

## Luxembourg Venture Capital / Private Equity Funds

In June 2004 Luxembourg introduced a law on venture capital/private equity funds: the *Société d'Investissement en Capital A Risque* (SICAR). This regime has attracted significant interest, and as of late May 2009 some 200 funds have been set up under it. Below we set out the main features of a SICAR and its operations.

### Definition

A SICAR is any company set up in Luxembourg subject to the principle of risk-spreading and accordingly qualifies as a UCI and that has specifically opted into the regime by mentioning the SICAR regime in its constitutive documents. A key characteristic is that a SICAR must make risk-bearing capital investments.

### Eligible Investors

SICARs are open only to well-informed investors. These are defined by law to be an institutional investor, a professional investor or any other investor who meets certain conditions.

### Investment Restrictions

The SICAR regime is designed for private equity/venture capital type investments that bear a significant amount of risk. Evaluation of the intended investments will be a key part of the CSSF authorisation process. Subject to that provision there are no further restrictions on the investments a SICAR can make in terms of geography or instruments (e.g. debt, equity, warrants etc). A SICAR is not subject to risk spreading requirements, meaning that it could be used to hold just a single asset.

### Legal Forms

A SICAR can be a common contractual fund (FCP) or of a corporate type.

### Authorisation and Supervision

SICARs are subject to supervision and prior authorisation by the Luxembourg regulator, the CSSF. When setting up a SICAR, the CSSF must approve both the prospectus and the choice of directors and custodian. However, it is not necessary to obtain this approval prior to launch, but it must be done in the month following the launch date.

There is no verification or authorisation of the promoter, the fund manager, investment advisor etc.

If the SICAR is structured as an FCP, then its management company must be authorised by the CSSF.

### Capital

Depending on its legal form, SICARs may be financed through a variety of equity, debt and hybrid instruments.

The subscribed share capital of any corporate type SICAR, increased by the share premium, must reach EUR 1 million no later than 12 months following the CSSF authorisation. Within the same timeframe, the net assets of a FCP-structured SICAR must reach EUR 1 million.

Redemptions of shares or units in an SICAR are not subject to any restrictions described in law other than that the minimum share capital or minimal net asset amount requirement of EUR 1 million remains fulfilled following cancellation of shares or units.

### Custodian, Auditor and Administrator

**Custodian** - A SICAR has to entrust the custody of its assets to a Luxembourg based custodian.

Custody of the assets is to be understood in the sense of "supervision" which implies that the custodian always knows how the assets of the SICAR are invested and where and how these assets are available.

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**Auditor** - The annual accounts of a SICAR must be audited by a Luxembourg independent auditor.

**Administrator** - A SICAR must have its central administration in Luxembourg. Central administration's responsibilities include calculation of the NAV and investor transactions. Typically, this is outsourced to a specialized local provider, such as Praxis Luxembourg S.A.

### Other Requirements

SICARs must publish a prospectus or similar offering document which requires approval from the CSSF.

SICARs must issue an annual report for each financial year within six months from the end of the financial year to which it relates. They are not required to publish semi-annual reports or prepare consolidated financial statements.

### Luxembourg Taxation

SICARs are exempt from Luxembourg income tax. SICARs are not subject to withholding tax on dividend distributions, liquidation proceeds, or interest payments save where the SICAR is structured as a FCP.

SICARs are subject to an annual subscription tax at a rate of 0.01%, calculated and payable in quarterly instalments on the basis of the total net asset value. Exempted from the calculation base for this tax is that portion of assets invested in other Luxembourg UCIs subject to this tax, certain institutional cash funds and pension pooling funds.

SICARs are qualified as a taxable person for VAT purposes.

### Investors Taxation

For foreign investors without a permanent establishment or permanent representative in Luxembourg profits derived from a SICAR are in principle not taxable in Luxembourg.

### Praxis Luxembourg SA Services

Praxis Luxembourg SA offers a full range of fund formation and administration services for SICARs that include:

- assistance/advice on set-up of the fund
- commitments, capitals and distributions
- subscriptions and redemptions
- investor due diligence
- restriction checking
- compliance
- provision of directors
- calculation of net asset value
- preparation of financial statements
- fee and expense calculation and payment
- regulatory and statutory returns
- board meetings and minutes
- subscription tax returns and payment

In addition, if the fund requires underlying Luxembourg special purpose vehicles for tax or other reasons Praxis Luxembourg will be able to provide a full package of services to these as well.

### Contact

To find out how Praxis can assist you with fund formation and administration contact: Robert Kimmels at robert.kimmels@praxisgroup.lu, telephone +352 621 285 607 or Chris Gambrell at chris.gambrell@pfs.gg, telephone +44 (0) 1481 737684.