

HOW TO SET UP

A SICAR (INVESTMENT COMPANY IN RISK CAPITAL)

DESCRIPTION

The investment company in risk capital (*Société d'investissement en Capital à Risque – SICAR*) is a regulated, fiscally efficient structure designed for private equity and venture capital investments. There are no investment diversification rules, nor lending or leverage restrictions.

ELIGIBLE INVESTORS

Investment in a SICAR is limited to “well informed” investors. These are defined as institutional investors, professional investors and any other investor who a) has confirmed in writing that he is a well-informed investor and b) invests a minimum of EUR125,000 in the company. The minimum investment condition may be waived if the investor can show evidence that he has the expertise, experience and knowledge to appraise an investment in risk capital. In practice this is done through the deliverance of a written certification by a credit institution, an investment firm or a management company.

ELIGIBLE ASSETS

A SICAR must invest its funds in assets representing risk capital. Investment in risk capital is defined in the SICAR law as the direct or indirect contribution of its assets to entities in view of their launch, development or listing on a stock exchange. The SICAR may also marginally hold financial derivative instruments on an exceptional basis. Temporary investment in other assets is allowed pending investment in risk capital.

LEGAL FRAMEWORK

The SICAR regime was established by the Luxembourg Law of 15 June 2004 (SICAR Law), which was amended in October 2008 and by the Law of 12 July 2013 on alternative investment fund managers (AIFM Law). As a

result, the SICAR Law is now divided into two parts: (i) general provisions applicable to all SICARs, and (ii) specific provisions applicable to SICARs which qualify as Alternative Investment Funds (AIFs) and which are required to be managed by an authorised Alternative Investment Fund Manager (AIFM).

LEGAL FORM

The SICAR may be structured in one of the following legal forms:

- SA – *société anonyme* (public limited company);
- Sàrl – *société à responsabilité limitée* (private limited company);
- SCA – *société en commandite par actions* (partnership limited by shares);
- SCoSA – *société coopérative organisée sous forme de société anonyme* (co-operative in the form of a public limited company);
- SCS – *société en commandite simple* (limited partnership);
- SCSp – *société en commandite special* (special limited partnership).

The SICAR may be set up as an umbrella structure with multiple compartments. The fund and compartments may have an unlimited number of share classes, depending on the needs of the investors to whom the fund is distributed.

AUTHORISATION AND SUPERVISION

As a regulated vehicle, the SICAR must be approved and is supervised by the CSSF.

APPOINTMENT OF AN AIFM

SICARs qualifying as AIFs (SICAR AIFs) are required to appoint an AIFM which can be established in Luxembourg, in another EU Member State or in a third country. They may either appoint an external AIFM or choose being internally managed. In the latter case, the SICAR AIF will

CAPITAL BASE

The subscribed share capital including share premiums, if any, must reach EUR 1,000,000 within 12 months of the SICAR's authorisation. At least 5% of each share must be paid up at subscription. A SICAR may opt for variable or fixed share capital.

itself be considered as the AIFM. As a consequence, all of the AIFM Law's obligations applying to the AIFM will have to be complied with by the SICAR AIF.

SICAR AIFs managed by an EU authorised AIFM benefit from a passport allowing AIFMs to market the SICAR's shares, units or partnership interests to professional investors within the EU through a regulator-to-regulator notification regime.

CENTRAL ADMINISTRATION

The central administration of the SICAR must be in Luxembourg. The directors/ general partners may appoint a third party administrative agent or themselves fulfil all or part of the functions.

DEPOSITARY

The eligible depositaries are Luxembourg established credit institutions but also Luxembourg established investment firms fulfilling certain requirements laid down by the Law of 5 April 1993 on the financial sector as amended. In addition to the type of depositaries described above, a new type of Luxembourg depositary, namely the professional depositary of assets other than financial instruments, was introduced by the Law of 12 July 2013.

PROFESSIONAL STANDING AND EXPERIENCE

The directors of the SICAR and the depositary must be of good repute and have sufficient experience in the performance of their functions in the private equity field. The directors are, in the case of limited partnerships, the general partners and in the case of public limited companies and limited companies, the members of the board of directors and the manager(s), respectively. The CSSF will likewise approve the choice of the administrative agent based on its level of expertise as well as sufficient technical and human resources to administer private equity funds.

EXTERNAL AUDITING

The SICAR must produce an audited annual report within six months of the end of the relevant period. There is no fixed format or content of the annual report. A SICAR is free from the obligation to consolidate the companies that are held in its portfolio for investment purposes.

SPECIFIC ASPECTS: EUVECA AND EUSEF

SICARs that qualify as European Venture Capital (EuVECA) or European Social Entrepreneurship (EuSEF) Funds have the option of being subject to the EuVECA or EuSEF regulation, respectively. Both regimes introduce a passport that permits the marketing of the fund to EU-based eligible investors.

AUTHORISATION PROCEDURE

Launching a SICAR is subject to prior approval by the CSSF. The file submitted to the CSSF should contain for approval (the list being not exhaustive):

- The constitutional documents;
- The prospectus;
- Names of the directors/managers of the SICAR, who must be experienced and reputable (together with their up-to-date, dated and signed CVs, a copy of their passport, proof of absence of criminal records and declaration of honour);
- A structure chart detailing the envisaged holding or investment structure;
- A business plan at the SICAR level outlining the main assumptions, value drivers and key financial figures, i.e. sufficiently detailed income and cash flow statements for a minimum of three years;
- Information relating to stment advisor;
- The central administration agreement;
- The choice of the AIFM (if applicable) and any delegation agreement where applicable;
- The domiciliation agreement;
- The share register and transfer agent agreement;
- The depositary agreement;
- The letter of intent or engagement letter from the auditor.

No offer of securities may be made before CSSF approval. Authorised SICAR are entered by the CSSF on a list which is published in the official gazette (the Mémorial).

Useful information sources

www.cssf.lu

Commission de Surveillance du Secteur Financier
(Luxembourg financial supervisory authority)

www.alfi.lu

Association of the Luxembourg Fund Industry