Luxembourg Collective Investment Vehicles

Legal regime and features in a nutshell
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 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 ("Securitisation 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.

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).

Important Disclaimer: The purpose of this flyer is to describe the main general features of the regime of the various types of Luxembourg collective investment vehicles, namely UCITS, Part II Funds, SIFs, SICARs, Securitisation Vehicles, RAIFs and Limited Partnerships. It must not be considered as an exhaustive presentation and no action should be taken or omitted on the basis of this flyer. In all instances proper legal or other advice should first be taken. Elvinger Hoss Prussen shall not incur any liability in relation to the information provided herein or in relation to any actions taken or omitted on the basis of this flyer.

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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

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 www.elvingerhoss.lu

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

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

<table>
<thead>
<tr>
<th>Eligible assets:</th>
<th>UCITS</th>
<th>Part II Fund</th>
<th>SIF</th>
<th>SICAR</th>
<th>Securisation Law</th>
<th>RAIF</th>
<th>Company Law</th>
<th>Limited Partnership</th>
</tr>
</thead>
<tbody>
<tr>
<td>transferable securities</td>
<td>restricted</td>
<td>unrestricted</td>
<td>unrestricted</td>
<td>restricted</td>
<td>unrestricted</td>
<td>unrestricted</td>
<td>unrestricted</td>
<td>unrestricted</td>
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<td>money market instruments and deposits</td>
<td>Yes¹</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<td>units/shares of investment funds</td>
<td>Yes¹</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>• for investment purposes</td>
<td>Yes¹</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td>• for hedging purposes</td>
<td>Yes¹</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<td>commodities</td>
<td>No⁶</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<td>No⁶</td>
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<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<td>loans</td>
<td>No⁶</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<td>Diversification required:</td>
<td>Yes⁷</td>
<td>Yes⁷</td>
<td>Yes⁷</td>
<td>No</td>
<td>No</td>
<td>Yes</td>
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<td>Strategies:</td>
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<td>hedge funds strategies</td>
<td>Yes¹</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes²</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<td>private equity and venture capital</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<td>Yes</td>
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<td>Yes</td>
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<tr>
<td>real estate</td>
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<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
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<td>fund of funds</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<td>microfinance</td>
<td>No</td>
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<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
</tbody>
</table>

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1. Restricted to investment in assets which, or the underlyng 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).
10. Subject to being compatible with a securitisation structure.
<table>
<thead>
<tr>
<th>Eligible investors:</th>
<th>unrestricted</th>
<th>unrestricted</th>
<th>well-informed¹</th>
<th>well-informed¹</th>
<th>unrestricted²</th>
<th>well-informed¹</th>
<th>unrestricted</th>
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</thead>
<tbody>
<tr>
<td>Marketing: (the information below reflects AIFMD regime¹ in summary only)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Distribution – prospectus rules</td>
<td>EU passport available for marketing to professional investors</td>
<td>If SIF qualifies as AIF: EU passport available for marketing to professional investors</td>
<td>If SICAR qualifies as AIF: EU passport available for marketing to professional investors</td>
<td>EU passport available for marketing to professional investors</td>
<td>If it qualifies as AIF: EU passport available for marketing to professional investors</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Possibility of listing</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<td>Prospectus Directive rules⁴</td>
<td></td>
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<tr>
<td>Income tax</td>
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<td>exempt</td>
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<td>exempt</td>
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<tr>
<td>Subscription tax⁵</td>
<td>0.05% of net assets</td>
<td>0.05% of net assets</td>
<td>0.01% of net assets</td>
<td>exempt</td>
<td>exempt</td>
<td>exempt</td>
<td>exempt</td>
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<tr>
<td>Net wealth tax</td>
<td>exempt</td>
<td>exempt</td>
<td>exempt</td>
<td>exempt⁸</td>
<td>exempt⁸</td>
<td>exempt</td>
<td>exempt</td>
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<tr>
<td>Withholding tax on dividends</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

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 contemplated 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.

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.
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”.

### STRUCTURING FEATURES

<table>
<thead>
<tr>
<th>Legal form:</th>
<th>UCITS</th>
<th>Part II Fund</th>
<th>SIF</th>
<th>SICAR</th>
<th>SV</th>
<th>RAIF</th>
<th>Limited Partnership</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Corporate form</strong></td>
<td>Yes²</td>
<td>Yes¹</td>
<td>Yes³</td>
<td>Yes³</td>
<td>Yes³</td>
<td>Yes³</td>
<td>Yes</td>
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<tr>
<td><strong>Contractual form</strong></td>
<td>Yes¹</td>
<td>Yes¹</td>
<td>Yes⁴</td>
<td>No</td>
<td>Yes⁵</td>
<td>Yes</td>
<td>n/a⁶</td>
</tr>
<tr>
<td><strong>Fixed (F) / variable capital (V):</strong></td>
<td>F / V</td>
<td>F / V</td>
<td>F / V</td>
<td>F / V</td>
<td>F</td>
<td>F / V</td>
<td>F / V</td>
</tr>
</tbody>
</table>

### Issue of securities:

<table>
<thead>
<tr>
<th><strong>Issue price</strong></th>
<th>SICAV/FCP: net asset value</th>
<th>SICAV/FCP: net asset value</th>
<th>no legal constraints, in accordance with constitutional documents</th>
<th>Securitisation fund: no legal constraints, in accordance with management regulations</th>
<th>Securitisation company: Debt: contractual freedom and Luxembourg or foreign law Equity: Company Law and articles of incorporation</th>
<th>no legal constraints, in accordance with constitutional documents</th>
<th>no legal constraints, in accordance with limited partnership agreement Limited partnerships may issue units or partnership interests</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Partial payment</strong></td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
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<td><strong>Multiple compartments umbrella</strong></td>
<td>Yes</td>
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<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>No</td>
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<tr>
<td><strong>Classes of shares</strong></td>
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<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
</tr>
<tr>
<td><strong>Dividend distribution</strong></td>
<td>SICAV/FCP: no statutory restrictions, except minimum capital</td>
<td>SICAV/FCP: no statutory restrictions, except minimum capital</td>
<td>SICAV/FCP: no statutory restrictions, except minimum capital</td>
<td>SICAV/FCP: no statutory restrictions, except minimum capital</td>
<td>Securitisation fund: no statutory restrictions, except minimum capital</td>
<td>Securitisation company: Company Law (SICAF: Company Law - waterfall)</td>
<td>no statutory restrictions</td>
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<tr>
<td><strong>Minimum dealing frequency</strong></td>
<td>twice a month</td>
<td>once a month, derogation possible</td>
<td>no minimum required</td>
<td>no minimum required</td>
<td>no minimum required</td>
<td>no minimum required</td>
<td>no minimum required</td>
</tr>
</tbody>
</table>
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