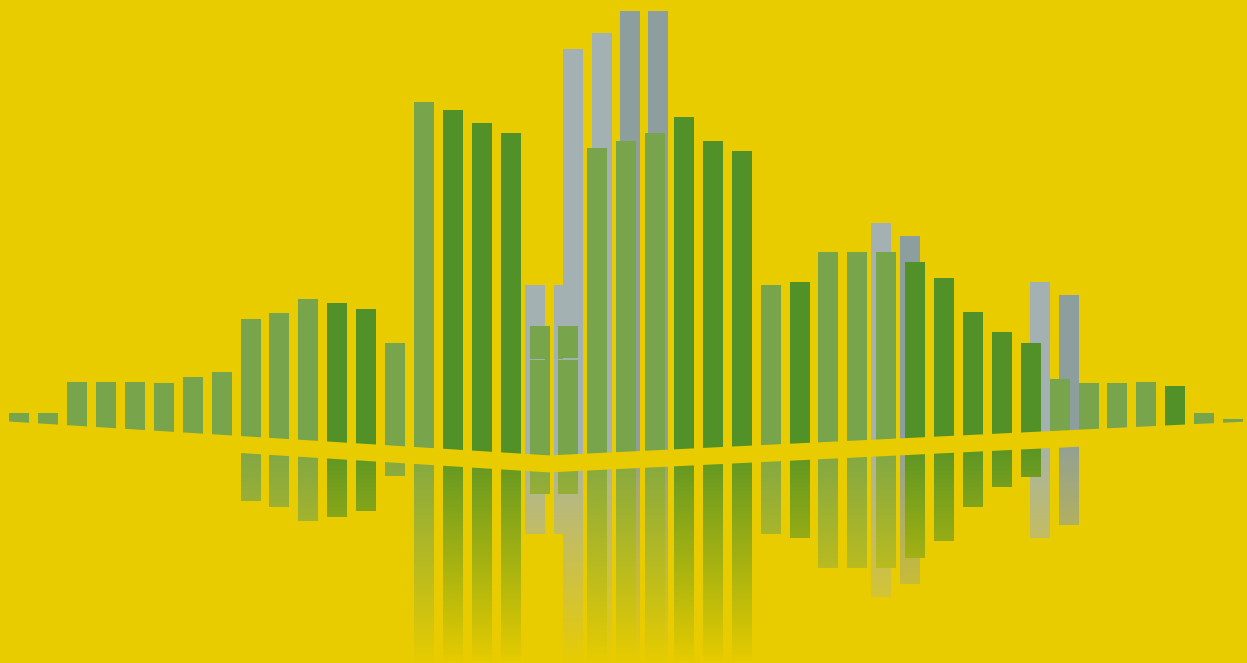




association of the
luxembourg fund industry

| **real estate**

Luxembourg Real Estate Investment Vehicles



why luxembourg ?

- 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



This brochure has been prepared by the Association of the Luxembourg Fund Industry (ALFI) in order to provide general background information on the legal and taxation aspects of regulated and unregulated real estate vehicles domiciled in the Grand Duchy of Luxembourg.

The choice of a real estate vehicle will depend on the type of funding that needs to be raised, the proposed investor base, the type of investments to be made and any specific tax considerations.

The Luxembourg legal framework is diverse and flexible enough to fulfill a wide range of investor needs. The taxation regime is also a key factor when considering whether to establish an unregulated or regulated real estate investment vehicle for international investors.

This brochure is not intended to be a comprehensive study. Readers should seek the advice of qualified professionals before making any decision as to the most appropriate Luxembourg real estate investment.

This document reflects the legal situation as of November 2014.



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The market for real estate investment vehicles is continuously developing to provide investors with flexible and innovative real estate investment products. The growth in the number of real estate investment vehicles set up in Luxembourg has outpaced the European average and all current market indicators show that this trend will continue for the future.

Luxembourg remains the leading European domicile for vehicles investing in international real estate. The number of real estate fund units has continued to grow during 2013 and during the first nine months of 2014, bringing the total number of real estate fund units domiciled in and operated from Luxembourg to 302 (plus 23 compared to the close of December 2013).

At the end of September 2014, net assets managed by the Luxembourg real estate funds amounted to EUR 32.5 billion, up 2.09 billion or 6.85% compared to end of December 2013.

These figures only refer to Luxembourg real estate vehicles regulated by the Luxembourg regulator, the *Commission de Surveillance du Secteur Financier* (CSSF). The inclusion of

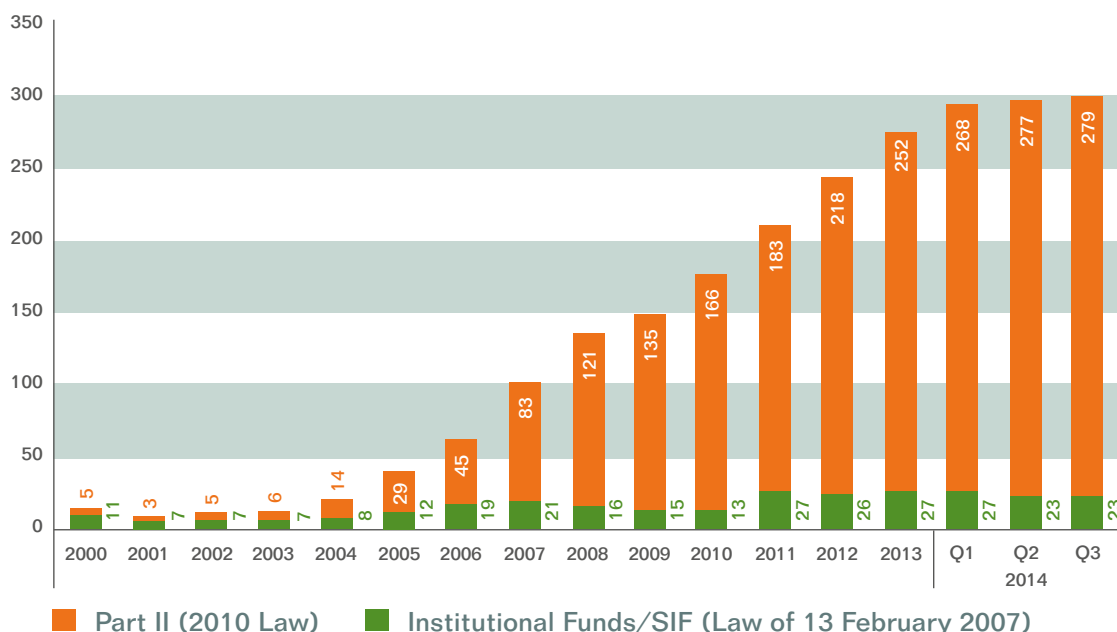
unregulated Luxembourg real estate investment vehicles would increase these figures considerably.

There are several key factors which contribute to the success of Luxembourg, including:

- Ongoing political support for the development of the financial services industry;
- Increasing investor awareness of Luxembourg funds;
- A high level of investor protection;
- A flexible onshore regime for setting up highly sophisticated and tax efficient real estate; vehicles investing internationally;
- The presence of experienced service providers.

The optimal choice of a real estate investment vehicle will depend largely on the type of funding that needs to be raised, the proposed investor base, any tax considerations and the type of investments. The current Luxembourg legal framework is diverse and flexible to meet a wide range of investor needs and the Luxembourg taxation regime is a key factor when considering whether to choose an unregulated or regulated real estate investment vehicle for international investors.

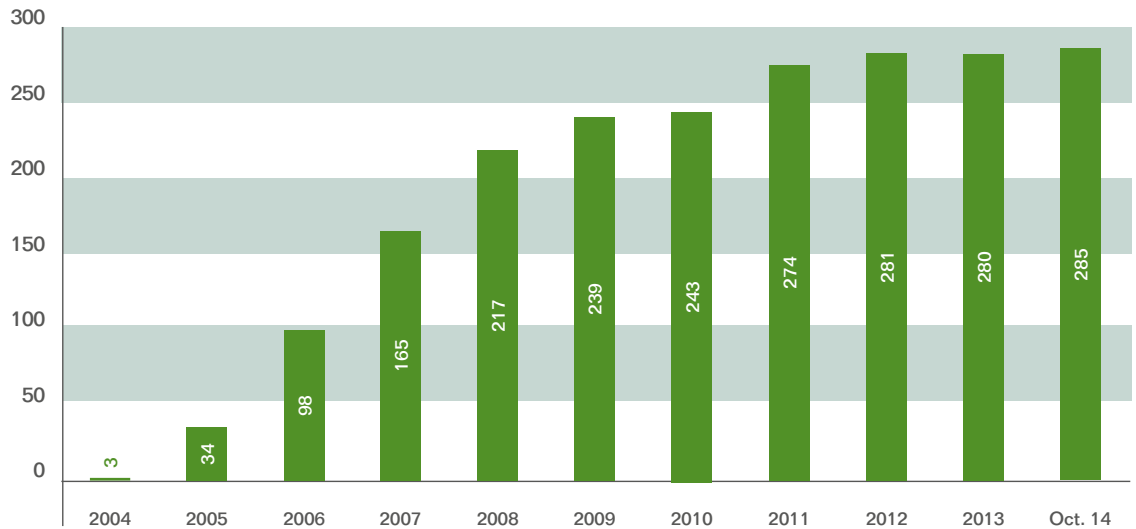
Number of Luxembourg real estate fund units*



(Source: ALFI/CSSF)

* fund unit = the number of stand-alone funds plus the number of sub-funds in umbrella structures

Growth in the number of SICAR since 2004



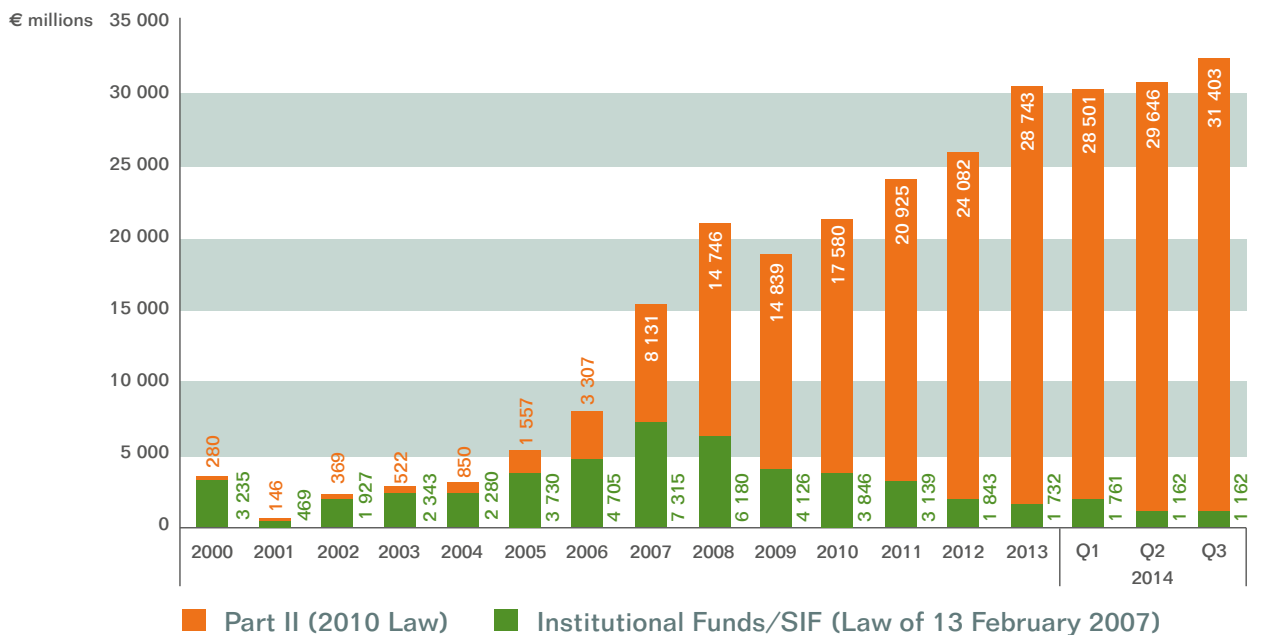
(Source: ALFI/CSSF)

Luxembourg real estate investment vehicles, whether regulated or not, may qualify as alternative investment funds (AIF) within the meaning of the Alternative Investment Funds Managers Directive (AIFMD).

The AIFMD was transposed into Luxembourg law by the law of 12 July 2013 on alternative investment fund managers (the AIFM Law). The AIFM Law regulates alternative investment fund managers (AIFM) but it also contains various provisions applicable to

qualifying alternative investment funds, disregarding whether the AIF has been set up as a regulated vehicle under the law of 17 December 2010 on undertakings for collective investment (the 2010 Law), the law of 13 February 2007 on specialised investment funds (the SIF Law), the law of 15 June 2004 on investment companies in risk capital (the SICAR Law) or as a non-regulated vehicle under the provisions of the law of 10 August 1915 on commercial companies (the 1915 Law).

Net assets under management in Luxembourg real estate funds



(Source: ALFI/CSSF)

Companies

Luxembourg is often used as the location of choice of professional, institutional and private investors for companies acquiring real estate.

Legal features

In accordance with the 1915 Law companies may be incorporated in Luxembourg as a:

- Public limited company;
- Partnership limited by shares;
- Private limited company;
- Common limited partnership;
- Special limited partnership; or
- Cooperative company.

In practice, the legal form of a public limited company (*Société Anonyme* or SA), a corporate partnership limited by shares (*Société en Commandite par Actions* or SCA), or a private limited company (*Société à Responsabilité Limitée* or Sàrl) is most commonly chosen for companies investing in real estate. One of the main features of these forms of company is the limited liability of each shareholder to the amount of its participation in the company (this also applies to the partnership limited by shares). The special limited partnership (*Société en Commandite Spéciale* or SCSp) which is a legal form available in Luxembourg since July 2013 and the common limited partnership (*Société en Commandite Simple* or SCS) which was modernised in July 2013 are also attractive because of their flexibility and alignment with common law-style limited partnerships.

The table on page 7 provides a comparison of the main features of the most popular corporate legal forms.

Tax features

According to the *lex rei sitae* principle, income derived from real estate is generally taxed in the country of the location of the real estate. If the real estate is held through a company, the sale of the shares is, in general, taxed in the country of residence of the seller, according to the ordinary rules of double taxation treaties (to be checked on a case-by-case basis).

Luxembourg companies which invest directly or indirectly in real estate are subject in Luxembourg to:

- A fixed registration duty of EUR 75 which is due upon incorporation of a company, modification of its articles of association or transfer of registered office of a company to Luxembourg;
- Net worth tax of 0.5%;
- Municipal business tax and corporate income tax at the global rate of 29.22% (for companies located in Luxembourg City) on all their income.

It is possible to leverage the investment through a mixture of equity and debt. Luxembourg companies may benefit (via applicable double tax treaties concluded by Luxembourg) from tax exemption on income deriving from real estate located abroad. Dividends and gains from qualifying shareholdings in real estate property companies are usually also exempt under the Luxembourg domestic participation exemption regime (implementing the amended EU Parent-Subsidiary Directive 2011/96/EU).

In addition, there is normally no net worth tax due on directly held foreign real estate or shareholdings in foreign property companies as a result of tax treaties and domestic law exemptions.

If the income is not exempt under a tax treaty, all investment expenses (property tax, interest on loans etc.) and costs associated with real estate management are deductible from taxable income.

	Public limited company (SA)	Private limited company (Sàrl)	Common/special Limited partnership (SCS/SCSp)
Key features	Commonly used	Commonly used as SPV	Tax transparent vehicle. No legal personality for the SCSp
Incorporation	Notarial deed required	Notarial deed required	Notarial deed not required
Minimum capitalisation (at incorporation/ launching)	EUR 31,000	EUR 12,500	No requirement
Shares	Dematerialised, registered or bearer	Registered form only	Registered form only
Shareholders	≥1	1 to 40	Limited partners: ≥ 1 Unlimited partners: ≥ 1
Transfer of shares	Free	Subject to certain conditions being met	Freely determined by the partnership agreement
Liabilities	Shareholders' liability is limited to the amount of their participation	Shareholders' liability is limited to the amount of their participation	Limited partners' liabilities: Limited to the amount of their participation General partners' liabilities: Unlimited
Listing	Yes	No	No
Assembly	1 annual general assembly required	1 annual general assembly required if the number of members/partners is ≥25	1 annual general assembly required for the SCS
Management	≥3 directors (if there is more than one shareholder) or a <i>Conseil de Surveillance & Directoire</i>	≥1 manager	≥1 manager which does not have to be an unlimited partner
Amendments to constitutive documents	By a quorum representing at least 1/2 of the share capital and a 2/3 majority of shareholders	By a majority in number of the shareholders representing at least 3/4 of the share capital	By all the partners, unless otherwise provided in the LPA
Accounts	Annual	Annual	Limited accounting obligation
Statutory auditor	Required	Required only if the number of partners is ≥25	Required only for large companies
Independant auditor's report	Required if certain size thresholds are exceeded	Required if certain size thresholds are exceeded	Required if certain size thresholds are exceeded

Securitisation Vehicles

The Luxembourg law of 22 March 2004 on securitisation as amended contains a broad definition of securitisation and a complete legal framework for securitisation transactions, including real estate transactions. It is sufficiently flexible for promoters to develop workable and effective structures for securitisation transactions, whilst ensuring a high level of investor protection.

Legal features

Securitisation is a technique which allows the conversion of assets (or the risks linked to the assets), which are not marketable, into transferable securities, and then to transfer these assets (or the risks linked to the assets) to a specific entity. The entity which owns, acquires or assumes all rights in connection with a specific asset or pool of assets transfers this asset to a securitisation vehicle through the issue of transferable securities which are backed/collateralised by the underlying assets.

A wide range of assets, tangible or intangible, movable or immovable, including real estate, may be securitised as long as a value may be reasonably ascertained and there is a reasonable likelihood of current or future income or gain. Securitisation can take the form of a transfer of ownership of the assets (true sale) or of a transfer of the risks linked to the asset (synthetic sale).

In Luxembourg, securitisation is accessible to a wide range of investors (retail or institutional), directly or indirectly. Securitisation vehicles are, in principle, unregulated. However, a securitisation vehicle which issues securities to the public on a continuous basis (normally interpreted as being more than three times a year) falls under the supervision and regulation of the CSSF, although offers to institutional investors and private placements do not constitute a “public offer”.

There are two types of securitisation vehicles which may be set up under Luxembourg law: (i) securitisation funds and (ii) securitisation companies. Securitisation funds have no legal personality and, therefore, must be managed by a management company. Securitisation funds may be structured in the form of a

contractual common fund (*Fonds Commun de Placement* or FCP) as either a co-ownership of assets (*co-propriété*) where there is a right to the securitised assets underlying the investor's securities or as a fiduciary property (*patrimoine fiduciaire*), where the management company holds the securitised assets as fiduciary property.

Securitisation companies may take the legal form of a:

- Public limited company (*Société Anonyme* or SA);
- Partnership limited by shares (*Société en Commandite par Actions* or SCA);
- Private limited company (*Société à Responsabilité Limitée* or Sàrl);
- Cooperative company organised as a public limited company (*Société Coopérative organisée sous forme de Société Anonyme* or SCoSA).

Securitisation vehicles may:

- Issue equity or debt securities;
- Value and make a return from securities, depending on the underlying assets;
- Create multiple compartments with different assets and liabilities which may be liquidated separately;
- Issue securities to the public (if an SA or SCA). The annual accounts must be audited by an independent auditor approved by the CSSF.

Tax features

The tax treatment of securitisation funds is similar to that of an FCP since securitisation funds are not subject to income or wealth taxes. Securitisation funds are also not subject to subscription tax (*taxe d'abonnement*).

Securitisation companies are subject to corporate income tax and municipal business tax at the global rate of 29.22% (for companies located in Luxembourg City) as are other commercial companies. However, they may deduct, without limit, dividends, interest payments and commitments towards their investors which *de facto* may reduce their tax basis to zero. An annual minimum advance corporate income tax is however due. Securitisation companies are exempt from net worth tax. A fixed registration duty of EUR 75 is due upon incorporation.

Undertakings for Collective Investment (UCIs) generally

Most real estate investment vehicles established in Luxembourg are undertakings for collective investment (UCIs). Real estate UCIs are those

- Which invest their funds in real estate;
- Which place their shares or units with the public by means of a public or private offer;
- Whose exclusive object is to invest in real estate assets in accordance with the principle of risk diversification.

Legal and regulatory features

Real estate UCIs may be set up either in corporate form (i.e. *Société d'Investissement à Capital Variable* or SICAV and *Société d'Investissement à Capital Fixe* or SICAF) or in a contractual common fund form (*Fonds Commun de Placement* or FCP). A key determining factor in the selection of one of these structures is the tax regime applicable to investors.

FCP, SICAV and SICAF UCIs all fall within the scope of the Luxembourg law of 17 December 2010 on undertakings for collective investment as amended and CSSF Circular 91/75 of 21 January 1991 (CSSF Circular 91/75), unless they have been established as a specialised investment fund (SIF) under the SIF Law (see below).

Real estate UCIs may adopt a multiple sub-fund structure (i.e. umbrella fund) where, for instance, each sub-fund may have a different investment policy or is restricted to certain investors. The umbrella fund is legally treated as a single entity; however, in principle, each sub-fund is responsible for its own assets and liabilities. A sub-fund may (within certain conditions) invest in another sub-fund of the same umbrella fund.

The main types of real estate UCIs are the following:

- Real estate SICAFs, which are investment companies with a fixed capital and thus have a share capital which may only vary in accordance with legal requirements. They are generally in the legal form of a public limited company (SA) or a partnership limited by shares (SCA).
- Real estate SICAVs, which are investment companies with variable share capital,

i.e. the share capital is at all times equal to their net asset value. The share capital of the SICAV is automatically increased or reduced upon issue or redemption of shares;

- Real estate FCPs, which are unincorporated co-proprietorships of assets (common funds) with no legal personality and, thus, must be managed by a management company incorporated in Luxembourg. The management company may delegate all or part of its functions to investment managers located in Luxembourg or abroad. Unit holders of the FCP, who have their liability limited to the amounts contributed by them to the FCP, are not, in principle, entitled to shareholder rights.

As for any UCI, a real estate UCI has to comply with the principle of risk diversification when implementing its investment policy. CSSF Circular 91/75 provides that a real estate UCI may, in principle, not invest more than 20% of its net assets in a single real property. However, this rule does not apply during the start-up period which may not extend beyond 4 years after the closing date of the initial subscription period. Distribution requirements vary according to the type of real estate UCI. As an example, an FCP or a SICAV may not make any distribution whereby the net assets of the UCI would fall below the legal minimum requirement of EUR 1,250,000.

Borrowing restrictions also apply to real estate UCIs since, in principle, real estate UCIs may only borrow up to 50% of the valuation of all their properties.

The net asset value of a real estate UCI is calculated at least once a year (at the end of the financial year) and on each day on which shares/units are issued or redeemed. The valuation of its assets is subject to specific requirements, such as the appointment of an independent valuer to value the underlying real properties.

All real estate UCIs are subject to CSSF approval and supervision. They must appoint a depositary to supervise and monitor their assets. The depositary must be a credit institution; an investment firm within the meaning of the Law of 5 April 1993 on the financial sector, as amended (the 1993 Law)

it being specified that investment firms shall only be eligible to act as depositary to the extent that they fulfill certain conditions prescribed by the AIFM Law (e.g. certain capital and own funds requirements and appropriate organisational, administrative and corporate governance structures for the carrying out of depositary functions) or, under certain conditions (see below), an entity governed by Luxembourg law that has the status of a professional depositary of assets other than financial instruments.

A new type of Luxembourg depositary, namely the professional depositary of assets other than financial instruments (*dépositaire professionnel d'actifs autres que des instruments financiers*), has been introduced by the AIFM Law for both SIFs and SICARs, under the SIF Law and the SICAR Law, respectively, this type of depositary may only be used by SIFs or SICARs which have no redemption rights exercisable during a period of five years from the date of the initial investments and that, in accordance with their core investment policy, either (i) generally do not invest in financial instruments that must be held in custody in accordance with relevant provisions of the AIFM Law (typically real estate funds), or (ii) generally invest in issuers or non-listed companies in order to potentially acquire control over such companies within the meaning of the AIFM Law (typically private equity and venture capital funds).

Real estate UCIs must have their central administration located in Luxembourg.

Finally, any real estate UCI may apply for a listing on the Luxembourg Stock Exchange provided it complies with the listing requirements.

Tax features

Real estate UCIs benefit from the general tax rules applicable to UCIs and are exempt from municipal business tax, corporate income tax and net worth tax but are subject to a fixed registration duty and an annual subscription tax (*taxe d'abonnement*).

The fixed registration duty of EUR 75 is payable upon creation of the UCI in corporate form, regardless of the amount invested and of any subsequent amendments of the articles of incorporation (e.g. increases in capital or subscriptions).

The subscription tax is an annual tax, payable quarterly and assessed on the total net assets of the UCI determined on the last valuation day of each calendar quarter. Real estate UCIs are subject to the standard rate of 0.05%.

Exemption and a lower rate of 0.01% may apply under certain conditions.

Tax on income received/capital gains realised by Luxembourg real estate UCIs (e.g. rent from real estate) is generally taxed in the country where the asset is located. Additionally, Luxembourg real estate UCIs may be subject to foreign withholding taxes on dividends and interest levied at source, and capital gains realised by UCIs may be taxable in the country of the investment.

Some real estate UCIs in corporate form (i.e. SICAV and SICAF) are entitled to benefit from a certain number of double tax treaties signed by Luxembourg. As of 15 July 2014, more than 70 tax treaties had been signed by Luxembourg, with approximately half of these covering UCIs in corporate form. UCIs formed as FCPs do not benefit from double tax treaties but their investors, where the tax transparency of the FCP is recognised, may be protected under the double tax treaty concluded between their country of residence and the country of the source income.

Luxembourg withholding tax does not apply to distributions made by real estate UCIs to investors, irrespective of their country of residence, subject to the application of the provisions of the EU Savings Directive 2003/48/EC. The taxation of income derived from real estate UCIs will follow the rules applicable in the country of residence of the investor.

Management companies are, in principle, fully taxable companies and are therefore subject to Luxembourg taxes, such as a fixed registration duty of EUR 75, municipal business and corporate income taxes at the global rate of 29.22% (for companies located in Luxembourg City) and net worth tax of 0,5%.

Distributions are subject to a withholding tax of 15%, unless exempted or reduced under Luxembourg domestic tax law or a double tax treaty. The withholding tax on dividends distributed to a parent company that is a qualifying entity under the EU Parent-Subsidiary Directive 2011/96/EU is reduced to 0% provided that the parent company is an entity that either holds, or commits to hold, for

an uninterrupted period of 12 months, at least 10% of the shares in the Luxembourg distributing entity or, alternatively, holds shares with an acquisition price of at least EUR 1.2 million. In addition, the withholding tax on dividends distributed to parent companies in a double tax treaty country is reduced to 0% provided the parent company is an entity that is subject to an effective tax rate of at least 10.5% and either holds, or commits to hold, for an uninterrupted period of 12 months at least 10% of the shares in the Luxembourg distributing entity or shares with an acquisition price of at least EUR 1.2 million euros. Liquidation distributions are not subject to withholding tax in all cases.

Specialised Investment Funds (SIFs)

The SIF Law supplemented the Luxembourg law of 19 July 1991 on UCIs, the securities of which were not intended to be placed with the public. The SIF Law allows “eligible investors” to invest in lightly regulated, operationally flexible and fiscally efficient real estate investment funds. SIFs may qualify as AIF for the purpose of the AIFM Law.

Legal and regulatory features

The range of eligible assets (nature of assets or associated risks) is unlimited and consequently includes real estate.

The scope of eligible investors for SIFs is limited to well-informed investors which include institutional or professional investors or any other investor who meets the following conditions:

- Has confirmed in writing that it adheres to the status of well-informed investor; and
- Either (i) invests a minimum of EUR 125,000 in the SIF, or, (ii) has been the subject of an assessment made by a credit institution within the meaning of Directive 2006/48/EC, by an investment firm within the meaning of Directive 2004/39/EC or by a management company within the meaning of Directive 2009/65/EC certifying its expertise,

experience and knowledge in adequately appraising an investment in the SIF.

Key characteristics are as follows:

- An application for prior approval has to be filed with the CSSF;
- In common with other Luxembourg UCIs, the SIF must appoint a depositary to supervise its assets;
- The risk diversification requirement remains in respect of the investment policy (as this is the essence of a UCI), but quantitative, qualitative or geographic investment restrictions remain flexible (and are usually self-imposed). CSSF Circular 07/309 provides that SIFs may invest, up to 30% of their assets in one single issuer with the possibility to obtain derogations in specific circumstances;
- Investment limits are determined by the SIF and agreed with the CSSF;
- The SIF must establish systems to monitor, measure and manage risks in the portfolio and must establish procedures so as to avoid conflicts of interest;
- Investors may invest in a SIF via equity or debt. Although borrowing restrictions remain flexible for this vehicle, the AIFM Law (if applicable) requires the AIFM to set a maximum borrowing level in respect of the relevant AIF;

- In respect of disclosure and reporting requirements, a SIF is only required to produce an annual audited report covering the relevant financial year. SIFs which are AIFs under the AIFM Law will be required to report in accordance with the provisions of the AIFM Law.

Neither the SIF Law nor CSSF Circular 07/309 provide for a specific grace period during which SIFs may derogate from the diversification rules mentioned above. They do however benefit from such tolerances which are applicable to all types of Luxembourg investment funds and which may extend to up to four years for SIFs investing in real estate and during which they may be allowed to concentrate investment in one or more properties.

SIFs may be structured as:

- An FCP managed by a management company;
- An investment company with variable capital (*Société d'Investissement à Capital Variable* or SICAV), opting for the corporate form of:
 - a public limited company (*Société Anonyme* or SA);
 - a partnership limited by shares (*Société en Commandite par Actions* or SCA);
 - a private limited company (*Société à responsabilité limitée* or Sàrl);
 - a common limited partnership (*Société en Commandite Simple* or SCS);
 - a special limited partnership (*Société en Commandite Spéciale* or SCSp) as further detailed hereafter;
 - a cooperative company organised as a public limited company (*Société Coopérative organisée sous forme de Société Anonyme* or SCoSA).

Recent changes to the 1915 Law allow for the incorporation of a SIF in the form of an SCSp. In a nutshell, the SCSp is a partnership, which does not constitute a legal person separate from that of its investors, entered into by one or more general partners (GP) with unlimited and joint and several liability for all of the SCSp's obligations, with one or more limited partners (LPs) contributing only a specific amount pursuant to the provisions of the limited

partnership agreement (LPA). The SCSp form may be used by regulated and non-regulated entities whether qualifying as AIFs or not.

Thus, regulated investment vehicles such as SIFs may adopt the legal form of the SCSp.

The rules applicable to subscription, redemption and distributions, valuation of assets and the compartmentalisation of assets may also be freely determined by the SIF.

The minimum capital (share capital and share premium) must reach EUR 1,250,000 within a period of 12 months following the authorisation of the SIF by the CSSF.

Tax features

A EUR 75 registration duty is due on incorporation and any amendments to the articles of incorporation of a corporate investment fund (i.e. SICAV-SICAF) or of a management company of an FCP. SIFs are otherwise exempt from corporate income tax, municipal business tax and net worth tax and only subject to an annual subscription tax (*taxe d'abonnement*) of 0.01% assessed on the total net assets of the SIF as determined on the last valuation day of each calendar quarter. Some exemptions from the subscription tax may apply.

There is no withholding tax for distributions, except if due by application of the EU Savings Directive 2003/48/EC.

Sociétés d'Investissement en Capital à Risque (SICARs)

The law of 15 June 2004 on the investment company in risk capital, as amended created a legal framework for establishing an investment vehicle tailored for qualified investors investing in venture capital and private equity: the investment company in risk capital (*Société d'Investissement en Capital à Risque* or SICAR). SICARs may qualify as AIF for the purpose of the AIFM Law.

Legal and regulatory features

Eligible assets under the SICAR regime are all assets representing risk capital. CSSF Circular 06/241 dated 5 April 2006 as well as the CSSF FAQ on SICARs provide a general description of the concept of risk capital. Although a SICAR is not authorised to invest directly in real estate properties, CSSF Circular 06/241 specifies that a SICAR can do so indirectly via entities that hold or invest in real estate assets. The purpose of a SICAR, as a real estate investment vehicle, is to buy real estate investments with the purpose to change their existing condition so as to increase their respective values and with a view to selling them at a profit.

The value creation may adopt several forms, such as the enhancement of the real estate through renovation, renegotiation of contracts, renewal of tenants or restructuring of the portfolio of the real estate company.

Real estate investments need to have risk capital characteristics to be classified as eligible assets. These could, for example, include a combination of:

- The objective of developing the target asset (for example value creation through investment in renovating a property or restructuring of a portfolio of properties);
- A specific element of risk associated with the property which is beyond the common level of real estate risk (for example the location of the property in a distressed area or an emerging country, or a property with significant tenant or avoid risk);
- The objective of acquiring the property in order to sell at a capital gain.

Typically, “opportunistic” investment strategies would qualify for the SICAR. The securities issued by the SICAR are reserved to well-informed investors which include institutional and professional investors or any other investor who meets the following conditions:

- It has confirmed in writing that he adheres to the status of well-informed investor; and
- It invests a minimum of EUR 125,000 in the company; or
- It 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 2009/65/EC certifying its expertise, experience and knowledge in adequately appraising an investment in risk capital.

Investment rules are flexible to fit with the specific needs of the private equity and venture capital industry. The SICAR is not subject to risk diversification requirements. It may use various forms of investments and various forms of financing for its investments.

A SICAR is entitled to create multiple investment compartments or sub-funds with specific investment policies or other own features, none of them being subject to any diversification requirements.

A SICAR may be incorporated in the legal form of a:

- Public limited company (*Société Anonyme* or SA);
- Partnership limited by shares (*Société en Commandite par Actions* or SCA);
- Private limited company (*Société à Responsabilité Limitée* or Sàrl);
- Common limited partnership (*Société en Commandite Simple* or SCS);
- Special limited partnership (*Société en Commandite Spéciale* or SCSp);
- Cooperative company organised as a public limited company (*Société Coopérative organisée sous forme de Société Anonyme* or SCoSA).

Operational flexibility is provided as there are no rules in respect of the type of capital (fixed or variable), the subscription and redemption of shares, and the distribution policy. However, the minimum capital of EUR 1,000,000 (including share premium) must be reached within 12 months of the authorisation of the SICAR by the CSSF.

Assets of the SICAR must be entrusted to a depositary.

The SICAR is subject to the prior approval and permanent supervision of the CSSF. The managers of the SICAR approved statutory depositary are also subject to such preapproval, but there is no such (approval) requirement for the promoter and the investment manager of the SICAR.

Tax features

The SICAR is subject to a registration duty of EUR 75 upon incorporation (and any amendments of its articles of incorporation). It is exempt from net worth tax and not subject to subscription tax (*taxe d'abonnement*).

A SICAR formed as a tax transparent vehicle is, in general, not subject to corporate income tax, municipal business tax and withholding tax on distributions made by the SICAR.

The income received by the investors of a transparent SICAR is taxed according to the rules applicable in their country of residence. Non-resident investors are not taxed on gains realised upon disposal of shares in the tax transparent SICAR.

A SICAR formed as a non-transparent company is subject to corporate income tax and municipal business tax on its net profits at a global rate of 29.22 % (for companies located in Luxembourg City) but may benefit from tax exemptions for income and capital gains realised on securities (including shares and debt securities) and on income from cash held for up to 12 months pending investment in risk capital. An annual minimum advance corporate income tax is however due. Capital losses on such investments are not tax-deductible. The non-transparent SICAR is exempt from withholding tax. It should be able to claim treaty benefits or qualify for the EU Parent-Subsidiary Directive and other EU tax directives. Non-resident investors are not taxed in Luxembourg on gains realised on the disposal of shares in a SICAR, and there is no withholding tax on dividends or other distributions of profit.



appendix I - comparative table of legal structures

	SICAR	SIF	PART II UCI
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.
Applicable legislation	SICAR Law (2004), as amended	SIF Law (2007), as amended	UCI Law, Part II (2010), as amended
Prospectus Directive	<p>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).</p> <p>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.</p>	<p>Only applicable if the SIF is closed-ended (i.e., does not offer any redemption opportunities to investors).</p> <p>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.</p>	<p>Only applicable if the fund is closed-ended (i.e., does not offer any redemption opportunities to investors).</p> <p>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.</p>
AIFM Law	SICAR may qualify as AIF	SIF may qualify as AIF	Part II UCI <i>de facto</i> qualify as AIF
EuVECA Regulation	SICAR may qualify as EuVECA	SIF may qualify as EuVECA	Part II UCI may qualify as EuVECA
Supervision by the CSSF	Yes	Yes	Yes
Eligible investors¹	Well-informed investors ²	Well-informed investors ³	Unrestricted

1 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.

2 + 3 A well-informed investor is an institutional investor, a professional investor or any other investor who meets the following conditions:

- 1) it has confirmed in writing that he adheres to the status of well-informed investor; and
- 2) it invests a minimum of EUR 125,000 in the company, or
- 3) it 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 its expertise, experience and 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
Eligible assets/ strategies⁴	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).
Risk spreading⁵	No	Yes (in principle, investment in any target company may not exceed 30% of the SIF assets). Feeder fund and fund of funds structures may however be set up.	Yes (in principle, investment in any target company may not exceed 20% of the net assets).
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
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.
Required service providers in Luxembourg⁶	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) ⁷ . Independent auditor.	Depositary (credit institution, investment firms and, under certain conditions, professional custodians). Administrative agent (PFS) ⁷ . Independent auditor.	Depositary (credit institution). Administrative agent (PFS) ⁷ . Independent auditor.

⁴ Additional requirements may apply in respect of EuVECA.

⁵ Additional requirements may apply in respect of EuVECA.

⁶ Depositary not required in respect of EuVECA.

⁷ 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.

appendix I - comparative table of legal structures

	SICAR	SIF	PART II UCI
Approval process by the CSSF	<p>Launching of a SICAR is subject to prior approval by the CSSF of:</p> <ul style="list-style-type: none"> - Constitutive document, prospectus, agreements with main service providers and business plan; - Directors/managers (must be experienced and reputable); - Choice of depositary and auditor. <p>The CSSF will also undertake a background check on the initiator and investment managers/advisors.</p> <p>No offer of securities may be made before CSSF approval.</p>	<p>Launching of a SIF is subject to prior approval by the CSSF of:</p> <ul style="list-style-type: none"> - 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. <p>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.</p> <p>No offer of securities may be made before CSSF approval.</p>	<p>Launching of fund is subject to prior approval by the CSSF of:</p> <p>Constitutive document, prospectus and agreements with main service providers;</p> <ul style="list-style-type: none"> - 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. <p>No offer of securities may be made before CSSF approval.</p>
Capital (fixed/variable)	Fixed or variable capital	Fixed or variable capital	Fixed or variable capital
Minimum capital/net assets requirements (for EUR amounts, equivalent in another currency is permitted)	<p>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.</p> <p>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.</p>	<p>For FCP: Net assets must reach EUR 1.25 million within 12 months from authorisation.</p> <p>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.</p> <p>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.</p>	<p>For FCP: Net assets must reach EUR 1.25 million within 6 months from authorisation.</p> <p>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.</p>

	SICAR	SIF	PART II UCI
Structuring of capital calls and issue of shares/units	<p>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;</p> <p>Existing shareholders have no pre-emptive right of subscription, unless otherwise provided for in the articles of association;</p> <p>Issue price may be freely determined in accordance with the principles laid down in the constitutive document.</p>	<p>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;</p> <p>Existing investors have no pre-emptive right of subscription, unless otherwise provided for in the constitutive document.</p>	<p>For FCP</p> <p>Capital calls may be organised on a commitment or subscription (through the issue of partly paid units) based model;</p> <p>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;</p> <p>Units must be issued at a price based on the NAV (plus costs and actualisation interests, if appropriate).</p> <p>For SICAF</p> <p>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;</p> <p>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);</p> <p>Issues of shares require an amendment of the articles of association before a public notary;</p> <p>Issue price is determined in accordance with the principles laid down in the articles of association.</p> <p>For SICAV</p> <p>Capital calls must be organised on a commitment based model (shares must be fully paid-up);</p> <p>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;</p> <p>Shares must be issued at a price based on the NAV (plus costs and actualisation interests, if appropriate).</p>

appendix I - comparative table of legal structures

	SICAR	SIF	PART II UCI
Distributions of proceeds	<p>No restrictions on distributions (except for compliance with minimum capital requirement and the provisions of the constitutive document).</p> <p>Distributions may be organised through dividend distributions and/or capital redemptions.</p>	<p>For SIF-FCP and SIF-SICAV</p> <p>No restrictions on distributions (except for compliance with minimum capital requirement and the provisions of the constitutive document).</p> <p>For SIF-SICAF</p> <p>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;</p> <p>Interim dividends are subject to Companies Law conditions.</p> <p>Distributions may generally be organised through dividend distributions and/or capital redemptions.</p>	<p>For FCP and SICAV</p> <p>There are no restrictions on distribution of (interim) dividends (except for compliance with minimum net assets/capital requirement).</p> <p>For SICAF</p> <p>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;</p> <p>Interim dividends are subject to Companies Law conditions.</p>
Valuation	<p>Assets are to be valued at fair value. Computation of periodic NAV no longer mentioned in SICAR Law but remains an option.</p> <p>Periodical NAV calculations are required.</p>	<p>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.</p>	<p>The NAV must be determined at least monthly.</p>
Financial reports/consolidation	<p>Audited annual report (within 6 months from end of relevant period).</p> <p>Explicit exemption from consolidation requirements.</p>	<p>Audited annual report (within 6 months from end of relevant period).</p> <p>Explicit exemption from consolidation requirements.</p>	<p>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.</p> <p>Unaudited semi-annual report (within 2 months from end of relevant period).</p>

	SICAR	SIF	PART II UCI
Processes and policies	<p>SICAR must implement appropriate risk management systems and must be organised in such a way as to minimize conflicts of interests.</p> <p>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.</p>	<p>SIF must implement appropriate risk management systems and must be organised in such a way as to minimize conflicts of interests.</p> <p>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.</p>	<p>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.</p>
Tax regime	<p>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.</p> <p>Fiscally opaque SICARs may in principle claim treaty protection and benefit from the EU direct tax directives.</p>	<p>SIFs are generally subject to an annual subscription tax (<i>taxe d'abonnement</i>) of 0.01% p.a. of their NAV, but several exemptions exist.</p> <p>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).</p>	<p>Part II funds are subject to an annual subscription tax (<i>taxe d'abonnement</i>) 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%.</p> <p>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).</p>

appendix I - comparative table of legal structures

	SICAR	SIF	PART II UCI
Tax regime	<p>(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.</p> <p>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).</p> <p>A fixed registration duty of EUR 75 is payable upon incorporation of the SICAR.</p>		



Glossary of terms	AIFMD	Directive 2011/61/EU on Alternative Investment Funds Managers
	CESR	Committee of European Securities Regulators
	CSSF	<i>Commission de Surveillance du Secteur Financier</i> (the Luxembourg Financial supervisory authority)
	CSSF Circular 07/309	CSSF Circular of 3 August 2007 on risk-spreading in the context of specialised investment funds (SIFs)
	CSSF Circular 07/308	CSSF Circular of 2 August 2007 on rules of conduct to be adopted by UCITS with respect to the use of a method for the management of financial risk, as well as the use of derivative financial instruments
	CSSF Circular 08/339	CSSF Circular of 19 February 2008 regarding guidelines of the Committee of European Securities Regulators (CESR) concerning eligible assets for investment by UCITS
	CSSF Circular 08/356	CSSF Circular of 4 June 2008 regarding rules applicable to undertakings for collective investment when they employ certain techniques and instruments relating to transferable securities and money market instruments
	CSSF Circular 11/512	CSSF Circular of 30 May 2011 on risk management in the context of UCITS funds
	CSSF Regulation 10-04	CSSF Regulation 10-04 of 22 December 2010 implementing Directive 2010/43/EU
	CSSF Circular 12/546	CSSF Circular 12/546 of 24 October 2012 on Chapter 15 Management Companies and self-managed UCITS
	EuVECA	European Venture Capital Fund
	FCP	<i>Fonds Commun de Placement</i> (common investment fund), an unincorporated co-ownership of assets managed by a management company
	2010 Law	Law of 17 December 2010 on undertakings for collective investment, as amended
	SA	<i>Société Anonyme</i> (public limited company)
	Sàrl	<i>Société à Responsabilité Limitée</i> (private limited company)
	SCA	<i>Société en Commandite par Actions</i> (partnership limited by shares)
	SCoSA	<i>Société Coopérative organisée comme une Société Anonyme</i> (cooperative company organised as a public limited company)
	SCS	<i>Société en Commandite Simple</i> (limited partnership)
	SCSp	<i>Société en Commandite Speciale</i> (limited partnership)

SICAF	<i>Société d'Investissement à Capital Fixe</i> (investment company with fixed capital)
SICAR	<i>Société d'Investissement en Capital à Risque</i>
SICAV	<i>Société d'Investissement à Capital Variable</i> (investment company with variable capital)
SIF Law	Law of 13 February 2007 on Specialised Investment Funds, as amended
UCI	Undertaking for Collective Investment
UCITS	Undertaking for Collective Investment in Transferable Securities
Well-informed Investor	<p>Institutional investor, professional investor or any other investor who meets the following conditions:</p> <ul style="list-style-type: none"> a) investor has confirmed in writing that he adheres to the status of well-informed investor, and b) (i) investor invests a minimum of EUR 125,000 in the specialised investment fund, or <ul style="list-style-type: none"> (ii) investor has been the subject of an assessment made by a credit institution within the meaning of Directive 2006/48/EC, by an investment firm within the meaning of Directive 2004/39/EC or by a management company within the meaning of Directive 2001/107/EC certifying investor's expertise, experience and knowledge in adequately appraising an investment in the SIF.

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