIFM, the AIF's depositary, auditor and any other service providers as well as a description of their duties and of the investors' rights;
- Information on any delegated management function and of any safekeeping function delegated by the depositary;
- A description of the AIF's valuation procedure and of the pricing methodology for valuing assets;
- A description of the AIF's liquidity risk management;
- A description of all fees, charges and expenses and of the maximum amounts thereof; and finally
- A description of how the AIFM ensures a fair treatment of investors.

No later than six months following the end of the financial year, the AIFM must make available to investors (on request) and competent authorities an audited annual report for each EU AIF it manages and for each AIF its markets in the EEA. It shall include a report on the activities of the financial year, as well as information on remuneration.

The above requirements apply to EU AIF that the AIFM manages and to AIF it markets in the EEA.

The Limited Partnership regime

The implementation of the AIFMD appeared as an excellent opportunity to modernise the Luxembourg partnerships regime and better align it with modern business needs.

This modernisation process involved

- a complete overhaul of the *Société en Commandite Simple* (SCS)/limited partnership regime;
- a few technical adjustments to the *société en commandite par actions* (SCA)/partnership limited by shares regime, and in particular
- the creation of a new type of limited partnership, the special limited partnership (*Société en Commandite Spéciale* - SCSp).

Unlike SCS, SCSp will have no legal personality.

Since the adoption of the AIFM Law, there are three types of Luxembourg partnership: SCS, SCSp and SCA.

The key points of the new limited partnership regime will be as follows:

- Unregulated vehicles as well as regulated vehicles (SIFs and SICARs) may be structured in the form of a limited partnership (SCS or SCSp);
- Confidentiality of the identity of limited partners is ensured;
- Management of the limited partnership is entrusted to one or more managers, who may or may not be unlimited partners;
- A limited partner does not lose the benefit of its limited liability if it takes actions which are internal to the limited partnership. A non exhaustive list of actions which a limited partner may perform without forfeiting its limited liability are set out in the Law;
- Partnership interests may be represented by securities or partnership accounts;
- No statutory restrictions on the following topics (which may be freely organised in the partnership agreement):
  - Issue and reimbursement of partnership interests;
  - Entitlement of partners to the profits and losses of the limited partnership;
  - Distributions to partners, whether under the form of a distribution of profits or a reimbursement of partnership interests;
  - Voting rights;
  - Transfer of partnership interests.

The provisions of the Law dealing with SCSp replicate to a large extent those applicable to SCS. However, the Law includes certain provisions, which are specific to SCS and aim at addressing particular issues linked to their lack of legal personality. These provisions are as follows:

- The domicile of an SCS is located at the seat of its central administration. The central administration of the SCS is deemed to coincide with the place of its registered office as set out in the partnership agreement;
- Registrations and other formalities relating to assets contributed to the SLP or held by the SLP are made in the name of the SLP. Notwithstanding its lack of legal personality, assets owned by the SLP are registered in its own name and not in the name of its partners or managers;
- Assets contributed to the SLP are exclusively reserved for the creditors whose claims have arisen in connection with the creation, operation or liquidation of the SLP. The assets of the SLP are only available to satisfy the rights of creditors of the SLP, to the exclusion of personal creditors of partners of the SLP. The personal creditor of a partner in an SLP has no direct recourse against the assets of the SLP. Its sole recourse is against the assets of the relevant partner, including the partnership interests of the relevant partner in the SLP.

Leverage

The AIFM is required to set a maximum level of leverage it will employ on behalf of each AIF it manages, as well as the extent of the right of re-use of collateral or guarantee that could be granted under the leveraging arrangement. The leverage shall be expressed as a ratio between the exposure of an AIF (calculated according to the gross method or the commitment method) and its net asset value.

The AIFM must demonstrate that the leverage limits for each AIF it manages are reasonable and that it complies at all times with these self-imposed leverage limits. The competent authorities of the AIFM may impose limits on the use of leverage for systemic risk mitigation purposes.

The Law requires additional disclosures to investors and regulators for managers that manage leveraged AIF.

Acquisition of major holdings and control over portfolio companies

The Law sets out requirements on the acquisition of major holdings or control of non-listed companies and issuers.

The provisions on acquisition of control apply to

- AIFM that are acting independently or, based on an agreement, in cooperation with one or more AIFM and that are managing one or more AIF acquiring or aiming at acquiring control of a non-listed company;
- issuers, in the context of certain limited provisions. Control is defined as more than 50% of the voting rights for non-listed companies and, by reference to Article 5(3) of the Takeover Bids Directive.

The provisions are neither applicable to small and medium enterprises (SMEs), nor to special purpose vehicles (SPVs) with the purpose of purchasing, holding, or administrating real estate. When an AIF acquires, holds or disposes of shares of a non-listed company, the respective AIFM must notify the competent authorities of its home European member state of the proportion of voting rights of the non-listed company held by the AIF any time that proportion reaches, exceeds, or falls below the thresholds of 10%, 20%, 30%, 50%, and 75%.

Carried Interest

The Law has introduced a favourable tax regime for carried interest paid to Luxembourg tax-resident individuals who are employees of the AIFMs (the Individuals). Provided certain conditions are met, the carried interest will be taxed at a rate equal to a quarter of the global standard income tax rate.

Carried interest is to be understood as the share of profits of the AIF paid to Individuals (being entitled to different rights in respect of the net assets or income of the AIF).

This entitlement to carried interest must be granted to Individuals based on their personal capacity and the performance of the investments.

The concept of carried interest does not, however, include capital gains (if any) realised by Individuals on the sale of their shares/units in the AIF (as a financial investment in the same manner as other investors who are not entitled to any carried interest). The latter will be subject to tax according to the standard rules applicable to capital gains and will thus be tax-exempt in Luxembourg provided that the Individual does not hold a substantial participation and that the sale occurs more than six months after the acquisition of the shares/units.

The conditions to be met in order to benefit from this favourable tax regime are as follows:

- Carried interest must be paid to an Individual who is an employee of the AIFM and who was not previously tax-resident (or subject to tax) in Luxembourg during the five tax years preceding the year of entry into force of the law. Furthermore, the benefit of this favourable tax treatment is limited to Individuals who become Luxembourg tax-residents during the year of entry into force of the AIFM Law or during the five years following the year of the entry into force of the AIFM Law;
- Favourable tax treatment applies for only a maximum period of ten tax years following the tax year of the beginning of the relevant professional activity of the Individual in Luxembourg;
- Entitlement to carried interest is granted under the condition that the investors must first have recovered their initial investment (in the AIF or in the underlying assets), and advance payment of carried interest must not be placed at the disposal of Individuals.

While venture capital funds tend to be smaller in size than private equity funds and are usually not using leverage, the venture capital industry was concerned it could be harmed by the AIFMD through increased costs and regulatory burdens that in practice would not add any value to the industry.

The European Venture Capital Fund (EuVECA)

In order not to adversely affect the long term objective of the EU as determined in 2004 with the Lisbon Agenda fostering investments in European small and medium-sized enterprises, the European Union approved in March 2013 the Regulation on European Venture Capital Funds (EuVECA), a regime creating an EU label for investment funds investing primarily in small and medium-sized enterprises (SMEs).

The EuVECA regime will initially be available to managers of funds established in the EEA and falling below the AIFMD threshold of EUR 500 million applicable to managers managing unleveraged, closed-ended alternative investment funds which comply with the organisational requirements and investment rules. The regime creates a "passport" enabling registered managers of EuVECA to market their fund to qualified investors throughout the EEA from 22 July 2013. The new regime is voluntary. If a manager chooses not to meet of the requirements of the regime and benefit from the passport, the EuVECA Regulation does not apply; existing national rules and general EU rules continue to apply.

Qualifying EuVECA must invest at least 30% of their aggregate capital contributions and uncalled committed capital in "qualifying investments". In summary, these "qualifying investments" include:

- Equity and quasi-equity instruments that are issued by a qualifying portfolio undertaking or an undertaking of which the qualifying portfolio undertaking is a majority-owned subsidiary;
- Secured or unsecured loans granted by the EuVECA to a qualifying portfolio undertaking;
- Shares of a qualifying portfolio undertaking acquired from existing shareholders of that undertaking;
- Units or shares of one or several other qualifying EuVECA.

A "qualifying portfolio undertaking" must meet the criteria applicable to a small and medium-sized entreprise (SME) – i.e., have less than 250 employees and either a turnover not exceeding EUR 50 million or an annual balance sheet not exceeding EUR 43 million.

As the manager of qualifying European funds has to comply with requirements regarding conduct of business, conflicts of interest, sufficient own funds, transparency, human and technical resources, the regime will meet, on the one hand, the needs of investors, and, on the other, relieves the manager through a lighter regime, for example, through the exemption to use a depositary.

The European Long Term Investment Fund (ELTIF)

On 26 June 2013, the European Commission has proposed to introduce a new investment fund regime for long term investments in companies and projects, the European Long-Term Investment Fund (ELTIF) (COM(2013) 462/2). The ELTIF regime would be introduced by a European regulation, meaning that unlike a regime created by a European directive such as the UCITS directive or the AIFMD, this regime would be applicable as of the moment of the entry into force of the regulation. Only EU AIFs subject to the AIFMD would be eligible to qualify as ELTIFs under the new regime.

The ELTIF regime intends to introduce a fund label similar to the UCITS label. This should facilitate cross-border distribution of ELTIFs, subject to compliance of the relevant ELTIF with a number of structuring and investment policy requirements and restrictions.

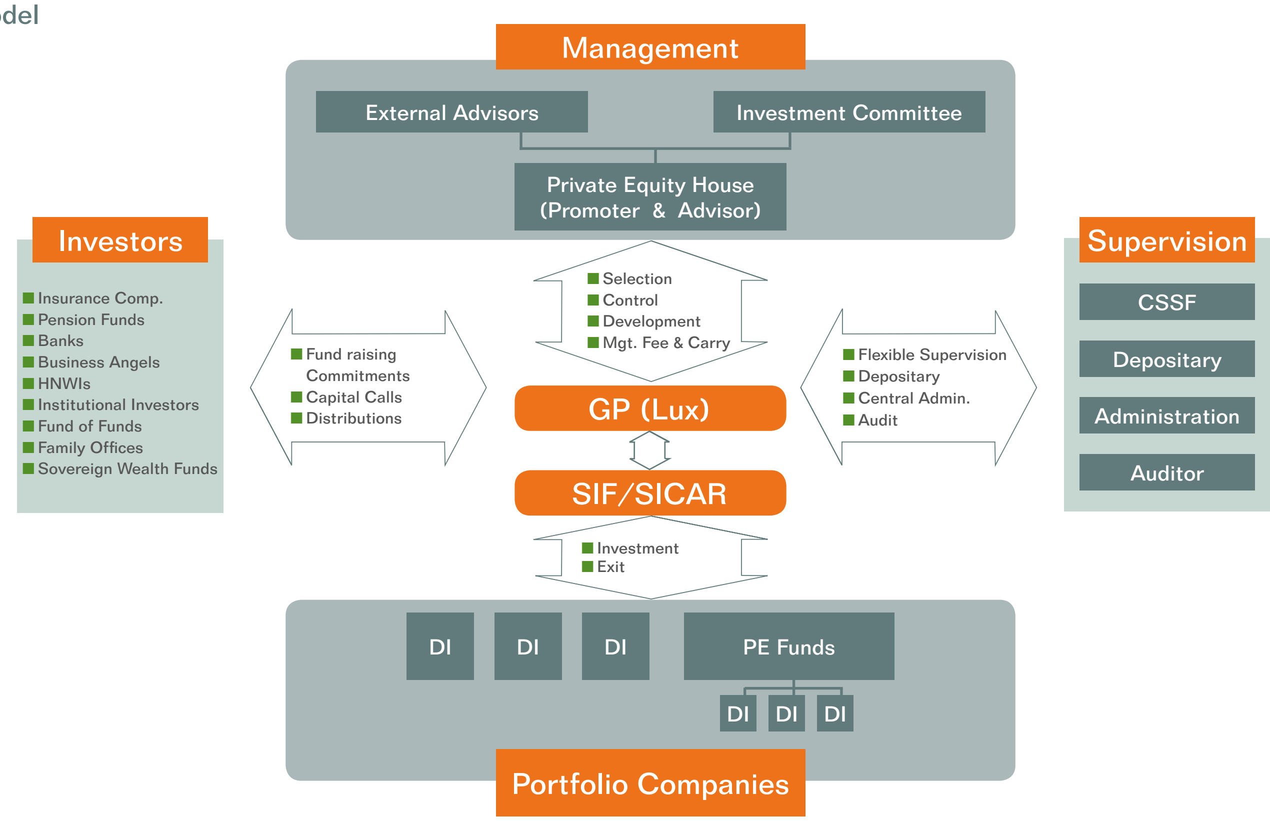
These are in particular

- the obligation to reduce risks through the spreading of assets;
- the obligation to use derivatives only to manage interest rate or currency risks and not for speculation;
- the prohibition of short selling, the investment in commodities as well as a prohibition of securities lending and repo agreements;
- a limitation on the amounts the ELTIF can borrow;
- a requirement concerning the object of the ELTIF, which may only invest in certain types of long-term assets, such as infrastructure, transport and sustainable energy projects;
- minimum information requirements for investors.

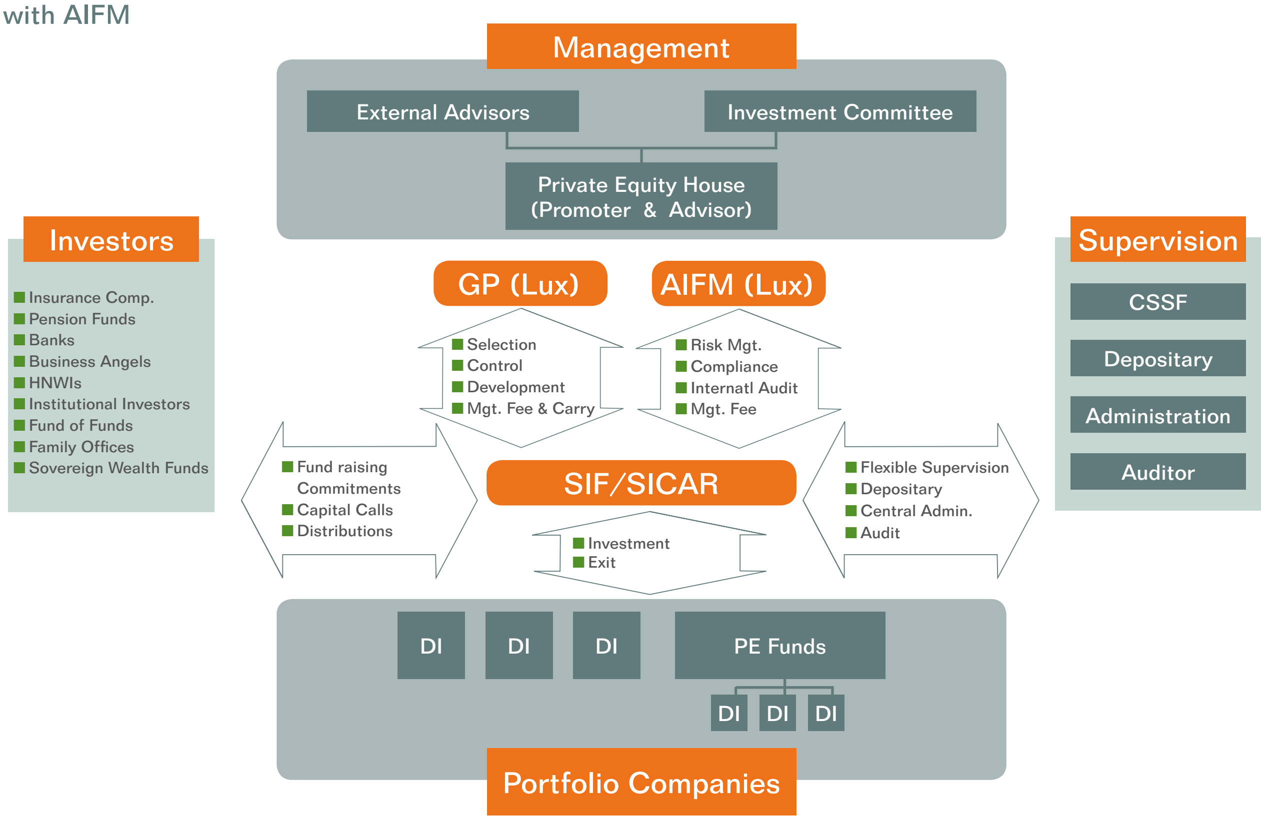
Furthermore, due to the illiquid nature of eligible ELTIF investments, investors will in principle not be allowed to withdraw their money/redeem their shares before a pre-determined end date of the relevant ELTIF.

Role Distribution in a Luxembourg structure

a. Classic Model



b. New model with AIFM



The Investment Company in Risk Capital (SICAR)

The SICAR is a regulated and fiscally efficient structure specifically designed for private equity and venture capital investments.

Authorisation procedure

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

The initiator of the SICAR has to submit the constitutive documents of the SICAR (i.e. the articles of association or partnership agreement), the prospectus (i.e. private placement memorandum), information regarding the qualification of the SICAR's managers, the choice of the depositary, the central administration and of the auditor to the CSSF, as well as a business plan outlining the main assumptions, value drivers and key financial figures of the SICAR for a minimum period of three years.

The managers[1] of the SICAR, the depositary 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 constitutive documents of the SICAR, its prospectus and in particular the investment strategy, 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"[2];
- any other investor who (i) has confirmed in writing that he/she adheres to the status of "well-informed" investor, and (ii) invests a minimum of EUR 125,000 in the relevant SICAR or (iii) has been subject to an assessment made by a credit institution[3], by an investment firm[4] or by a management company[5] certifying his expertise, his experience and his knowledge in adequately appraising an investment in risk capital.

The managers of the relevant SICAR as well as any other person involved in the management of the SICAR and who hold shares of the SICAR do not need to comply with the "well informed" investor status.

1 *The managers who effectively represent the SICAR, i.e. representatives of the general partner of the SCA, SCS and SCSp, the board members of SA and SCoSA and the managers of SARL.*
2 *Definition provided under Appendix II of the EU Directive 2004/39/EC.*
3 *Within the meaning of Directive 2006/48/EC.*
4 *Within the meaning of Directive 2004/39/EC.*
5 *Within the meaning of Directive 2001/107/EC.*

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 benefit of the result of the management of its assets in consideration for the risk which they incur*". *Risk capital "is to be understood as the direct or indirect contribution of assets to entities in view of their launch, their development or their listing on a stock exchange"*.

The SICAR's investments must thus fulfil the criteria of i) "high risk" and ii) the "intention to develop" the investee companies. The "high risk" element can be demonstrated by various characteristics at investment level, such as the lack of liquidity due to the fact that the investment is not listed. The "intention to develop" may take a variety of forms and materialise in value creation at the level of the investee companies. Value can be added for example via the restructuring, the modernisation or development of new products and markets as well as any measures aiming at a better allocation of resources. This often entails intervention in the management of the investee companies via active board representation. Further guidance in this respect can be found in the CSSF Circular 06/241.

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/asset spreading requirements. 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) or feeder fund, provided that the underlying target funds/master fund also fulfil 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[6].

6 *The potential tax consequences of interest income derived from simple loans to target companies must be analysed on a case by case basis .*

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 trade sale, initial public offering or 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 SICAR 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. Further information in this respect can be found in the CSSF Circular 06/241.

Legal structures

SICAR can be structured as SA, SCA, SARL, SCS, SCSp and SCoSA. The latter is rarely used in this context. For all matters that are not expressly covered by the SICAR Law, the Companies Law remains fully applicable.

Each corporate entity has a legal personality of its own, distinct from that of its investors as from the day of incorporation. Each SICAR exists under a firm name followed by the "SICAR" acronym. 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. Additional information in respect of the various legal forms can be found in Appendix 1.

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
<u>Minimum capitalisation</u>
A SICAR must achieve a minimum capitalisation of EUR 1 million (share premium included, if any) within twelve months following its authorisation as a SICAR by the CSSF.

At incorporation, the minimum capitalisation will vary with the choice of the legal form.

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 SARL, SCS, SCoSA or SCSp, best practice typically follows the rules of the SA/SCA.

The drawdown process can be organised in two ways:

- The entire subscription commitment is immediately issued in partly-paid shares, with a minimum 5% payment upon issue; or
- Shares are issued fully paid-up upon capital contributions 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. Any such reduction ipso jure triggers an amendment to the constitutive document. The formalities are thus quite burdensome and the outcome of any such reduction subject to the will of the general meeting. 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 proceeds of sale including any principal amounts.
The management body will thus not be bound by restrictions other than those which are self-imposed in the constitutive 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 issue process can be freely organised in the constitutive documents.

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

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 constitutive documents (i.e. the articles of association or partnership agreement) 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, the BVCA and the AFIC 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
The SICAR may report under Luxembourg Generally Accepted Accounting Principles (LuxGAAP). 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. The SICAR may also report under IFRS pursuant to the Law of 10 December 2010 on international financial reporting standards for undertakings. 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 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 on a regular basis. 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.

Depositary, central administration and auditor

Depositary

A SICAR must appoint a depositary established in Luxembourg. The depositary 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 depositary can delegate certain tasks to third parties, it remains fully liable to the SICAR and its investors notwithstanding such delegation.

The depositary'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.

Central administration

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.

The administrative agent needs to hold a special license (i.e., under the 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 maintain the register of members and fulfil the functions ancillary thereto.

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.

Tax regime

Under Luxembourg tax law, the SICAR will be considered as a transparent entity, for tax purposes, if it is set up as a SCS or a SCSp and as a non-transparent entity (i.e. liable to tax) if it is formed as a capital company such as a SCA, a SCoSA, a SARL or a SA.

Most importantly, the regime provides the requisite flexibility needed to ensure flexible, tax neutral and swift profit repatriations and extractions, whether by way of redemption, distribution or liquidation.

Transparent entity
Under the legal form of a limited partnership (SCS) or a special limited partnership (SCSp), 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 Luxembourg tax purposes, it also needs to be checked with the relevant source countries and each investor's country of residence. The consequences will be as follows:

<u>At the level of the target company</u>
Withholding tax, if any, on income distributed by the target company to the SICAR could 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 corporate 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.

<u>At the level of the transparent SICAR</u>
The (special) limited partnership SICAR is not subject to corporate income tax (*impôt sur le revenu 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 transparent SICAR.

<u>At the level of the investors</u>
Non-resident investors are not subject to Luxembourg tax on income derived from their interest in the SICAR as long as they do not hold such interest through a Luxembourg permanent establishment.

Non-transparent entity
If the SICAR is organised in the form of a capital company, it will be considered a non-transparent entity for Luxembourg 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.

<u>At the level of the target company</u>
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 that 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.

<u>At the level of the non-transparent SICAR</u>
The corporate SICAR is subject to corporate income tax (*impôt sur le revenu des collectivités*) at the rate of 21%, to municipal business tax (*impôt commercial communal*) at the rate of 6.75% (in Luxembourg city) and to an additional payment of 7% of the corporate income tax as a contribution to the unemployment fund. This leads to a total effective corporate tax rate of 29.22% for 2013 in Luxembourg city.

Nevertheless, the corporate SICAR benefits from an exemption from corporate income tax on any income (e.g. dividends and interest) and capital gains derived from transferable securities (*valeurs mobilières*) 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.

All other income falling outside the scope of the above-mentioned extended exemption regime is fully subject to Luxembourg corporate taxes.

As any Luxembourg company, the corporate SICAR is subject to a minimum annual corporate income tax of EUR 3,210 (solidarity surcharge included) if the sum of its fixed financial assets, transferable securities, intra-group receivables and cash at bank represents more than 90% of its balance sheet, which is in general the case for SICARs. In all other circumstances, the applicable minimum corporate income tax ranges between EUR 535 (solidarity surcharge included) and EUR 21,400 (solidarity surcharge included) depending on the total amount of its balance sheet, the highest amount being due if its balance sheet exceeds EUR 20 million. There is no Luxembourg withholding tax on dividends and liquidation proceeds distributed by a corporate SICAR.

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

<u>At the level of the investors</u>
In principle, as the corporate SICAR is subject to Luxembourg corporate taxes, certain qualifying EU resident investors may also be in a position to benefit from the participation exemption on dividends received from a corporate SICAR.

Non-resident investors are not subject to Luxembourg tax on any capital gains realised upon the sale of their SICAR shares, except if such shares are held through a Luxembourg permanent establishment.

VAT
From the VAT angle, the SICAR benefits from the same tax regime as Luxembourg investment funds (including UCI, UCITS and SIFs).
The SICAR could thus benefit from VAT-exempt management services. The concept of

management services is defined and applied broadly in Luxembourg. It includes administrative type services, investment advisory and management services, and custody bank services, except for control and supervision of the custody services, which are liable for VAT and benefit from the reduced rate of 12%, while the standard rate is 15%. The SICAR is not entitled to recover VAT incurred on its costs. However, this VAT burden is limited thanks to the broad application of the VAT exemption.

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 worth 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 3,000 is due by the SICAR to the CSSF; this tax amounts to EUR 6,000 for a multiple compartment SICAR. Moreover, the application for authorisation to the CSSF, the SICAR is subject to a one-off fixed registration fee of EUR 3,500. If the SICAR is organised with multiple compartments, the registration fee amounts to EUR 7,000.

The Specialised Investment Fund (SIF)

The SIF is a regulated, operationally flexible and fiscally efficient multipurpose investment fund regime for an international, institutional and qualified investor base.

The SIF Law allows any type of assets, investment styles and policies. 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.

On 6 March 2012, the SIF Law was amended. Certain changes to the SIF Law aim at preparing the Luxembourg legal and regulatory framework for the implementation of the AIFMD: in particular, the proper implementation of operating conditions (risk management and conflicts of interest procedures), delegation of investment management functions, and approval by the CSSF prior to its launch. The amended SIF Law also provides for more flexibility in certain aspects, such as cross-compartment investments and reporting to shareholders.

Authorisation procedure

With the entry in force of the amendments to the SIF Law in 2012, the authorisation procedure is identical to that of the SICAR.

The formation and launch of a SIF does not require the backing of a promoter or sponsor with "deep pockets". 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.

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.

Investments

SIFs may 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, 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 on a look through basis at the level of the master fund. The CSSF has issued guidance in its 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).

Since 2012, a compartment of a SIF is allowed, under certain conditions, to cross-invest into another compartment of the same SIF.

Legal structures

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 15 or Chapter 16 of the UCI Law.

A SIF can otherwise be formed under any corporate legal form also available under the SICAR regime. Additional information in respect of the various legal forms can be found in Appendix 1.

Furthermore, the SIF Law also provides for the creation of umbrella SIFs.

Delegation of the asset management

The amendments to the SIF Law in 2012 increased the regulation of the delegation of asset management to third parties. With the entry into force of these amendments to the SIF Law, the asset manager must be either be approved and supervised by the CSSF or by another foreign regulatory authority. In the latter case, a cooperation agreement must be in place between the CSSF and the relevant foreign regulatory authority and the delegated activities must be mentioned in the prospectus of the SIF.

In principle, the governing body of the SIF has to ensure proper due diligence and on-going controls over the asset manager by putting in place appropriate supervision procedures and rules.

Capital structure and distributions

Capital structure

Minimum capitalisation

The minimum capitalisation amounts to EUR 1,250,000 (including share premium, if any) 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.

Most private equity and venture capital funds will apply a commitment-based funding policy.

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 upon capital contributions and within the limits of the 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. 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 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 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 legal form of an SCA or an SA may issue different types of securities such as shares, bonds, founder shares, beneficiary shares or other financial instruments. The issue process can be freely organised in the constitutive documents.

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 constitutive documents. In particular, the issue and/or redemption prices may deviate from the net asset value concept applicable to UCIs.

Distributions

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

Valuation, accounting and reporting

Valuation

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.

Accounting

The SIF may report under Luxembourg Generally Accepted Accounting Principles (LuxGAAP). The SIF Law, similar to the SICAR Law, 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. The SIF may also report under International Financial Reporting Standards (IFRS) pursuant to the Law of 10 December 2010 on international financial reporting standards for undertakings. Notwithstanding the available exemption from consolidation, IFRS will require the production of consolidated accounts.

Reporting

The SIF Law does not impose any form or content requirements in respect of the "Issuing Document", i.e. the prospectus 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.

The SIF Law does not require 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.

SIFs are only obliged to establish an annual report and may provide additional reports on a case-by-case basis.

The amendments to the SIF Law of 6 March 2012 amends the reporting requirements applicable to a SIF established in the form of a company in that the investors in such a SIF do not need to be provided with the complete financial documentation together with the notices convening them to the annual general meeting. The amendments to the SIF Law of 6 March 2012 also introduce some operational flexibility in the way a quorum of general meetings is calculated.

Depositary, central administration and auditor

Depositary

The depositary's role is identical to the role performed under the SICAR Law.

Central administration

The central administration of the SIF must be located in Luxembourg.

The central administrative agent must be a professional of the financial sector and thus hold a special licence pursuant to the Banking Law. A SIF may also be self-administered, subject to satisfying the organisational requirements that the CSSF would require.

Auditor
As for the SICAR, a SIF 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.

Tax regime

At the level of the SIF
SIFs are subject to a subscription tax at a rate of 0.01% p.a. 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 exchange-traded funds, certain money market funds and pension pooling funds will be exempt from subscription tax.

The SIF Law does not require that the participating pension funds be of the same group and thus permits that individual compartments or individual share/unit classes reserved to pension schemes also benefit from this exemption.

The exemption also applies to SIFs whose investment policy specifies that at least 50% of their assets are invested in one or more microfinance institutions, or which benefit from the microfinance label issued by the Luxembourg Fund Labelling Agency (LuxFLAG).

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.

Withholding taxes deducted at source from income received by a SIF on its investments are not normally reduced under most of Luxembourg's tax treaties, due to the tax-exempt status of SIFs in Luxembourg. Nonetheless, according to the website of the Luxembourg direct taxation authorities, it appears that currently Armenia, Austria, Azerbaijan, People's Republic of China, Bahrain, Denmark, Finland, Georgia, Germany, Hong Kong, Indonesia, Ireland, Israel, Republic of Korea, Liechtenstein, Malaysia, Malta, Moldavia, Monaco, Morocco, Poland, Portugal, Qatar, Romania, Singapore, the Slovak Republic, Slovenia, Spain (only UCITS), Thailand, Trinidad and Tobago, Tunisia, Turkey, the United Arab Emirates, Uzbekistan, and Vietnam grant treaty protection to a SICAV or a SICAF.

This might apply to a SICAV-SIF as well (except for Spain). According to the same website, Bulgaria, Greece, Italy, Norway and Russia may grant treaty benefits to a SICAV/SICAF on a case-by-case basis.

SIFs of the contractual type
SIFs of the contractual type are transparent for tax 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.

Other taxes
The SIF is exempt from net worth tax (*impôt sur la fortune*).

The SIF is subject to a subscription tax (*taxe d'abonnement*) of 0.01% p.a. of the net assets of the SIF. The subscription tax can be waived under certain circumstances.

A fixed annual fee (*taxe forfaitaire annuelle*) of EUR 3,000 is due by the SIF to the CSSF; this tax amounts will be increased to EUR 6,000 for up to EUR 30,000 for a multiple compartment

SIF, depending on the amount of compartments operated by the SIF. Moreover, the application for authorisation to the CSSF, the SIF is subject to a one-off fixed registration fee of EUR 3,500. If the SIF is organised with multiple compartments, the registration fee amounts to EUR 7,000.

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.

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.

Undertakings for Collective Investment (PART II)

General legal and regulatory framework

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

While only a limited exposure will be possible in (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 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 may, however, be marketed to retail investors by virtue of a private placement or by complying with local distribution/registration 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 distinctions lie in the fact that a UCI requires a promoter with "deep pockets" as well as a higher degree of risk diversification compared to SIFs and SICARs.

Even though UCIs are subject to a stricter regulatory regime than SIF and SICAR, the UCI Law offers certain structuring flexibility. A UCI may (i) be closed-ended (ii) raise its capital without promoting the sale of its shares/units to the public within the EU (iii) reserve in its constitutional documents the sale of its units/shares to the public in non-EU countries or (iiii) pursue alternative investment policies such as real estate, private equity and venture capital investments.

The CSSF 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 other alternative investment strategies (hedge funds and funds of hedge funds).

Circular IML 91/75 as amended by Circular CSSF 05/177 (Circular 91/75) thus outlines 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.

Circular 91/75 provides that for this kind of UCI, 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 or not yet 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, Circular 91/75 clarifies that the prospectus of the UCI 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.

Legal structures

UCIs may adopt a contractual or corporate form and can be structured with multiple compartments.

If organised under the contractual form, the UCI needs to be managed by a management company having its registered office in Luxembourg and which is authorised either under Chapter 15 or under Chapter 16 of the UCI Law.

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 a SA while if organised as a SICAF, it may opt for the SA, the SCA or the SARL.

The UCI Law allows a compartment of a UCI, under certain conditions, to cross-invest into another compartment of the same UCI.

Depositary, central administration and auditor

Depositary
The depositary must be a Luxembourg-based bank. The tasks and functions of the depositary are more detailed than for SIFs and SICARs.

Central Administration and Auditor
The central administration has to be located in Luxembourg and an independent auditor (*réviseur d'entreprises*) must be appointed.

Tax regime

UCIs are treated the same as SIFs in respect of their tax regime. As for the SIF, a distinction is made between the corporate and contractual type.

The subscription tax regime is, however, slightly different:

UCIs investing in private equity and venture capital investments are 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 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.

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.

Other taxes
The UCI is exempt from net worth tax (*impôt sur la fortune*).

A fixed annual fee (*taxe forfaitaire annuelle*) of EUR 3,000 is due by the UCI to the CSSF; this tax amounts will be increased to EUR 6,000 for up to EUR 30,000 for a multiple compartment UCI, depending on the amount of compartments operated by the UCI. Moreover, the application for authorisation to the CSSF, the UCI is subject to a one-off fixed registration fee of EUR 3,500. If the SIF is organised with multiple compartments, the registration fee amounts to EUR 7,000.

The SOPARFI (*société de participations financières*)

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 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-like" 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 Companies Law constitutes the general legal framework applicable to a SOPARFI.
A SOPARFI is a Luxembourg commercial corporate entity, which will be incorporated inter alia as a SA, SARL or SCA.

Regulatory framework

SOPARFIs are in principle 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 29.22% for entities located in Luxembourg City in 2013. As any Luxembourg company, the SOPARFI is subject to a minimum annual corporate income tax of EUR 3,210 (solidarity surcharge included) if the sum of its fixed financial assets, transferable securities, intra-group receivables and cash at bank represents more than 90% of its balance sheet, which is in general the case for SOPARFIs. In all other circumstances, the applicable minimum corporate income tax ranges between EUR 535 (solidarity surcharge included) and EUR 21,400 (solidarity surcharge included) depending on the total amount of its balance sheet, the highest amount being due if its balance sheet exceeds EUR 20 million.

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 free of withholding tax.

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

As from 2009, Luxembourg has extended the dividend withholding tax exemption, previously only available to qualifying companies established in EU member states, to distributions made to qualifying companies established in all treaty countries. For all other recipients, while the ordinary withholding tax rate is 15%, it may be reduced to 10%, 5% or nil, as the case may be, under the double tax agreements in force. This represents a significant advantage for the structuring of profit repatriations as it simplifies profit repatriation schemes to treaty countries.

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 to see 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 controlled foreign company (CFC) rules, etc.). 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 beneficial ownership, 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 by combining the SOPARFI's efficiency with 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.

Additional structuring options

Additional structuring options are available for the setting up of Private Equity structures.

Private Equity structures can indeed be set up in the form of Securitisation Vehicles under the Securitisation Law. This law is particularly flexible with regard to the structuring possibilities and assets to be securitised. It can also be used in a PE context. In this case, they tend to be set up as unregulated securitisation companies that do not issue securities on a regular basis.

The *société de gestion de patrimoine familial* or family wealth management company has also shown itself as being a tangible alternative to the common structures in the context of individuals managing their private wealth. It allows individuals to directly invest their savings or private liquid assets in shares, bonds, bank balances, undertakings for collective investment, etc., or, alternatively, to create one or more corporate structures to manage all or part of their private liquid assets. The private character of the *société de gestion de patrimoine familial* enables individuals to have the assets of the *société de gestion de patrimoine familial* managed in the way they wish and, if so desired, to waive the risk-spreading requirement imposed on undertakings for collective investment.

	SICAR	SIF	PART II UCI	SOPARFI[7]
Key features	Regulated and fiscally efficient structure specifically designed for private equity and venture capital investments.	Regulated, operationally flexible and fiscally efficient multipurpose investment fund regime for an international, institutional and qualified investor base.	Regulated investment fund that does not benefit from the European passport for cross-border distribution. Designed for all type of investors.	Most common private equity vehicle for cross-border private equity acquisitions.
Applicable legislation	SICAR Law (2004), as amended	SIF Law (2007), as amended	UCI Law, Part II (2010), as amended	Companies Law (1915), as amended
Prospectus Directive	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). SICAR which make an offer under an exemption of the Prospectus Directive must issue a prospectus compliant with the SICAR Law. This prospectus must be updated each time new securities are issued.	Only applicable if the SIF is closed-ended (i.e., does not offer any redemption opportunities to investors). Open-ended SIF may make a public offer in Luxembourg on the basis of their issuing document that is compliant with the SIF Law. This issuing document must be updated each time new securities are issued to new investors. This prospectus must be updated on an ongoing basis.	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 that is compliant with the UCI Law. This prospectus must be updated on an ongoing basis.	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).
AIFM Law	SICAR may qualify as AIF	SIF may qualify as AIF	Part II UCI de facto qualify as AIF	SOPARFI may qualify as AIF/AIFM
EuVECA Regulation	SICAR may qualify as EuVECA	SIF may qualify as EuVECA	Part II UCI may qualify as EuVECA	SOPARFI may qualify as EuVECA
Supervision by the CSSF	Yes	Yes	Yes	No
Eligible investors[8]	Well-informed investors[9]	Well-informed investors[10]	Unrestricted	Unrestricted

7 *This table only refers to SOPARFI established under the form of an SA, an SCA or an SARL*

8 *Eligible investors of EuVECA are investors which are considered to be professional clients in accordance with Section I of Annex II to Directive 2004/39/EC or which may, on request, be treated as professional clients in accordance with Section II of Annex II to Directive 2004/39/EC, or to other investors that (a) commit to investing a minimum of EUR 100,000 and (b) state in writing, in a separate document from the contract to be concluded for the commitment to invest, that they are aware of the risks associated with the envisaged commitment or investment. These requirements shall not apply to investments made by executives, directors or employees involved in the management of*
a manager of a qualifying venture capital fund when investing in the qualifying venture capital funds that they manage.

9 + 10 *A well-informed investor shall be an institutional investor, a professional investor or any other investor who meets the following conditions:*
1) *he has confirmed in writing that he adheres to the status of well-informed investor; and*
2) *he invests a minimum of EUR 125,000 in the company, or*
3) *he has been subject to an assessment made by a credit institution within the meaning of Directive 2006/48/EC, by an investment firm within the meaning of Directive 2004/39/EC or by a management company within the meaning of Directive 2001/107/EC certifying his expertise, his experience and his knowledge in adequately appraising an investment in risk capital.*

These conditions do not apply to directors and other persons taking part in the management of the SICAR/SIF.

	SICAR	SIF	PART II UCI	SOPARFI[7]
Eligible assets/ strategies[11]	Investments must qualify as risk capital pursuant to CSSF circular 06/241 (i.e. high risk and intention to develop the investee company/ies)	Unrestricted	Unrestricted (subject to CSSF prior approval)	Unrestricted
Risk spreading[12]	No	Yes (in principle, investment in any target company may not exceed 30% of the SIF assets). Feeder fund and fund of funds structure may however be set up.	Yes (in principle, investment in any target company may not exceed 20% of the net assets)	No
Entity type	SCS, SCSp, SCA, SCoSA, SARL, SA	SICAV (SA, SCA, SCS, SCSp, SARL, SCoSA) SICAF (SA, SCA, SCS, SCSp, SARL, SCoSA) FCP	SICAV (SA) SICAF (SA, SCA, SARL) FCP	Any corporate type of entity
Segregated compartments	Yes	Yes The SIF Law allows, under certain conditions, a compartment of a SIF to cross-invest into another compartment of the same SIF.	Yes The UCI Law allows, under certain conditions, a compartment of a Part II UCI to cross-invest into another compartment of the same Part II UCI.	No
Required service providers in Luxembourg[13]	Depositary (credit institution, investment firms and under certain conditions, professional custodians) Administrative agent (PFS or unregulated company however the transfer agent must be a PFS)[14] Independent auditors	Depositary (credit institution, investment firms and under certain conditions, professional custodians) Administrative agent (PFS)[14] Independent auditors	Depositary (credit institution) Administrative agent (PFS)[14] Independent auditors	Depositary (credit institution, investment firms and under certain conditions, professional custodians) only if the SOPARFI qualifies as an AIF and that its AIFM is fully within scope of the AIFM Law. Independent auditors may be required depending on size of company and/or number of employees (if any).

11 Additional requirements may apply in respect of EuVECA

12 Additional requirements may apply in respect of EuVECA

13 Depositary not required in respect of EuVECA

14 The administrative agent is not required if the administration duties are performed by the SICAR, the SICAV/F or the management company itself in Luxembourg.

	SICAR	SIF	PART II UCI	SOPARFI[7]
Approval process by the CSSF	Launching of a SICAR is subject to prior approval by the CSSF of: - Constitutive document, prospectus, agreements with main service providers and business plan; - Directors/managers (must be experienced and reputable); - Choice of depositary and auditor. The CSSF will also undertake a background check on the initiator and investment managers/advisors. No offer of securities may be made before CSSF approval.	Launching of a SIF is subject to prior approval by the CSSF of: - Constitutive document, prospectus and agreements with main service providers; - Directors/managers (must be experienced and reputable); - Investment manager(s) (if any) (must be experienced and reputable); - Choice of depositary and auditor. In case of delegation, the CSSF must be informed and where the delegation pertains to investment portfolio management, the delegatee must be authorised or registered and subject to prudential supervision. No offer of securities may be made before CSSF approval.	Launching of fund is subject to prior approval by the CSSF of: Constitutive document, 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[15]
Capital (fixed/variable)	Fixed or variable capital	Fixed or variable capital	Fixed or variable capital	Fixed capital
Minimum capital/net assets requirements (for EUR amounts, equivalent in another currency is permitted)	For SCA/SARL/SA: Upon incorporation: SA/SCA: EUR 31,000 SARL: EUR 12,500 Subscribed share capital and share premium must reach EUR 1 million (or its equivalent in another currency) within 12 months from authorisation For SCS/SCSp/SCoSA: The value of the contributions must reach EUR 1 million within 12 months from authorisation Contribution in kind/in cash is possible	For FCP: Net assets must reach EUR 1.25 million within 12 months from authorisation For SICAV/F set up as SCA/SARL/SA: Upon incorporation: SA/SCA: EUR 31,000 SARL: EUR 12,500 Subscribed share capital and share premium must reach EUR 1.25 million within 12 months from authorisation For SICAV/F set up as SCS/SCSp/SCoSA: The value of the contributions must reach EUR 1.25 million within 12 months from authorisation Contribution in kind/in cash is possible	For FCP: Net assets must reach EUR 1.25 million within 6 months from authorisation For SICAV/F: Upon incorporation: SA/SCA: EUR 31,000 SARL: EUR 12,500 Share capital must reach EUR 1.25 million within 6 months from authorisation	Upon incorporation: SA/SCA: EUR 31,000 SARL: EUR 12,500 SCoSA: no requirement

15 Subject to application of EuVECA Regulation and AIFM Law

	SICAR	SIF	PART II UCI	SOPARFI[7]
Structuring of capital calls and issue of shares/ units	Capital calls may be organised on a commitment or subscription (through the issue of partly paid up shares (to be paid up to 5% at least)) based model; Existing shareholders have no pre-emptive right of subscription, unless otherwise provided for in the articles of association; Issue price may be freely determined in accordance with the principles laid down in the constitutive document.	Capital calls may be organised on a commitment or subscription (through the issue of partly paid up shares (to be paid up to 5% at least) or units) based model; Existing investors have no pre-emptive right of subscription, unless otherwise provided for in the constitutive document.	For FCP Capital calls may be organised on a commitment or subscription (through the issue of partly paid units) based model; 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 SICAF Capital calls in an SA/ SCA may be organised on a commitment or subscription (through the issue of partly paid shares (to be paid up to 25% at least)) based model. An SARL cannot issue partly paid shares; Existing shareholders of an SA/SCA have a pre-emptive right of subscription in the case of a capital increase by way of cash contribution (except if waived by shareholders meeting); Issues of shares require an amendment of the articles of association before a public notary; Issue price is determined in accordance with the principles laid down in the articles of association. For SICAV Capital calls must be organised on a commitment based model (shares must be fully paid-up); Existing shareholders do not have a pre-emptive right of subscription in the case of share issues, except if otherwise provided for in the articles of association; Shares must be issued at a price based on the NAV (plus costs and actualisation interests, if appropriate).	Capital calls may be organised on a commitment (i.e., contractual undertaking from investors to subscribe for shares of the company upon request) or subscription (through the issue of partly paid shares (to be paid up to 25%)) based model. SARL and SCoSA cannot issue partly paid shares; Existing shareholders of an SA/SCA have a pre-emptive right of subscription in the case of a capital increase by way of cash contribution (except if waived by shareholders meeting); New shareholders of SARL must be approved by the general meeting of shareholders; Issues of shares require an amendment of the articles of association before a public notary; No legal constraints on issue price.

	SICAR	SIF	PART II UCI	SOPARFI[7]
Distributions of proceeds	No restrictions on distributions (except for compliance with minimum capital requirement and the provisions of the constitutive document). Distributions may be organised through dividend distributions and/or capital redemptions.	For SIF-FCP and SIF-SICAV No restrictions on distributions (except for compliance with minimum capital requirement and the provisions of the constitutive document). For SIF-SICAF 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 Companies Law conditions. Distributions may generally be organised through dividend distributions and/or capital redemptions.	For FCP and SICAV There are no restrictions on distribution of (interim) dividends (except for compliance with minimum net assets/ capital requirement). For SICAF 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 Companies Law 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 Companies Law conditions; SCoSA: profits are distributed proportionally to investors each year, except if provided otherwise in the articles of association.
Valuation	Assets are to be valued at fair value. Computation of periodic NAV no longer mentioned in SICAR Law but remains an option. Periodical NAV calculations are required	Assets are to be valued at fair value. The NAV must be determined in accordance with the rules laid down in the articles of association or management regulations, at least for reporting purposes.	The NAV must be determined at least monthly.	Not applicable
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 report. Unaudited semi-annual report (within 2 months from end of relevant period).	Audited annual report is required only if company exceeds a certain size in terms of turnover, total assets and number of employees.

	SICAR	SIF	PART II UCI	SOPARFI[7]
Processes and policies	SICAR must implement appropriate risk management systems and must be organised in such a way as to minimize conflicts of interests. SICAR which qualify as an AIF and whose AIFM is within scope of the AIFM Law will further have to implement a remuneration policy and might be requested to set up a remuneration committee. Those SICAR might also be requested to set up a liquidity risk policy.	SIF must implement appropriate risk management systems and must be organised in such a way as to minimize conflicts of interests. SIF which qualify as an AIF and whose AIFM is within scope of the AIFM Law will further have to implement a remuneration policy and might be requested to set up a remuneration committee. Those SIF might also be requested to set up a liquidity risk policy.	Part II UCI will have to implement a remuneration policy and might be requested to set up a remuneration committee. Part II UCI might also be requested to set up a liquidity risk policy.	SOPARFI which qualify as an AIF and whose AIFM is within scope of the AIFM Law will have to implement appropriate risk management systems, must be organised in such a way as to minimize conflicts of interests, implement a remuneration policy and might be requested to set up a remuneration committee. Those SOPARFI might also be requested to set up a liquidity risk policy.
Tax regime	Fiscally opaque SICARs (i.e. all SICARs except those established under the form of an SCS or SCSp) are fully taxable. However, they can generally avoid any substantial tax (with the exception of the applicable minimum corporate income to which all fully taxable Luxembourg companies are subject – in the case of SICARs such minimum corporate income tax should in principle amount to EUR 3,210, solidarity surcharge included) in Luxembourg as they benefit from a corporate tax exemption with respect to 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 EU direct tax directives	SIFs are generally subject to an annual subscription tax (taxe d'abonnement) of 0.01% p.a. of their NAV, but several exemptions exist. Unlike the SIF-FCP, the SIF-SICAV/SICAF should benefit from certain double tax treaties. Investments may be made through fully taxable subsidiaries benefiting from double tax treaties and the EU direct tax directives (e.g., 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 the FCP, the SICAV/SICAF benefits from certain double tax treaties. Investments may be made through fully taxable subsidiaries benefiting from double tax treaties and the EU direct tax directives (e.g., the EU Parent-Subsidiary Directive).	SOPARFIs are fully taxable companies, subject to an aggregate corporation tax burden, which currently amounts to 29.22%. However, SOPARFIs benefit from corporate tax exemptions for dividends received from shareholdings, capital gains made on the sale of shareholdings and gains made on liquidation of qualifying companies in which shares are held. The exemption is granted on the following conditions: - Dividend and liquidation gains exemption on shareholdings of at least 10% or the acquisition cost of at least EUR 1.2 million provided such qualifying shareholding is held for at least 12 months; - Capital gains exemption of shareholdings of at least 10% or an acquisition cost of at least EUR 6 million provided such qualifying shareholding is held for at least 12 months.

	SICAR	SIF	PART II UCI	SOPARFI[7]
Tax regime	(e.g. the EU 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 or SCSp are tax transparent and the profit share of non-resident investors investing in these SICAR is not subject to any tax in Luxembourg (except in the case where the non-resident investor holds interest in the SICAR through a Luxembourg permanent establishment). A fixed registration duty of EUR 75 is payable upon incorporation of the SICAR.			A 15% withholding tax will be applied on the gross amounts of dividends paid by the SOPARFI, but will generally be reduced under tax treaty. An exemption is available to distributions made to fully taxable Luxembourg companies, EU companies listed in the EU Parent- Subsidiary Directive and fully taxable companies established in a treaty country or an EEA member state. 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.

Outline of available legal forms

	SA	SARL	SCA
Key features	Commonly used	Commonly used as SPV	Convenient for fund initiators who want to retain control over the management
Minimum capitalization (at incorporation/launching)	EUR 31,000	EUR 12,500	EUR 31,000
Shareholding	One or more limited shareholders (no upper limit)	One or more limited shareholders (no more than 40)	One or more unlimited shareholders and several limited shareholders (no upper limit)
Liability	Shareholders are liable up to the amount committed	Shareholders are liable up to the amount committed	Unlimited shareholders are indefinitely, jointly and severally liable Limited shareholders are liable up to the amount committed
Form of shares/units	Dematerialised, bearer or registered form	Registered form only	Dematerialised, bearer or registered form
Transfers of shares	No restriction	Transfers to non-shareholders subject to the prior approval of the shareholders	No restriction
Listing	Yes	No	Yes
Management	By a board of directors or by a management board supervised by a supervisory board	By one or several managers	By the general partner or an external manager Unlimited shareholder acts as general partner
Amendment to constitutive documents	By a quorum representing at least ½ of the share capital and a ⅔ majority of shareholders	By a majority in number of the shareholders representing at least ¾ of the share capital	By a quorum representing at least ½ of the share capital and a ⅔ majority of shareholders, including the general

	SCS	SCSp	FCP
	Tax transparent vehicle Convenient for fund initiators who want to retain control over the management Formed by written agreement	No legal personality Tax transparent vehicle Convenient for fund initiators who want to retain control over the management Formed by written agreement High contractual freedom	No legal personality Tax transparent vehicle Not governed by the Companies Law Formed by written agreement High contractual freedom
	No requirement	No requirement	No requirement
	One or more unlimited partners and one or more limited partners (no upper limit)	One or more unlimited partners and one or more limited partners (no upper limit)	One or more unitholders (no upper limit)
	Unlimited partners are indefinitely, jointly and severally liable Limited partners are liable up to the amount committed	Unlimited partners are indefinitely, jointly and severally liable Limited partners are liable up to the amount committed	Unitholders are liable up to the amount committed
	Registered form only	Registered form only	Dematerialised, bearer or registered form
	Transfers not allowed unless authorized by the LPA or approved by all the partners	Transfers not allowed unless authorized by the LPA or approved by all the partners	As set forth in the Management Regulations
	No	No	Yes
	By the general partner or an external manager	By the general partner or an external manager	By the Management Company (chap 15 or chap 16 of the UCI Law)
	By all the partners, unless otherwise provided in the LPA	By all the partners, unless otherwise provided in the LPA	As set forth in the Management Regulations

Glossary of terms

AFIC	*Association Française des Investisseurs pour la Croissance*
AIF	Alternative Investment Funds
AIFM	Alternative Investment Fund Manager
AIFMD	The directive 2011/61/EU of 8 June 2011 on Alternative Investment Fund Managers
AIFM Law	The law of 12 July 2013 on Alternative Investment Fund Managers
AM	Asset Manager
Annual Accounts Law	The law of 19 December 2002 on the annual accounts of companies, as amended
Banking Law	The law of 5 April 1993 on the financial sector, as amended
BVCA	British Private Equity & Venture Capital Association
Companies Law	The law of 10 August 1915 on commercial companies, as amended
CFC	Controlled Foreign Company
CSSF	The Luxembourg Supervisory Authority of the Financial Sector (*Commission de Surveillance du Secteur Financier*)
EEA	The European Economic Area including EU members states as well as Iceland, Liechtenstein and Norway
ESMA	The European Securities and Markets Authority
EU	The European Union
EU Parent-Subsidiary Directive	The directive 90/435/EEC on the common system of taxation applicable in the case of parent companies and subsidiaries of different member states of the EU, as amended
EuVECA	European Venture Capital Funds
EuVECA Regulation	The Regulation (EU) No 345/2013 of 17 April 2013 on European Venture Capital Funds
EVCA	European Private Equity and Venture Capital Association
FCP	Common fund (*Fonds Commun de Placement*)
IFRS	International Financial Reporting Standards
LPA	Limited Partnership Agreement
LuxGAAP	Luxembourg Generally Accepted Accounting Principles
MIFID	Markets in Financial Instruments Directive
NAV	Net Asset Value
PD prospectus	Prospectus in accordance with the European Prospectus Directive
PFS	Professional of the financial sector within the meaning of the Banking Law
PPR	Private Placement Regime
Prospectus Directive	The directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading, as amended

SA	Public limited liability company (*Société Anonyme*)
Sàrl	Private limited liability company (*Société à Responsabilité Limitée*)
SCA	Corporate partnership limited by shares (*Société en Commandite par Actions*)
SCoSA	cooperative company organised as a public limited company (*Société Coopérative organisée comme une Société Anonyme)*
SCS	Common limited partnership (*Société en Commandite Simple*)
SCSp	Special limited partnership (*Société en Commandite Spéciale*)
Securitisation Law	The law of 22 March 2004 on securitisation, as amended
SICAF	Investment company with fixed capital (*Société d'Investissement à Capital Fixe*)
SICAR	Investment company in risk capital (*Société d'Investissement en Capital à Risque*)
SICAR Law	The law of 15 June 2004 on the investment company in risk capital, as amended
SICAV	investment company with variable capital (*Société d'Investissement à Capital Variable*)
SIF	Specialised Investment Fund (*Fonds d'Investissement Spécialisé*)
SIF Law	The law of 13 February 2007 on specialised investment funds, as amended
SME	Small and Medium sized Enterprise
SOPARFI	Financial interest holding company (*Société de Participations Financières*)
SPV	Special Purpose Vehicle
UCI	Undertaking for Collective Investment within the meaning of part II of the UCI Law
UCI Law	The law of 17 December 2010 on Undertakings for Collective Investment, as amended
UCITS	Undertaking for collective investment in transferable securities within the meaning of part I of the UCI Law

November 2013

luxembourg private equity and
venture capital investment vehicles