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LUXEMBOURG LAW

Luxembourg Collective Investment Vehicles

Legal regime and features in a nutshell

TYPES OF COLLECTIVE INVESTMENT VEHICLES AVAILABLE IN LUXEMBOURG

UCITS

stands for Undertakings for Collective Investment in Transferable Securities and designates those investment funds which have been set up in compliance with the provisions of the amended Luxembourg Law of 17 December 2010 implementing EU Directive 2009/65/EC ("**UCI Law**"). UCITS benefit from a European passport in that, once authorised by the supervisory authority in Luxembourg, they can, using a standardised notification procedure, be sold to the public in all other EU Member States. UCITS also benefit from facilities for registration with authorities in numerous non-EU Member States which recognise the UCITS label and the investor protection regime it entails. In order to protect the retail investors to which UCITS can be marketed, UCITS are subject to specific rules as regards the assets in which they can invest and the diversification and concentration rules with which they have to comply. These aim at ensuring an appropriate liquidity of the UCITS investment portfolio allowing investors to redeem their units at least twice a month.

PART II FUND

refers to collective investment undertakings governed by Part II of the UCI Law, which do not qualify as UCITS either because of their investment policy or because of the rules applicable to the distribution of their units/shares. Although Part II Funds can be sold to the public, they do not have access to the UCITS passport. They will, however, benefit from the AIFMD passport[1] under certain conditions. They are subject to the ongoing supervision of the Luxembourg supervisory authority ("**CSSF**"). Yet, they have increased flexibility as regards the type of assets they can invest in, the investment strategies they can employ, the diversification rules they are subject to and the liquidity they offer to investors.

SIF

stands for Specialised Investment Funds organised under the amended Luxembourg Law of 13 February 2007 ("**SIF Law**"). SIFs are reserved for so-called well-informed investors, i.e. in substance institutional investors, professional investors and investors subscribing for a minimum of EUR 125,000. They are subject to ongoing supervision by the CSSF. Because of the sophistication of their investors, they benefit from a pretty flexible regime. Among others things, SIFs have to invest in accordance with the principles of risk-spreading but otherwise have full flexibility as regards the type of assets in which they invest and the strategies which they employ. Like Part II Funds, they will also benefit from the AIFMD passport under certain conditions.

SICAR

stands for Investment Companies in Risk Capital governed by the amended Luxembourg Law of 15 June 2004 ("**SICAR Law**"). SICARs operate under a regime that is tailor-made for private equity/venture capital investments, including a tax treatment which differs from that applicable to UCITS, Part II Funds and SIFs. SICARs are not required to operate under the principle of risk-spreading. They are reserved to well-informed investors and are subject to supervision by the CSSF in a similar manner as SIFs. SICARs will, under certain conditions, also benefit from the AIFMD passport.

SV

stands for Securitisation Vehicles organised under the amended Luxembourg Law of 22 March 2004 on securitisation ("**Securisation 2004 Law**"). They can be used in certain circumstances as an alternative to the investment vehicles mentioned above or as a complement to the investment structure, mainly depending on the objectives of the transaction and the way it is structured. Securitisation vehicles may be offered to any type of investors, but those that issue securities to the public on a continuous basis, fall under the CSSF supervision. SV will not be subject to the AIFMD regime when qualifying as "securitisation special purpose entities" as defined therein[3].

A new securitisation regime which reflects the requirements of Regulation (EU) 2017/2402 on securitisations ("**SR**") has applied since 1 January 2019. Three different securitisation regimes are therefore available in Luxembourg: (i) the SR general regime for all securitisations which meet the criteria set forth in the definition of securitisation provided in the SR, (ii) the specific SR regime provided for securitisations which qualify as simple, transparent and standardised (STS) securitisations under the SR, and (iii) the Luxembourg securitisation regime for securitisations other than (i) and (ii).

1 AIFMD passport refers to the EU passport introduced by the Alternative Investment Fund Managers Directive 2011/61/EU ("**AIFMD**") for the marketing of Alternative Investment Fund(s) ("**AIF**") to EU professional investors, as implemented in Luxembourg domestic law.

2 Securitisation special purpose entities are defined in Article 4 (an) of the AIFMD.

RAIF

stands for Reserved Alternative Investment Funds governed by the Luxembourg Law of 23 July 2016 ("**RAIF Law**"). Its regime is based on the SIF regime with the important exception that the RAIF is not subject either to authorisation or supervision by the CSSF as a product, which makes it an attractive vehicle from a time-to-market perspective. On the other hand, the RAIF must designate a licensed AIFM, thus benefiting from the AIFMD passport as well as from the protection of the AIFMD framework.

LIMITED PARTNERSHIPs[1]

Limited Partnerships refer to a category of investment vehicles which are governed by the amended Luxembourg Law of 10 August 1915 on commercial companies ("**Company Law**"). They are not supervised by the CSSF and thus may be formed very rapidly. These vehicles are used for their flexibility and characterised by the contractual freedom in their structuring, similarly to the well-known Anglo-Saxon model of limited partnerships. Limited Partnerships also offer a competitive tax environment and may benefit from the AIFMD passport under certain circumstances. Limited Partnerships can be used to set up investment vehicles under specific sector laws such as the SIF Law, the SICAR Law or the RAIF Law. As such, all flexibilities offered by these legal forms (the main features of which are detailed in the following tables) are also available for a Limited Partnership qualifying as a SIF, SICAR or RAIF (as long as those sector specific laws do not specifically derogate therefrom).

For further details on the various types of Luxembourg collective investment vehicles, you may consult the following memoranda and legal texts which are available on our website

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(PUBLICATIONS)

UCITS AND PART II FUND

Legal texts concerning Undertakings for Collective Investment (UCI)

SIF

Memorandum: Specialised Investment Funds: Luxembourg regime for investment funds dedicated to sophisticated investors

Legal texts concerning Specialised Investment Funds (SIF)

SICAR

Memorandum: SICAR: Luxembourg regime for investment funds investing in risk capital and dedicated to sophisticated investors

Legal texts concerning the Investment Company in Risk Capital (SICAR)

AIFMD

Legal texts:

- The Alternative Investment Fund Managers Directive and its implementation in Luxembourg
- The Law of 12 July 2013 on alternative investment fund managers

RAIF

Memorandum: Reserved Alternative Investment Funds: Luxembourg regime for investment funds not supervised by the Luxembourg regulator and dedicated to sophisticated investors

Legal text: The Law of 23 July 2016 on RAIFs

LIMITED PARTNERSHIP

Memorandum: Luxembourg Partnerships

Legal text: The Law of 10 August 1915 on commercial companies

1 "**Limited Partnership**" refers to the *société en commandite simple* (common limited partnership) and the *société en commandite spéciale* (special limited partnership).

ELIGIBLE ASSETS

	UCI Law		SIF Law	SICAR Law	Securisation Law	RAIF Law	Company Law
	UCITS	Part II Fund	SIF	SICAR	SV	RAIF	Limited Partnership
Eligible assets:	restricted	unrestricted	unrestricted	restricted[1]	unrestricted[2]	unrestricted	unrestricted
transferable securities	Yes[3]	Yes	Yes	Yes	Yes	Yes	Yes
money market instruments and deposits	Yes[3]	Yes	Yes	Yes[4]	Yes	Yes	Yes
units/shares of investment funds	Yes[3]	Yes	Yes	Yes	Yes	Yes	Yes
financial derivative instruments							
• for investment purposes	Yes[3]	Yes	Yes	Yes[5]	Yes	Yes	Yes
• for hedging purposes	Yes[3]	Yes	Yes	Yes	Yes	Yes	Yes
commodities	No[6]	Yes	Yes	Yes[7]	Yes	Yes	Yes
real estate	No[6]	Yes	Yes	Yes[7]	Yes	Yes	Yes
loans	No[6]	Yes	Yes	Yes	Yes	Yes	Yes
Diversification required:	Yes[8]	Yes[8]	Yes[8]	No	No	Yes	No
Strategies:							
hedge funds strategies	Yes[9]	Yes	Yes	No	Yes[10]	Yes	Yes
private equity and venture capital	No	Yes	Yes	Yes	Yes[10]	Yes	Yes
real estate	No	Yes	Yes	No	Yes	Yes	Yes
fund of funds	Yes	Yes	Yes	No	Yes	Yes	Yes
microfinance	No	Yes	Yes	Yes	Yes[10]	Yes	Yes

1 Restricted to investment in assets which, or the underlying of which, represent risk capital.
2 No restrictions in terms of underlying assets, but risks securitised must exclusively result from third parties assets/claims/obligations and cannot be generated by the securitisation vehicle.
3 Subject to the limits and conditions set out in the UCI Law.
4 On an ancillary basis only.
5 Only where such transactions are necessary for the realisation of its investment policy but cannot constitute the object of its policy.
6 UCITS are subject to strict rules regarding eligible assets. They may, however, gain exposure to alternative asset classes such as commodities or real estate through eligible assets such as, for instance, transferable securities, financial derivative instruments on financial indices (including hedge fund and commodity indices under certain conditions).
7 Although direct holding is not allowed, indirect investment via intermediary entities is possible if representative of risk capital.
8 UCITS may invest, under certain conditions, no more than 10% of their assets in one single issuer. For Part II Funds this limit is, in principle, 20% and for SIFs 30%, both with the possibility to obtain derogations (the 30% limit will also probably apply mutatis mutandis to RAIFs).
9 Under restrictive conditions.
10 Subject to being compatible with a securitisation structure.

DISTRIBUTION

	UCITS	Part II Fund	SIF	SICAR	SV	RAIF	Limited Partnership
Eligible investors:	unrestricted	unrestricted	well-informed[1]	well-informed[1]	unrestricted[2]	well-informed[1]	unrestricted
Marketing: (the information below reflects AIFMD regime[3] in summary only)							
Distribution – prospectus rules	EU passport available for public distribution	EU passport available for marketing to professional investors	If SIF qualifies as AIF: EU passport available for marketing to professional investors	If SICAR qualifies as AIF: EU passport available for marketing to professional investors	Prospectus Directive rules[4]	EU passport available for marketing to professional investors	If it qualifies as AIF: EU passport available for marketing to professional investors
		• Marketing to retail investors (for Part II Funds) and to well-informed[1] investors not qualifying as professional investors (for SIFs and SICARs) under private placement regimes possible if and to the extent permitted by local rules • Closed-ended: Prospectus Directive rules[4]				Marketing to well-informed[1] investors not qualifying as professional investors under private placement regimes possible if and to the extent permitted by local rules Closed-ended: Prospectus Directive rules[4]	Marketing to investors not qualifying as professional investors under private placement regimes possible if and to the extent permitted by local rules Closed-ended: Prospectus Directive rules[4]
Possibility of listing:	Yes	Yes	Yes	Yes	Yes	Yes	Yes

TAX REGIME

	UCITS	Part II Fund	SIF	SICAR	SV	RAIF	Limited Partnership
Income tax:	exempt	exempt	exempt	SICAR organised as a limited company is subject to corporate income tax[5] and to municipal business tax[6]. However, income and capital gains from investments in securities representing risk capital are fully exempt exempt if established as a limited partnership or a special limited partnership	**Contractual:** exempt **Corporate:** subject to corporate income tax and to municipal business tax but any payment obligations assumed towards investors (including dividend distributions) or any other creditors are fully tax deductible	**General tax regime:** exempt **Optional tax regime:** an optional tax regime applies for RAIFs investing in securities representing risk capital. An exemption from taxation (same as for SICAR) is available	tax transparent and not subject to corporate income tax not subject to municipal business tax as long as the GP holds less than 5% interest in the limited partnership and the limited partnership is either an AIF or has no commercial activity
Subscription tax[7]:	0.05% of net assets 0.01% of net assets : money market, cash and institutional funds exempt: institutional money market funds, ETFs, pension and microfinance funds	0.05% of net assets 0.01% of net assets : money market, cash and institutional funds exempt: institutional money market funds, ETFs, pension and microfinance funds	0.01% of net assets exempt: money market funds, ETFs, pension and microfinance funds	No	No	**General tax regime:** 0.01% of net assets exempt: money market funds, ETFs, pension and microfinance funds **Optional tax regime:** No	No
Net wealth tax:	exempt	exempt	exempt	exempt[8]	exempt[8]	exempt (general and optional tax regime)[9]	No
Withholding tax on dividends:	No	No	No	No	No	No	No

1 A well-informed investor is defined as an institutional investor, a professional investor or any other investor who meets the following conditions: a) he has confirmed in writing that he adheres to the status of well-informed investor, and b) (i) he invests a minimum of EUR 125,000, or (ii) he has been the subject of an assessment made by a credit institution, by an investment firm or by a management company (or for a RAIF by an authorised AIFM) certifying his expertise, his experience and his knowledge in adequately appraising the contempleted investment in the SIF, SICAR or RAIF.
2 Under the SR, the sale of securitisations to retail investors is subject to certain conditions.
3 Those funds qualifying as AIF benefit from the AIFMD passport, subject to certain conditions.
4 "**Prospectus Directive**" means Directive 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading, as may be amended from time to time. We are only referring here to SVs qualifying as "securitisation special purpose entities" not subject to AIFMD regime.
5 Corporate income tax (*impôt sur les revenus des collectivités*).
6 Municipal business tax (*impôt commercial communal*) depends on municipality. The rate is 6.75% in Luxembourg-City.
7 Exemption for the portion of the assets invested in other UCITS, Part II Funds or SIF already subject to the subscription tax.
8 A minimum net wealth tax is, however, applicable.
9 A minimum net wealth tax is, however, applicable for the optional tax regime.

STRUCTURING FEATURES

	UCITS	Part II Fund	SIF	SICAR	SV	RAIF	Limited Partnership[1]
Legal form:							
corporate form	Yes[2]	Yes[3]	Yes[3]	Yes[3]	Yes	Yes[3]	Yes
contractual form	Yes[4]	Yes[4]	Yes[4]	No	Yes[5]	Yes	n/a[6]
Fixed (F) / variable capital (V)[7]:	F / V	F / V	F / V	F / V	F	F / V	F / V
Issue of securities:							
issue price	SICAV/FCP: net asset value SICAF: no legal constraints, in accordance with articles of incorporation	SICAV/FCP: net asset value SICAF: no legal constraints, in accordance with articles of incorporation	no legal constraints, in accordance with constitutional documents	no legal constraints, in accordance with articles of incorporation	Securitisation fund: no legal constraints, in accordance with management regulations Securitisation company: Debt: contractual freedom and Luxembourg or foreign law Equity: Company Law and articles of incorporation	no legal constraints, in accordance with constitutional documents	no legal constraints, in accordance with limited partnership agreement limited partnerships may issue units or partnership interests
partial payment	FCP/SICAF: Yes SICAV: No	FCP/SICAF: Yes SICAV: No	Yes	Yes	Yes	Yes	Yes
Multiple compartments umbrella:	Yes	Yes	Yes	Yes	Yes	Yes	No
Classes of shares:	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Dividend distribution:	SICAV/FCP: no statutory restrictions, except minimum capital SICAF: restrictions of the Company Law	SICAV/FCP: no statutory restrictions, except minimum capital SICAF: restrictions of the Company Law	SICAV/FCP: no statutory restrictions, except minimum capital SICAF: restrictions of the Company Law	no statutory restrictions, except minimum capital	Securitisation fund: no statutory restrictions Securitisation company: Company Law - waterfall	no statutory restrictions, except minimum capital	no statutory restrictions
Minimum dealing frequency:	twice a month	once a month, derogation possible	no minimum required	no minimum required	no minimum required	no minimum required	no minimum required

1 This description of the Limited Partnership is restricted to situations where it is not used to set-up a RAIF, a SIF or a SICAR (in these latter cases, the limited partnership enjoys the flexibilities offered by the specific law applying to these investment structures (i.e. the RAIF Law, the SIF Law or the SICAR Law).
2 The corporate form commonly used is the public limited company (*société anonyme*).
3 The corporate forms commonly used are the public limited company, the partnership limited by shares (*société en commandite par actions*) and the special limited partnership ("**SLP**").
4 The contractual form used is the *Fonds Commun de Placement* ("**FCP**").
5 Contractual forms of securitisation vehicles are securitisation fund or fiduciary arrangements.
6 The SLP in particular is very similar to the Anglo-Saxon LP. It has no legal personality and although qualifying as a company, it is characterised by freedom and flexibility in its structuring (e.g. it is subject to a limited number of mandatory provisions).
7 A corporate form with variable capital is referred to as a "**SICAV**" and a corporate form with fixed capital is referred to as a "**SICAF**".

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