

## **Law of 15 June 2004 relating to the investment company in risk capital (SICAR)**

### **Law of 15 June 2004 relating to the investment company in risk capital ("SICAR") and amending**

- the Law of 4 December 1967 on income tax, as amended
- the Law of 16 October 1934 on wealth tax, as amended
- the Law of 1 December 1936 on business tax, as amended
- the Law of 12 February 1979 on value added tax, as amended
- the Law of 20 December 2002 relating to undertakings for collective investment.

(Mém. A 2004, No 95)

as amended by:

- the Law of 10 July 2005 on prospectuses for securities and
  - implementing Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC;
  - amending the Law of 23 December 1998 creating a commission for supervision of the financial sector;
  - amending the Law of 23 December 1998 on the supervision of securities markets;
  - amending the Law of 30 March 1988 concerning undertakings for collective investment;
  - amending the Law of 20 December 2002 concerning undertakings for collective investment;
  - amending the Law of 15 June 2004 relating to the investment company in risk capital (SICAR);
  - amending the Law of 10 August 1915 on commercial companies;

(Mém. A 2005, No 98)
- the Law of 24 October 2008 improving the legislative framework of the Luxembourg financial centre and amending
  - the provisions concerning mortgage bonds in the Law of 5 April 1993 on the financial sector, as amended;
  - the Law of 15 June 2004 relating to the investment company in risk capital (SICAR), as amended;
  - the Law of 23 December 1998 creating a commission for supervision of the financial sector, as amended;
  - the Law of 23 December 1998 relating to the monetary status and to the *Banque centrale du Luxembourg* (Luxembourg Central Bank), as amended;
  - the Law of 6 December 1991 on the insurance sector, as amended;

(Mém. A 2008, No 161)
- the Law of 19 December 2008
  - revising the regime applicable to certain company acts as regards registration taxes
  - implementing Council Directive 2008/7/EC of 12 February 2008 concerning indirect taxes on the raising of capital
  - amending:
    - the Law of 7 August 1920 increasing registration taxes, stamp duties, inheritance taxes, etc., as amended
    - the Law of 20 December 2002 concerning undertakings for collective investment, as amended
    - the Law of 22 March 2004 on securitisation
    - the Law of 15 June 2004 relating to the investment company in risk capital (SICAR), as amended
    - the Law of 13 July 2005 on institutions for occupational retirement provision in the form of a SEPCAV and an ASSEP, as amended
    - the Law of 13 February 2007 relating to specialised investment funds
  - and repealing the Law of 29 December 1971 concerning the tax on the raising of capital in companies governed by civil law or commercial law and revising certain legal provisions on the collection of registration taxes, as amended;

(Mém. A 2008, No 207)
- the Law of 18 December 2009 concerning the audit profession and:
  - transposing Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC,
  - on the organisation of the audit profession,
  - amending divers other statutory provisions, and

- repealing the Law of 28 June 1984 on the organisation of the profession of company auditors, as amended;  
(Mém. A 2010, No 22)
- the Law of 21 December 2012 transposing Directive 2010/78/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 98/26/EC, 2002/87/EC, 2003/6/EC, 2003/41/EC, 2003/71/EC, 2004/39/EC, 2004/109/EC, 2005/60/EC, 2006/48/EC, 2006/49/EC and 2009/65/EC in respect of the powers of the European Supervisory Authority (European Banking Authority), the European Supervisory Authority (European Insurance and Occupational Pensions Authority) and the European Supervisory Authority (European Securities and Markets Authority) and amending:
  1. the Law of 6 December 1991 on the insurance sector, as amended;
  2. the Law of 5 April 1993 on the financial sector, as amended;
  3. the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
  4. the Law of 22 March 2004 on securitisation, as amended;
  5. the Law of 15 June 2004 relating to the investment company in risk capital (SICAR), as amended;
  6. the Law of 10 July 2005 on prospectuses for securities, as amended;
  7. the Law of 13 July 2005 on institutions for occupational retirement provision in the form of a SEPCAV and an ASSEP, as amended;
  8. the Law of 9 May 2006 on market abuse, as amended;
  9. the Law of 13 February 2007 relating to specialised investment funds, as amended;
  10. the Law of 13 July 2007 on markets in financial instruments, as amended;
  11. the Law of 11 January 2008 on transparency requirements for issuers of securities, as amended;
  12. the Law of 10 November 2009 on payment services, as amended;
  13. the Law of 17 December 2010 relating to undertakings for collective investment;  
(Mém. A 2012, No 275)
- the Law of 12 July 2013 on alternative investment fund managers and
  - transposing Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010;
  - amending:
    - the Law of 17 December 2010 relating to undertakings for collective investment, as amended;
    - the Law of 13 February 2007 relating to specialised investment funds, as amended;
    - the Law of 15 June 2004 relating to the investment company in risk capital (SICAR), as amended;
    - the Law of 13 July 2005 on institutions for occupational retirement provision in the form of a SEPCAV and an ASSEP, as amended;
    - the Law of 13 July 2005 on the activities and supervision of institutions for occupational retirement provision;
    - the Law of 5 April 1993 on the financial sector, as amended;
    - the Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended;
    - the Law of 23 December 1998 establishing a financial sector supervisory commission ("Commission de surveillance du secteur financier"), as amended;
    - the Law of 10 August 1915 on commercial companies, as amended;
    - the Law of 19 December 2002 on the trade and companies register and the accounting practices and annual accounts of undertakings, as amended;
    - the Commercial Code;
    - the Law of 4 December 1967 on income tax, as amended;
    - the Law of 1 December 1936 on business tax, as amended;
    - the Law of 16 October 1934 on fiscal adjustment, as amended;
    - the Law of 16 October 1934 on the valuation of assets and values, as amended;
    - the Law of 12 February 1979 on value added tax, as amended;  
(Mém. A 2013, No 119)
- the Law of 18 December 2015 amending:
  - the Law of 4 December 1967 on income tax, as amended;
  - the Law of 16 October 1934 on wealth tax, as amended;
  - the Law of 22 March 2004 on securitisation, as amended;
  - the Law of 15 June 2004 relating to the investment company in risk capital (SICAR), as amended;
  - the Law of 13 July 2005 on institutions for occupational retirement provision in the form of a SEPCAV and an ASSEP, as amended;  
(Mém. A 2015, No 245)
- the Law of 27 May 2016 amending, with the view of reforming the legal publication regime regarding companies and associations,
  - the Law of 19 December 2002 on the trade and companies register and the accounting practices and annual accounts of undertakings, as amended;
  - the Law of 10 August 1915 on commercial companies, as amended;
  - the Law of 21 April 1928 on non-profit organisations, as amended;

- the Grand-ducal decree of 24 May 1935 supplementing the legislation on suspension of payments, on composition with creditors to prevent bankruptcy by establishing a controlled management regime, as amended;
  - the Grand-ducal decree of 17 September 1945 revising the Law of 27 March 1900 on the organisation of agricultural associations, as amended;
  - the Law of 24 March 1989 relating to Banque et Caisse d'Épargne de l'Etat, Luxembourg, as amended;
  - the Law of 25 March 1991 on economic interest groupings, as amended;
  - the Law of 25 March 1991 on diverse implementing measures of Council Regulation (EEC) No 2137/85 of 25 July 1985 on the European Economic Interest Grouping (EEIG), as amended;
  - the Law of 17 June 1992 relating to the annual and consolidated accounts of credit institutions, as amended;
  - the Law of 8 December 1994 relating to: - the annual and consolidated accounts of insurance and reinsurance undertakings governed by the laws of Luxembourg - the obligations in relation to the drawing-up and publication of accounting documents of branches of insurance undertakings governed by foreign laws, as amended;
  - the Law of 31 May 1999 governing the domiciliation of companies, as amended;
  - the Law of 22 March 2004 on securitisation, as amended;
  - the Law of 15 June 2004 relating to the investment company in risk capital (SICAR), as amended;
  - the Law of 13 July 2005 on institutions for occupational retirement provision in the form of a SEPCAV and an ASSEP, as amended;
  - the Law of 13 February 2007 relating to specialised investment funds, as amended;
  - the Law of 10 November 2009 on payment services, as amended;
  - the Law of 17 December 2010 relating to undertakings for collective investment, as amended;
  - the Law of 7 December 2015 on the insurance sector;
  - the Law of 18 December 2015 on the failure of credit institutions and certain investment firms;  
(Mém. A 2016, No 94)
- the Law of 21 July 2023 amending:
1. the Law of 15 June 2004 relating to the investment company in risk capital (SICAR), as amended;
  2. the Law of 13 February 2007 relating to specialised investment funds, as amended;
  3. the Law of 17 December 2010 relating to undertakings for collective investment, as amended;
  4. the Law of 12 July 2013 on alternative investment fund managers, as amended;
  5. the Law of 23 July 2016 on reserved alternative investment funds.  
(Mém. A 2023, No 442)

**“Part I – General provisions applicable to investment companies in risk capital”**

**Chapter I: General provisions**

**Article 1.** (1) For the purpose of this law, a *société d’investissement en capital à risque* (investment company in risk capital), in abbreviation “SICAR”, shall be any company:

- that has adopted the legal form of a *société en commandite simple* (limited partnership), “*société en commandite spéciale* (special limited partnership),”<sup>1</sup> a *société en commandite par actions* (partnership limited by shares), a *société coopérative organisée sous forme de société anonyme* (cooperative company organised as a public limited company), a *société à responsabilité limitée* (private limited liability company) or a *société anonyme* (public limited company) governed by Luxembourg law, and
- whose object is to invest its assets in securities representing risk capital in order to ensure for its investors the benefit of the result of the management of its assets in consideration for the risk which they incur, and
- the securities “or partnership interests”<sup>2</sup> of which are reserved to well-informed investors as defined in Article 2 of this law, and
- the articles of incorporation “or the partnership agreement”<sup>3</sup> of which provide that it is subject to the provisions of this law.

(2) Investment in risk capital means the direct or indirect contribution of assets to entities in view of their launch, development or listing on a stock exchange.

(3) The registered office and the head office of a Luxembourg SICAR must be situated in Luxembourg.

**“Article 2.** Within the meaning of this law, a well-informed investor shall be an institutional investor, a professional investor “within the meaning of Annex II to Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments and amending Directive 2002/92/EC and Directive 2011/61/EU, hereafter “Directive 2014/65/UE” “<sup>4</sup> or any other investor who meets the following conditions:

- 1) he has confirmed in writing that he adheres to the status of well-informed investor and
- 2) he invests a minimum of “EUR 100,000”<sup>5</sup> in the company, or
- “3) he has been the subject of an assessment made by a credit institution within the meaning of Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and amending Regulation (EU) No 648/2012, by an investment firm within the meaning of Directive 2014/65/EU, by a management company within the meaning of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) or by an authorised AIFM within the meaning of Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010, hereafter “Directive 2011/61/EU”, certifying his expertise, his experience and his knowledge to adequately appraise an investment in the SICAR.”<sup>6</sup>

The conditions set forth in this article do not apply to directors<sup>7</sup> and other persons taking part in the management of the SICAR.”<sup>8</sup>

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<sup>1</sup> Law of 12 July 2013

<sup>2</sup> Law of 12 July 2013

<sup>3</sup> Law of 12 July 2013

<sup>4</sup> Law of 21 July 2023

<sup>5</sup> Law of 21 July 2023

<sup>6</sup> Law of 21 July 2023

<sup>7</sup> *Dirigeants*

<sup>8</sup> Law of 24 October 2008

(Law of 21 July 2023)

"The SICAR shall have the necessary means in order to ensure compliance with the conditions set out in the first subparagraph."

(Law of 12 July 2013)

**"Article 2a.** The provisions of this part shall apply to all SICARs, unless there is a derogation under the specific provisions of Part II of this law which applies to SICARs whose management falls under an AIFM authorised under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers or Chapter II of Directive 2011/61/EU."

**"Article 3.** (1) SICARs are subject to the general provisions applicable to commercial companies, as far as it is not waived by this law.

(Law of 12 July 2013)

"Where the articles of incorporation or the partnership agreement of a SICAR and any amendment to them are recorded in a notarial deed, the latter shall be drawn up in French, German or English as the appearers choose. By way of derogation from the provisions of the decree of 24 Prairial, year XI, where the notarial deed is drawn up in English, the requirement to append a translation in one of the official languages when it is registered is not applicable. This requirement neither applies to the other deeds recorded in notarial form, such as notarial deeds drawing up reports of shareholders' or partners' meetings of a SICAR or recording a merger project regarding a SICAR.

The place and the way in which the SICAR shall make available the annual accounts, as well as the report of the *réviseur d'entreprises agréé* (approved statutory auditor), the management report and, where applicable, the observations of the supervisory board or any other information which shall be made available to investors shall be determined in the articles of incorporation or in the partnership agreement of the SICAR or, failing that, in the convening to the annual general meeting. Each investor may request that these documents be sent to him.

The convening to the general meetings of the investors of a SICAR may require that the quorum in the general meeting be determined according to the securities or partnership interests issued at midnight (Luxembourg time) on the fifth day prior to the general meeting (referred to as "Record Date"). The investors' rights to participate in the general meeting and to exercise the voting right attached to their securities or partnership interests shall be determined according to the securities or partnership interests held by each investor at the Record Date."

(2) SICARs may include multiple compartments, each compartment corresponding to a distinct part of the SICAR's assets and liabilities.

(3) The constitutional documents of the SICAR must expressly provide for that possibility and the applicable operational rules. The prospectus must describe the investment policy of each compartment.

(4) The securities "or partnership interests" of SICARs with multiple compartments may be of different value with or without indication of a par value.

(5) The rights of investors and of creditors concerning a compartment or which have arisen in connection with the creation, operation or liquidation of a compartment are limited to the assets of that compartment unless a clause included in the constitutional documents provides otherwise.

The assets of a compartment are exclusively available to satisfy the rights of investors in relation to that compartment and the rights of creditors whose claims have arisen in connection with the creation, the operation or the liquidation of that compartment unless a clause included in the constitutional documents provides otherwise.

For the purpose of the relations between investors, each compartment will be deemed to be a separate entity, unless a clause included in the constitutional documents provides differently.

(6) Each compartment of a SICAR may be separately liquidated without such separate liquidation resulting in the liquidation of another compartment. Only the liquidation of the last remaining compartment of a SICAR will result in the liquidation of the company as referred to in Article 21(1) of this law."<sup>9</sup> "In this case, as soon as the event giving rise to liquidation of the SICAR occurs, the issue of securities or partnership interests shall be prohibited, under penalty of nullity, except for the purpose of liquidation."<sup>10</sup>

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<sup>9</sup> Law of 24 October 2008

<sup>10</sup> Law of 21 July 2023

(Law of 21 July 2023)

"(7) The authorisation of a compartment of a SICAR and the maintaining of this authorisation shall be subject to observance of all legislative, regulatory or statutory provisions relating to its organisation and operation. The withdrawal of the authorisation of a compartment shall not give rise to the withdrawal of the SICAR from the list referred to in Article 13(1)".

**Article 4.** "(1) The subscribed capital of the SICAR, increased, where applicable, by the share premium, or the value of the amount constituting partnership interests shall not be less than EUR 1 million. This minimum must be reached within a period of "twenty-four" <sup>11</sup> months following the authorisation of the company. A grand-ducal regulation may increase such minimum amount up to a maximum of EUR 2 million."<sup>12</sup>

(2) (...) <sup>13</sup> *Sociétés en commandite par actions* (partnerships limited by shares), *sociétés à responsabilité limitée* (private limited liability companies), *sociétés anonymes* (public limited companies) and *sociétés coopératives organisées comme sociétés anonymes* (cooperative companies organised as a public limited company) covered by this law may foresee in their articles of incorporation that the share capital amount is always equal to the total net assets."<sup>14</sup> In such case, variations in the capital shall be effected *ipso jure* and without compliance with measures regarding publication and entry in the trade and companies register.

(...)<sup>15</sup>

**Article 5.** (1) The SICAR can issue new securities "or partnership interests"<sup>16</sup> in accordance with the conditions and procedures set forth in the articles of incorporation "or partnership agreement"<sup>17</sup>.

(2) The share capital of a *société en commandite par actions* (partnership limited by shares), a *société anonyme* (public limited company), a *société à responsabilité limitée* (private limited liability company) and a *société coopérative organisée sous forme de société anonyme* (cooperative company organised as a public limited company), subject to this law, must be entirely subscribed, and at least 5% of each share must be paid-up in cash or by means of a contribution other than cash.

(3) "The valuation of the assets of the company is based on the fair value."<sup>18</sup> Such value must be determined in accordance with the rules set forth in the articles of incorporation "or partnership agreement"<sup>19</sup>.

(Law of 21 July 2023)

"(4) The issue and repurchase of securities or partnership interests shall be prohibited:

- a) during the period in which the SICAR does not have a depositary;
- b) where the depositary is put into liquidation or declared bankrupt or seeks an arrangement with creditors, a suspension of payment or a controlled management or is the subject of similar proceedings.

(5) In the interests of investors, repurchases may be suspended by the CSSF if the legislative, regulatory or statutory provisions concerning the activity and operation of the SICAR are no longer observed."

**Article 6.** (1) SICARs shall not be obliged to create a legal reserve.

(2) Repayments and distribution of dividends to investors are not subject to any restrictions other than those set forth in the articles of incorporation "or partnership agreement"<sup>20</sup>.

(3) SICARs are not subject to any rules in respect of payment of interim dividends other than those set forth in their articles of incorporation "or partnership agreement"<sup>21</sup>.

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<sup>11</sup> Law of 21 July 2023

<sup>12</sup> Law of 12 July 2013

<sup>13</sup> Law of 12 July 2013

<sup>14</sup> Law of 24 October 2008

<sup>15</sup> Law of 12 July 2013

<sup>16</sup> Law of 12 July 2013

<sup>17</sup> Law of 12 July 2013

<sup>18</sup> Law of 24 October 2008

<sup>19</sup> Law of 12 July 2013

<sup>20</sup> Law of 12 July 2013

<sup>21</sup> Law of 12 July 2013

**Article 7.** For companies falling within the scope of this law, the denomination "or the name"<sup>22</sup> of the company followed or not by the words "*société en commandite simple*" (limited partnership), "*société en commandite spéciale*," (special limited partnership)<sup>23</sup> "*société en commandite par actions*" (partnership limited by shares), "*société à responsabilité limitée*" (private limited liability company), "*société anonyme*" (public limited company) or "*société coopérative organisée sous forme de société anonyme*" (cooperative company organised as a public limited company) shall be supplemented by the words "*société d'investissement en capital à risque*" (investment company in risk capital), in abbreviated form: "SICAR".<sup>24</sup>

(Law of 12 July 2013)

**Article 7a.** (1) SICARs shall be structured and organised so that the risk of conflicts of interest between the SICAR and, where applicable, any person contributing to the activities of the SICAR or any person directly or indirectly linked to the SICAR is minimised and does not harm the interests of the investors. In case of possible conflicts of interests, the SICAR shall protect investors' interests.

(2) The implementing procedures of paragraph 1 shall be laid down in a CSSF regulation."

## Chapter II: The depositary

(Law of 12 July 2013)

**Article 8.** (1) The custody of the assets of a SICAR must be entrusted to a depositary.

(2) The depositary must either have its registered office in Luxembourg or be established in Luxembourg if its registered office is in another State.

(3) Without prejudice to the provision laid down in the second subparagraph of this paragraph, the depositary shall be a credit institution or an investment firm within the meaning of the Law of 5 April 1993 on the financial sector, as amended. An investment firm shall only be eligible as a depositary if this investment firm fulfils the conditions laid down in Article 19(3) of the Law of 12 July 2013 on alternative investment fund managers.

For SICARs which have no redemption rights exercisable during a period of 5 years from the date of the initial investments and which, in accordance with their core investment policy, generally do not invest in assets that must be held in custody in accordance with Article 19(8)(a) of the Law of 12 July 2013 on alternative investment fund managers or generally invest in issuers or non-listed companies in order to potentially acquire control over such companies in accordance with Article 24 of said law, the depositary may also be an entity incorporated under Luxembourg law which has the status of professional depositary of assets other than financial instruments within the meaning of Article 26-1 of the Law of 5 April 1993 on the financial sector, as amended.

(4) The depositary's liability shall not be affected by the fact that it has entrusted all or some of the assets in its custody to a third party."

**Article 9.** (1) In carrying out its duties, the depositary must act independently and solely in the interest of the investors.

(2) The depositary shall be liable in accordance with Luxembourg law to the company and to investors for any loss suffered by them as a result of its wrongful failure to perform its obligations or its wrongful improper performance thereof.

(3) The liability to investors shall be invoked through the SICAR. Should the company fail to act despite a written notice to that effect from an investor within a period of three months following receipt of such a notice, the investor may directly invoke the liability of the depositary.

**Article 10.** The duties of the depositary regarding the SICAR shall cease, respectively:

- a) in the case of voluntary withdrawal of the depositary or of its removal by the company under the conditions provided for in the contract for the appointment of the depositary. The contract shall provide for a period of notice allowing the replacement of the depositary. Where no new depositary has been appointed at the expiry of the period of notice, the CSSF shall withdraw the SICAR from the list provided for in Article 13(1). The institution which last acted in its capacity as depositary shall take all necessary steps for the good preservation of the interests of the investors, including the obligation to maintain or open all the accounts

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<sup>22</sup> Law of 12 July 2013

<sup>23</sup> Law of 12 July 2013

<sup>24</sup> Law of 24 October 2008

necessary for the safekeeping of the different assets of the SICAR up to the closure of the liquidation of the SICAR”<sup>25</sup>

- b) where the SICAR or the depositary has been declared bankrupt, has entered into a composition with creditors, has obtained a suspension of payment, has been put under court-controlled management or has been the subject of similar proceedings or has been put into liquidation;
- c) where the supervisory authority withdraws its authorisation of the SICAR or the depositary;
- d) in all other cases provided for in the articles of incorporation “or partnership agreement”<sup>26</sup>.

### Chapter III: Authorisation and supervision

**Article 11.** (1) The authority which is to carry out the supervision of SICARs is the Commission de Surveillance du Secteur Financier, hereafter the “CSSF”.

(2) The CSSF carries out its duties exclusively in the public interest.

(3) The CSSF ensures that SICARs and their *directors*<sup>27</sup> comply with the applicable legal and contractual rules.

**Article 12.** (1) SICARs subject to this law must, in order to carry out their activities, be authorised “beforehand”<sup>28</sup> by the CSSF.

(2) A SICAR shall be authorised only if the CSSF has approved its constitutional documents and the choice of the depositary.

(3) The directors of the SICAR and of the depositary must be of sufficiently good repute and have sufficient experience for performing their functions. “Directors” shall mean, in the case of *sociétés en commandite par actions* (partnerships limited by shares), *sociétés en commandite simple* (limited partnerships) and *sociétés en commandite spéciale* (special limited partnerships), the managers whether or not they are general partners, in the case of *sociétés anonymes* (public limited companies) and *sociétés coopératives organisées sous forme de société anonyme* (cooperative companies organised as a public limited company), the members of the board of directors or the management board, and in the case of *sociétés à responsabilité limitée* (private limited liability companies), the managers. The appointment of the directors and of any person succeeding them in office, shall be subject to approval by the CSSF.”<sup>29</sup>

(Law of 21 July 2023)

“(3a) Besides the conditions of paragraphs 2 and 3, the authorisation under paragraph 1 shall be subject to the communication to the CSSF of the identity of the persons in charge of the investment portfolio management. These persons shall be of sufficiently good repute and have sufficient experience in view of the type of SICAR.

The appointment of the persons referred to in the first subparagraph and any person succeeding them in office shall be subject to approval by the CSSF.”

(4) The replacement of the depositary or of a director and the amendment of the constitutional documents of the SICAR are subject to the approval by the CSSF.

(5) The authorisation is subject to justifying that the central administration of the SICAR is situated in Luxembourg.

(Law of 21 July 2023)

“(6) The authorisation granted under paragraph 1 implies that SICARs shall spontaneously submit to the CSSF a complete, consistent and understandable written notification of all changes concerning the substantial information on which the CSSF based itself to process the authorisation request and all changes concerning the directors referred to in paragraph 3 and the persons in charge of the investment portfolio management referred to in paragraph 3a.”

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<sup>25</sup> Law of 21 July 2023

<sup>26</sup> Law of 12 July 2013

<sup>27</sup> *Dirigeants*

<sup>28</sup> Law of 21 July 2023

<sup>29</sup> Law of 21 July 2023



(Law of 21 July 2023)

**"Article 12a.** SICARs subject to this law shall be authorised to delegate to third parties for the purpose of a more efficient conduct of their business the power to carry out on their behalf one or more of their own functions, where the following conditions are fulfilled:

- a) the CSSF is informed in an appropriate manner;
- b) the mandate does not prevent the effectiveness of supervision of the SICAR, and, in particular, does not prevent the SICAR from acting, or from being managed, in the best interests of investors;
- c) where the delegation concerns investment portfolio management, the mandate may only be given to natural or legal persons authorised or registered for the purpose of investment portfolio management and subject to prudential supervision. Where the mandate has been given to a third-country natural or legal person subject to prudential supervision, the cooperation between the CSSF and the supervisory authority of this third country is ensured.
- d) where the conditions of letter c) are not fulfilled, the delegation may only become effective if the CSSF approves the choice of the natural or legal person to which the functions will be delegated. In the latter case, these persons shall be of sufficiently good repute and have sufficient experience in view of the type of SICAR concerned.
- e) the directors of the SICAR are able to establish that the natural or legal person to which the functions will be delegated is qualified and capable to carry out these functions and that sufficient due diligence has been carried out for its selection;
- f) measures exist which enable the directors of the SICAR to effectively and at all times monitor the delegated activity;
- g) the mandate does not prevent the directors of the SICAR to give at any time instructions to the natural or legal person to which the functions are delegated and to withdraw the mandate with immediate effect to protect the interest of investors;
- h) no mandate relating to the main function of investment management is given to the depositary;
- i) the prospectus of the SICAR states the delegated functions."

**Article 13.** (1) Authorised SICARs shall be entered by the CSSF on a list. Such entry shall be tantamount to authorisation and shall be notified by the CSSF to the SICAR concerned. Applications for entry must be filed with the CSSF within the month following the constitution or formation of the SICAR. The said list and any amendments made thereto shall be published in the Mémorial by the CSSF.

(2) The entering and the maintaining on the list referred to in paragraph 1 shall be subject to observance of all legislative, regulatory or contractual provisions relating to the organisation and operation of the SICARs.

(3) (...) <sup>30</sup>

(Law of 12 July 2013)

**"Article 14.** The fact that a SICAR is entered on the list referred to in Article 13(1) shall not, under any circumstances, be described in any way whatsoever as a positive assessment made by the CSSF of the soundness or of the economic, financial or legal structure of an investment in the SICAR, of the quality of the securities or partnership interests or of the solvency of the SICAR."

**Article 15.** "(1) Any person who works or who has worked for the CSSF, as well as the *réviseurs d'entreprises agréés* (approved statutory auditors) or experts instructed by the CSSF, shall be bound by the obligation of professional secrecy provided for by Article 16 of the Law of 23 December 1998 creating a commission for the supervision of the financial sector, as amended. Such secrecy implies that no confidential information which they may receive in the course of their professional duties may be divulged to any person or authority whatsoever, save in summary or aggregate form such that SICARs and depositaries cannot be individually identified, without prejudice to cases covered by criminal law."<sup>31</sup>

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<sup>30</sup> Law of 10 July 2005

<sup>31</sup> Law of 18 December 2009

(2) Paragraph 1 shall not prevent the CSSF from exchanging information with the supervisory authorities of the other Member States of the European Union within the limits provided by this law.

The CSSF shall closely cooperate with the supervisory authorities of other Member States of the European Union for the purpose of the fulfilment of their duty of supervision of SICARs and other investment companies in risk capital and shall communicate for that sole purpose all required information.

The supervisory authorities of countries other than Member States of the European Union which are party to the Agreement on the European Economic Area are assimilated to the supervisory authorities of the Member States of the European Union within the limits provided by that Agreement and the instruments relating thereto.

(3) Paragraph 1 shall not prevent the CSSF from exchanging information with:

- authorities of third countries with public responsibilities for the supervision of investment companies in risk capital;
- the other authorities, bodies and persons referred to in paragraph 5, with the exception of central credit registers, when they are established in third countries;
- the authorities of third countries referred to in paragraph 6.

The communication of information by the CSSF authorised by this paragraph is subject to the following conditions:

- the transmitted information must be required for the purpose of performing the supervisory duty of the recipient authorities, bodies and persons;
- information received shall be subject to the professional secrecy of the recipient authorities, bodies or persons and the professional secrecy of such authorities, bodies or persons must offer guarantees at least equivalent to the professional secrecy of the CSSF;
- the authorities, bodies or persons which receive information from the CSSF may only use such information for the purposes for which it has been communicated to them and must be able to ensure that no other use can be made therewith;
- the authorities, bodies or persons which receive information from the CSSF grant the same right of information to the CSSF;
- the CSSF may only disclose information received from EU authorities responsible for the prudential supervision of investment companies in risk capital with the express agreement of such authorities and, where appropriate, solely for the purposes for which those authorities gave their agreement.

For the purpose of this paragraph third countries are countries other than those referred to in paragraph 2.

(4) Where the CSSF receives confidential information under paragraphs 2 and 3, it may use it only in the course of its duties:

- to check that the conditions governing the taking-up of the business of SICARs and depositaries are met and to facilitate the monitoring of the conduct of that business, of administrative and accounting procedures and of internal control mechanisms; or
- to impose penalties; or
- in administrative actions against decisions taken by the CSSF; or
- in legal proceedings brought against decisions refusing to grant authorisation or withdrawing such authorisation.

(5) Paragraphs 1 to 4 shall not preclude:

a) the exchange of information within the European Union between the CSSF and:

- authorities with public responsibility for the supervision of credit institutions, investment firms, insurance undertakings and other financial organisations and the authorities responsible for the supervision of financial markets;
- bodies involved in the liquidation, bankruptcy or other similar proceedings concerning investment companies in risk capital and depositaries;

- persons responsible for carrying out statutory audits of the accounts of credit institutions, investment firms, other financial institutions or insurance undertakings, in the performance of their functions.
- b) the disclosure by the CSSF within the European Union to bodies, which administer investor compensation schemes or central credit registers, of information necessary for the performance of their functions.

The communication of information by the CSSF authorised by this paragraph is subject to the condition that such information is covered by the professional secrecy of the authorities, bodies or persons receiving the information and is only authorised to the extent the professional secrecy of such authorities, bodies or persons offers guarantees at least equivalent to the professional secrecy of the CSSF. In particular, authorities which receive information from the CSSF may only use such information for the purposes for which it has been communicated and must be able to ensure that no other use can be made therewith.

Countries other than Member States of the European Union which are party to the Agreement on the European Economic Area are assimilated to the Member States of the European Union within the limits provided by that Agreement and the instruments relating thereto.

(6) Paragraphs 1 and 4 do not prevent exchanges of information within the European Union between the CSSF and:

- the authorities responsible for overseeing the bodies involved in the liquidation, bankruptcy or other similar proceedings concerning credit institutions, investment firms, insurance undertakings, investment companies in risk capital and depositaries;
- the authorities responsible for overseeing persons entrusted with the carrying out of statutory audits of the accounts of credit institutions, investment firms, insurance undertakings and other financial institutions.

The communication of information by the CSSF authorised by this paragraph is subject to the following conditions:

- the transmitted information is intended to be used for the purpose of performing the supervisory duty of the authorities which receive the information;
- information received shall be subject to the professional secrecy of the authorities which receive the information and the professional secrecy of such authorities must offer guarantees at least equivalent to the professional secrecy of the CSSF;
- the authorities which receive information from the CSSF may only use such information for the purposes for which it has been communicated to them and must be able to ensure that no other use can be made therewith;
- the CSSF may only disclose information received from supervisory authorities referred to in paragraphs 2 and 3 with the express agreement of such authorities and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Countries other than Member States of the European Union which are party to the Agreement on the European Economic Area are assimilated to the Member States of the European Union within the limits provided by that Agreement and the instruments relating thereto.

(7) This article shall not prevent the CSSF from transmitting to central banks and other bodies with a similar function in their capacity as monetary authorities information intended for the performance of their duties.

The communication of information by the CSSF authorised by this paragraph is subject to the condition that such information is covered by the professional secrecy of the authorities which receive the information and is only authorised to the extent the professional secrecy of such authorities offers guarantees at least equivalent to the professional secrecy of the CSSF. In particular, authorities which receive information from the CSSF may only use such information for the purposes for which it has been communicated and must be able to ensure that no other use can be made therewith.

This article shall furthermore not prevent the authorities or bodies referred to in this paragraph from communicating to the CSSF such information as it may need for the purposes of paragraph 4. Information received by the CSSF shall be subject to its professional secrecy.

(8) This article shall not prevent the CSSF from communicating the information referred to in paragraphs 1 to 4 to a clearing house or other similar body recognised under the law for the provision

of clearing or contractual settlement services on one of the Luxembourg markets, if the CSSF considers it is necessary to communicate such information in order to ensure the proper functioning of those bodies in relation to defaults or potential defaults by a market participant.

The communication of information by the CSSF authorised by this paragraph is subject to the condition that such information is covered by the professional secrecy of the recipient bodies, and is only authorised to the extent the professional secrecy of such bodies offers guarantees at least equivalent to the professional secrecy of the CSSF. In particular, bodies which receive information from the CSSF may only use such information for the purposes for which it has been communicated and must be able to ensure that no other use can be made therewith.

The information received by the CSSF pursuant to paragraphs 2 and 3 may not be disclosed in the circumstances referred to in this paragraph without the express agreement of the supervisory authorities which have disclosed such information to the CSSF.

(Law of 12 July 2013)

**Article 16.** (1) The decisions to be adopted by the CSSF in implementation of this law shall state the reasons on which they are based and, unless the delay entails risks, they shall be adopted after preparatory proceedings at which all parties are able to state their case. They shall be notified by registered letter or delivered by bailiff.

(2) The decisions by the CSSF concerning the granting, refusal or withdrawal of the authorisations provided for in this law and the decisions by the CSSF concerning fines imposed pursuant to Article 17 of this law may be referred to the *Tribunal administratif* (Administrative Tribunal) which deals with the substance of the case. The action shall be filed within one month from the notification of the challenged decision, or else shall be time barred."

**Article 17.** (1) The directors of SICARs, as well as the liquidators in the case of voluntary liquidation of a SICAR, may have imposed upon them by the said authority a fine of fifteen to five hundred euro in the event of their refusing to provide the financial reports and the requested information or where such documents prove to be incomplete, inaccurate or false, and in the event of any infringement of Article 23 of this law or in the event of any other serious irregularity being discovered.

(2) The same fine may be imposed upon any person who infringes the provisions of Article 14.

#### Chapter IV: Dissolution and liquidation

**Article 18.** The decision of the CSSF withdrawing a SICAR from the list provided for in Article 13 shall, as from the notification thereof to such company and at its expense, "until the judgement ordering the liquidation provided for under Article 19(1)"<sup>32</sup>, *ipso jure* entail for such company suspension of any payment by said company and prohibition for such company to take any measures other than protective measures, such other measures being null and void except when taken with the authorisation of the supervisory commissioner<sup>33</sup>. "The office of supervisory commissioner shall be held by one or several supervisory commissioners appointed by the judge presiding over the District Court dealing with commercial matters acting on the CSSF's request. The request shall be introduced according to the procedure applicable to summary proceedings with the Court in the district in which the SICAR has its registered office. The supervisory commissioners shall have the appropriate knowledge and professional experience concerning the type and the investment strategies of the SICARs concerned. The CSSF shall hold, *ipso jure*, the office of supervisory commissioner pending the appointment of the supervisory commissioner(s) by the Court."<sup>34</sup>.

(...)<sup>35</sup>

(...)<sup>36</sup>

The written authorisation of the supervisory commissioners is required for all measures and decisions of the SICAR and, failing such authorisation, they shall be void.

The Court may, however, limit the scope of operations subject to authorisation.

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<sup>32</sup> Law of 21 July 2023

<sup>33</sup> *Commissaire de surveillance*

<sup>34</sup> Law of 21 July 2023

<sup>35</sup> Law of 21 July 2023

<sup>36</sup> Law of 21 July 2023

The commissioners may submit for consideration to the relevant bodies of the SICAR any proposals which they consider appropriate. They may attend proceedings of the administrative, management, executive and supervisory bodies of the SICAR.

The Court shall decide as to the expenses and fees of the supervisory commissioners; it may grant them advances.

"The judgement ordering liquidation provided for in Article 19(1) shall terminate the duties of the supervisory commissioner. Before deciding the appointment of one or several liquidators, the Court shall receive from the supervisory commissioners a report on the use of the SICAR's assets. In the absence of a judgement pronouncing the dissolution and ordering the liquidation within the year following the notification to the SICAR concerned of the decision withdrawing the undertaking from the list, the commissioners shall report to the Court on an annual basis. Within one month after their replacement, the supervisory commissioners shall report to the liquidators appointed by judgement on the use of the SICAR's assets together with the accounts and supporting documents."<sup>37</sup>

If the Court "referred to in Article 16(2)"<sup>38</sup>, reverses the withdrawal decision, the supervisory commissioner shall be deemed to have resigned.

**Article 19.** (1) The *Tribunal d'arrondissement* (District Court) dealing with commercial matters shall, at the request of the State Prosecutor, acting on its own motion or at the request of the CSSF, pronounce the dissolution and order the liquidation of the SICARs, whose entry on the list provided for in Article 13(1) has definitively been refused or withdrawn. "The *Tribunal d'arrondissement* (District Court) dealing with commercial matters shall, at the request of the State Prosecutor, acting on its own motion or at the request of the CSSF, pronounce the dissolution and order the liquidation of one or several compartments of a SICAR, in case the authorisation concerning the compartment(s) has definitively been refused or withdrawn."<sup>39</sup>

When ordering the liquidation, the Court shall appoint a *juge-commissaire* (bankruptcy judge) and one or more liquidators. It shall determine the method of liquidation. It may render applicable to such extent as it may determine "the rules governing the bankruptcy"<sup>40</sup>. The method of liquidation may be changed by subsequent decision, either of the Court's own motion or at the request of the liquidator(s).

The Court shall decide as to the expenses and fees of the liquidators; it may grant advances to them. The judgement pronouncing dissolution and ordering liquidation shall be enforceable on a provisional basis.

(2) The liquidator(s) may bring and defend all actions on behalf of the SICAR, receive all payments, grant releases with or without discharge, realise all the transferable securities of the SICAR and reemploy the proceeds therefrom, issue or endorse any negotiable instruments, compound or compromise any dispute. They may alienate immovable property of the SICAR by auction.

They may also but only with the authorisation of the Court, mortgage and pledge its assets and alienate its immovable property by private treaty.

(3) As from the day of the judgement, no legal actions relating to movable or immovable property or any enforcement procedures relating to movable or immovable property may be pursued, commenced or exercised otherwise than against the liquidators.

The judgement ordering liquidation shall terminate all seizures effected at the request of unsecured creditors not benefiting from preferential rights over movable and immovable property.

(4) After payment or consignment of the sums necessary for the discharge of the debts, the liquidators shall distribute to "investors"<sup>41</sup> the sums or amounts due to them.

(5) The liquidators may convene at their own initiative, and must convene at the request of "investors"<sup>42</sup> representing at least one fourth of the assets of the SICAR, a general meeting of shareholders for the purpose of deciding whether instead of an outright liquidation it is appropriate to contribute the assets of the SICAR in liquidation to another SICAR. "That decision shall be taken, provided that the general meeting is composed of a number of investors representing at least one

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<sup>37</sup> Law of 21 July 2023

<sup>38</sup> Law of 21 July 2023

<sup>39</sup> Law of 21 July 2023

<sup>40</sup> Law of 21 July 2023

<sup>41</sup> Law of 12 July 2013

<sup>42</sup> Law of 12 July 2013

half of the value of the amount constituting partnership interests or capital, by a majority of two thirds of the votes of the investors present or represented."<sup>43</sup>

(6) The court decisions pronouncing the dissolution and ordering the liquidation of a SICAR shall be published in the "*Recueil électronique des sociétés et associations* (electronic compendium of companies and associations)"<sup>44</sup> and in two newspapers with adequate circulation specified by the Court, one of which at least must be a Luxembourg newspaper. The liquidator(s) shall arrange for such publications.

(7) If there are no or insufficient assets, as ascertained by the *juge-commissaire* (bankruptcy judge), the documents relating to the proceedings shall be exempt from any registry and registration duties and the expenses and fees of the liquidators shall be borne by the Treasury and paid as judicial costs.

(8) The liquidators shall be responsible both to third parties and to the SICAR for the discharge of their duties and for any faults committed in the conduct of their activities.

(9) When the liquidation is completed, the liquidators shall report to the Court on the use made of the funds of the SICAR and shall submit the accounts and supporting documents thereof. The Court shall appoint *commissaires* to examine the documents.

After receipt of the *commissaires'* report, a ruling shall be given on the management of the liquidators and the closure of the liquidation.

The closure of the liquidation shall be published in accordance with paragraph 6 above.

Such publication shall also indicate:

- the place designated by the Court where the books and records must be kept for at least five years;
- the measures taken in accordance with Article 22 with a view to consigning the sums and funds due to creditors "or to investors"<sup>45</sup> (...) <sup>46</sup> to whom it has not been possible to deliver the same.

(10) Any legal actions against the liquidators of SICARs, in their capacity as such, shall be prescribed five years after publication of the closure of the liquidation provided for in paragraph 9.

Legal actions against the liquidators in connection with the performance of their duties shall be prescribed five years after the date of the facts or, in the event of concealment thereof by wilful misconduct, five years after the discovery thereof.

(11) The provisions of this article shall equally apply to the SICARs which have not applied to be entered on the list provided for in Article 13 within the time limit laid down therein.

**Article 20.** (1) After their dissolution, SICARs shall be deemed to exist for the purpose of liquidation. In the case of a non-judicial liquidation, they shall remain subject to the supervision of the CSSF.

(2) All documents issued by a SICAR in liquidation shall indicate that it is in liquidation.

(*Law of 21 July 2023*)

"(3) The institution which last acted in its capacity as depositary at the time of the initiation of the liquidation of the SICAR shall take all necessary steps for the good preservation of the interests of the investors, including the obligation to maintain or open all the accounts necessary for the safekeeping of the different assets of the SICAR up to the closure of the liquidation of the SICAR."

**Article 21.** (1) In the event of a non-judicial liquidation of a SICAR, the liquidator(s) must be approved by the CSSF. The liquidator(s) must provide all guarantees of good repute and professional skill.

(2) Where a liquidator does not accept office or is not approved, the *Tribunal d'arrondissement* (District Court) dealing with commercial matters shall, at the request of any interested party or of the CSSF, appoint the liquidator(s). The judgement appointing the liquidator(s) shall be provisionally enforceable, on the production of the original thereof and before registration, notwithstanding any appeal or objection.

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<sup>43</sup> Law of 12 July 2013

<sup>44</sup> Law of 27 May 2016

<sup>45</sup> Law of 12 July 2013

<sup>46</sup> Law of 12 July 2013

**Article 22.** In the event of a voluntary or compulsory liquidation of a SICAR within the meaning of this law, the sums and assets payable in respect of securities "or partnership interests"<sup>47</sup> whose holders failed to present themselves at the time of the closure of the liquidation, shall be paid to the Consignment Office to be held for the benefit of the persons entitled thereto.

## **Chapter V: Publication of a prospectus and an annual report**

**"Article 23.** (1) The SICAR shall draw up a prospectus and an annual report for each financial year.

(2) The annual reports together with the report of the *réviseur d'entreprises* (statutory auditor) shall be made available to the investors within six months from the end of the period these reports refer to."<sup>48</sup>

**Article 24.** (1) The prospectus must include the information necessary for investors to be able to make an informed judgement on the investment proposed to them and the risks attached thereto.

(2) The annual report must include a balance sheet or a statement of assets and liabilities, an income and expenditure account for the financial year, a report on the activities of the past financial year, as well as any significant information enabling investors to make an informed judgement on the development of the activities and the results of the SICAR.

(3) Notwithstanding "Article 1711-1"<sup>49</sup> of the Law of 10 August 1915 on commercial companies, as amended, the SICAR shall be exempt from the obligation to prepare consolidated accounts.

(Law of 21 July 2023)

"(4) Contributions other than cash shall, at the time of the contribution, be subject to a report to be established by a *réviseur d'entreprises* (statutory auditor). The report shall be established pursuant to the provisions of Article 420-10 of the Law of 10 August 1915 on commercial companies, as amended, regardless of the legal form adopted by the SICAR concerned."

**Article 25.** (1) The constitutional documents of the SICAR shall form an integral part of the prospectus and must be annexed thereto.

(2) However, the documents referred to in paragraph 1 need not be annexed to the prospectus, provided that the investor is informed that at his request, he will either be sent those documents or be apprised of the place where he may consult them.

**Article 26.** The essential elements of the prospectus must be up to date when new securities "or partnership interests"<sup>50</sup> are issued "to new investors"<sup>51</sup>.

**Article 27.** (1) SICARs must have the accounting information provided in their annual report audited by a *réviseur d'entreprises agréé* (approved statutory auditor).

"The report of the *réviseur d'entreprises agréé* (approved statutory auditor) and its qualifications, if any, are set out in full in each annual report."<sup>52</sup>

"The *réviseur d'entreprises agréé* (approved statutory auditor) must establish that he has appropriate professional experience."<sup>53</sup>

"(2) The *réviseur d'entreprises agréé* (approved statutory auditor) shall be appointed and remunerated by the SICAR."<sup>54</sup>

"(3) The *réviseur d'entreprises agréé* (approved statutory auditor) must report promptly to the CSSF any fact or decision of which he has become aware while carrying out the audit of the accounting information contained in the annual report of a SICAR or any other legal task concerning a SICAR, where such fact or decision is liable to:

- constitute a material breach of this law or the regulations adopted for its execution, or
- affect the continuous functioning of the SICAR, or

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<sup>47</sup> Law of 12 July 2013

<sup>48</sup> Law of 24 October 2008

<sup>49</sup> Law of 21 July 2023

<sup>50</sup> Law of 12 July 2013

<sup>51</sup> Law of 12 July 2013

<sup>52</sup> Law of 18 December 2009

<sup>53</sup> Law of 18 December 2009

<sup>54</sup> Law of 18 December 2009

- lead to a refusal to certify the accounts or to the expression of reservations thereon.”<sup>55</sup>

“The *réviseur d’entreprises agréé* (approved statutory auditor) shall likewise have a duty to promptly report to the CSSF, in the accomplishment of its duties referred to in the preceding subparagraph in respect of a SICAR, any fact or decisions concerning the SICAR and meeting the criteria referred to in the preceding subparagraph of which he has become aware while carrying out the audit of the accounting information contained in the annual report of another undertaking having close links resulting from a control relationship with the SICAR or while carrying out any other legal task concerning such other undertaking.”<sup>56</sup>

For the purposes of this article, a close link resulting from a control relationship shall mean the link which exists between a parent undertaking and a subsidiary in the cases referred to in Article 77 of the Law of 17 June 1992 concerning the annual accounts and consolidated accounts of credit institutions, as amended, or as a result of a relationship of the same type between any individual or legal entity and an undertaking; any subsidiary undertaking of a subsidiary undertaking is also considered as a subsidiary of the parent undertaking which is at the head of those undertakings. A situation in which two or more individuals or legal persons are linked to one and the same person by a control relationship on a long term basis shall also be regarded as constituting a close link between such persons.

“If, in the discharge of his duties, the *réviseur d’entreprises agréé* (approved statutory auditor) ascertains that the information provided to investors or to the CSSF in the reports or other documents of the SICAR does not truly describe the financial situation and the assets and liabilities of the SICAR, he shall be obliged to inform the CSSF forthwith.”<sup>57</sup>

“The *réviseur d’entreprises agréé* (approved statutory auditor) shall moreover be obliged to provide the CSSF with all information or certificates required by the latter on any matters of which the *réviseur d’entreprises agréé* (approved statutory auditor) has or ought to have knowledge in connection with the discharge of his duties. The same applies if the *réviseur d’entreprises agréé* (approved statutory auditor) ascertains that the assets of the SICAR are not or have not been invested according to the regulations set out by the law or the prospectus.”<sup>58</sup>

“The disclosure in good faith to the CSSF by the *réviseur d’entreprises agréé* (approved statutory auditor) of any fact or decision referred to in this paragraph shall not constitute a breach of professional secrecy or of any restriction on disclosure of information imposed by contract and shall not result in liability of any kind for the *réviseur d’entreprises agréé* (approved statutory auditor).”<sup>59</sup>

(Law of 21 December 2012)

“Every SICAR subject to the supervision of the CSSF which must have its accounts audited by a *réviseur d’entreprises agréé* (approved statutory auditor) must spontaneously communicate to the CSSF the reports and written comments issued by the *réviseur d’entreprises agréé* (approved statutory auditor) in the framework of its audit of the annual accounting documents.

The CSSF may set rules regarding the scope of the mandate for the audit of annual accounting documents and the content of the reports and written comments of the *réviseur d’entreprises agréé* (approved statutory auditor), as referred to in the previous subparagraph, without prejudice to the legal provisions governing the content of the statutory auditor’s report.”

“The CSSF may request a *réviseur d’entreprises agréé* (approved statutory auditor) to perform a control on one or several particular aspects of the activities and operations of a SICAR. This control is performed at the expense of the SICAR concerned.”<sup>60</sup>

“(4) The CSSF shall refuse or withdraw the entry on the list of SICARs whose *réviseur d’entreprises agréé* (approved statutory auditor) does not satisfy the conditions or does not discharge the obligations prescribed in this article.”<sup>61</sup>

(5) The institution of *commissaires aux comptes* (supervisory auditors) provided for by “Articles 443-1, 600-7, 811-2 and 710-27”<sup>62</sup> of the Law of 10 August 1915 on commercial companies, as

<sup>55</sup> Law of 18 December 2009

<sup>56</sup> Law of 18 December 2009

<sup>57</sup> Law of 18 December 2009

<sup>58</sup> Law of 18 December 2009

<sup>59</sup> Law of 18 December 2009

<sup>60</sup> Law of 18 December 2009

<sup>61</sup> Law of 18 December 2009

<sup>62</sup> Law of 21 July 2023



amended, is repealed with respect to Luxembourg SICARs. The directors are solely competent in all cases where the Law of 10 August 1915 on commercial companies, as amended, provides for the joint action of the *commissaires aux comptes* (supervisory auditors) and the directors.

The institution of *commissaires* provided for by "Article 1100-15"<sup>63</sup> of the Law of 10 August 1915 on commercial companies, as amended, is not applicable to SICARs. "Upon completion of the liquidation, a report on the liquidation shall be drawn up by the *réviseur d'entreprises agréé* (approved statutory auditor)."<sup>64</sup> This report shall be tabled at the general meeting at which the liquidators report on the application of the corporate assets and submit the accounts and supporting documents. The same meeting shall resolve on the approval of the accounts of the liquidation, the discharge and the closure of the liquidation.

**Article 28.** The SICAR must send its prospectus and any amendments thereto, as well as its annual reports, to the CSSF. "The annual reports must be sent within the same deadline as set out in Article 23(2)"<sup>65</sup>.

**Article 29.** (1) The prospectus currently in force and the latest annual report must be offered free of charge to subscribers before the conclusion of the contract.

(2) The annual reports shall upon request be supplied free of charge to investors.

## **Chapter VI: Publication of other information**

**Article 30.** "<sup>66</sup>(...)"

**Article 31.** Any invitation to purchase securities "or partnership interests"<sup>67</sup> of a SICAR must indicate that a prospectus exists and the places where it may be obtained.

## **Chapter VII: Transmission of other information to the CSSF**

**Article 32.** The CSSF may request SICARs to provide any information relevant to the fulfilment of its duties and may, for that purpose, itself or through appointees, examine the books, accounts, registers or other records and documents of SICARs.

## **Chapter VIII: Protection of name**

**Article 33.** (1) No SICAR shall make use of designations or of a description giving the impression that it is subject to this law if it has not obtained the authorisation provided for in Article 12.

(2) The *Tribunal d'arrondissement* (District Court) dealing with commercial matters of the place where the SICAR is situated or of the place where the designation has been used, may at the request of the Public Prosecutor issue an injunction, prohibiting anyone from using the designation as defined in paragraph 1, if the conditions provided for by this law are not or no longer met.

(3) The judgement or final court decision which delivers this injunction, is published by the Public Prosecutor and at the expense of the person sentenced in two Luxembourg or foreign newspapers with adequate circulation.

## **Chapter IX: Fiscal provisions**

**Article 34.** (1) The Law of 4 December 1967 on income tax, as amended, is amended as follows:

- a) Article 14, number 1, is completed by the following sentence: "The investment company in risk capital (SICAR) organised under the legal form of a *société en commandite simple* (limited partnership) shall however not be considered to be a commercial company;"
- b) Number 3 of Article 147 is amended and completed as follows:

"3. if the income is allocated by a Luxembourg holding company as defined by the Law of 31 July 1929 or by an undertaking for collective investment (UCI), including a Luxembourg investment company in risk capital (SICAR), without prejudice however to the taxation of the aforementioned income if received by residents."

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<sup>63</sup> Law of 21 July 2023

<sup>64</sup> Law of 18 December 2009

<sup>65</sup> Law of 21 July 2023

<sup>66</sup> Law of 24 October 2008

<sup>67</sup> Law of 12 July 2013

c) Article 156, number 8, is completed by a point (c) worded as follows: "c) However, the income resulting from the transfer of a participation in an investment company in risk capital (SICAR) is not covered by numbers 8a and 8b."

d) Article 164a is completed by the insertion, after indent 4, of a new indent 5 worded as follows: "(5) Investment companies in risk capital (SICAR) are excluded from the scope of this Article." The other indents are renumbered accordingly.

(2) Income resulting from securities as well as income resulting from the transfer, contribution or liquidation of these assets does not constitute taxable income of joint stock companies subject to this law. Realised losses resulting from the transfer of transferable securities as well as unrealised losses accounted for upon the reduction of the value of these assets may not be deducted from the taxable income of the company.

(3) Income arising from funds held pending their investment in risk capital does not constitute taxable incomes for SICARs; this exemption is only applicable for a maximum period of twelve months preceding their investment in risk capital and where it can be established that the funds have effectively been invested in risk capital.

**"Article 35.** Number 5 of the 1<sup>st</sup> indent of paragraph 3 of the Law of 16 October 1934 on wealth tax, as amended, is amended as follows:

5. investment companies in risk capital (SICAR) set up as a *société en commandite par actions* (partnership limited by shares), a *société coopérative organisée sous forme de société anonyme* (cooperative company organised as a public limited company), a *société à responsabilité limitée* (private limited liability company) or a *société anonyme* (public limited company) governed by Luxembourg law, subject to the minimum wealth tax determined in accordance with the provisions of § 8, 2<sup>nd</sup> indent."<sup>68</sup>

**Article 36.** The Law of 1 December 1936 on commercial communal tax, as amended, is amended as follows:

- a) Indent 2 of paragraph 2 is completed by the insertion of a number 4 worded as follows: "4. The provisions under number 3 are not applicable to investment companies in risk capital (SICAR) organised under the form of a limited partnership."
- b) Paragraph 9 is completed by a number 2b which states as follows: "2b. participating shares added pursuant to paragraph 8 number 4 to the operating profit of a partnership limited by shares, as long as they are included in the operating profit determined pursuant to paragraph 7."

**Article 37.** (...) <sup>69</sup>

**Article 38.** Article 44(1), under point (d) of the Law of 12 February 1979 concerning value added tax, as amended, is amended by adding the words ", comprising also SICAR" after the word "UCI".

## Chapter X: Criminal law provisions

**Article 39.** A fine of five hundred to twenty-five thousand euro shall be imposed upon any person who in infringement of Article 33 purports to use a designation or description giving the impression that they relate to the activities subject to this law if they have not obtained the authorisation provided for in Article 12.

**Article 40.** (...) <sup>70</sup>

**Article 41.** A penalty of imprisonment of one month to one year and a fine of five hundred to twenty-five thousand euro or either of such penalties shall be imposed upon the founders or directors of a SICAR who have infringed the provisions of Articles 5(1) and 5(3) of this law.

**Article 42.** A penalty of imprisonment of three months to two years and a fine of five hundred to fifty thousand euro or either of such penalties shall be imposed on anyone who has carried out or caused to be carried out operations involving the receipt of savings from investors concerned if the SICAR for which they acted was not entered on the list provided for in Article 13.

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<sup>68</sup> Law of 18 December 2015

<sup>69</sup> Law of 19 December 2008

<sup>70</sup> Law of 24 October 2008

**Article 43.** A penalty of imprisonment of one month to one year and a fine of five hundred to twenty-five thousand euro or either of such penalties shall be imposed on the directors of SICARs who, notwithstanding the provisions of Article 18, have taken measures other than protective measures without being authorised for that purpose by the supervisory commissioner.

#### **Chapter XI: Final provision**

**Article 44.** This law may, in abbreviation, be referred to as the "Law of 15 June 2004 relating to the investment company in risk capital (SICAR)".

#### **Chapter XII: Modifying provision**

**Article 45.** (...) <sup>71</sup>

*(Law of 12 July 2013)*

#### **"Part II – Specific provisions applicable to SICARs managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers or under Chapter II of Directive 2011/61/EU"**

**Article 46.** This part shall apply, by way of derogation from the general rules of Part I of this law, to SICARs managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers or under Chapter II of Directive 2011/61/EU.

**Article 47.** (1) Any SICAR subject to this part shall be managed by an AIFM, which may either be an AIFM established in Luxembourg authorised under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers, or an AIFM established in another Member State or in a third country authorised under Chapter II of Directive 2011/61/EU, subject to the application of Article 66(3) of the aforementioned directive where the SICAR is managed by an AIFM established in a third country.

(2) The AIFM shall be determined in accordance with the provisions of Article 4 of the Law of 12 July 2013 on alternative investment fund managers or in accordance with the provisions of Article 5 of Directive 2011/61/EU.

The AIFM is:

- a) either an external AIFM, which is the legal person appointed by the SICAR or on behalf of the SICAR and which, through this appointment, is responsible for managing this SICAR; in case of appointment of an external AIFM, the latter shall be authorised in accordance with the provisions of Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers or in accordance with the provisions of Chapter II of Directive 2011/61/EU, respectively;
- b) or where the governing body of the SICAR chooses not to appoint an external AIFM, the SICAR itself.

An internally managed SICAR within the meaning of this article shall, in addition to the authorisation required under Article 12 of this law, be authorised as an AIFM under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers. The relevant SICAR shall ensure at all times compliance with all provisions of the aforementioned law, provided that such provisions are applicable to it.

**Article 48.** (1) The assets of a SICAR subject to this part shall be entrusted to a depositary appointed in accordance with the provisions of Article 19 of the Law of 12 July 2013 on alternative investment fund managers.

(2) The depositary shall either have its registered office in Luxembourg or have a branch there if its registered office is in another Member State of the European Union.

(3) Without prejudice to the provisions laid down in the second subparagraph of this paragraph, the depositary shall be a credit institution or an investment firm within the meaning of the Law of 5 April 1993 on the financial sector, as amended. An investment firm shall only be eligible as depositary if this investment firm fulfils the conditions laid down in Article 19(3) of the Law of 12 July 2013 on alternative investment fund managers.

For SICARs which have no redemption rights exercisable during a period of 5 years from the date of the initial investments and which, in accordance with the core investment policy, generally do not

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<sup>71</sup> These provisions are not included in this coordinated version.

invest in assets that must be held in custody in accordance with Article 19(8)(a) of the Law of 12 July 2013 on alternative investment managers or which invest in issuers or non-listed companies in order to potentially acquire control over such companies in accordance with Article 24 of said law, the depositary may also be an entity incorporated under Luxembourg law which has the status of professional depositary of assets other than financial instruments referred to in Article 26-1 of the Law of 5 April 1993 on the financial sector, as amended.

(4) The depositary is required to provide the CSSF, on request, with all information that the depositary has obtained in the exercise of its duties and which is necessary to enable the CSSF to monitor compliance by the SICAR with this law.

(5) The duties and responsibilities of the depositary are defined in accordance with the rules laid down in Article 19 of the Law of 12 July 2013 on alternative investment fund managers.

**Article 49.** Without prejudice to the application of the provisions of Article 5(3) of this law, the valuation of the assets of a SICAR subject to this part is performed in accordance with the rules laid down in Article 17 of the Law of 12 July 2013 on alternative investment fund managers and in the delegated acts provided for in Directive 2011/61/EU.

**Article 50.** By way of derogation from Article 24(2) of this law, the content of the annual report of SICARs subject to this part is governed by the rules laid down in Articles 20 and 26 of the Law of 12 July 2013 on alternative investment fund managers and in the delegated acts provided for in Directive 2011/61/EU.

**Article 51.** As far as the information to be provided to investors is concerned, SICARs subject to this part shall comply with the rules laid down in Article 21 of the Law of 12 July 2013 on alternative investment fund managers and in the delegated acts provided for in Directive 2011/61/EU.

*(Law of 21 July 2023)*

**“Article 51a.** The AIFM of a SICAR falling within the scope of application of this part shall be authorised to delegate to third parties the power to carry out, on its behalf, one or more of its functions. In this event, delegation of functions by the AIFM shall be compliant with all the conditions laid down in Article 18 of the Law of 12 July 2013 on alternative investment fund managers, as amended, for the SICARs managed by an AIFM whose home Member State is Luxembourg, within the meaning of the Law of 12 July 2013 on alternative investment fund managers, as amended, subject to the application of Article 66(3) of Directive 2011/61/EU where the management of the SICAR is performed by an AIFM established in a third country.”

**Article 52.** The CSSF may request SICARs subject to this part to provide any information referred to in Article 24 of Directive 2011/61/EU.

**Article 53.** The marketing by the AIFM in the European Union of securities or partnership interests of SICARs subject to this part as well as the management of these SICARs in the European Union on a cross-border basis are governed by the provisions of Chapter 6 of the Law of 12 July 2013 on alternative investment fund managers in the case of SICARs managed by an AIFM established in Luxembourg or by the provisions of Chapters VI and VII of Directive 2011/61/EU, respectively, in the case of SICARs managed by an AIFM established in another Member State or in a third country, subject to the application of Article 66(3) of the aforementioned directive where the SICAR is managed by an AIFM established in a third country.

### **Part III – Transitional provisions**

**Article 54.** SICARs established before 22 July 2013 shall have until 22 July 2014 to comply with Article 7a of this law.

**Article 55.** (1) Without prejudice to the transitional provisions provided for in Article 58 of the Law of 12 July 2013 on alternative investment fund managers or, if it concerns an AIFM established in a third country, provided for in Article 45 of the Law of 12 July 2013 on alternative investment fund managers, SICARs established before 22 July 2013, which are managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers or under Chapter II of Directive 2011/61/EU, shall comply with the provisions of Part II of this law from 22 July 2014 at the latest.

(2) Without prejudice to the transitional provisions provided for in Article 58 of the Law of 12 July 2013 on alternative investment fund managers or, if it concerns an AIFM established in a third country, provided for in Article 45 of the Law of 12 July 2013 on alternative investment fund managers, SICARs established between 22 July 2013 and 22 July 2014, which are managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 on alternative investment fund

managers or under Chapter II of Directive 2011/61/EU, shall qualify as AIFs within the meaning of the Law of 12 July 2013 on alternative investment fund managers from the date they are established. These SICARs shall comply with the provisions of Part II of this law from the date they are established. By way of derogation from this principle, SICARs established between 22 July 2013 and 22 July 2014, with an external AIFM which exercises the activities of AIFM before 22 July 2013, shall comply with the provisions of Part II of this law from 22 July 2014 at the latest.

(3) All SICARs established after 22 July 2014, which are managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers or under Chapter II of Directive 2011/61/EU shall be, subject to the transitional provisions provided for in Article 45 of the Law of 12 July 2013 applicable to alternative investment fund managers established in a third country, *ipso jure* governed by Part II of this law. These SICARs which are managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers or under Chapter II of Directive 2011/61/EU or, where applicable, their AIFM, shall be *ipso jure* subject to the provisions of the Law of 12 July 2013 on alternative investment fund managers.

(4) SICARs established before 22 July 2013, managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers or under Chapter II of Directive 2011/61/EU, which qualify as AIFs of the closed-ended type within the meaning of the Law of 12 July 2013 on alternative investment fund managers and which do not make any additional investments after such date, do not need to comply with the provisions deriving from Part II of this law.

(5) SICARs managed by an AIFM authorised under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers or under Chapter II of Directive 2011/61/EU, which qualify as AIFs of the closed-ended type within the meaning of the Law of 12 July 2013 on alternative investment fund managers whose subscription period for investors has closed prior to 22 July 2011 and are constituted for a period of time which expires at the latest three years after 22 July 2013, do not need to comply with the provisions of the Law of 12 July 2013 on alternative investment fund managers, except for Article 20 and, where applicable, Articles 24 to 28 of the Law of 12 July 2013 on alternative investment fund managers, nor do they need to submit an application for authorisation under the Law of 12 July 2013 on alternative investment fund managers."

*(Law of 21 July 2023)*

**"Article 56.** SICARs authorised before 28 July 2023 shall have twelve months as from 28 July 2023 to comply with the obligations laid down in Article 12a."