

# HOW TO SET UP

## A SICAR (INVESTMENT COMPANY IN RISK CAPITAL)

### DESCRIPTION

An investment company in risk capital (*Société d'investissement en Capital à Risque* – SICAR) is an investment vehicle that was designed for investments in private equity and venture capital. It usually qualifies as alternative investment fund (AIF) and can be sold to well-informed investors. SICARs that have appointed an EU AIFM can market their shares or partnership interests via a specific passport to well-informed investors across the EU.

### ELIGIBLE INVESTORS

Investment in a SICAR is limited to “well-informed” investors that are able to adequately assess the risks associated with an investment in such a vehicle. These are defined as institutional investors, professional investors and investors who have confirmed in writing that they adhere to the well-informed investor status and who either invest a minimum of EUR125,000 in the SICAR or have been assessed by a credit institution, investment firm or management company which certifies the investors’ expertise, experience and knowledge in adequately appraising an investment in the SICAR.

### 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 and/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

SICARs are subject to 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). Due to the broad definition of AIFs, most SICARs qualify as AIFs.

SICARs investing in short-term assets and having distinct or cumulative objectives offering returns in line with

money market rates or preserving the value of the investment must further comply with the requirements of Regulation (EU) 2017/1131 on money market funds.

There are a number of additional rules that have to be observed at national and/or EU level (e.g. concerning AML, MiFID, market abuse, derivatives, securities financing transactions and shareholder rights).

### LEGAL FORM

Contrary to other fund types which can be set up in contract form, the SICAR must always be constituted as corporate entity with fixed or variable share capital (however, the abbreviations SICAV or SICAF which are known from other fund types set up in corporate form are not used for SICARs). The creation of such a corporate entity requires the drafting of instruments of incorporation.

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

### AUTHORISATION AND SUPERVISION

A SICAR must be authorised by the *Commission de Surveillance du Secteur Financier* (CSSF) before commencing its activity. Afterwards, it is supervised by the same on an ongoing basis e.g. by means of regular reporting requirements. The CSSF charges an annual fee for its supervisory activity.

The draft documents and information to be submitted to the CSSF – via e-file (see [www.e-file.lu](http://www.e-file.lu)) or email ([setup.uci@cssf.lu](mailto:setup.uci@cssf.lu)) – for approval are set out in Chapter III of the SICAR Law (as modified).

The documents and information are generally compiled and submitted to the CSSF with the assistance of lawyers/ auditors and/or a bank in Luxembourg.

The approval process of a new SICAR or additional sub-funds is subject to the payment of a one-off fee.

The CSSF keeps an official list of the authorised SICARs that are subject to its supervision. A SICAR may start business as soon as authorisation has been granted.

## DISCLOSURE REQUIREMENTS AND FINANCIAL REPORTS

A SICAR must prepare a prospectus, a PRIIP Key Information Document (KID) if retail investors can make investments, and an annual report. There is no obligation to prepare a semi-annual report.

## APPOINTMENT OF AN AIFM

SICARs that qualify as AIFs are required to appoint an AIFM, unless they benefit from the limited exceptions provided by the AIFM Law. The AIFM can be established in Luxembourg, in another EU Member State or in a third country. SICARs may either appoint an external AIFM or choose to be internally managed. In the latter case, the SICAR will itself be considered as the AIFM and will have to comply with all the legal obligations of the AIFM Law.

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

A UCITS management company may apply for authorisation as AIFM in order to manage both UCITS and AIFs.

Smaller AIFMs that do not exceed certain thresholds in terms of assets under management have to be registered and must comply with some of the requirements of the AIFM Law, or can decide to opt for a formal authorisation to benefit from the passport.

## 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 and EuSEF regulation respectively. Both regimes provide a passport that permits the marketing of the fund to EU-based eligible investors.

## SERVICE PROVIDERS

A SICAR qualifying as AIF does not have to be, but can be managed by a management company. Self-managed SICARs may only manage assets of their own portfolio and may not manage assets on behalf of a third party. The central administration of a SICAR must be in Luxembourg.

A SICAR must appoint a Luxembourg depositary which is among other things responsible for the safekeeping of assets. 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. It is also possible to collaborate with a professional depositary of assets other than financial instruments.

The directors of the SICAR and of the depositary must be of sufficiently good repute and have sufficient experience in the performance of their functions in the private equity/ venture capital field.

The annual report must be audited by an authorised independent auditor with appropriate professional experience.

Other typical service providers to a SICAR include lawyers, portfolio managers (investment advisers), administrators/ registrars/transfer agents/domiciliation agents, distributors/nominees, market makers and paying agents.

## CAPITAL BASE

The subscribed share capital including share premiums, if any, must reach EUR 1,000,000 within twelve months of the SICAR's authorisation. At least 5% of each share must be paid up at subscription.

### Useful information sources

[www.cssf.lu](http://www.cssf.lu)

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

[www.alfi.lu](http://www.alfi.lu)

Association of the Luxembourg Fund Industry