INVESTING THROUGH LUXEMBOURG

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INTRODUCTION TO LUXEMBOURG
Luxembourg is one of the smallest countries in Europe and is a founding member of both the European Union and the OECD; its central location has given Luxembourg a greater importance than its geographical size. It is situated at the heart of Europe, with about 500 million European consumers on its doorstep and has borders with France, Belgium and Germany, putting it within easy reach of some of the largest and most important European financial and industrial centres.

Luxembourg is a demographically and linguistically diverse country. Out of a population of approximately 553,000, 46% of Luxembourg residents are foreign nationals. The majority of Luxembourgers speak Luxembourgish, though French and German are the main languages for administrative purposes. English is also widely used as a business language.

The Grand-Duchy of Luxembourg is the largest centre for private wealth management in the European Union. Around one hundred and forty-seven international banks have been established within its borders, and numerous investment funds are domiciled in the country. The official unit of currency is the Euro.

The government is stable and strong, with a well-established pro-business agenda. It is quick to make the necessary legislative changes in order to assist the business community and encourage economic growth.

Luxembourg is an important financial centre, where investment funds, banks, reinsurance businesses and holding companies have expanded rapidly during the last fifteen years. Measures are in place to prevent money laundering, supporting the integrity of the marketplace.
UNREGULATED INVESTMENT VEHICLES
Luxembourg offers a wide variety of investments vehicles which are subject to different levels of regulation. The choice of structure is usually driven by the investment policy and the marketing strategy of the promoters.

1. SOPARFI

**General features**

The SOPARFI (société de participation financière – financial holding company) is the most used unregulated investment vehicle. The notion of SOPARFI is not a defined legal and tax concept but refers to a company the corporate purpose of which is to carry on holding and financial activities under the general tax regime (the so-called "Participation Exemption).

A SOPARFI may be incorporated as a public limited company (société anonyme), private limited company (société à responsabilité limitée) or partnership limited by shares (société en commandite par actions).

**Regulatory environment**

Unless application of the AIFM Law (please see below), SOPARFIs are not subject to any supervisory authority.

**Tax aspects**

**Income taxation**

As Luxembourg tax residents, the SOPARFIs are fully-taxable entities subject to corporate income tax ("CIT"), municipal business tax ("MBT") and net worth tax ("NWT"). SOPARFIs further benefit from the Luxembourg double tax treaty network.

Commercial profits realised by a Luxembourg company are in principle subject to CIT and MBT on profits at the current global aggregate rate of 29.22% (CIT: 22.47% and MBT: 6.75%) if the company is located in the city of Luxembourg.

However, Article 166 of the amended law dated 4 December 1967 on income tax ("ITL") provides for special rules for dividends, liquidations proceeds and capital gains realised by a SOPARFI (or by a Luxembourg permanent establishment of an EU company covered by Article 2 of the EU parent-subsidiary directive or of a non-EU joint-stock company residing in a country with which Luxembourg has concluded a double tax treaty).

Under Article 166 ITL, the dividends, liquidation proceeds and capital gains are exempt from tax in Luxembourg if all the following conditions are met:
(i) at the date of realisation of the income, the SOPARFI holds or commits itself to hold for an uninterrupted period of 12 months a direct participation in the share capital of:

- a Luxembourg resident fully-taxable entity,
- an EU company covered by Article 2 of the EU parent-subsidiary directive (directive 2011/96/EU),
- a non-resident joint-stock company which is fully liable to a tax corresponding to Luxembourg CIT. Regarding this condition, the Luxembourg tax authorities generally apply a rule that the foreign effective tax rate must be at least 10.5% with the tax basis determined in a manner similar to that employed by Luxembourg,

(ii) representing at least 10% of the capital of the subsidiary or having an acquisition price of at least EUR 1.2mio in case of dividends (and liquidation proceeds) or EUR 6mio in case of capital gains.

If the conditions as mentioned above are not met (holding period and/or shareholding threshold), the SOPARFI may benefit from a 50% exemption with respect to dividends received from a Luxembourg resident fully-taxable entity, or an EU company covered by Article 2 of the EU parent-subsidiary directive (directive 2011/96/EU) or a non-resident joint-stock company which is fully liable to a tax corresponding to Luxembourg CIT. Regarding this condition, the Luxembourg tax authorities generally apply a rule that the foreign effective tax rate must be at least 10.5% with the tax basis determined in a manner similar to that employed by Luxembourg.

Luxembourg SOPARFIs are however subject to a minimum advance CIT of EUR 3,210 (including the 7% surcharge for the employment fund) if their financial assets, transferable securities and cash deposits exceed 90% of their total balance sheet.

**Withholding tax exemption**

Dividends paid by a SOPARFI will not be subject to a withholding tax if at the time of the distribution, the parent company (a Luxembourg resident fully-taxable entity, or an EU company (or its Luxembourg permanent establishment) covered by Article 2 of the EU parent-subsidiary directive, or a company (or its Luxembourg permanent establishment) residing in a country with which Luxembourg has concluded a double tax treaty to a tax and which is subject to a tax corresponding to Luxembourg CIT) holds or commits itself to hold for an uninterrupted period of 12 months a participation in the SOPARFI of at least 10% of the share capital or having an acquisition price of at least EUR 1.2mio.

**Net worth tax exemption**

Qualifying participations will also be exempt from NWT (no requirement relating to a minimum holding period).

**Expenses related to exempt income**

Further, the participation exemption regime contains some rules intended to avoid the participation exemption to be used to generate both exempt income and deductible expenses.

If the acquisition of a participation is financed through an interest-bearing debt, such interest has an impact for the application of the participation exemption. Indeed, pursuant to Article 166 (5) ITL, to the extent that received dividends are exempt, interests in direct economic
relationship with these dividend income are not deductible (up to the related exempt income, the excess being deductible).

Further, if a participation is disposed of, the capital gain exemption does not apply to the extent of the algebraic sum of related expenses (for example, interest exceeding the exempt dividend income) that have decreased the tax result of the current and preceding years (so-called "recapture rule").

**Expected evolution**

The new directive 2015/121/EU (amending the parent-subsidiary directive 2011/96/EU) introduced several common minimum anti-abuse rule to prevent misuse of the directive, according to which Member States shall not grant the benefits of the directive to an arrangement or a series of arrangements which, having been put into place for the main purpose or one of the main purposes of obtaining a tax advantage that defeats the object or purpose of the directive, are not genuine (an arrangement or a series of arrangements shall be regarded as not genuine to the extent that they are not put into place for valid commercial reasons which reflect economic reality) having regard to all relevant facts and circumstances.

Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2015 at the latest.

**Group financing activities**

Luxembourg companies involved in intra-group financing activities are subject to 2 administrative circulars (circular letters n°164/2 and 164/2bis), the purpose of which was to provide the country with standard practice and to determine conditions to be met.

An entity principally engaged in intra-group financing transactions (not taking into account holding of participations related activities) such as granting loans or advances to associated companies and refinancing them through financial instruments (public issuances, private borrowings, bank loans).

Related transactions need to respect arm’s length conditions, i.e. an arm’s length price is the remuneration comparable to the one charged by independent financial institutions in similar situations (taking into account related costs — solvency requirements, foreign exchange costs,... - and risk analysis – annual accounts of the borrower, guarantees, duration, terms and conditions, etc...). Further, the Luxembourg companies involved in intra-group financing activities need to be appropriately equity financed to be in position to assume the risks involved.

Luxembourg companies involved in intra-group financing activities may request to have their activities covered by advance pricing agreements, subject to several conditions to be cumulatively met:

- substance requirements: majority of the board members being either Luxembourg residents or non-residents having taxable professional activity in Luxembourg, must possess professional knowledge to exercise their duties; key decisions must be taken in Luxembourg; the company needs to operate at least one Luxembourg bank account.
• capitalisation: 1% of the nominal amount of the financing granted or EUR 2 million (so as to assume the risks of the transactions).

The advance pricing agreements granted by the tax authorities are valid for a period not exceeding 5 years.

**Accounting aspects**

As any Luxembourg commercial companies, SOPARFIs must publish accounts on a yearly basis. The accounts need to be made available to shareholders, within six months of the year-end. No semi-annual report is required by the law.

SOPARFIs typically report under Luxembourg GAAP but it is also possible to produce accounts under Luxembourg GAAP and fair value option for some financial instruments and other categories of assets. Listed companies being undertakings whose securities are admitted to trading on an EU regulated market may use IFRS.

Companies in Luxembourg are required to prepare consolidated financial statements to the extent, they (i) have a majority of the shareholders’ or members voting rights in another undertaking; or (ii) have the right to appoint or remove a majority of the members of the administrative, management or supervisory body of another undertaking and are at the same time a shareholder in or member of that undertaking; or (iii) are a shareholder in or member of an undertaking, and control alone, pursuant to an agreement with other shareholders in or members of that undertaking, a majority of shareholders’ or members’ voting rights in that undertaking. SICARs are exempt from the obligation to prepare consolidated accounts imposed by the company law.

Luxembourg companies are permitted to derogate from this consolidation principle and exempt from consolidation in the following circumstances:

- Small group exemption
- Upper level exemption
- Temporary holding exemption

Annual accounts must be filed with the trade and company register within seven months after year-end and within one month of the approval of the annual accounts by the general meeting of shareholders.

2. **Intellectual properties vehicles**

**General features**

Luxembourg has concluded many agreements in view of protecting intellectual property such as the Bern Convention, the Patent Cooperation Treaty (PCT), the Paris Convention, as well as
the Madrid Agreement and Protocol. Luxembourg has implemented European directives and treaties such as the agreement on Trade-Related aspects of Intellectual Property Rights.

Luxembourg has also signed the European Patent Convention (leading to the European Patent Office) and the Patent Law Treaty.

Luxembourg thus offers a safe IP environment.

**Scope**

A favourable IP related tax regime entered into force on 1 January 2008 (law of 21 December 2007) and applies to recurrent and non-recurrent income derived from:

- Copyrights on software
- Patent
- Trademarks
- Domain names
- Designs
- Models

acquired or constituted after 31 December 2007.

**Tax aspects**

The IP regime provides for an 80% exemption of income (whether recurrent or not) derived from eligible IP rights.

**Recurrent income**

The 80% exemption applies on the net income arising from the use or the right to use the IP rights. In this respect, net income is the difference between gross revenue and any expenses directly connected with such gross revenue (amortization allowances, interests on IP rights' financing, depreciation etc.).

Subject to recapture rules, a negative IP income is in principle deductible.

Further, a taxpayer which develops a patent to be used for its own activities is entitled for a notional 80% deduction on the net remuneration (fictive arm's length royalty reduced by expenses directly connected with the deemed remuneration) that the company would have received had it licensed the patent to a third party.
Non-recurrent income

The 80% exemption applies also on capital gains arising from the disposal of IP rights, subject to the recapture rules (the basis for the calculation of the capital gain is increased by 80% of the negative income deriving from the IP rights incurred the year of disposal or previous years).

NWT exemption

Qualifying IP rights are not subject to net worth tax.

Conditions for application of the IP regime

The IP rights must have been created or acquired after 31 December 2007;

The expenses connected with the IP rights need to be recorded as assets in the balance sheet for the first accounting year for which the application of the IP regime is requested;

The IP rights must not have been acquired from an “associated company” (i.e. direct mother company, direct subsidiary or direct sister company).

Expected evolutions

Luxembourg Finance Minister announced that the current IP regime will be amended so as to comply with the so-called “modified nexus approach”.

Current BEPS (Base Erosion Profit Shifting) discussions at the level of OECD led to discuss several approaches for the application of favourable IP tax regimes (OECD/G20 BEPS Project – Action 5: agreement on modified nexus approach for IP regimes). The following position has been adopted:

- Particular emphasis on the existence of actual economic activity (link between eligibility to a favourable IP regime and actual R&D incurred by the taxpayer relating to the IP rights);
- No entry into “old” regimes after 30 June 2016.

As a consequence:

- Luxembourg IP regime may still be implemented until 30 June 2016;
- Existing structures may continue relying on the Luxembourg IP regime without any changes until 30 June 2021.
3. SECURITIZATION

**Scope and legal regime**

The Luxembourg securitization undertakings are subject to the amended law dated 22 March 2004 on securitization ("Securitization Law"). The Securitization Law defines securitization as the transaction by which a securitization undertaking acquires or assumes, directly or through another undertaking, risks relating to claims, other assets, or obligations assumed by third parties or inherent to all or part of the activities of third parties and issues securities whose value or yield depends on such risks.

The Securitization Law expressly foresees the possibility to create securitization undertaking under the corporate form (which is considered from a Luxembourg tax perspective as a Luxembourg resident fully-taxable company) or under the form of an unincorporated fund is not subject to any income taxes.

Article 5 of the Securitization Law expressly allows the creation of undertakings (whether as a securitization company or securitization fund) with multiple compartments (umbrella structures) where each compartments will correspond to separate assets and liabilities and where each compartment will be segregated from the other compartments of the same undertaking as regards investors’ and creditors’ rights, effectively “ring-fencing” each compartment. This “ring-fencing” will also apply in case of liquidation, as a compartment can be liquidated without affecting the other compartments.

Pursuant to Article 19 of the Securitization Law, securitization undertakings which issue securities to the public on a continuous basis must be authorized by CSSF to exercise their activities, and shall, in principle, remain regulated by the CSSF until their liquidation.

The regulated status is thus mandatory when both criteria ("issue securities to the public" and "on a continuous basis") are cumulatively met. A securitization undertaking may not, however, voluntarily opt for the regulated status if it does not meet cumulatively these two criteria.

The securitization undertaking must determine by itself if, in its particular case, it is to be considered as issuing securities to the public on a continuous basis, and such assessment does not need to be submitted for validation by the CSSF.

The Securitization Law does not provide strict definitions nor criteria to assess if these two conditions are met, but the CSSF has provided the following guidelines:

(i) the criterion of issue “on a continuous basis” is assumed to be fulfilled when the securitization undertaking makes more than three issues per year to the public. In the case of an umbrella structure, the number of issues to consider is determined by the total number of issues of all compartments of the securitization undertaking. In addition, the setting-up of an issuance program cannot be considered as equivalent to one single issue. In order to determine the number of annual issues of a securitization undertaking issuing securities under a program, the nature of the program and of the different series of issues must be analyzed in order to assess whether the characteristics of these issues allow considering that they constitute one single issue and not several separate issues.
the criterion relating to the issuance of securities “to the public” shall be assessed on
the following basis:

- issues to professional clients within the meaning of Annex II to Directive 2004/39/EC
  (MiFID) are not issues to the public;
- issues whose denominations equal or exceed EUR 125,000 are assumed not to be
  placed with the public;
- the listing of an issue on a regulated or alternative market does not ipso facto entail
  that the issue is deemed to be placed with the public;
- issues distributed as private placements, whatever their denomination, are not
  considered as issues to the public. The CSSF assesses whether the issue is to be
  considered as a private placement on a case-by-case basis according to the
  communication means and the technique used to distribute the securities. However,
  the subscription of securities by an institutional investor or financial intermediary for
  a subsequent placement of such securities with the public constitutes a placement
  with the public.
- If the management of the securitization undertaking is of the opinion that it is about
to fall within the scope of the Securitization Law, it must file an application for CSSF
authorization, and abstain, from that moment, from initiating issues of securities
which would make such prior authorization mandatory until it has obtained such
authorization. It appears however from our contacts with the regulator that no such
application for a conversion of an existing, non-regulated, undertaking into a
regulated undertaking has yet been submitted to the CSSF.

Once authorized, the securitization undertaking shall in principle remain under the
supervision of the CSSF until its liquidation. However, if, at one point, the securitization
undertaking does not issue new securities on a continuous basis to the public, and on the
condition that all the securities that the securitization undertaking has issued to the public
during the time it was subject to supervision have matured and been refunded, the
securitization undertaking may request to be withdrawn from the official list of authorized
securitization undertakings.

**Tax aspects**

The developments below only relate to securitization undertakings under the corporate form,
the Securitization Law foreseeing also the possibility to establish a securitization undertaking
under the form of an unincorporated fund (contractual fund).

As opposed to securitization undertaking under the corporate form (which are considered
from a Luxembourg tax perspective as a Luxembourg resident fully-taxable company), a
securitization undertaking under the form of an unincorporated fund is not subject to any
income taxes. The tax regime of securitization undertakings under the form of an
unincorporated fund is aligned on the tax regime applicable to ordinary Luxembourg
investment funds.

As a rule, according to the provisions of Article 89 of the Securitization Law, any
commitments of a securitization company towards its investors and/or other creditors are
tax deductible business expenses - in the meaning of Article 97 (1) 5 ITL (in practice, a
A securitization company generally does not realize any taxable profits and hence will not actually pay income tax as any income or gain is normally offset by a tax deductible expense. In addition, distributions and other proceeds allotted to the investors and/or creditors, whatever the form they adopt (dividends or interests) are considered as interests from a Luxembourg tax perspective.

Interests, whether fixed or variable, are fully deductible for the purpose of Luxembourg taxation at the level of the securitization company (article 46, paragraph 14 ITL) under the accounting/tax year to which they relate even if their payment is delayed.

Under Luxembourg tax law, a securitization company is a fully-taxable resident company which benefits from specific deductibility features and has access to Luxembourg tax treaties to enable it to benefit from reduced withholding taxes in the source countries of its investments.

In this respect, and absent any specific provision in the Law, a securitization company cannot be excluded from the benefit of the Luxembourg participation exemption as foreseen under Article 166 ITL. In order to qualify for the participation exemption (on dividends and/or capital gains), the following conditions must be met:

- The parent company must hold a direct participation in the share capital of an eligible entity, i.e. a company covered by Article 2 of the EU parent-subsidiary directive (directive 2011/96/EU) or a non-resident company limited by share capital (société de capitaux) liable to a tax corresponding to Luxembourg corporate income tax;

- At the time the income is made available, the parent company must have held or must commit itself to hold the participation in the eligible entity for an uninterrupted period of at least 12 months and during this whole period, either the level of participation must not fall below the threshold of 10% or the acquisition price must not fall below EUR 1.2 million (6 million in case of capital gains).

Further, the participation exemption regime contains some rules intended to avoid a double benefit (exemption of income and deduction of expenses). If the acquisition of a participation is financed through an interest-bearing debt, such interest has an impact for the application of the participation exemption. Indeed, pursuant to Article 166 (5) ITL, to the extent that received dividends are exempt, interests in direct economic relationship with these dividend income are not deductible (up to the related exempt income, the excess being deductible). Further, when a participation is disposed of, the capital gain exemption does not apply to the extent of the algebraic sum of related expenses (for example, interest exceeding the exempt dividend income) that have decreased the tax result of the current and preceding years (so-called "recapture rule").

However, the securitization company cannot use concurrently for the same assets the participation exemption regime and the specific tax regime as provided for in the Law. If the participation exemption regime is applied towards income derived from qualifying participations, interest paid in the context of the financing the acquisition of said qualifying participations may not be deductible (for the sake of clarity, one must specify that except in the securitization regime, dividends are generally not considered as tax deductible).

As a consequence, within the context of a securitization company, it is not possible to receive exempt dividends under the participation exemption regime and deduct interests (or dividends qualifying as interest under that regime) payable under the securitization regime.
**Accounting aspects**

The annual accounts of a corporate securitization vehicle are subject to accounting rules applicable to Luxembourg commercial companies. Annual accounts of a securitization fund are subject to similar accounting rules to those provided for an investment fund.

The accounts of all securitization vehicles are audited by one or more independent auditors designated by the board of the securitization company, or by the management company in case of a securitization fund.

For a regulated vehicle, the auditor must be authorized by the CSSF.

Regulated and unregulated securitization vehicles, qualified as financial vehicle corporations engaged in securitization transactions, have to comply with quarterly reporting obligations further to the:

- Circular of the Luxembourg Central Bank on statistical data collection for securitization vehicles;
- Regulation of the European Central Bank in relation to statistics on the assets and liabilities of financial vehicle corporations engaged in securitization transactions.

The Luxembourg Central Bank may grant derogations to certain reporting obligations.

### 4. SPF

**Scope and legal regime**

The société de gestion de patrimoine familial has been created by the law dated 11 May 2007 (the "SPF Law") with the objective to create a favourable framework for the family wealth management by qualifying shareholders which are either:

- Individuals acting in the management of their private wealth, or
- Patrimonial entities (e.g. trusts, private foundations) acting exclusively in the interest of private wealth of individuals;
- Intermediaries holding shares in the SPF on a fiduciary basis or in a similar capacity, on behalf of qualifying shareholders.

The activity of the SPF is strictly limited to the acquisition, holding and disposal of financial assets. The assets in which the SPF can invest include shares, bonds and other debt instruments, cash but also investments in structured products, derivatives as well as put/call options on securities, indexes and currencies.

The SPF cannot engage in commercial activity. It may hold participations in other companies, but only to the extent that the SPF does not involve itself in the management of these
companies. It is also not allowed to render any kind of services or to grant interest-bearing loans to companies in which it holds participation.

**Tax aspects**

The SPF benefits from a tax subjective exemption and is thus not subject to corporate income tax, municipal business tax, net worth tax and dividend withholding tax.

SPF is however subject to a 0.25% subscription tax to be declared and paid quarterly to the Administration de l'Enregistrement et des Domaines (minimum annual taxation of EUR 100 and maximum annual taxation of EUR 125,000).

The SPF does not benefit from the Luxembourg double tax treaty network.

Given its specific and limited purpose, the SPF is not to be considered as a taxable person for VAT purposes (with no right to deduct input VAT).

Each year, the domiciliation agent, a licensed independent auditor or an expert-comptable must certify:

- that the SPF is held only by qualified investors;
- that the SPF respected its obligations as a paying agent with respect to the withholding tax on interest;
- that the SPF respected its obligations as a paying agent with respect to the withholding tax on interest.

**Accounting aspects**

The SPF must respect the provisions of the company law.
REGULATED INVESTMENT VEHICLES
Besides non-regulated investments vehicles (see the SOPARFI and SPF above), there are two main types of regulated entities:

- alternative investment funds (1), which comprise all funds including hedge funds, real estate investment funds, venture capital and private equity funds, which are themselves divided into SICARs (1.1) and UCIs, this latter category being itself among the Part 2 UCIs (1.2.1) and the SIFs (1.2.2), and

- undertakings for collective investment in transferable securities (UCITS) (1.2.3) (or Part I UCIs), which comply with the European Directive on that subject UCITS.

SICARs and SIFs have in common that they are reserved for use by institutional, professional or well-informed investors, while UCI and UCITS may be sold to all categories of investor.

1. Alternative investment funds

The term "alternative investment funds" encompasses all investment funds falling out of the scope of the European Directive on Undertakings for Collective Investment in Transferable Securities (UCITS). This includes hedge funds, fund of fund hedge funds, venture capital and private equity funds, real estate funds and other funds investing in tangible or intangible assets (debt, art, antiques, wine, jewellery, IP sporting rights, etc.).

Luxembourg has succeeded in creating a brand in the alternative investment market, similar to the global brand it has enjoyed for decades with UCITS.

1.1 SICAR

General features

Created by a law dated 15 June 2004, as amended (the “SICAR Law”), an investment company in risk capital (“SICAR”) shall be any company:

- that has adopted the form of a limited partnership (S.C.S) or of a special limited partnership (S.C.Sp.), or the form of a partnership limited by shares (S.C.A.), a cooperative in the form of a public limited company (S.Coop.S.A.), a limited company (S.à r.l) or a public limited company (S.A.) governed by Luxembourg law, and

- whose purpose is to invest in securities (risk capital) so as to secure a return for their investors commensurate with the risk which they take, and

- the securities of which are restricted to well-informed investors as defined in Article 2 of SICAR Law, and

- the articles of which provide that it is subject to the provisions of the SICAR Law.
Investment in risk capital means direct or indirect contribution of assets to entities in view of their launch, development or listing on a stock exchange, involving a higher level of risk by creating value in the target entities through restructuring, modernization, product development or by measures aimed at improving the allocation of resources. The entity may temporary invest in other assets whilst it is waiting for suitable investments in risk capital.

SICARs are not subject to any risk diversification restrictions and may be highly leverage, subject to certain conditions.

The SICAR Law expressly allows for the creation of undertakings with multiple compartments (umbrella structures) permitting a private equity house to group different investment strategies, or meet the demands of different investors, within one legal structure.

The SICAR is restricted to well-informed investors who shall be institutional investors, professional investors or any other investor who meets the following criteria:

- he has confirmed in writing that he satisfies the status of well-informed investor and
- he invests a minimum of EUR 125,000 in the company, or
- he has been subject to an assessment made by a credit institution within the meaning of Directive 2006/48/EC, by an investment firm within the meaning of Directive 2004/39/EC or by a management company within the meaning of Directive 2009/65/EC certifying his expertise, his experience and his knowledge in adequately appraising an investment in risk capital.

The conditions set forth above do not apply to directors and other persons taking part in the management of the SICAR.

The subscribed share capital of a SICAR, including share premium, shall not be less than EUR 1 million (to be reached within 12 months following the authorization given by the regulator). At least 5% of each share must be paid up at subscription. A SICAR may opt for a variable or a fixed share capital and may be structured as an open-ended or closed-end fund. The issue and redemption of shares/units is not subject to restrictions other than those contained in the constitutional documents.

**Regulatory environment**

The SICAR is a regulated vehicle supervised by the Luxembourg Commission de Surveillance du Secteur Financier (CSSF) and an authorisation file must be submitted to the CSSF prior to its launch.

The authorisation will be granted subject to:

- approval of the constitutional documents and of the prospectus;
- approval of the choice of custodian bank located in Luxembourg and an independent auditor;
approval of the directors of the SICAR, who must be of good repute and have sufficient experience in the performance of their duties in the private equity field;

- the designation of a central administration agent located in Luxembourg.

The SICAR must periodically report to the CSSF and produce an audited annual report to its shareholders.

A one-time fee of EUR 3,500 (EUR 7,000 for umbrella funds) is payable to the CSSF for the initial authorisation, as well as an annual fee of EUR 3,000 (EUR 6,000 for umbrella funds) for supervision.

SICARs qualify as alternative investments funds (AIFs) under the Directive 2011/61/EU of June 8, 2011 (the AIFM Directive).

SICARs managed by an EU authorised AIFM benefit from a passport allowing AIFMs to market the SICAR’s shares, units or partnership interests to professional investors within the EU through a regulator-to-regulator notification regime.

**Tax aspects**

No stamp duty, capital duty or tax will be payable in Luxembourg upon the issue of shares by a SICAR, whether in partnership form or corporate form; there is a registration tax of EUR 75 due upon incorporation and to be paid upon each amendment to the articles of association.

A SICAR in partnership form (S.C.S. and S.C.Sp.) is considered as a transparent entity for Luxembourg tax purposes and not subject to corporate income tax. A SICAR in partnership form is not considered a commercial entity and is not subject to municipal business tax.

The tax regime of a SICAR in corporate form (S.A., S.à r.l. and S.C.A.) is similar to the regime applicable to ordinary commercial companies: it is subject to corporate income tax in Luxembourg at a current global rate of 29.22% (which comprises corporate income tax, solidarity tax and the municipal business tax for Luxembourg-city (as applicable for 2015)).

However, income arising from qualifying securities held by a corporate SICAR, as well as any capital gains realized upon the sale, contribution or liquidation or any other disposal of qualifying securities, does not constitute taxable income. Realized losses resulting from the transfer of securities and unrealized losses arising from reduction in value of these assets are non-tax-deductible. Income arising from other assets, pending their investment in risk capital, does not constitute taxable income, provided such assets are invested in risk capital within twelve (12) months.

A corporate SICAR is subject to a minimum tax of EUR 3,000 (EUR 3,210 including the solidarity surcharge (2015)) per year if more than 90% of the fund’s assets are invested in financial assets, receivables held against related parties and companies in which the SICAR holds a participation, transferable securities, bank deposits and cash, and shares or units held in tax transparent entities.

A corporate SICAR may, from a Luxembourg tax perspective, benefit from the Luxembourg double tax treaty network as well as the EU parent-subsidiary directive; would such a benefit be denied, dividends and interests, if any, received by the SICAR from investments may be
liable to withholding taxes in the countries concerned at varying rates and such withholding taxes are usually not recoverable.

Dividends, redemption amounts and liquidation proceeds paid by the SICAR, whether in partnership or corporate form, are not subject to any Luxembourg withholding tax, regardless of the country of residence of the recipient.

**Accounting aspects**

SICARs must publish accounts on an annual basis. The accounts have to be made available to investors and the CSSF, the Luxembourg regulator, within six months of the year-end. No semi-annual reports are required.

SICARs typically report under Luxembourg GAAP and may use IFRS by agreement with the CSSF and in particular if the SICAR is listed in accordance with EU regulation.

The SICAR's assets must be valued using fair-market value, determined in accordance with the procedures laid down in the articles of incorporation. Accounts must be reviewed by an independent auditor that is approved by the CSSF.

SICARs are exempt from the obligation to prepare consolidated accounts.

SICARs must provide a set of financial information to the CSSF which the CSSF will use for its supervision of SICARs as well as for statistical purposes.

### 1.2 UCI (Part 2 UCIs and SIFs)

The expression "undertakings for collective investment (UCI)" regroups two different types of vehicles: the "Part 2 UCI" and the SIFs, each governed by a specific law, but which have a number of features in common.

#### 1.2.1 The Part 2 UCIs

**General features**

Part 2 UCIs are governed by Part II of the Luxembourg law of 17 December 2010 on undertakings for collective investments and qualify as alternative investment funds (AIFs) for the purpose of the Luxembourg law of 12 July 2013 on alternative investment fund managers (AIFM law).

There are no legal restrictions on the type of assets in which alternative funds may invest, but the investment policy must respect the principle of risk spreading and must be approved by the financial sector regulator, the CSSF, which has established certain requirements regarding risk diversification which are less restrictive than for UCITS.
Part 2 UCIs may adopt one of the following legal structures:

- the common investment fund (Fonds Commun de Ppilacement - FCP), a contractual arrangement (mutual fund) without legal personality which must be managed by a fund management company;
- the investment company with variable capital (Société d'Investissement à Capital Variable - SICAV), where the capital varies in response to subscriptions and redemptions made by investors;
- the investment company with fixed capital (Société d'Investissement à Capital Fixe - SICAF).

The SICAV and the SICAF are public limited companies which may be either self-managed or may appoint an external management company.

These structures can be set up as stand-alone funds, with a single investment portfolio, or can be structured as multiple compartment funds (also known as “umbrella funds”), which create separate sub-funds (compartments) under the roof of a single legal entity. These sub-funds function as independent entities, each with its own investment policy, target distribution market, fee schedule and investor profile. The fund and sub-funds may have an unlimited number of share classes, depending on the needs of the investors to whom the fund is distributed. The structures may be open-ended or closed-end.

The subscribed share capital of a Part 2 UCI shall not be less than EUR 1,250,000 (to be reached within 6 months following CSSF authorization). Part 2 UCIs may be structured as open-ended or closed-end funds. The issue and redemption of shares/units is based on the net asset value of the fund, which must be calculated no less than once a month.

**Regulatory environment**

The Part 2 UCI is a regulated vehicle, supervised by CSSF for which authorisation must be submitted to the CSSF prior to its launch.

The authorisation will be granted subject to:

- approval of the constitution and of the prospectus;
- approval of a custodian bank located in Luxembourg and an independent auditor;
- approval of the managers and directors, who must be of good repute and have sufficient experience to carry out their duties in the specific asset class;
- designation of a central administration agent located in Luxembourg;

The Part 2 UCI must periodically report to the CSSF and produce audited annual reports to its shareholders.

A one-time fee of EUR 3,500 (EUR 7,000 for umbrella funds) is payable to the CSSF for the initial authorisation, as well as an annual fee of EUR 3,000 (EUR 6,000 for umbrella funds) for supervision.

Within Luxembourg, shares or units of a Part 2 UCI may be sold to retail investors without any threshold restrictions, as well as professional or institutional investors in Luxembourg. Part 2 UCI AIFs managed by an EU authorised AIFM benefit from a passport allowing AIFMs to market the UCI’s shares, units or partnership interests to professional investors within the EU through a regulator-to-regulator notification regime.

**Tax aspects**

Part 2 UCIs are tax exempt entities except for registration duty and annual subscription tax.

*Registration duty*

Part 2 UCIs incorporated as investment companies are subject to a registration duty of EUR 75 on incorporation, transfer of the effective place of management or registered office to Luxembourg and/or amendment of the articles of incorporation.

Part 2 UCIs constituted as common funds are not subject to registration duty.

*Subscription tax*

Part 2 UCIs are subject to an annual subscription tax of 0.05% payable quarterly based on the total net asset value on the last day of the relevant quarter.

A reduced rate (0.01%) is applicable for Part 2 UCIs investing in money market instruments and deposits and for institutional investor sub-fund or shares classes.

A subscription tax exemption applies in the case of investment in other Luxembourg UCIs which are subject to subscription tax, investment in institutional cash UCIs, pension fund pooling vehicles, microfinance UCIs and exchange traded funds.

No Luxembourg tax is payable on realised or unrealised capital appreciation of the assets of the Part 2 UCIs.

*VAT*

Article 4 of the Luxembourg VAT law exempts the management of UCIs from VAT. Luxembourg UCIs are considered as VAT taxable persons with – in principle – no right to deduct input VAT as they are active in VAT-exempt activities only (it being understood that in the case of a FCP the management company is the VAT taxable person).

Management services relating to investment funds include:

- Portfolio management;
- Administration of funds (annex II UCITS IV directive);
- Investment advisory services.
Custodian services relating to control and supervisory duties are subject to a reduced 12% VAT rate.

**Savings Directive**

On 24 March 2014, the Council of the European Union adopted Council Directive 2014/48/EU amending the EU Savings Directive. EU Member States have to adopt and publish by 1 January 2016, the laws, regulations and administrative provisions necessary to comply with this directive. Council Directive 2014/48/EU enlarges *inter alia* the scope of the EU Savings Directive (and the obligation to report certain personal details relating to the beneficial owner) by extending the definition of interest payments and will cover income distributed by or income realized upon the sale, refund or redemption of shares or units in undertakings for collective investment or other collective investment funds (such as Part 2 UCIs constituted as common funds) or schemes that either are registered as such in accordance with the law of any of the EU Member States or of the countries of the European Economic Area which do not belong to the EU, or have fund rules or instruments of incorporation governed by the law relating to collective investment funds or schemes of one of these States or countries irrespective of the legal form of such undertakings, funds or schemes and irrespective of any restriction to a limited group of investors, in case such undertakings, funds or schemes invest, directly or indirectly, a certain percentage of their assets in debt claims as defined under the amended EU Savings Directive.

**Accounting aspects**

Part 2 UCIs must publish information on a yearly basis. Part 2 UCIs report under Luxembourg GAAP or IFRS. Accounts must be reviewed by an independent auditor approved by the CSSF.

Part 2 UCIs must also publish semi-annual financial statements which do not need to be audited and should be published within 2 months of the period end.

The extent of involvement of the board in the valuation process is linked to the level of risk of mispricing or misevaluation. For listed and liquid securities, the valuation exercise is quite simple in that it involves applying observable market prices, obtained from price vendors, at each valuation point. For unlisted or illiquid securities, the valuation exercise is more subjective, which means that more active involvement of the management bodies (board and conducting officer(s)) is required. This is because there is a higher risk of inappropriate valuation, and therefore a higher risk of investors’ interests being affected.

Part 2 UCIs must provide to the CSSF and to the Banque Centrale de Luxembourg financial information which the CSSF will use for its supervision of Part 2 UCIs as well as for statistical purposes.

**1.2.2 SIFs**

The Specialised Investment Funds (SIF), governed by the Luxembourg law of 13 February 2007 (the “SIF Law”), as amended by the AIFM Law of 12 July 2013, is designed as a more lightly regulated investment vehicle which offers an operationally flexible and fiscally efficient multipurpose investment tool for international, institutional and qualified investors.
(the same definition as for SICARs): eligible assets might include, in addition to traditional securities or money market instruments, real-estate, hedge fund, private equity or tangible or intangible assets (debt, art, antiques, wine, jewellery, IP or sporting rights etc.).

The only investment restriction is that the SIF must respect a minimum risk diversification, i.e. one single investment may not represent more than 30% of its total assets.

**General features**

SIFs may adopt the contractual form of a common investment fund (FCP), without legal personality, a limited partnership (S.C.S.) or a special limited partnership (S.C.Sp.), also without legal personality), or a partnership limited by shares (S.C.A.), a cooperative in the form of a public limited company (S.COOP.S.A.), a limited company (S.à r.l.) or public limited company (S.A.) governed by Luxembourg law.

The SIF Law expressly allows the creation of undertakings with multiple compartments (umbrella structures) so as to allow the grouping of different investment strategies or to meet the demands of different investors, within one single legal structure.

The subscribed share capital of a SIF, including share premiums, shall not be less than EUR 1,250,000 (to be reached within 12 months following authorization by the regulator).

At least 5% of each share must be paid up at subscription. A SIF may opt for a variable or fixed share capital, and may be structured as an open-ended or closed-end fund. The issue and redemption of shares/units is not subject to restrictions other than those provided in the constitutional documents.

**Regulatory environment**

The SIF is a regulated vehicle, supervised by the CSSF. A request for authorisation must be submitted to the CSSF prior to its launch.

The authorisation will be granted subject to:

- approval of the constitutional documents and of the prospectus;
- approval of a custodian bank located in Luxembourg and an independent auditor;
- approval of the directors of the SIF, who must be of good repute and have sufficient experience of the duties required in the private equity field;
- designation of a central administration agent located in Luxembourg.

The SIF must periodically report to the CSSF and produce an audited annual report for its shareholders.

A one-time fee of EUR 3,500 (EUR 7,000 for umbrella funds) is payable to the CSSF for the initial authorisation, as well as an annual fee of EUR 3,000 (EUR 6,000 for umbrella funds) for permanent supervision.
SIFs qualify as alternative investments funds (AIFs) under the Directive 2011/61/EU of June 8, 2011 (the AIFM Directive).

SIF (AIFs) managed by an EU authorised AIFM benefit from a passport allowing AIFMs to market the SIF’s shares, units or partnership interests to professional investors within the EU through a regulator-to-regulator notification regime.

**Tax aspects**

SIFs are tax exempt entities except for registration duty and annual subscription tax.

**Registration duty**

SIFs incorporated as investment companies are subject to a registration duty of EUR 75 upon incorporation, transfer of the effective place of management or registered office to Luxembourg and/or amendment of the articles of incorporation.

SIFs constituted as common funds are not subject to registration duty.

**Subscription tax**

SIFs are subject to an annual subscription tax of 0.01% payable quarterly based on the net asset value on the last day of the relevant quarter.

A subscription tax exemption applies where there is investment in other Luxembourg UCIs subject to subscription tax, investment in institutional cash UCIs, pension fund pooling vehicles, microfinance UCIs, exchange traded funds, and (under certain conditions) investments in LuxFlag labelled institutions.

No Luxembourg tax is payable on realised or unrealised capital appreciation of the assets of the SIFs.

**VAT**

Article 4 of the Luxembourg VAT law exempts from VAT the management of UCIs. Luxembourg UCIs are considered as VAT taxable persons with – in principle – no right to an input-tax deduction as they are active in VAT exempt activities only (it being understood that in the case of an FCP the management company is the VAT taxable person).

Management services relating to investment funds include:

- Portfolio management;
- Administration of funds (annex II UCITS IV directive);
- Investment advisory services.

**Savings Directive**

On 24 March 2014 the Council of the European Union adopted Council Directive 2014/48/EU amending the EU Savings Directive. EU Member States have to adopt and publish by 1 January 2016, the laws, regulations and administrative provisions necessary to comply with
this directive. Council Directive 2014/48/EU enlarges inter alia the scope of the EU Savings Directive (and then the obligation to report certain personal details on the beneficial owner) by extending the definition of interest payments and will cover income distributed by or income realized upon the sale, refund or redemption of shares or units in undertakings for collective investment or other collective investment funds (such as entities subject to the SIF Law) or schemes, that either are registered as such in accordance with the law of any of the EU Member States or of the countries of the European Economic Area which do not belong to the EU, or have fund rules or instruments of incorporation governed by the law relating to collective investment funds or schemes of one of these States or countries irrespective of the legal form of such undertakings, funds or schemes and irrespective of any restriction to a limited group of investors, in case such undertakings, funds or schemes invest, directly or indirectly, a certain percentage of their assets in debt claims as defined under the amended EU Savings Directive.

### Accounting aspects

SIFs must publish accounts annually. SIFs report under Luxembourg GAAP and may use IFRS by agreement with the CSSF and in particular if the SIF is listed in accordance with EU regulation. Accounts must be reviewed by an independent auditor approved by the CSSF.

The SIF Law provides a very flexible regime in terms of valuation of assets, frequency of NAV calculation and price of shares /units issued or redeemed.

The minimum frequency of NAV calculation is annual in line with the requirement to prepare annual accounts.

The valuation of assets shall be based on fair-market value unless the documents constituting the SIF provide otherwise. This allows SIFs holding specific investments to select a more appropriate valuation methodology, for example the "International Private Equity and Venture Capital Valuation Guidelines" or the valuation rules of the "Royal Institution of Chartered Surveyors" for Real Estate investments.

SIFs are exempt from any obligation to prepare consolidated accounts.

SIFs must provide financial information to the CSSF which the CSSF will use for supervision of SIFs as well as for statistical purposes.

### 2. UCITS

UCITS, which is the acronym for Undertakings for Collective Investment in Transferable Securities, designates an EU-harmonised typology of highly regulated investment funds offering a high level of protection to retail investors. UCITS may only invest in securities (such as shares and bonds) quoted on a recognised stock exchange. UCITS must be open-ended, so that the investor can redeem his holdings at any time. The investment policy must also respect a number of rules relating to portfolio diversification, asset liquidity and the use of hedging.
Luxembourg UCITS, once approved by the CSSF, benefit from the European passport allowing them to be sold to the general public and registered for distribution in all EU Member States.

Luxembourg has successfully positioned itself as the uncontested global leader for cross-border distribution of investment funds, and today more than 75% of UCITS funds distributed internationally are based in Luxembourg, the UCITS brand being recognized in a growing number of countries in Asia and Latin America.

**General features**

UCITS are governed by Part I of the Luxembourg law of 17 December 2010 on undertakings for collective investments.

Their investment policies are restricted to transferable securities, money market instruments admitted to or dealt in on a regulated market or admitted to official listing on certain stock exchanges, deposits with reputable credit institutions, certain financial derivative instruments and money market instruments with material risk diversification regulations.

UCITS may adopt the form of

- a common investment fund (FCP) without legal personality,

- an investment company with variable capital (Société d’Investissement à Capital Variable - SICAV), where the capital varies in response to subscriptions and redemptions made by investor, or of

- an investment company with fixed capital (Société d’Investissement à Capital Fixe - SICAF).

The SICAV and the SICAF are similar to public limited companies which may be either self-managed or may appoint an external management company.

UCITS can be set up as stand-alone funds, with a single investment portfolio, or they can be structured as multiple-compartment funds (also known as "umbrella funds") which creates separate sub-funds (compartments) under the roof of a single legal entity. These sub-funds function as independent entities, each with its own investment policy, target distribution market, fee schedule and investor profile. The fund and sub-funds may have an unlimited number of share classes, depending on the needs of the investors to whom the fund is distributed.

A UCITS must be open-ended.

The subscribed share capital of a UCITS shall not be less than EUR 1,250,000 (to be reached within 6 months following CSSF authorization). The issue and redemption of shares/units is based on the net asset value of the fund, which must be calculated at least twice monthly.
**Regulatory environment**

UCITS are a highly regulated investment vehicle, subject to the supervision of the Luxembourg *Commission de Surveillance du Secteur Financier (CSSF)* which must grant its approval prior to their launch.

As for other types of investments funds, the authorisation will be granted subject to:

- approval of the constitution and of the prospectus;
- approval of a custodian bank located in Luxembourg and of an independent auditor;
- approval of the managers and directors, who must be of good repute and have sufficient experience in the specific asset class to discharge their duties;
- designation of a central administration agent located in Luxembourg;

A KIID (Key Investor Information Document), to be up-dated on an annual basis, must be available at all times to investors.

UCITS must periodically report to the CSSF and produce audited annual and a non-audited semi-annual report to their shareholders.

UCITS must implement strong risk-management procedures which enable the UCITS to monitor and measure at any time all the material risk of its positions.

A one-time fee of EUR 3,500 for UCITS having appointed an external management company (EUR 7,000 for umbrella funds), or EUR 10,000 for self-managed UCITS, shall be due to the CSSF for the initial authorisation, as well as an annual fee of EUR 3,000 (EUR 6,000 for umbrella funds) for the permanent supervision.

Shares or units of a Luxembourg UCITS may be sold to retail investors without any threshold restrictions, as well as to professional or institutional investors in Luxembourg and within the EU through a regulator-to-regulator notification regime.

**Tax aspects**

UCITS are tax exempt entities except for registration duty and annual subscription tax.

*Registration duty*

UCITS incorporated as investment companies are subject to a registration duty of EUR 75 upon incorporation, transfer of the effective place of management or registered office to Luxembourg and/or amendment of the articles of incorporation.

UCITS constituted as common funds are not subject to registration duty.

*Subscription tax*

UCITS are subject to an annual subscription tax of 0.05% payable quarterly based on the total net asset value on the last day of the relevant quarter.
A reduced tax (0.01%) applies to UCITS investing in money market instruments and deposits and for institutional investor sub-fund or shares classes.

Subscription tax exemption applies in case of investment in other Luxembourg UCIs subject to subscription tax, investment in institutional cash UCIs, pension fund pooling vehicles, microfinance UCIs and exchange traded funds.

No Luxembourg tax is payable on realised or unrealised capital appreciation of the assets of the UCITS.

**VAT**

Article 4 of the Luxembourg VAT law exempts from VAT the management of UCIs. Luxembourg UCIs are considered as VAT taxable persons with – in principle – no right to an input-tax VAT deduction as they are active in VAT exempt activities only (it being understood that in the case of a FCP the management company is the VAT taxable person).

Management services relating to investment funds include:

- Portfolio management;
- Administration of funds (annex II UCITS IV directive);
- Investment advisory services.

Custody services relating to the control and supervision are subject to a reduced 12% VAT rate.

**Savings Directive**

Pursuant to the law dated 25 November 2014 (amending the law dated 21 June 2005 which implemented under Luxembourg law the Council Directive 2003/48/EC on taxation of savings income in the form of interest payments ("EU Savings Directive"), a Luxembourg-based paying agent is required since 1 January 2015 to report to the Luxembourg tax authorities the payment of interest and other similar income paid by it to (or under certain circumstances, to the benefit of) an individual or certain residual entities resident or established in another EU Member State or in certain associated or dependent territories of the European Union (Aruba, British Virgin Islands, Guernsey, Isle of Man, Jersey, Montserrat as well as the former Netherlands Antilles, i.e. Bonaire, Curaçao, Saba, Saint Eustatius and Saint Maarten – collectively the "Associated Territories"), and certain personal details on the beneficial owner. Such details will be transmitted by the Luxembourg tax authorities to the competent foreign tax authorities of the state of residence of the beneficial owner.

Under current legislation, distributions by the Company will fall within the scope of the EU Savings Directive if the Company invests 15 percent or more in debt claims within the meaning of the EU Savings Directive. Payment of proceeds upon the sale, refund or redemption of Shares in the Company will fall within the scope if the Company invests directly or indirectly 25 percent or more in debt claims within the meaning of the EU Savings Directive.
Accounting aspects

UCITS must publish information on a yearly basis. UCITS report under Luxembourg GAAP or IFRS. Accounts must be reviewed by an independent auditor approved by the CSSF.

UCITS must also publish semi-annual financial statements which do not need to be audited and should be published within 2 months of the period end.

The extent of involvement of the Board in the valuation process is linked to the level of risk of mispricing or misevaluation. For listed and liquid securities, the valuation exercise is quite simple in that it involves applying observable market prices, obtained from price vendors, at each valuation point. For unlisted or illiquid securities, the valuation exercise is more subjective, which means that more active involvement of the Managements bodies (Board and conducting officer(s)) is required. This is because there is a higher risk of inappropriate valuation, and therefore a higher risk of investors' interests being affected.

UCITS must provide to the CSSF and to the Banque Centrale de Luxembourg financial information which the CSSF will use for its supervision of UCITs as well as for statistical purposes.

3. AIFM Directive

Origin

The AIFM Directive ("AIFMD") is the result of a G20 consensus for closer regulatory oversight of systemic risks emanating from certain players and activities in the alternative investment funds sector. In particular, it aims at setting up robust risk and liquidity management systems and at enhancing transparency for investors.

The initial proposal of the AIFMD gave rise to vehement criticism from many industry participants and led to lengthy discussions between the EU Commission, the EU Council of Ministers and the EU Parliament before these bodies were able to reach a compromise. The AIFMD was finally approved by the EU Parliament on 11 November 2010 after nearly one and a half years of intense negotiations.

Luxembourg has now fully implemented the AIFMD. The AIFM Law is an important step for the on-going development of the alternative investment fund industry and will reinforce Luxembourg's position as a global investment fund hub.

Although some provisions of the AIFM will require clarification from the CSSF, more defined rules will apply with respect to, i.a., capital requirements, specific operational procedures and remuneration.

The AIFM regime also provides for the appointment of additional service providers. In exchange for increased regulatory oversight, a European passport for AIFMs has been introduced for marketing of AIFs to professional investors, ultimately aiming at the phasing out of existing private placement rules.
**Scope**

The AIFM regime applies to:

- EU AIFMs managing one or more EU AIFs/non-EU AIFs;
- Non-EU AIFMs managing one or more EU AIFs;
- Non-EU AIFMs marketing AIFs in the EU.

The only scenario which does not fall within the scope of the AIFM regime is the case of a non-EU AIFM managing and/or marketing a non-EU AIF outside the EU given the absence of any relationship with the EU.

The AIFM regime takes a “one size fits all” approach by encompassing AIFMs of all AIFs which are not covered by the UCITS Directive. UCIs governed by Part II of the UCI Law, SIFs governed by the SIF Law if they fulfil the criteria under article 1(39) of the AIFM Law or SICARs governed by the SICAR Law if they fulfil the criteria under article 1(39) of the AIFM Law are therefore in principle subject to the AIFM regime. The AIFM regime also impacts non-regulated investment vehicles if they are not regulated under the UCI Law, the SIF Law or the SICAR Law but also meet the criteria of article 1(39) of the AIFM Law.

Whereas the AIFM Law directly regulates AIFMs, it also indirectly applies to EU and non-EU AIFs and some of their service providers. In this context, one should keep in mind that the AIFM Law defines an AIF as “an entity raising capital from a number of investors with a view to investing it in accordance with a defined investment policy for the benefit of such investors.”

Some players are excluded

Certain players are expressly excluded from the scope of the AIFM Law: holding companies, captive funds, management of pension funds, employee participation or savings schemes, supranational institutions, national central banks, securitization special purpose entities as well as national, regional and local governments and bodies. In addition, the AIFM Law does not apply to family office type arrangements, provided they do not raise external capital.

Smaller AIFs exempted

Exemptions from the AIFM Law have been expressly provided for AIFMs managing “smaller” AIFs, i.e.:

- AIFMs managing AIFs which are not leveraged and without redemption rights for a period of 5 years, and with aggregate assets under management below EUR 500 million;
- AIFMs managing AIFs whose assets under management, including any assets acquired through the use of leverage, do not exceed EUR 100 million.

Such exempted AIFMs are subject to registration requirements with the CSSF. Exempted AIFMs can also decide to opt in to the application of the AIFM regime and thereby benefit from the marketing passport.
4. CARRIED INTEREST

**General definition**

Carried interest may be defined as a share of any profits that the general partners of private equity and hedge funds receive as compensation, despite not contributing any initial funds. This method of compensation seeks to motivate the fund manager to work toward improving the fund's performance.

**Specific regime**

The AIFM Law introduced in Luxembourg law a specific tax regime for carried interest paid to Luxembourg-resident employees of alternative investment fund managers and AIF management companies. The specific tax regime will apply for a period of 11 years from the year they take on the position in Luxembourg entitling them to the carried interest.

Carried interest will be taxable as extraordinary income at the level of the employee (quarter of the global rate, i.e. 10.90%) provided the conditions below are met:

- the employee was not resident in Luxembourg for tax purposes and not subject to tax in Luxembourg on Luxembourg source during the 5 years preceding the year of entry into force of the AIFM Law;

- the employee becomes resident in Luxembourg for tax purposes during the year of entry into force of the AIFM Law or in the 5 following years;

- the employee did not receive any advance payments of carried interest;

- prior repayment of the committed capital to the investors.
SUMMARY OF UNREGULATED AND REGULATED INVESTMENTS VEHICLES
<table>
<thead>
<tr>
<th></th>
<th>SOPARFI</th>
<th>SECURIZATION COMPANY</th>
<th>SICAR</th>
<th>SIF</th>
<th>UCI</th>
<th>UCITS</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Applicable legislation</strong></td>
<td>The SOPARFI (société à participations financières) is a commercial corporate vehicle not subject to the supervision of the Luxembourg financial sector supervisory authority (CSSF). It is governed by the Law of 10 August 1915 on commercial companies, as amended (the “Law of 1915”) and pertains to investments in qualifying financial participations.</td>
<td>The Law of 22 March 2004 (the “Law on securization”).</td>
<td>The Law of 15 June 2004 relating to the investent company in risk capital, as amended (the “SICAR Law”).</td>
<td>The Law of 13 February 2007 relating to specialised investment funds (the “SIF Law”) is applicable.</td>
<td>The Part II of the Law of 17 December 2010 (the “Fund Law”) is applicable.</td>
<td>The Part I of the Law of 17 December 2010 (the “Fund Law”) is applicable.</td>
</tr>
<tr>
<td><strong>Eligible investments</strong></td>
<td>Unrestricted.</td>
<td>Securization of risks linked to all kinds of assets, whether movable or immovable, tangible or intangible as well as risks relating to obligations or liabilities assumed by third parties or relating to all or part of the activities of a third party.</td>
<td>Restricted to direct and/or indirect investment in securities that represent risk capital. Risk capital consists mainly of high risk investment made in view of their launch, development or listing on stock exchange. Such investments may take varied forms and are normally done with a medium-term view.</td>
<td>Unrestricted.</td>
<td>Unrestricted.</td>
<td>Restricted to: Transferable securities, admitted or dealt in on a regulated market investment funds, financial derivative instruments, cash and money market instruments that are compliant with the law. Uncovered short sale and borrowings are not permitted, Precious metals and certificates representing them may not be acquired.</td>
</tr>
<tr>
<td><strong>Legal form</strong></td>
<td>SCA (partnership limited by shares) SA (public limited company) Sàrl (private limited company) SCS (limited partnership) SCSp (special limited partnership)</td>
<td>SA, SCA, Sàrl Public offering may only be conducted under the structure of a SA or SCA.</td>
<td>SA, SCA, Sàrl, SCS, SCSp Corporate entity with fixed or variable share capital.</td>
<td>SICAV (SA, SCA, Sàrl) SICAF (SA, SCS, Sàrl) FCP Structures may be open or closed-ended.</td>
<td>SICAV (SA) SICAF (SA, SCS, Sàrl) FCP Structures may be open or closed-ended.</td>
<td>All three must be open-ended.</td>
</tr>
<tr>
<td><strong>Central administration</strong></td>
<td>Not required.</td>
<td>Not required.</td>
<td>Central administration established in Luxembourg.</td>
<td>Central administration established in Luxembourg.</td>
<td>Central administration established in Luxembourg.</td>
<td>Central administration established in Luxembourg.</td>
</tr>
<tr>
<td><strong>Other services providers</strong></td>
<td>Statutory auditor for SOPARFI adopting the legal form of SA, SCA and Sàrl (if the company has more than 25 shareholders).</td>
<td>Independant auditor established in Luxembourg.</td>
<td>Depository and independent auditor established in Luxembourg.</td>
<td>Depository and independent auditor established in Luxembourg.</td>
<td>Depository and independent auditor established in Luxembourg.</td>
<td>Depository and independent auditor established in Luxembourg.</td>
</tr>
<tr>
<td><strong>Management company requirement</strong></td>
<td>Not required.</td>
<td>Not required.</td>
<td>Not required.</td>
<td>SICAV/SICAF Not required. FCP Yes.</td>
<td>SICAV/SICAF Not required. FCP Yes.</td>
<td>SICAV/SICAF May appoint a Luxembourg or EU management company or be a UCITS self-managed SICAV. FCP Yes. Management company established in Luxembourg or UCITS management company established in another EU member State.</td>
</tr>
<tr>
<td><strong>Prior authorisation and supervision</strong></td>
<td>No authorisation and no supervision.</td>
<td>No authorisation and no supervision.</td>
<td>Subject to approval by the CSSF. Permanent supervision by the CSSF.</td>
<td>Subject to approval by the CSSF. Permanent supervision by the CSSF.</td>
<td>Subject to approval by the CSSF. Permanent supervision by the CSSF.</td>
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<td>SOPARFI SECURIZATION COMPANY</td>
<td>SICAR</td>
<td>SIF</td>
<td>UCI</td>
<td>UCITS</td>
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<td><strong>Capital requirements</strong></td>
<td>Will depend on the legal form chosen.</td>
<td>EUR 1.000.000 to be reached not later than 12 months following the authorisation of the CSSF.</td>
<td>EUR 1.250.000 to be reached not later than 12 months following the authorisation of the CSSF.</td>
<td>EUR 1.250.000 to be reached not later than 6 months following the authorisation of the CSSF.</td>
<td>EUR 1.250.000 to be reached not later than 6 months following the authorisation of the CSSF.</td>
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<tr>
<td>SA / SCA : EUR 31.000</td>
<td>SA / SCA : EUR 31.000</td>
<td>EUR 1.250.000</td>
<td>EUR 1.250.000</td>
<td>EUR 1.250.000</td>
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<td>Sàrl : EUR 12.500</td>
<td>Sàrl : EUR 12.500</td>
<td>EUR 1.250.000</td>
<td>EUR 1.250.000</td>
<td>EUR 1.250.000</td>
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<tr>
<td>SCS, SNC, SC: no minimum share capital</td>
<td>SCS, SNC, SC: no minimum share capital</td>
<td>EUR 1.250.000</td>
<td>EUR 1.250.000</td>
<td>EUR 1.250.000</td>
<td>EUR 1.250.000</td>
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<tr>
<td><strong>Eligible investors</strong></td>
<td>Unrestricted.</td>
<td>Institutional investors and professional investors.</td>
<td>Professional investors or well-informed investors or an investor shall invest a minimum of EUR 125.000.</td>
<td>Unrestricted.</td>
<td>Unrestricted.</td>
<td></td>
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<tr>
<td><strong>Capital calls</strong></td>
<td>Partly paid shares are not allowed for Sàrl so capital calls must be organised through capital commitment. If the company is set up as a SA or SCA, capital calls can be organised through capital commitment or by way of the issue of partly paid shares (at least 25% of each shares).</td>
<td>Capital calls may be made by way of capital commitments or through the issue of partly paid shares (at least 5% of each shares).</td>
<td>Capital calls may be made by way of capital commitments or through the issue of partly paid shares (at least 5% of each shares).</td>
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<td>Capital calls may be made by way of capital commitments or through the issue of partly paid shares (at least 5% of each shares).</td>
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<tr>
<td><strong>Frequency of Net Asset Value (NAV) calculation</strong></td>
<td>Not required.</td>
<td>Not required.</td>
<td>NAV is computed on the frequency set in the Articles or Management regulations.</td>
<td>NAV must be calculated very day there are subscription / redemption orders and at least twice per month.</td>
<td>NAV must be calculated very day there are subscription / redemption orders and at least twice per month.</td>
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<tr>
<td><strong>Valuation principles</strong></td>
<td>Valuation of the assets is made at the lower of the acquisition costs or market value or at acquisition cost less permanent impairment considered by the Board.</td>
<td>Valuation of the assets is made on the basis of the fair value to be determined in compliance with the rules detailed in the Articles.</td>
<td>Valuation of the assets is made on the basis of the fair value to be determined in compliance with the rules detailed in the Articles or Management Regulations.</td>
<td>Valuation of the assets is made on the basis of the realisable value estimate, unless provided for differently in the Articles or Management Regulations.</td>
<td>Valuation of the assets is made on the basis of the realisable value estimate, unless provided for differently in the Articles or Management Regulations.</td>
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<tr>
<td><strong>Financial reports</strong></td>
<td>Financial statements should be available before the AGM of shareholders and filed within 7 months of the year-end. No Semi-annual financial statements is required.</td>
<td>Audited financial statements should be available before the AGM of shareholders and filed within 7 months of the year-end. No Semi-annual financial statements is required.</td>
<td>Audited financial statements are required within 6 months of the year-end. No Semi-annual financial statements is required.</td>
<td>Audited financial statements are required within 4 months of the year-end. Semi-annual (unaudited) financial statements is due within 2 months of the 6 month period-end.</td>
<td>Audited financial statements are required within 4 months of the year-end. Semi-annual (unaudited) financial statements is due within 2 months of the 6 month period-end.</td>
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<td>NON REGULATED</td>
<td>SECURIZATION COMPANY</td>
<td>REGULATED</td>
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<td>Audited financial statements is required within 4 months of the year-end.</td>
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<td>No Semi-annual financial statements is required.</td>
<td>No Semi-annual financial statements is required.</td>
<td>No Semi-annual (unaudited) financial statements is due within 2 months of the 6 month period-end.</td>
<td>No Semi-annual (unaudited) financial statements is due within 2 months of the 6 month period-end.</td>
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<tr>
<td><strong>Consolidation</strong></td>
<td>Required. May be exempt under certain conditions.</td>
<td>Not required.</td>
<td>No exemption granted.</td>
<td>Normally not required due to diversification requirements.</td>
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<tr>
<td><strong>Income tax</strong></td>
<td>SA/SCA/Sàrl 21% (Corporate income tax) and 6,75% (Municipal business tax in Luxembourg city) but tax exemption for (i) dividend, liquidation proceeds and capital gain derived from qualifying participations (ii) 80% on qualifying IP rights. Minimum flat tax of EUR 3,210. SCS, SCSp Tax exempt (except in limited cases).</td>
<td>SA/SCA/Sàrl 21% (Corporate income tax) and 6,75% (Municipal business tax in Luxembourg city) but tax exemption for (i) dividend, liquidation proceeds and capital gain derived from qualifying participations (ii) 80% on qualifying IP rights. Minimum flat tax of EUR 3,210. SCS, SCSp Tax exempt (except in limited cases).</td>
<td>Tax exempt.</td>
<td>Tax exempt.</td>
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<td><strong>Subscription tax</strong></td>
<td>Tax exempt.</td>
<td>Tax exempt.</td>
<td>0,01% of the NAV. May be exempt under certain conditions.</td>
<td>0,01% of NAV, except 0,05% of NAV for money market funds, cash funds and institutional funds. May be exempt under certain conditions.</td>
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<tr>
<td><strong>Withholding tax on dividend</strong></td>
<td>SA/SCA/Sàrl 15% but exemption for qualifying parent companies and reduction under tax treaties. SCS, SCSp Tax exempt.</td>
<td>Exempt except if EU savings directive applies</td>
<td>Exempt except if EU savings directive applies</td>
<td>Exempt except if EU savings directive applies</td>
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<tr>
<td><strong>Net worth tax</strong></td>
<td>Tax exempt.</td>
<td>Tax exempt.</td>
<td>Tax exempt.</td>
<td>Tax exempt.</td>
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<tr>
<td><strong>Value Added tax (VAT)</strong></td>
<td>No VAT exemption.</td>
<td>VAT exemption on management services.</td>
<td>VAT exemption on management services.</td>
<td>VAT exemption on management services.</td>
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<tr>
<td><strong>Double Taxation treaties (DTT)</strong></td>
<td>May benefits from the Luxembourg double tax treaty network (except for SCS and SCSp).</td>
<td>May benefits from the Luxembourg double tax treaty network (except for SCS and SCSp).</td>
<td>FCP No access to DTT (exception Ireland)</td>
<td>FCP No access to DTT (exception Ireland)</td>
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<td>SICAV/SICAF Limited to some DTTs.</td>
<td>SICAV/SICAF Limited to some DTTs.</td>
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duvieusart ebel, avocats associés, an independent and dynamic Luxembourg law firm, combines recognized experiences in corporate law, M&A, investments funds, private equity and international and domestic corporate taxation.

Our ever demanding client-base is mainly composed of investment fund managers, assets managers, family offices, private investors, entrepreneurs, banks and insurance companies, domestic and multinational companies, financial intermediaries, domestic and foreign correspondent law firms and domiciliation companies.

Our practices being in permanent evolution, we are member of various technical associations such as IFA (International Fiscal Association), ALFI (Luxembourg Investment funds’ association) and both partners are lecturers at the IFBL (Luxembourg Banks’ training institute).

We advise our clients on the formation of their investment vehicles or the structuring of cross-border transactions, always making a point in being responsive and proactive, and focused on delivering timely, pragmatic and commercially driven solutions.

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