

SICAR Law modernization

dated 21 October 2008

On 15 October, the Luxembourg Chamber of Deputies passed a set of legal provisions which amend, among other things, the Law of 15 June 2004 on investment companies in risk capital ("SICAR"). After four years of success, some changes were indeed required to meet the needs of the industry and to continue promoting the Luxembourg investment vehicle dedicated to the venture capital and private equity businesses.

One major innovation introduced by the act of 15 October is the possibility to create a SICAR as an umbrella structure with multiple compartments having segregated assets and liabilities. The language of the law is similar to the 2002 Law on UCIs and the 2007 Law on SIFs. This technique enables the SICAR manager to propose different investment policies within a single entity instead of structuring participations in successive issues aiming at financing specific investments. A compartment can be liquidated without having to liquidate the whole SICAR.

Another change to the law consists in taking into account share premiums to compute the SICAR EUR 1 million minimum capital. Indeed, according to the promoters' objectives, it may be necessary to issue shares with a small nominal value but with an important share premium. According to the chosen ratio between the nominal value and the share premium, the minimum share capital of EUR 1 million to be subscribed may be difficult to reach. Given that the objective of this minimum capital paid by investors is to guarantee a minimum size for the SICAR, it seemed relevant to take share premiums into consideration.

The article on the role of the SICAR's custodian bank has been combined with the text of SIF Law and the additional control duties initially entrusted to the SICAR custodian have been repealed. These control duties consisted in ensuring that settlements were made on a timely basis, controlling that the SICAR income was applied correctly and that subscription prices for securities issued by the SICAR were remitted within the timeframe set forth in the SICAR's constitutive documents. This restricted list of additional control duties was indeed not suitable to the specific nature of the investments in risk capital.

Other changes are:

- The "well-informed investor" concept has been harmonized with the wording of the SIF Law. It has also been clarified that SICAR managers or those persons who are involved in the management of the SICAR are not required to meet the well-informed investor criteria.
- The valuation of the assets shall no longer be made by reference to the "foreseeable sales price estimated in good faith" but by reference to the "fair value". While not earth-shattering, this change may nevertheless impact the SICAR's constitutive documents.
- The company name shall now be completed with the mention "SICAR" in order to avoid confusion with other types of companies.

- It is no longer required to inform investors about the NAV on a half-yearly basis. While many promoters may choose to do so nonetheless, the additional flexibility is welcome.
- The law makes it clear that SICARs are not required to "publish" a prospectus and an annual report for each financial year. Instead, the law provides that the SICARs should "prepare" a prospectus and an annual report and that such annual report must be available for investors within six months from the end of the period to which it relates.
- Finally, the law provides that a limited corporate partnership (Société en Commandite Simple) may also decide that the amount of its capital shall at all times be equal to its net asset value.

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