



**CONTACT :**

**Hance Law Avocats**

**3A Sentier de l'Espérance,**

**L-1474 Luxembourg**

**Tel: +352 274 404**

**[luxembourg@hance-law.com](mailto:luxembourg@hance-law.com)**

**SICAR**  
**SOCIÉTÉ D'INVESTISSEMENT EN CAPITAL À RISQUE**

**DEFINITION**

A Luxembourg SICAR (Société d'investissement en capital à risque) is a tailor made investment vehicle for private equity and venture capital. A SICAR is formed to combine attractive tax status with lighter regulatory requirements.

The law defines "Venture Capital" as the capital put at the disposal of the companies which have just been incorporated or companies from sectors of activities with high potential for development. "Private Equity" is an investment in an unquoted private company. Those are investments in risk transactions, however with very high potential for return.

**OBJECTIVE, PURPOSE**

A SICAR invests its assets in securities representing risk capital in order to make its investors profit from results of assets' management in consideration for the risk encountered. The term risk capital comprises direct or indirect contributions of assets into entities to facilitate their launch, their development or their listing on a stock exchange.

Securities issued by a SICAR are reserved to "informed investors" (knowledgeable investors or investors investing at least EUR 125,000). There are no restrictions imposed on portfolio investments or investment policies. Dividend distribution is not prescribed or limited.

**LEGAL BASIS**

The Law dated June 15, 2004 on the investment company in risk capital (the "SICAR Law") as amended by the Law of October 24, 2008.

**LEGAL FORM**

A SICAR can be incorporated within the framework of one of the following corporate forms:

- **Société anonyme (S.A.)** – similar to a Public Limited Liability Company or Aktiengesellschaft (AG);
- **Société à responsabilité limitée (S.à r.l.)** – similar to a Private Limited Company or a Gesellschaft mit beschränkter Haftung (GmbH);
- **Société en commandite simple (SCS)** - Limited Partnership ;
- **Société en commandite par actions (SCA)** – similar to Partnership Limited by Shares or Kommanditgesellschaft auf Aktien (KGaA);
- **Société co-operative (S.C.)** – a co-operative (a co-operative can also be incorporated as a public company).

**ADMINISTRATION**

A SICAR shall have its registered office and central administration executed in Luxembourg, which is usually provided by specialized domiciliation agents, together with ancillary services such as bookkeeping, filing and reporting or services of directors.

The minimum share capital of a SICAR is 1 million EUR of which minimum 5% has to be paid up. This allows the promoter to set up a SICAR and to request that investors pay the capital when investments are foreseen and funds are actually required.

A SICAR shall appoint a depositary bank to act as a custodian of its assets. A depositary bank must either have its registered office in Luxembourg or be established in Luxembourg, if its registered office is in another EU Member State.

**INVESTMENT SCOPE**

Investment policy of a SICAR is freely determined by the promoter, the manager and investors without any mandatory obligation or limitation.

A SICAR may be composed of multiple compartments, each compartment corresponding to a distinct part of assets and liabilities of the SICAR and having status of a separate entity.

A SICAR is authorized to issue new shares pursuant to its articles of association without any further formalities. This allows tailoring of securities and creation of as many classes of shares as required by the company's activity.

Shares of a SICAR may be listed on the Luxembourg Stock Exchange. Investors who for regulatory reasons prefer to invest in a listed company will thus have access to a venture capital investment through a listed SICAR.

**SUPERVISION**

The promoter of a SICAR is not subject to any authorization from the CSSF.

Annual accounts of a SICAR must be reviewed by an independent auditor (réviseur d'entreprises).

A SICAR has to publish an annual report within six months after the end of the year.



**CONTACT:**

**Hance Law Avocats**  
**3A Sentier de l'Espérance,**  
**L-1474 Luxembourg**  
**Tel: +352 274 404**  
**[luxembourg@hance-law.com](mailto:luxembourg@hance-law.com)**

**PROTECTION OF INVESTORS**

Protection of investors is secured by following various steps:

Only informed investors are able to subscribe shares of a SICAR. Individuals wanting to invest a minimum of 125,000 EUR have to be accordingly sponsored with this respect by a bank or a financial sector professional (i.e. an individual should receive a passport to invest into a SICAR).

A SICAR has to prepare a prospectus with all required information so that investors are able to make an informed judgment of the investment and accompanying risks.

SICAR's incorporation documents represent an integral part of each prospectus. An audit has to be undertaken by an external auditor. A SICAR is subject to an advance authorization and supervision by the financial sector regulator (Commission de Surveillance du Secteur Financier "CSSF").

**TAX TREATMENT**

SICAR's tax regime is very flexible and together with a choice of corporate structures offers extensive opportunities for investors' tax treatment optimization. At the level of a SICAR, all items of income from transferable securities, or from sale, contribution or liquidation of such assets, are excluded from taxable income. A SICAR is exempt from net wealth tax.

**SICAR INCORPORATED AS A CAPITAL COMPANY- ACCESS TO THE DOUBLE TAX TREATIES' NETWORK**

If a SICAR is incorporated as a SA, a SARL or a SCA, it will be a Luxembourg resident for tax purposes. A SICAR will therefore be able to claim double tax treaty benefits such as reduced withholding tax rates on dividends distributed by a foreign target company into which the SICAR invested. Considering the extensive double tax treaties' network of Luxembourg, broad possibilities for tax optimization exist. If a SICAR invests in transferable securities, income deriving from such source will be exempt from Luxembourg corporate income tax. Dividends and capital gains earned by foreign investors will likewise not be subject to Luxembourg taxation.

Dividend distributions by a SICAR are equally exempt from the 20% dividend withholding tax. Capital gains generated by non-resident investors upon sale of their shares in a SICAR are not taxable in Luxembourg.

**TRANSPARENT SICAR- NO ACCESS TO THE DOUBLE TAX TREATIES' NETWORK**

If a SICAR is incorporated as a société en commandite simple (SCS) (a Private Partnership), then it will be entirely disregarded in corporate sense for tax purposes. The SCS is by nature a pass-through entity, which means that the income earned by a SCS is deemed earned directly by its shareholders in proportion to their respective shareholdings in the SCS.

Any income deriving from investments in the target companies is deemed to be achieved directly by shareholders and will as such only be taxed at the level of an individual shareholder and according to the regulations of his/her country of residence. Non-resident shareholders will under no circumstances be subject to any Luxembourg tax as a consequence of their stake in a SICAR SCS.

Due to the fact a SCS is entirely disregarded in corporate sense for taxation purposes, it is not considered a resident of Luxembourg for tax purposes. Therefore it does not benefit from double tax treaties concluded by Luxembourg. Nevertheless an individual shareholder shall be able to claim benefits under double tax treaties concluded between his/her country of residence and the country of each target company from which such shareholders are deemed to have received income.

