

# Private Equity funds

Quick Reference Guide



## **Applicable legal framework**

Private Equity funds may be created either as SIFs, SICARs or Part II funds of the Fund Law. The choice of the appropriate vehicle depends on the type of investor targeted, the type of investment as well as the flexibility sought in terms of diversification and operation of the fund.

## **Funds dedicated to well-informed investors (“SIF”)**

- Law of 13 February 2007 on Specialised Investment Funds (“SIF Law”);
- CSSF Circular 07/283 of 28 February 2007 regarding entry into force of the law of 13 February 2007 relating to SIFs;
- CSSF Circular 07/309 of 3 August 2007 concerning risk diversification requirements applicable to SIFs;
- CSSF Circular 07/310 of 3 August 2007 regarding financial information to be provided by SIFs;
- CSSF Circular 08/371 of 5 September 2008 regarding the electronic transmission of prospectuses and financial reports of UCIs and SIFs to the CSSF.

## **Investment Company in Risk Capital (“SICAR”)**

- Law of 15 June 2004 on SICARs, as amended;
- CSSF Circular 06/241 of 5 April 2006 on the concept of risk capital in SICARs;
- CSSF Circular 06/272 of 21 December 2006 on technical specifications regarding the communication to the CSSF, under the law on prospectuses for securities, of documents for approval or for filing and of notices for offers to the public of securities issued by SICARs and admissions of securities issued by SICARs to trading on a regulated market;
- CSSF Circular 08/376 of 23 October 2008 regarding financial information to be submitted to the CSSF by SICARs.

SICARs, since they are not subject to the principle of risk diversification, are technically **not** investment funds.

**Public funds: Non-UCITS (“Part II” funds)**

- Part II of the Law of 17 December 2010 on Undertakings for Collective Investment (“the Fund Law”);
- IML Circular 91/75 of 21 January 1991 clarifying certain aspects of the UCI legislative framework (Chapter I lays down specific rules applying to Part II funds investing in Private Equity and venture capital);
- IML Circular 97/136 of 13 June 1997 on financial information to be provided by public funds;

- CSSF Circular 02/77 of 27 November 2002 on the protection of investors in case of NAV calculation error or breach of investment rules;
- CSSF Circular 08/371 of 5 September 2008 regarding the electronic transmission of prospectuses and financial reports of UCIs and SIFs to the CSSF;
- CSSF Circular 11/498 of 10 January 2011 regarding the entry into force of the law of 17 December 2010 on UCIs.

**Investors**

If the Private Equity fund is created under the provisions of Part II of the Fund Law, there is no restriction as to the type of investors. If the fund is a SIF or a SICAR, only well-informed investors will be allowed to invest in it. For further details on the “well-informed investors” definition, please refer to the SIF Quick Reference Guide of this brochure.

**Eligible investments, investment restrictions and valuation requirements**

Unlike SICARs, which are only permitted to invest in risk capital, the range of investments eligible for Part II funds and SIFs is not limited: all types of Private Equity assets are eligible.

The investment restrictions, depending on whether one considers SIFs, SICARs or Part II funds investing in Private Equity assets, can be summarised as follows:

	<b>SICAR</b>	<b>SIF</b>	<b>Part II funds</b>
<b>Maximum investment in one target</b>	SICARs are not submitted to risk spreading obligations. SICAR may invest in only one or several targets.	30% of the fund/sub-fund’s gross assets.	20% of fund/sub-fund’s net assets in any one company.
<b>Maximum leverage</b>	No maximum cap foreseen by regulation but the CSSF checks that the maximum leverage indicated in the prospectus is acceptable.		
<b>Minimum liquid assets in the fund</b>	No minimum cap foreseen by regulation but the fund’s liquidity features must be in line with sections dealing with investors’ ability to redeem in the prospectus.		

Note that, because these investment restrictions are laid down in CSSF circulars, they may in certain cases be derogated upon proper justification vis-à-vis the Commission.

SIFs, SICARs, Part II funds must also comply with the following valuation requirements:

	<b>SICAR</b>	<b>SIF</b>	<b>Part II funds</b>
<b>Minimum frequency of NAV calculation</b>	Once a year.	Once a year.	Once a month (but derogation may be obtained).
<b>Valuation principle</b>	Fair value.	Fair value unless derogated in the fund constitutional documents.	Valuation is made for officially listed securities on the basis of the last known stock exchange quotation. If it is not representative or for other securities, valuation is made based on the realisable value of the assets, estimated in good faith (unless differently provided for in the constitutional documents).
<b>Requirement for independent valuation of the assets</b>	No.	No.	No.

**Private Equity funds main features at a glance**

	<b>SIF and SICAR</b>	<b>Part II funds</b>
<b>Eligible Investors</b>	Well-informed investors only, i.e. institutional investors, professional investors and other investors provided that they formally declare themselves as well-informed investors and either invest a minimum of EUR 125,000 or obtain a certificate from a regulated entity confirming their understanding of the risks associated to the investment in a SIF/SICAR.	No restriction on the type of investor authorised to invest in a Part II fund.  (Min. subscription amount of EUR 12,500.)
<b>Licensing requirements</b>	<p>Part II funds and SICARs must receive the CSSF's prior authorisation before they can start their activities. The CSSF will pay particular attention to:</p> <ul style="list-style-type: none"> <li>• The fund draft constitutional documents, notably the prospectus;</li> <li>• The identity of the promoter of the fund, which must be a professional in the financial sector and must have sufficient financial surface;</li> <li>• The identity of the investment manager of the fund which must be duly licensed for that function in its country of domicile;</li> <li>• The identity of the persons in charge of conducting the business of the fund; they must show good reputation and adequate experience for acting in such capacity;</li> <li>• The identity of the Luxembourg central administration, the Luxembourg depositary and the Luxembourg external auditors.</li> </ul> <p>In addition, for <b>SICARs</b>, CSSF requires a business plan with a risk analysis as well as a description of the governance structure.</p> <p>A <b>SIF</b> may start operations without receiving the CSSF prior clearance but must file an application for approval within one month following its creation. SIFs do not require a promoter identified to the CSSF nor do they need a duly regulated investment manager.</p>	
<b>Compulsory service providers in Luxembourg</b>	<ul style="list-style-type: none"> <li>• Depositary: responsible for safekeeping of the SIF and SICAR assets – must be a Luxembourg bank or the Luxembourg branch of a EU bank.</li> </ul>	<ul style="list-style-type: none"> <li>• Depositary: responsible for safekeeping of the fund assets and certain other supervisory duties – must be a Luxembourg bank or the Luxembourg branch of a foreign bank.</li> </ul>
	<ul style="list-style-type: none"> <li>• Central administration – responsible for accounting, NAV calculation, keeping of the register of the shareholders/unitholders, handling with subscriptions and redemptions, communication with investors and preparation of financial statements – which must be a Luxembourg bank or a branch of a foreign bank or a professional of the financial sector with a proper license.</li> </ul>	
	<ul style="list-style-type: none"> <li>• A Chapter 16 Management Company if the Part II fund or the SIF is set up as an FCP. SICARs cannot be set up as FCPs.</li> </ul>	
	<ul style="list-style-type: none"> <li>• External auditors.</li> </ul>	
<b>Subscription/Redemption</b>	<ul style="list-style-type: none"> <li>• Subscription price can be freely determined in the offering documents. A SIF or SICAR can be closed to subscriptions;</li> <li>• Redemption price can be freely determined in the offering documents. A SIF or SICAR can be closed to redemptions.</li> </ul>	<ul style="list-style-type: none"> <li>• Subscription at NAV plus subscription fees. A Part II fund can be closed to subscriptions;</li> <li>• Redemption price must in practice be made at NAV minus redemption fees. A Part II fund can be closed to redemptions.</li> </ul>

## Private Equity funds main features at a glance (continued)

	<b>SIF and SICAR</b>	<b>Part II funds</b>
<b>Minimum capital requirement</b>	EUR 1.25 Mio for SIF and 1 Mio for SICAR to be reached within 12 months following approval.	EUR 1.25 Mio to be reached within six months following approval.
<b>Documents to be established according to laws and regulations</b>	<ul style="list-style-type: none"><li>• Offering document;</li><li>• Articles of association (in case of a SICAV or SICAF);</li><li>• Management regulations (in case of an FCP) – a SICAR can only take a corporate form;</li><li>• Agreements with the service providers;</li><li>• Annual audited financial statements (annually within six months of period end);</li><li>• Filing of financial statements with trade Registry within seven months of period end (for SICAR only).</li></ul>	<ul style="list-style-type: none"><li>• Prospectus;</li><li>• Articles of association (in case of a SICAV or SICAF);</li><li>• Management regulations (in case of an FCP);</li><li>• Agreements with the service providers;</li><li>• Annual audited financial statements (annually within four months of period end);</li><li>• Semi-annual non-audited financial statements (annually within two months);</li><li>• Long Form Report describing the organisation of the fund (annually within four months of period end).</li></ul>

**For further information,  
please contact:**

**Didier Prime**  
Luxembourg Asset Management Leader  
didier.prime@lu.pwc.com  
+352 49 48 48 6130

**Valérie Tixier**  
Private Equity Funds Leader (Regulated Structures)  
valerie.tixier@lu.pwc.com  
+352 49 48 48 5797