

## Luxembourg Investment Company in Risk Capital

The Investment Company in Risk Capital commonly known as “SICAR” (French acronym for *Société d’Investissement en Capital à Risque*), introduced by the law 15<sup>th</sup> June 2004, is a regulated vehicle mainly intended for investments in venture capital and private equity in general.

### Key features

- ▶ Investment vehicle set up as a company but having operational similarities with funds
- ▶ Extended definition of eligible investors
- ▶ Investment in all kind of transferable securities as long as they are risky
- ▶ No risk spreading rules
- ▶ Segregation of the assets via multiple compartments allowed
- ▶ Light reporting requirements
- ▶ Attractive tax regime
- ▶ Benefits from Luxembourg double tax treaty network and from EU Directives

## 1. Scope

### 1.1 Eligible investors

Three categories of investors are authorised to invest in the SICAR:

- ▶ Institutional investors;
- ▶ Professional investors;
- ▶ Other well-informed investors who have adhered in writing to the status of well-informed investors and who comply with one of the following conditions:
  - minimum investment of EUR 125.000 in the SICAR; or
  - participation in the management of the SICAR; or
  - positive assessment from a credit institution or another professional of the financial sector certifying their aptitude to appraise the contemplated investment and the risks attaching thereto.

## **1.2 Optional regime**

The submission to the SICAR regime must be opted for by inserting a mention to that effect in the constitutive documents.

## **2. Legal aspects**

### **2.1 Legal forms**

The SICAR must be incorporated in one of the following legal forms:

- ▶ public limited liability company (Société Anonyme, “SA”);
- ▶ private limited liability company (Société à Responsabilité Limitée, “SàRL”);
- ▶ partnership limited by shares (Société en Commandite par Actions, “SCA”);
- ▶ co-operative company in the form of a public limited liability company (“SCoSA”) ;
- ▶ limited partnership (Société en Commandite Simple, “SCS”).

Besides, it must be noted that the SICAR may be set up as an umbrella vehicle with multiple compartments with strict segregation of assets and liabilities between compartments.

### **2.2 Capital structure**

The SICAR must be capitalised with at least EUR 1.000.000 which can be the subscribed capital increased by the share premium. Subscription must be made 12 months following the authorisation of the SICAR by the Luxembourg supervisory authorities of the financial sector (so-called CSSF).

Unlike regular companies, the SICAR may opt for variable share capital allowing variation in share capital without need to respect any formalities.

### **2.3 Valuation of assets**

The SICAR has to value its assets at fair value in accordance with the methodologies set out in its articles of incorporation. Generally, valuation principles established by specialised professional bodies are used.

Computation of a periodic NAV may be required by investors if necessary.

### **3. Investment rules**

#### **3.1 Investment policy and risk diversification**

The SICAR must invest in assets representing “risk capital” with the aim of rewarding investors in proportion for the risk they bear.

The concept of “risk capital” being defined in a broad manner by the Law 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 CSSF issued a circular in order to provide with guidelines as to the eligible assets.

In principle, all types of transferable securities (e.g. shares, debt instruments, hybrid instruments, and shares in real estate companies...) should be eligible provided the investment is risky and made with intent to develop or create value.

It must be noted that unlike investment funds, the SICAR is not required to diversify its risks. It can invest in only one target.

### **4. Regulatory aspect**

#### **4.1 Prudential regime**

The SICAR must be authorised by the CSSF prior starting its operations. Once authorised, the SICAR is subject to the permanent supervision of the CSSF. However, it has to be mentioned that the SICAR benefits from a “light” regulatory regime, resulting from the fact that the SICAR is dedicated to well-informed investors who are deemed to be able to value the risks involved in their investments.

Besides, it must be noted that although the CSSF does not carry out an in-depth review of all materials, the CSSF has to approve the offering document, bylaws/management rules, the directors/managers (must be experienced and reputable) and the choice of the depositary bank of the SICAR.

#### **4.2 Requirement for depositary**

The SICAR must entrust the custody of the assets to a depositary bank resident in Luxembourg.

#### **4.3. Requirement to appoint an auditor**

The annual accounts of the SICAR must be audited by a Luxembourg independent auditor.

## 4.4 Reporting requirements

The SICAR must establish an offering document (sales prospectus) and an annual report.

The annual report must be presented to the investors at the latest 6 months following the end of the financial year. The annual report must include a balance sheet or a statement of assets and liabilities, a profit and loss account, significant information on the financial year as well as additional information for the assessment.

## 5. Tax regime

The taxation of the SICAR is contingent on the elected legal form. From the five corporate forms available, four are taxable entities and one is tax transparent.

### 5.1 Taxable entities

The SICAR that takes the form of an SA, SàRL, SCA or SCoSA is, as a general rule, fully subject to corporate income and municipal business tax at the aggregate rate of 29.22% (from 2013). However, in practice the SICAR avoids substantial taxation in Luxembourg as it is allowed to exempt from its taxable base all income and gains deriving from:

- Transferable securities. This income classification is very large and covers not only shares and titles in equity participations (and the resulting dividends, interest, royalties and capital gains) but also debt instruments;
- Temporary cash deposits held for less than 12 months in view of investments in risk capital. This exemption covers funds that have been called by the SICAR, paid up by the investor, but not yet invested.

As a result, the SICAR is only taxable on ancillary income. Besides, it must be noted that the SICAR is exempt from net wealth tax and withholding taxes on dividends, interest and liquidation proceeds.

As from 2013, Luxembourg companies that have aggregate financial assets, securities and bank deposits exceeding 90% of their balance sheet total are subject to a minimum corporate income tax of EUR 3,210 (including solidarity tax rate of 7%). For the other Luxembourg companies, a minimum annual taxation ranging between EUR 535 and EUR 21.400 (including solidarity tax rate of 7%) and which is determined on the basis of their total balance sheet of the tax year concerned, will be due.

### 5.2 Tax transparent entity

The SICAR that takes the form of the SCS is deemed transparent (i.e. look-through) for Luxembourg tax purposes. Income generated by the SICAR is therefore deemed having been directly earned by the partners in proportion to their respective participation in the limited partnership. Consequently, they will be taxed solely according to the rules applicable in their country of residence.

No withholding tax will be levied on dividends, interest and liquidation proceeds distributed by the tax transparent SICAR.

## **6. Thin capitalisation rules**

The Luxembourg tax authorities do not require from the SICAR to respect a debt-to-equity ratio.

## **7. Services provided by Experta Luxembourg**

Experta Luxembourg is a provider of services related to corporate and investment structures, as well as financial and estate planning. Experta Luxembourg assists private individuals, corporate clients and institutional investors with tailor-made solutions making use of creative planning techniques from various jurisdictions.

Experta Luxembourg may assist clients in the set up and management of SICARs, by coordinating the whole incorporation process and by providing all the services related to the Central Administration.

For inquiries please contact us at **+352 269255-1** or through [experta@experta.lu](mailto:experta@experta.lu).

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*The objective of this fact sheet is to provide the reader with a general view of relevant aspects relating to the SICAR. No action shall be taken without prior consultation with Experta, as this document alone cannot cover all aspects relating to the incorporation and administration of the SICAR. Finally, please note that this document is provided for information purposes only and should not be understood as legal or fiscal advice.*

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