

SICAR Investment Company in Luxembourg

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Your LCG Team

SICAR Investment Company in Luxembourg

I. Legal structure of a SICAR Investment Company in Luxembourg

1. Concept

The SICAR Investment Company (Société d'investissement en capital à risqué) in Luxembourg is not a new company form. Instead, it is an instrument exclusively for risk capital investments which is regulated by the SICAR law. The SICAR Investment Company in Luxembourg has legal personality separate from its investors.

2. Purpose

The purpose of a SICAR Investment Company in Luxembourg is the investment of its resources in assets representing risk capital in order to distribute the result generated therefrom to qualified investors. The said result offsets the risk borne.

3. Investment policy

The Luxembourg investment vehicle SICAR is permitted to invest in risk capital only. This means that funding is directly or indirectly contributed to a company to assist it during its early stages, for its development or its flotation on the stock market (private equity investments).

Investments in real estate are only permitted under certain conditions. Investments through companies which invest in or hold real estate assets representing risk capital as well as investments in Real Estate Companies are possible. Notwithstanding this, the direct holding of real estate is not permitted.

A SICAR Investment Company in Luxembourg is not under a duty to comply with the principle of diversification when choosing its investments. It is therefore possible for it to invest in one or several companies active in a particularly crowded segment of the market.

Moreover, the method through which a SICAR finances companies may be freely chosen. Consequently, all methods of financing including, yet not limited to, investments, loans, interim credit and mezzanine finance are permissible under the condition that it represents the financing of a risk capital investment.

4. Investors

Under the SICAR law, the Luxembourg SICAR investment vehicle is exclusively reserved for "qualified investors", namely professional investors as well as institutional investors such as banks and insurance companies. Moreover, natural persons, who are wanting to invest at least

125,000 EUR, are required to submit written proof of their well-informed investment status. Such written proof may take the form of a letter from the bank or financial provider confirming the investor's having the requisite knowledge.

5. Formation

A SICAR in Luxembourg is formed either as a corporation or as a partnership. It is not permitted to be organised in contractual form, namely to be organised as an Investment Fund managed by a Management Company (fonds commun de placement, FCP). The following legal forms are consequently available for SICAR Investment Companies in Luxembourg:

the Public Limited Company (PLC., Corp./SA); Limited Liability Company (LLC., Ltd./SARL); Partnership Limited by Shares (SCA); Co-operative in the form of the Public Limited Company (SCOSA) and Limited Partnership (LP.)

In addition, a SICAR in Luxembourg may take the structure of a Holding Fund constituted by several sub-funds, each of which having their own specific investment strategy, investment manager and each of which being independent of the others. In this respect, the structuring possibilities are similar to those of the Specialised Investment Fund (SIF) in Luxembourg.

6. Minimum capital

The subscribed capital of a SICAR in Luxembourg must amount to at least 1 million EUR. The said amount requires to be reached within a period of 12 months from the date on which the SICAR was approved by Luxembourg's Financial Market Authority (CSSF).

Moreover, the minimum share capital that requires to be contributed depends upon the particular legal form chosen. In the case where a SICAR in Luxembourg is formed as a corporation, the shares issued require to be fully subscribed and each shares requires to be paid up at least as to 5% through a cash or non-cash contribution.

7. Registered office of the SICAR

The registered office and place of central control and management of a SICAR under its articles of association must be located in Luxembourg. This includes, among others, the production and safekeeping of all documents provided to the investors as well as the issuance and redemption of shares.

8. Custodian

It is required that the assets of a SICAR in Luxembourg be transferred to an independent custodian (financial institute) which is resident in Luxembourg. The latter will act exclusively in the interests of the investors and, within this framework, will ensure that the subscription price of shares in the company are received within the specified time. In the case of transactions involving

the said assets, the custodian will ensure that the consideration therefor is transferred or paid and that the resulting proceeds are used in accordance with the formation deeds.

9. Organisation

How a SICAR Investment Company in Luxembourg is organised depends upon the particular legal form chosen.

The company management and the custodian of a SICAR must be sufficiently qualified and it is required that they provide proof of their corresponding experience in the field of “private equity”. Notwithstanding this, a SICAR in Luxembourg does not necessarily require a “sponsor/promoter”. Furthermore, it is required that the investment manager obtain a licence from Luxembourg’s Financial Market Authority (CSSF).

10. Issuance and distribution policy

The provisions contained in the articles of association are wholly authoritative with regard to the issuance of new shares due to the SICAR law containing no specific provisions thereon.

This is also the case for the regulation of the formal criteria for the distribution of dividends or other repayments to the investors. Furthermore, a SICAR in Luxembourg is not required to create reserves.

A SICAR in Luxembourg may determine its method for the valuation of assets freely. Notwithstanding this, the said method should be noted in the founding documents.

11. Description

The name of a SICAR Company is required to include the abbreviation “SICAR”.

12. Supervision aspects

In comparison with other regulated investment vehicles in Luxembourg, the SICAR is subject to significantly less strict supervisory rules.

12.1. Approval and supervision

The SICAR in Luxembourg is subject to the permanent supervision of Luxembourg’s Financial Market Authority (CSSF) and requires to obtain prior approval from the latter.

Following the consent from the CSSF, a SICAR may be quoted on Luxembourg’s stock market.

12.2. Reports

The annual accounts of a SICAR in Luxembourg must be audited by an independent auditor and must be published no later than 6 months after the close of the year.

12.3. Minimum content of the sale prospectus

Furthermore, a SICAR in Luxembourg is required to prepare a sales prospectus which contains all the necessary information which enables the investors to carry out an informed evaluation of the investments and associated risks. The said prospectus requires to contain the foundation documents.

II. Tax structure of a SICAR Investment Company in Luxembourg

1. Corporate taxation

In principle, a SICAR corporation in Luxembourg is subject to corporate taxation at a rate of 29.22%. This said rate consists of the following components: corporate income tax at a rate of 21% on income exceeding 15,000 EUR (or a rate of 20% on income not exceeding 15,000 EUR); the solidarity surtax at a rate of 7% as well as the municipal business tax at a rate of 6.75%.

Notwithstanding this, income from securities as well as from the sale, contribution or liquidation of its securities is exempt from corporation tax.

If a SICAR in Luxembourg is formed as a Limited Partnership (LP), it is the persons carrying on business as partners and not the partnership itself which is liable to tax. The SICAR consequently remains exempt from corporate income and the municipal business tax. In contrast thereto, its investors remain liable to tax in the country in which they are resident.

2. Tax exemptions

A SICAR in Luxembourg is exempt from the net wealth tax and the withholding tax on the distribution of dividends to investors as well as investment income from the disposal of such investments. In addition, withholding tax does not require to be paid by non-resident investors on interest paid by a SICAR as well as on liquidation proceeds. It is likewise exempt from the so-called “subscription tax” (Tax d’Abonnement). Moreover, management services provided to a SICAR by a Management Company in Luxembourg remain exempt from value-added tax (VAT).

3. Double taxation agreements (DTA’s)

Due to a SICAR in Luxembourg in the form of a corporation being fully liable to tax, it is able to benefit from Luxembourg’s network of double taxation agreements (DTA’s).

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