



ENGELWOOD



S.I.C.A.R. (Investment Company in Risk Capital) in Luxembourg :
A tailor-made regime for private equity/venture capital investments





Legal Aspects

Features

- **Regulated vehicle** designed for investments in private equity and venture capital;
- May be structured as a **SICAV** (variable capital) or **SICAF** (fixed capital);
- **Corporate forms:**
 - Public limited company (S.A.);
 - Limited liability company (S.à r.l.);
 - Partnership Limited by shares (S.C.A.);
 - Common Limited Partnership (S.C.S.);
 - Special Limited Partnership (S.C.Sp);
 - Cooperative in form of public limited company;
- Creation of **compartments and or cross sub-funds** (separate portfolios) under umbrella structure;
- Possibility of classes of shares;
- **Authorisation and supervision** of the Luxembourg supervisory authorities (“C.S.S.F.”);

Taxation

Why Luxembourg

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- **Registered office, control and central administration** (agent appointment subject to prior consent from the C.S.S.F. in Luxembourg);
- Company name shall include the identifier “**SICAR**”;
- **Directors** shall comply with honorability criteria, have professional sustainability and be authorized by the C.S.S.F.;
- **Investment managers** and delegation of portfolio management are subject to C.S.S.F. consent (only if authorised AIFM);
- Independent auditor requirement;
- **Custody** – depositary must be a Luxembourg based bank (prior consent from C.S.S.F.);
- **Minimum capital:** EUR 1,000,000 to be reached within 12 months following the C.S.S.F. initial authorisation (only 5% minimum at incorporation);



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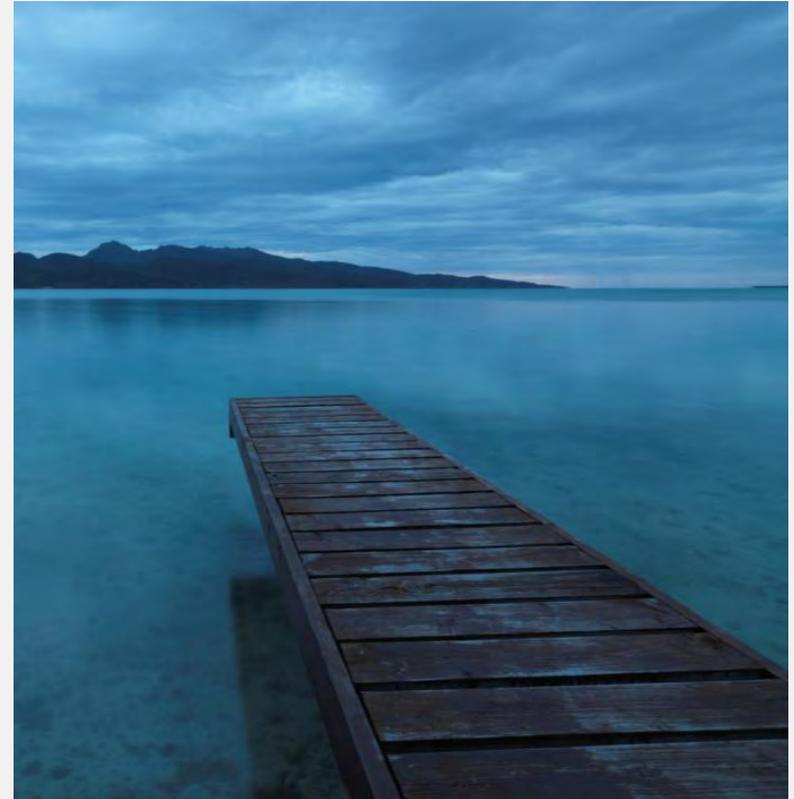
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Object and scope of investments:

- ✓ The SICAR regime may be opted for by vehicles whose object is to invest their assets in securities representing “risk capital” which is defined by the SICAR Law as *“the direct or indirect contribution of assets to entities in view of their launch, development or listing on a stock exchange”*.
- ✓ The SICAR regime offers a great deal of corporate flexibility along with recognised supervision and favourable tax treatment.
- ✓ The SICAR Law does not impose any restrictions regarding the type of assets that may be held by a SICAR.
- ✓ The SICAR Law does not impose any restrictions on investments in any jurisdictions, industries or currencies.
- ✓ The SICAR Law does not impose any risk-spreading requirements.





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AIF requirement (if applicable):

The SICAR LAW now distinguishes between two SICAR regime:

- ✓ SICARs which **do not qualify** as SICAR AIFs pursuant to the Luxembourg law dated 12 July 2013 or
- ✓ (i) Although **qualifying as AIFs** fall within the small-managers exemption and thus are subject to Part I of the SICAR Law, and
- ✓ (ii) SICAR **qualifying as AIFs** which are subject to Part I and Part II of the SICAR Law and shall appoint an AIFM (Alternative Investment Fund Manager) duly authorized by the Luxembourg supervisory authorities (C.S.S.F.).

SICAR AIFs may either be:

- ✓ **Externally managed** by appointing a separate AIFM responsible for the management of the SICAR AIFs, or
- ✓ **Internally managed**, where the SICAR AIFs legal form permits internal management; the SICAR AIFs will itself be considered as the AIFM. As a consequence, all of the AIFM regulatory obligations applying to the AIFM will have to be complied by the SICAR.



The Luxembourg supervisory authorities have issued several circulars concerning AIFM status, authorisation or registration process (see details on www.cssf.lu).



Eligible Investors:

Shareholders shall be qualified as “**Qualified Investors**” which means:

- ✓ Institutional investors;
 - ✓ Professional investors;
 - ✓ Private investors qualified as well informed investors since they proof their status, invest at least EUR 125,000 or provide certification from a bank or MiFID firm attesting their experience & knowledge of the risk associated with investing in a SICAR;
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- Investors contributions by way of **capital and/or debt**;
 - Flexible rules with respect to **issue and redemption** of shares/stock;
 - **Investment policy**: a SICAR can invest in all types of assets (traditional or alternative), without being subject to risk-spreading requirements.



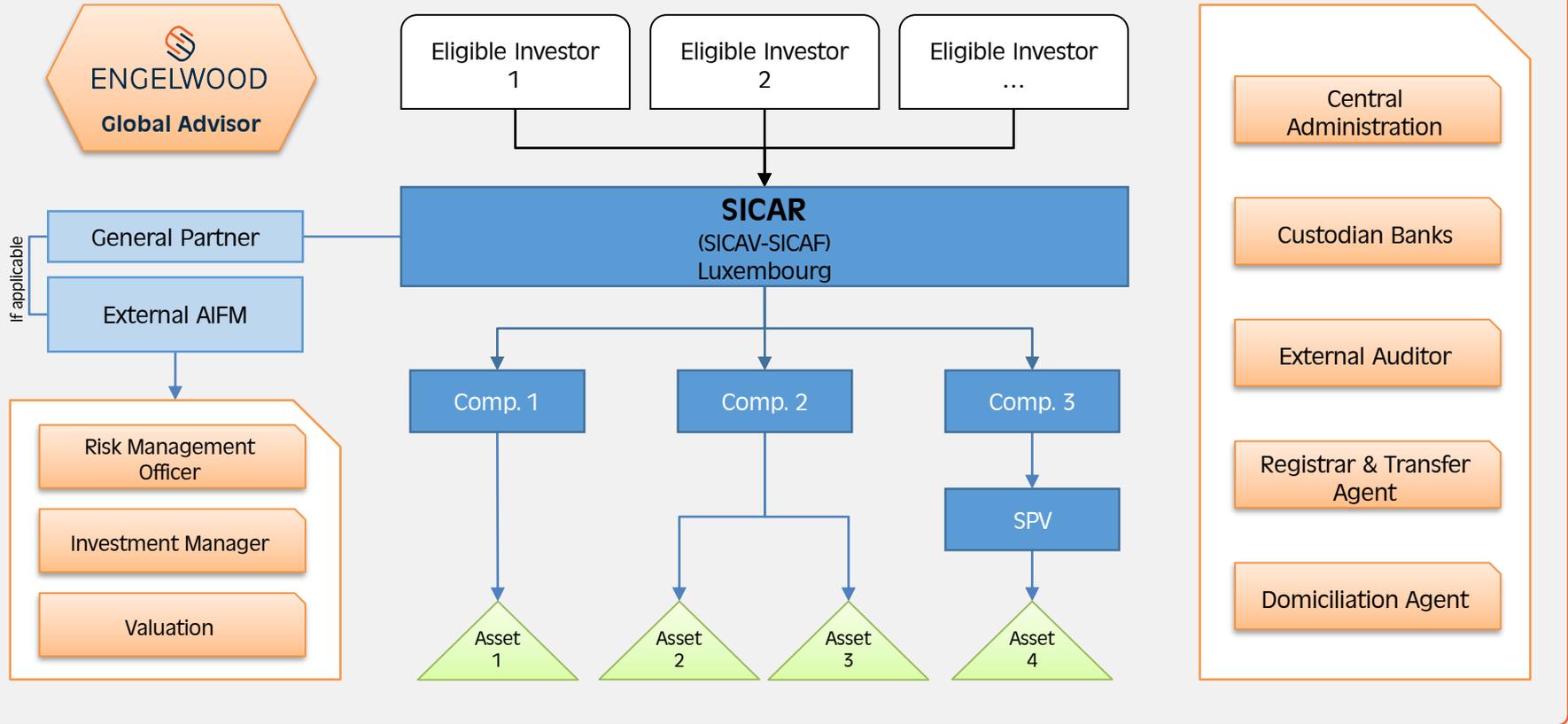
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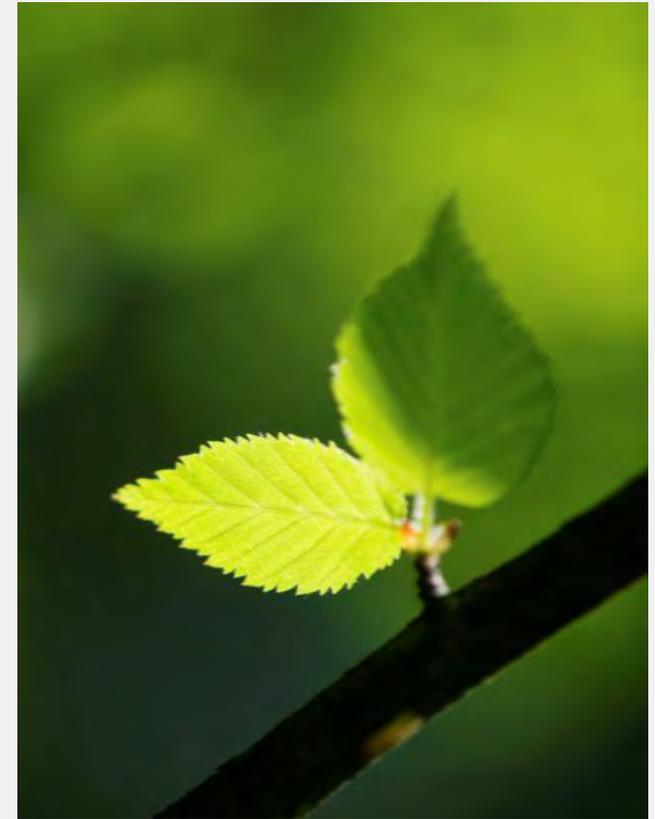
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Publication requirement:

- ✓ A **prospectus**, to be submitted to the prior consent of the C.S.S.F.;
- ✓ No requirement in terms of content other than the requirement to include the information necessary for investors to be able to make an informed assessment of the investment proposed to them and of the risk attached thereto;
- ✓ No disclosure about the Prospectus' content to the Register of Commerce, only to the Luxembourg supervisory authorities.





Reporting requirement:

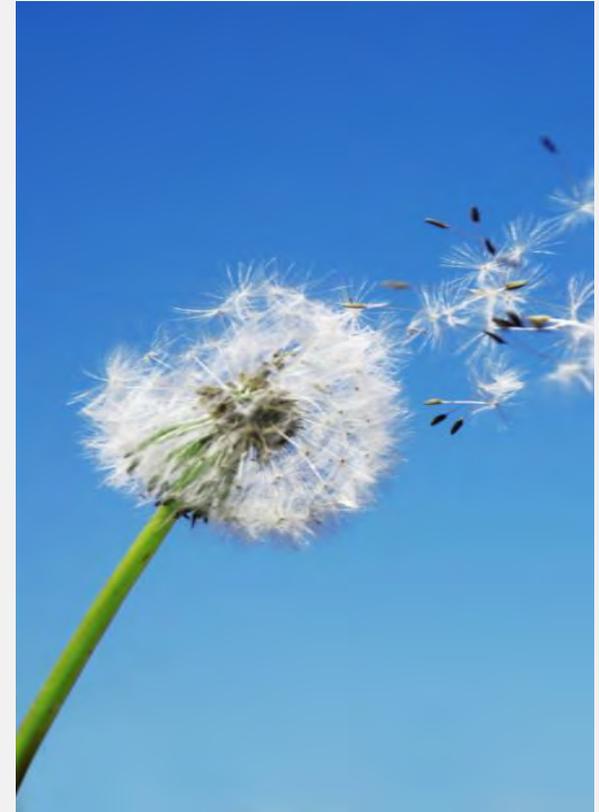
- ✓ **Audited annual report** to be reported within 6 months following the end of the financial year;
- ✓ No semi-annual report obligation (only one Net Asset Value per year);
- ✓ No requirement for publishing the Net Asset Value;
- ✓ No consolidation of portfolio companies;
- ✓ **Accounting rules:** Lux GAAP or IFRS (US GAAP under certain conditions) and flexible valuation methodology.





Other specificities:

- ✓ A SICAR is not required to maintain a legal reserve.
- ✓ Distributions by way of annual dividends and interim dividends throughout the year in a SICAR are not subject to any restrictions other than those set forth in its articles of incorporation.
- ✓ Distributions may only be made provided that the minimum share capital of EUR 1,000,000 is respected.





Efficient tax solution:

The SICAR benefits from an attractive tax regime which varies depending on the legal form adopted;

- ✓ Corporate taxes in Luxembourg: 29,22% including corporate income taxes, municipal business taxes and a solidarity surcharge tax of 7%;
- ✓ No capital duty at incorporation (only one-off EUR 75 registration duty);
- ✓ No annual subscription tax;
- ✓ No taxation on capital gain;
- ✓ As from January 2016, **minimum wealth tax** applies to SICAR;

- ✓ No withholding tax on distribution to investors;
- ✓ From January 2016, transposition of the latest amendments to the Parent-Subsidiary Directive: **introduction of anti-abuse clauses** which could limit the benefit from the corporate income tax exemption and from the municipal business tax exemption provided that certain conditions are met;

Double tax treaties could be used (not directly – except for limited cases) indirectly if investment(s) are well structured;

Management services are VAT exempt;

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“Luxembourg is the second largest investment fund centre in the world after the United States, the premier captive reinsurance market in the European Union and the premier private banking centre in the Eurozone. The financial sector is the largest contributor to the Luxembourg economy. From its origins as a Euroloan centre, the city subsequently developed as a private banking centre and then, from the 1980s, as a leading domicile for investment funds. The success of the financial centre is founded on the social and political stability of the Grand Duchy and on a modern legal and regulatory framework that is continuously updated, inspired by regular consultation between the government, the legislator and the private sector. Thus, over the years, specific regulatory frameworks have been created for alternative investment funds, venture capital investment funds, international pension funds, specialised investment funds, captive reinsurance companies, covered bond issuing banks, securitisation vehicles and family wealth management companies. This legal framework, combined with Luxembourg’s openness to the world, has attracted banks, insurance companies, investment fund promoters and specialist service providers from all over the world. The Luxembourg financial centre is characterised by a strong culture of investor protection and rigorous anti money-laundering policies. Its specialist teams are multilingual and multicultural, with a long tradition of financial expertise and extensive knowledge of the needs of an international clientele.”

Source: www.luxembourgforfinance.lu

Our mission is built up around the **One Stop Shop concept**: a global player which is staying client focused from the inside out, providing tailored solutions with high level of expertise.

Our experienced team is dealing with:

- ✓ complex and common investment policies in the **alternative investment fund industry**,
- ✓ a challenging **corporate industry**,
- ✓ diversified **private client** requirements, and
- ✓ a new **financing sources** environment

in close relationship (fast and proactive) with our clients and in accordance with an increasing **regulated environment**.

More information about our solutions & services available on our website: www.engelwood.lu



- ✓ A **specialized team** coming from the alternative investment fund and corporate industry with more than 20 years expertise in Europe;
- ✓ A truly **independent financial and corporate services provider** able to leverage on the existing expertise by providing a fully integrated solution in several jurisdictions.



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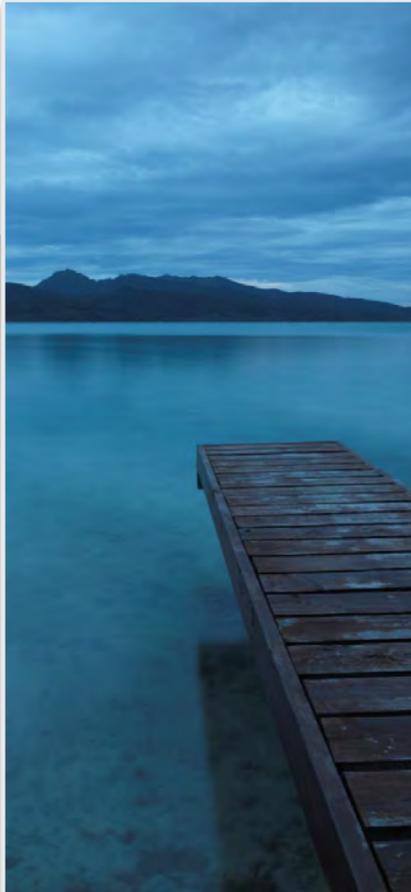


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LINKS



C.S.S.F. (Commission de Surveillance du Secteur Financier)

www.cssf.lu

Ordre des Experts-Comptables (Luxembourg)

www.oec.lu

Institut Luxembourgeois des Administrateurs

www.ila.lu

Luxembourg for Finance

www.luxembourgforfinance.lu

LPEA (Luxembourg Private Equity & Venture Capital Association)

www.lpea.lu

EVCA (European Private Equity & Venture Capital Association)

www.evca.eu

ALFI (Association of the Luxembourg Fund Industry)

www.alfi.lu



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