

## SUPERVISORY FRAMEWORK FOR SICARS

1. Developments in the SICAR sector in 2005
2. Regulatory framework
3. Prudential practice

# CHAPTER IV



### 1. DEVELOPMENTS IN THE SICAR SECTOR IN 2005

During the year 2005, the CSSF has received 67 files from SICARs applying for registration on the CSSF's official list of SICARs, four of them having however been abandoned, at the initiators' request, during the process of scrutiny.

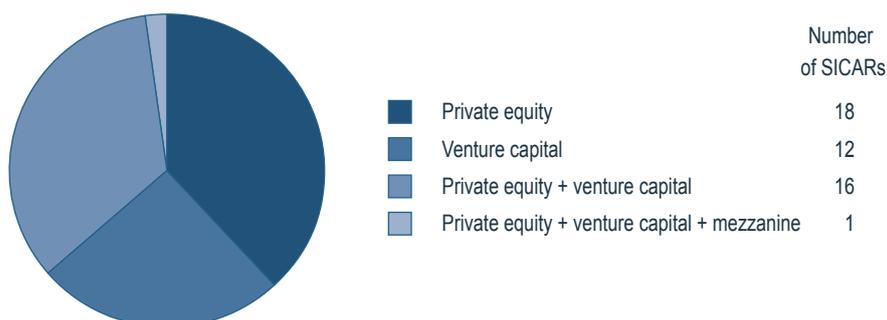
As at 31 December 2005, 47 SICARs were registered on the official list of the CSSF and about thirty application files were being processed.

As regards the financial assets of the SICARs registered on the official list, it should be noted that many SICARs are currently in the process of collecting funds, or identifying investment opportunities. Thus, only 32 out of the 47 SICARs registered on the official list had already made investments as at 31 December 2005.

The provisional total balance sheet of the SICARs reached EUR 2,695.6 million as at 31 December 2005. The total subscribed capital amounted to approximately EUR 2,597 million, of which EUR 1,009 million have been paid up.

The following graph on the nature of the investment policy of SICARs shows a slight preference for private equity, followed by venture capital, without however revealing an actual trend.

*Nature of the investment policy of SICARs*



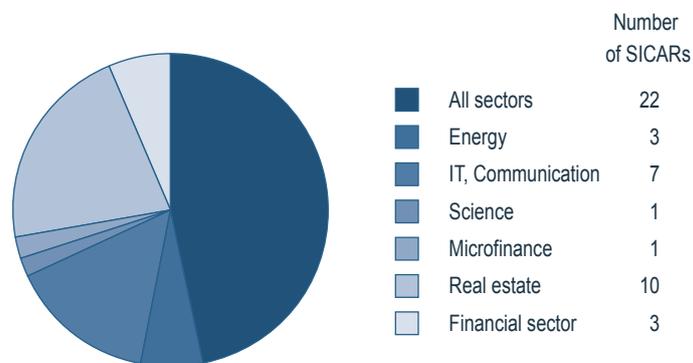
As regards the investment strategy, it can be observed that SICARs choose either to limit their policy to a particular strategy (buy, build and sell, buyouts, mezzanine financing or indirect investment via funds), or to adopt a combination of strategies generally used in the field of risk capital.

*Investment strategy*



As for the sectoral distribution of investment policies, a considerable number of SICARs would rather not limit their investment policy to a particular investment sector. As regards SICARs opting for a specialised policy, a slight predominance of the high technology and telecommunications sectors can be observed. A certain interest also exists for SICARs investing in private equity real estate.

*Sectoral distribution*



As far as the geographical origin of the initiators is concerned, those from the US are predominant, followed by the European initiators.

*Geographical origin of the initiators*

Country	Number
United States	11
France	6
Great Britain	6
Switzerland	6
Luxembourg	5
Italy	3
Belgium	2
Egypt	2
Germany	1
Denmark	1
Spain	1
Finland	1
Guernsey	1
Netherlands	1
<b>Total</b>	<b>47</b>

### 2. REGULATORY FRAMEWORK

SICARs are governed by the law of 15 June 2004 relating to the investment company in risk capital (“the SICAR law”) whose article 1 specifies that investment in risk capital refers to capital provided directly or indirectly to entities in view of their launch, development or listing on a stock exchange.

On 5 April 2006, the CSSF has published circular CSSF 06/241 whose objective is to provide a general description of the notion of risk capital and the criteria applied by the CSSF to assess the acceptability of the investment policies proposed for SICARs.

The circular specifies that risk capital under the SICAR law is defined by the concurrent existence of two elements, namely a high risk and an intention to develop the target entities (portfolio companies).

The main objective of the SICAR should be to contribute to the development of the entities in which it invests. The notion of development is understood in the broad sense as value creation with respect to the target companies. It should also be noted that as an investment company in risk capital, the declared intention of the SICAR shall be in general to acquire financial assets in order to sell them with a profit, as opposed to a holding company that acquires to hold, and to make investors benefit from an increased yield as a remuneration of the higher risk that they accepted to incur.

The circular sets down that several aspects need to be considered in order to assess whether an investment policy is acceptable, such as for example the number and the nature of the target entities, their maturity level, the SICAR’s development projects and the envisaged duration of holding. It also specifies under what conditions private equity real estate is eligible under the SICAR law.

### 3. PRUDENTIAL PRACTICE

#### 3.1. Composition of an application file

The application file submitted to the CSSF shall comprise the following documents and information:

- the draft offering;
- the draft articles of incorporation of the SICAR;
- the draft articles of incorporation of the SICAR’s general partner, for SICARs in the form of a limited partnership or a partnership limited by shares;
- the *curricula vitae* of the managers of the SICAR, as well as the information allowing to assess their experience to perform their function;
- a document attesting their professional repute, notably a recent extract from their police record or an affidavit in case of nationals of countries whose authorities do not issue such extracts;
- the draft agreements between the SICAR and its main service providers (central administration, depositary bank, registrar and transfer agent, domiciliation agent, etc.);
- the identity of the initiator(s);
- information on the marketing of the shares/units of the SICAR. In this context, it should also be stated whether the SICAR’s securities will be offered to the public under the terms of the law of 10 July 2005 on prospectuses for securities. In the affirmative, the offering prospectus shall be adapted in order to take account of the provisions of this law.

This list is of course not exhaustive and the CSSF reserves the right, at any moment, to request any additional document or information it deems necessary for the fulfilment of its supervisory tasks.

As regards the content of the SICAR's offering documents, it should be borne in mind, generally-speaking, that they shall provide investors with transparent and adequate information, for example on the investment policy and the inherent risks, the decision-making processes of the SICAR, the rules regarding the distribution of dividends and the remuneration of managers, as well as the other costs and commissions to be borne by the investors.

### 3.2. Notion of central administration

The law of 15 June 2004 requires the SICARs to appoint a central administration in Luxembourg.

It should be stressed that the notion of central administration of a SICAR can be interpreted in a more flexible way as for undertakings for collective investment. Indeed, the entity in charge of the SICAR's central administration task is not always obliged to be authorised as professional of the financial sector under the terms of the law of 5 April 1993 on the financial sector as amended.

The entity appointed as central administration shall in any case establish that it has the necessary human and technical resources to properly fulfil its mission.

In this context, the CSSF can authorise this central administration located in Luxembourg to outsource certain tasks related to its function to an entity abroad. Outsourcing is analysed on a case-by-case basis and is subject to the following non-exhaustive conditions:

- delegation must be made under the responsibility and coordination of the central administration in Luxembourg;
- the foreign entity appointed by the central administration shall have sufficient human and technical means to perform its role;
- the central administration shall have direct and immediate access to the data processed by the entity abroad and shall monitor this data;
- the CSSF, as well as the shareholders, shall be aware of the structure in place;
- a system shall be set up to ensure the information flow between the different parties involved.

### 3.3. Half-yearly reporting

By the time of their authorisation, SICARs are invited to submit half-yearly financial information to the CSSF. The details of the information to be submitted are outlined in a circular letter from the CSSF. This information can be submitted to the CSSF in a format and on a data support chosen by the SICAR, for instance in the form of copies of the reports drawn up by the SICAR for reporting and internal control purposes.

The information to provide on a half-yearly basis within 45 days following the reference date shall at least include the following:

- a statement of the SICAR's financial situation and notably the total of its assets;
- a detailed account of its portfolio;
- the amount of the SICAR's subscribed and paid-up capital, as well as the total of investors' subscription commitments;
- information concerning the profile of the investors that subscribed to the SICAR's shares;
- where applicable, information on the level of the SICAR's indebtedness.

Furthermore, the CSSF wishes to receive, automatically and on an *ad hoc* basis, copies of the SICAR's financial statements drawn up for its shareholders.

### 3.4. Update of the prospectus

The CSSF considers that an annual update of the prospectus is not always required in accordance with article 23(1) of the SICAR law. Pursuant to article 26 of this law, the essential elements of the prospectus shall however be up-to-date when additional securities are issued.

### 3.5. SICARs that wish to make an offer to the public under the terms of the law of 10 July 2005 on prospectuses for securities (Prospectus law)

Where a SICAR, wishing to make an offer of securities to the public under the Prospectus law, cannot invoke the exemptions provided for in article 5 of this law, the Prospectus law requires the CSSF to observe certain response time limits for the analyses of the issue prospectus.

In these events, the CSSF advocates a two-stage procedure both for issues of securities by newly incorporated SICARs and for subsequent issues of securities under the Prospectus law by existing SICARs.

The formal procedure laid down in the Prospectus law would thus be preceded by an informal procedure, consisting in introducing the draft prospectus (in general one of the elements of the SICAR's application file), in order to allow the CSSF to assess the compliance of the submitted documents with the SICAR law and with the Prospectus law.

This informal procedure having resulted in the authorisation of the SICAR and the approval of its constituent documents under the SICAR law, the formal application for prospectus approval under the Prospectus law can be submitted.

It should be noted that the CSSF circulars dealing with technical specifications regarding communications to the CSSF of documents for approval or for filing and of notices for offers to the public and admissions to trading on a regulated transferable securities market under the Prospectus law do not apply to offers of securities of SICARs.



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DEPARTMENT SUPERVISION OF PENSION FUNDS, SICARS AND SECURITISATION  
UNDERTAKINGS

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