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Introduction to Luxembourg Alternative Investment Vehicles

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Welcome to Luxembourg, the next location of choice for your investment vehicle

Luxembourg is only the size of Manhattan, but it is the biggest domicile for investment funds in Europe (including all related industries) and the second most preferred location for investment funds globally (after Manhattan).

Luxembourg offers a full range of investment vehicles and its financial supervisory authority, the Commission de Surveillance du Secteur Financier (the "CSSF") is one of the major regulators in Europe and is recognised worldwide.

Following the financial crisis, the latest EU Regulations have squeezed the financial markets tightly: new laws are entering into force and more and more corporate structures are available.

How do we navigate among all these rules and structures without losing track?

This brochure is for "beginners" to the alternative investment world and aims at giving a simple but comprehensive overview of the unregulated, indirectly regulated and regulated options for investment funds.

Welcome to the unregulated world (no CSSF supervision)

1

The unregulated world of investment vehicles

No need for CSSF supervision

Unregulated investment vehicles are mainly governed by the Law of 10 August 1915 on commercial companies, as amended. Various types of vehicles are available.

S.A.
SAS

If you are a large group of people (even if you don't know each other),
choose either the S.A. or the SAS

... is like a train

S.à r.l.
SCA

If there aren't too many of you and you are happy to be driven by someone amongst you or by a stranger,
choose either the S.à r.l. or the SCA

... is like a bus

SNC
SCSp
SCS

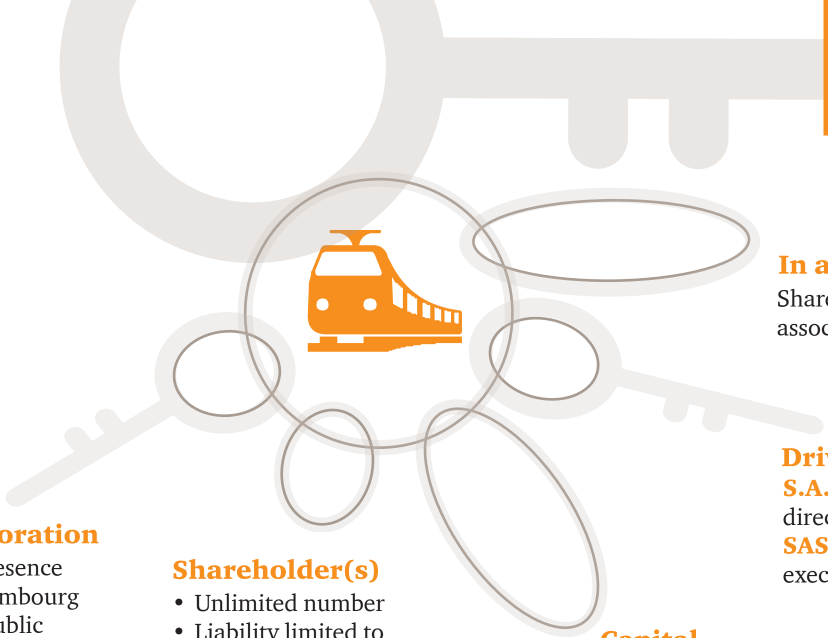
If there are only a few of you, you know each other and you want to be driven by someone amongst you,
choose the SNC, the SCSp or the SCS

... is like a car

S.A./SAS:
What are these vehicles?

S.A. = Public limited liability company
(Société anonyme)

SAS = Simplified public limited liability company
(Société par actions simplifiée)



In and out
Shares are transferable as per the provisions of the articles of association

Driver
S.A.: Three or more directors, who may not be shareholders (only one director is allowed in some cases)
SAS: A chairman (who may not be a shareholder) or one or more executive officers

Incorporation
In the presence of a Luxembourg notary public

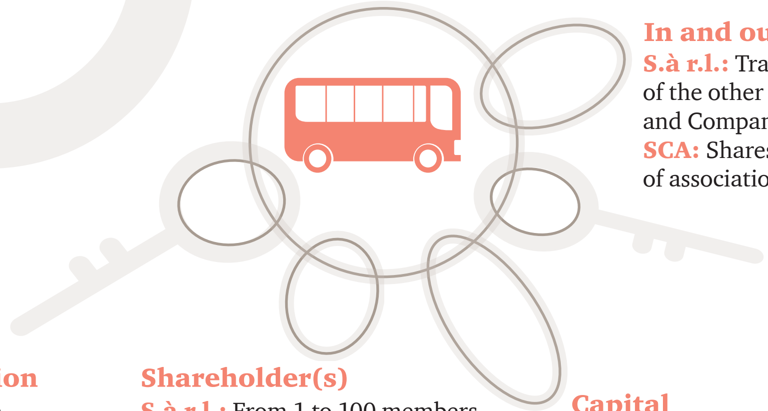
Shareholder(s)
- Unlimited number
- Liability limited to their contribution

Capital
Minimum EUR 30,000

SCA/S.à r.l.: What are these vehicles?

S.à r.l. = Private limited liability company
(Société à responsabilité limitée)

SCA = Partnership limited by shares
(Société en commandite par actions)



In and out

S.à r.l.: Transferring shares is not easy as it requires the consent of the other shareholders and must be registered on the Trade and Companies Register and published
SCA: Shares are transferable as per the provisions of the articles of association

Driver

S.à r.l.: One or several managers, who do not need to be shareholders
SCA: Usually one general partner (a shareholder with full personal liability) or a third party

Incorporation

In the presence of a Luxembourg notary public

Shareholder(s)

S.à r.l.: From 1 to 100 members (shareholders) with liability limited to their contribution
SCA: Unlimited number with liability limited to their contribution

Capital

S.à r.l.: Minimum EUR 12,000
SCA: Minimum EUR 30,000

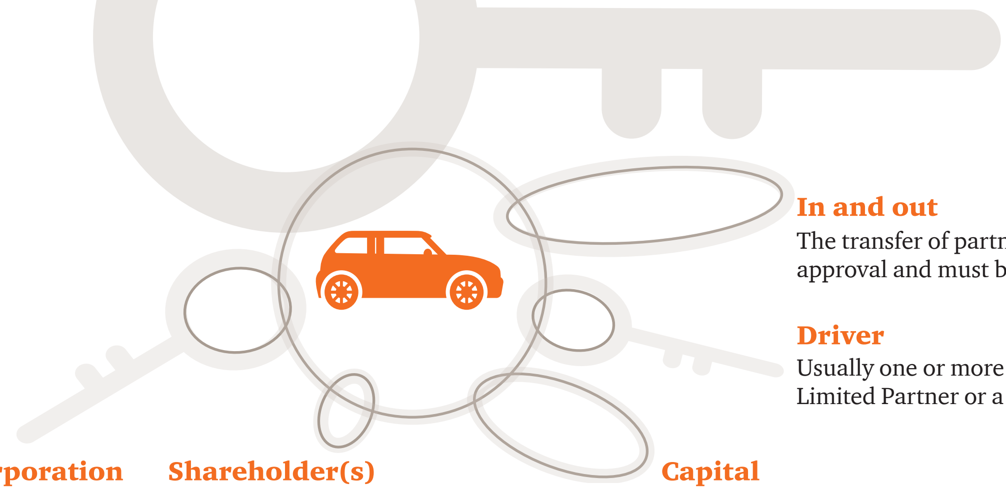
SNC/SCSp/SCS:

What are these vehicles?

SNC = General partnership
(Société en nom collectif)

SCS = Limited partnership
(Société en commandite simple)

SCSp = Special limited partnership
(Société en commandite spéciale)



In and out

The transfer of partnership interests requires the Partners' approval and must be registered

Driver

Usually one or more Partners (in practice the "General Partner"), but not a Limited Partner or a third party

Incorporation

Partnership agreement by private seal

Shareholder(s)

At least two shareholders (the "Partners")

- **SNC**: All Partners are fully personal liable
- **SCS/SCSp**: two types of Partners: *(i) General Partners:* fully personal liable; and *(ii) Limited Partners:* liability limited to their contribution

Capital

No minimum, no maximum

Welcome to the world of indirect CSSF regulation

2

The reserved alternative investment fund ("RAIF")

A viable alternative to your SIF or SICAR

New
July 2016

RAIF

- All investment types possible
- Umbrella structure and multiple classes available
- Sales prospectus necessary
- Public notary must be involved in and/or after establishing the fund

- Risk-diversification requirements apply (like the SIF regime) unless investments are made in risk capital only (like the SICAR regime)
- Dedicated to "well-informed investors" (like the SIF and SICAR regimes)

- Tax regime similar to SIF regime or special tax regime like for SICARs
- May opt for a variable-capital structure and may be created under various different legal forms (corporate partnership and contractual legal forms)
- Annual accounts must be audited by an authorised auditor *(réviseur d'entreprises agrée)*

Should I set up a RAIF or consider other options?

The pros and cons of RAIFs

New
July 2016

Tax considerations must be made on a case-by-case basis

Pros

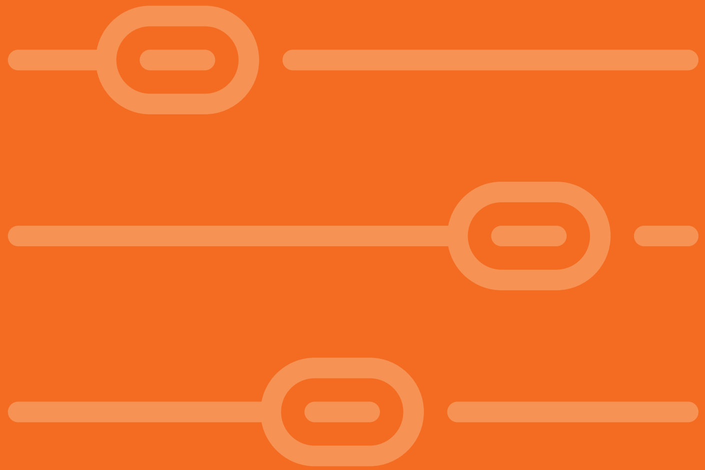
- No prior CSSF approval, i.e. time-to-market advantage
- I can avail of the umbrella-structure
- I have the same investment possibilities and little investment restrictions like in SIF and SICAR structures
- I can avoid on-going CSSF supervision (the AIFM will bear it)
- RAIFs can “switch” to the SIF-regime at a later stage

Cons

- I must appoint a fully licensed AIFM, which could be expensive
- When I drive my investment vehicle under the “de-minimis” rule (below the 100 mln / 500 mln € thresholds) and I need no EU-marketing passport, a regulated AIF could be cheaper but more time-consuming in the set-up phase (prior CSSF approval is required)

RAIF

Welcome to the world of CSSF regulation



3

The CSSF-regulated world

AIFs

AIF

Legislation

- EU Directive 2011/61/EU (the "AIFMD")
- Luxembourg Law of 12 July 2013 (the "AIFMD Law")

Success

- AIFs aim to replicate the success of UCITS for all investment funds that are not UCITS.

Key for success

- Once approved in one EU Member State, an AIF can be distributed in all other EU Member States using the EU Product Passport (exactly like UCITS), as the AIFMD aims to replicate the UCITS success story for alternative investment funds.

Who is an "AIF investor"? Am I eligible?

AIFs: target investors

"Well-informed investors", i.e.:

- Institutional investors (e.g. banks, insurance companies, pension funds, etc.)
- Professional investors (e.g. high-net-worth individuals)
- Any other investor who:
  - confirms in writing that they fulfil the status of "well-informed investor"; AND
  - invests at least €125,000; OR
  - provides a bank confirmation (or similar)

Don't forget...

- AIFs are lightly regulated and can follow different strategies (this means that they can be risky for ordinary people – so tell your grandma to invest in UCITS only!)
- AIF-eligible investors can also invest in UCITS, but in principle not vice versa!.

What are the key differences between UCITS and AIFs?

A very quick overview

EU cross-distribution thanks to the UCITS Product Passport

UCITS

- Fits for retail investors with small investments
- Investments are only possible in “safe” and liquid assets (e.g. shares, debt, bonds)
- Many investment restrictions are in place to prevent you from putting all your eggs in one basket
- Generally low performance
- Listed UCITS that replicate a specific benchmark are called exchange-traded funds (ETFs)

AIFs

- Fits for investors with higher investments (e.g. institutional investors)
- ALL investment types are possible (e.g. private equity, real estate, infrastructure, aircraft and any other investment that is ineligible for UCITS)
- Lower investment restrictions, since the target investors need less protection than a retail client (like your grandma)
- Higher performance but riskier

EU cross-border distribution thanks to the AIFMD Product Passport

My target clients are institutional investors, so I'll go for an AIF: How does it work?

A UCI ("Part II fund") is not a good option in this case (rigorous approval process and not viable when there are no retail targets). You would be better off going for a SIF (specialised investment fund) or a SICAR (investment company in risk capital).

SIF

- ALL asset classes are eligible, with or without leverage
- Minimal investment restrictions apply (in principle, no more than 30% of the fund's assets in ONE single investment and about 4 or 5 investments in total)
- A SIF can be an FCP or a SICAV/SICAF

SICAR

- Only risk capital is permitted, plus certain real estate with development factor (e.g. transforming London dock warehouses into exclusive lofts and then selling them on while realising gains)
- Only one (or more) investments are possible, no investment restrictions

AIF

Ok, I'll go for either a SIF or a SICAR:
What else should I know?

AIFM

SIFs and SICARs are AIFs and either need to appoint an alternative investment fund manager (AIFM) or can be self-managed internally. Chapter 15 or 16 ManCos or other companies can apply for an AIFM licence (Super ManCo), which is granted by the CSSF.

Registration Authorisation

The AIFM can obtain "registered" (so-called "*de minimis*") status if the SIF or SICAR's AuM remain below €100 million when leverage is used or below €500 million when no leverage is used and redemption is not possible for five years (the "thresholds").

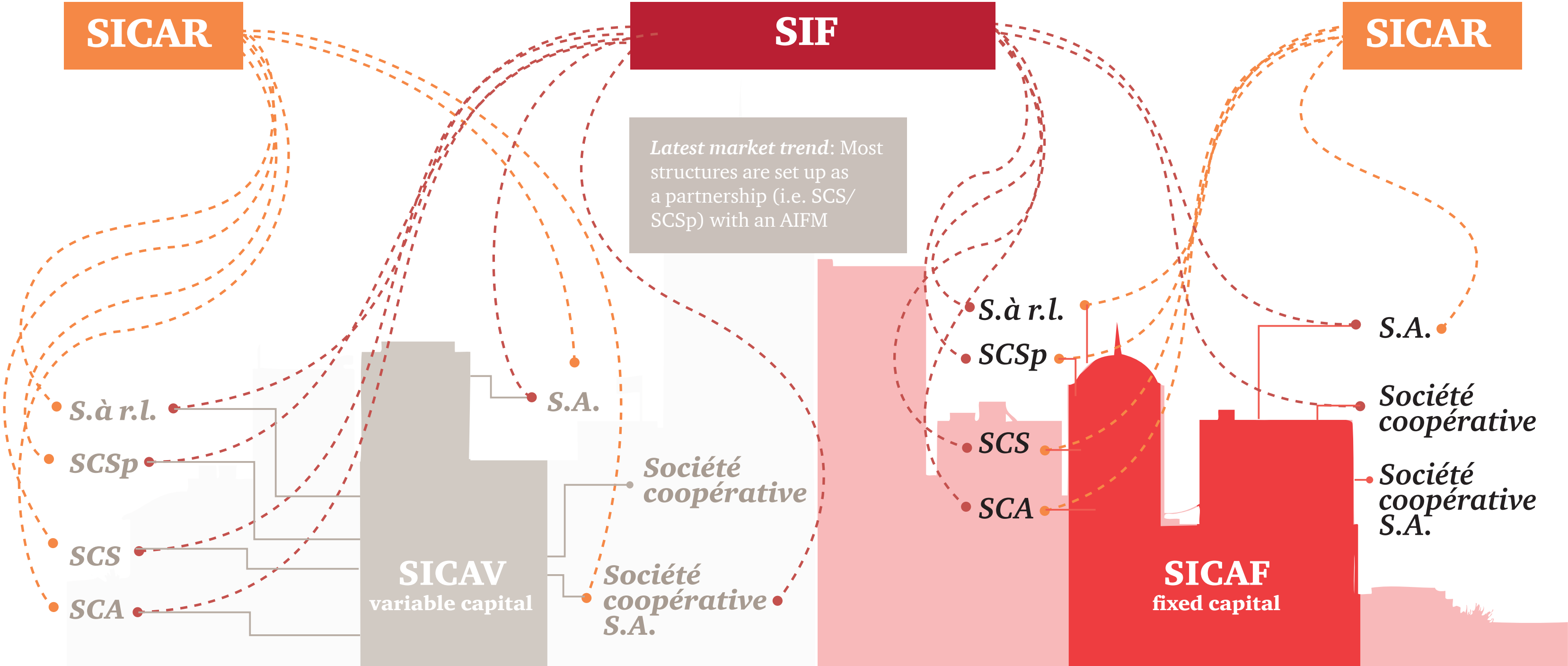
Distribution

No EU Product Passport for public distribution in the EU is available for *de minimis* SIFs or SICARs! … Not a problem! When there is no active distribution or you are only selling to a few investors, you don't need to passport the fund: you can use the national private placement regimes (where available).

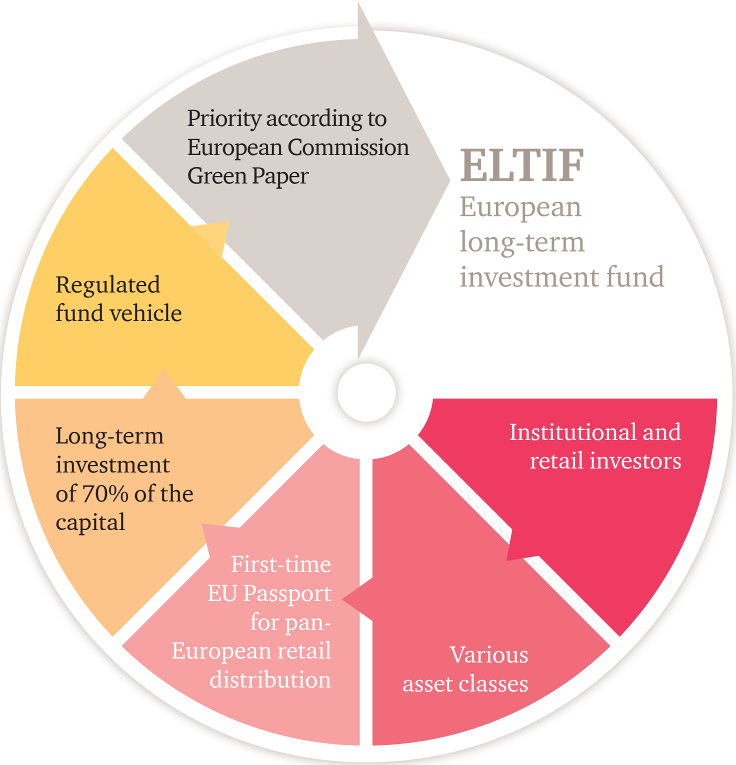
Substance

If the thresholds are exceeded, the AIFM requires full substance under the AIFMD Law: this means thorough organisation.
If the set-up costs for a fully licensed AIFM are too high, the SIF or SICAR can appoint an existing fully licensed third-party AIFM.

I've found my AIFM and I'm opting for a SIF or a SICAR with a SICAV/F structure: Which legal forms are available?



Here comes the ELTIF: What kind of vehicle is this?



Financial vehicle corresponding to the Europe 2020 strategy
Contributes to the implementation of the political objective: a high level of employment and smart, sustainable growth

Regulated fund vehicle
ELTIFs provide long-term and stable returns and pursue a long-term investment strategy

70% of the capital
must be invested in more or less clearly defined long-term assets

EU Retail Product Passport available
Unlike other AIFs, ELTIFs benefit from the EU Retail Product Passport

Various asset classes
Private equity, infrastructure, specific real estate, listed SMEs, participations, debt instruments, other ELTIFs, EuVECAs or EuSEFs

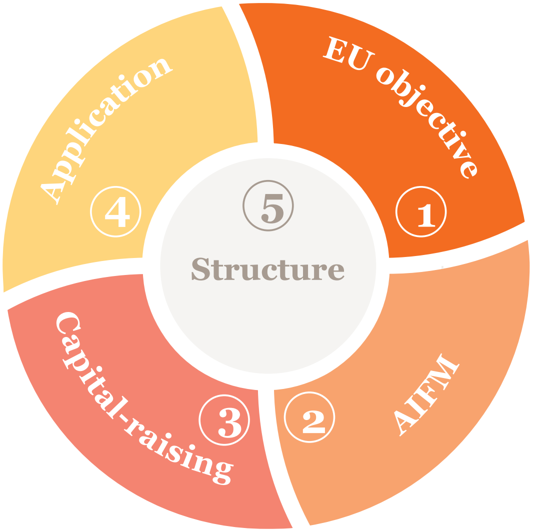
Institutional and retail investors
Retail investors with a portfolio of up to EUR 500,000 may not invest an aggregate amount exceeding 10% of their portfolio in ELTIFs. Initial amount must be at least EUR 10,000. Written alert for ELTIFs whose lifecycle exceeds 10 years: “may not be suitable for retail investors”.

The ELTIF, the "European long-term investment fund"

A pan-European regime for AIFs

In order to pursue its Europe 2020 strategy, the EU identified long-term finance as a crucial element for implementing the strategy.

To foster long-term financing, the EU created the European long-term investment fund. An ELTIF is designed to provide lasting financing to various infrastructure projects, unlisted companies or listed SMEs that issue equity or debt instruments.



1. Raising capital towards European long-term investments in the real economy, in line with the European objective of ***smart, sustainable*** and ***inclusive growth***
2. ELTIFs must appoint a fully authorised AIFM
3. ELTIFs can raise capital from institutional and retail investors across the EU and the EEA using the EU Product Passport (AIFMD rules)
4. Any AIF can apply for the ELTIF regime
5. Closed-ended structure: redemptions not possible during the ELTIF's lifetime – exceptionally after five years or the ELTIF's half-life point for a defined amount

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