



HALSEY GROUP^{Srl}

**PROFESSIONAL SERVICES
FOR COMPANIES**



SICAR

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General features

Created by a law dated 15 June 2004, as amended (the “**SICAR Law**”), an investment company in risk capital (“**SICAR**”) shall be any company:

- that has adopted the form of a limited partnership (S.C.S.) or of a special limited partnership without legal personality (S.C.Sp.), or the form of a partnership limited by shares (S.C.A.), a cooperative in the form of a public limited company (S.COOP.S.A.), a limited company (S.à r.l.) or a public limited company (S.A.) governed by Luxembourg law, and
- whose purpose is to invest in securities (risk capital) so as to secure a return for their investors commensurate with the risk which they take, and
- the securities of which are restricted to well-informed investors as defined in Article 2 of SICAR Law, and
- the articles of which provide that it is subject to the provisions of the SICAR Law.

Investment in risk capital means direct or indirect contribution of assets to entities in view of their launch, development or listing on a stock exchange, involving a higher level of risk by creating value in the target entities through restructuring, modernization, product development, or by measures aimed at improving the allocation of resources. The entity may temporary (max 12 months) invest in other assets whilst it is waiting for suitable investments in risk capital.

SICARs are not subject to any risk diversification restrictions and may be highly leveraged, subject to certain conditions.

The SICAR Law expressly allows for the creation of undertakings with multiple compartments (umbrella structures) permitting a private equity house to group different investment strategies or meet the demands of different investors, within one legal structure.

The SICAR is restricted to well-informed investors who shall be institutional investors, professional investors or any other investor who meets the following criteria:

- he has confirmed in writing that he satisfies the status of well-informed investor and
- he invests a minimum of EUR 125,000 in the company, or
- he has been subject to an assessment made by a credit institution within the meaning of Directive 2006/48/EC, by an investment firm within the meaning of Directive 2004/39/EC or by a management company within the meaning of Directive 2009/65/EC certifying his expertise, his experience and his knowledge in adequately appraising an investment in risk capital.

The conditions set forth above do not apply to directors and other persons taking part in the management of the SICAR.

The share capital of a SICAR (the net asset value, in the case of a SICAR with variable capital), including share premium or the value of the amount constituting partnership interests, shall not be less than EUR 1 million (to be reached within 12 months following the authorization given by the CSSF). At least 5% of each share (except for SCS and SCSp for which there is no such minimum) must be paid up at subscription. A SICAR may opt for a variable or a fixed share capital and may be structured as an open-ended or closed-end fund.



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SCA, S.A., S.à r.l. and S.COOP.S.A. may foresee in their articles of incorporation that the share capital amount is always equal to the total net assets.

The issue and redemption of shares/units is not subject to restrictions other than those contained in the constitutional documents.

Regulatory environment

The SICAR is a regulated vehicle supervised by the Luxembourg Commission de Surveillance du Secteur Financier (CSSF) and an authorisation file must be submitted to the CSSF prior to its launch.

The authorisation will be granted subject to:

- approval of the constitutional documents and of the prospectus;
- approval of the choice of custodian bank located in Luxembourg and an independent auditor;
- approval of the directors of the SICAR, who must be of good repute and have sufficient experience in the performance of their duties in the private equity field;
- the designation of a central administration agent located in Luxembourg.

The SICAR must periodically report to the CSSF and produce an audited annual report to its shareholders.

A one-time fee of EUR 3,500 (EUR 7,000 for umbrella funds) is payable to the CSSF for the initial authorisation, as well as an annual fee of EUR 3,000 (EUR 6,000 for umbrella funds) for supervision¹.

SICARs qualify as alternative investments funds (AIFs) under the Directive 2011/61/EU of June 8, 2011 (the AIFM Directive).

SICAR (AIFs) managed by an EU authorised AIFM benefit from a passport allowing AIFMs to market the SICAR's shares, units or partnership interests to professional investors within the EU through a regulator-to-regulator notification regime (see chapter 4 below).

Tax aspects

No stamp duty, capital duty or tax will be payable in Luxembourg upon the issue of shares by a SICAR, whether in partnership form or corporate form; there is a registration tax of EUR 75 due upon incorporation and to be paid upon each amendment to the articles of association.

A SICAR in partnership form (S.C.S. and S.C.Sp.) is considered as a transparent entity for Luxembourg tax purposes and not subject to corporate income tax. A SICAR in partnership form is not considered a commercial entity and is not subject to municipal business tax.

The tax regime of a SICAR in corporate form (S.A., S.à r.l., S.COOP.SA and S.C.A.) is, as a matter of principle, similar to the regime applicable to ordinary commercial companies: it is subject to corporate income tax in Luxembourg at a current global rate of 27.08% (which comprises corporate



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income tax (CIT), solidarity tax and the municipal business tax (MBT) for Luxembourg-city (to be reduced to 26.01% as from January 1, 2018)).

However, income arising from qualifying securities held by a corporate SICAR, as well as any capital gains realized upon the sale, contribution or liquidation or any other disposal of qualifying securities, does not constitute taxable income. Realized losses resulting from the transfer of securities and unrealized losses arising from reduction in value of these assets are not tax-deductible. Income arising from other assets, pending their investment in risk capital, does not constitute taxable income, provided such assets are invested in risk capital within twelve (12) months.

A corporate SICAR may, from a Luxembourg tax perspective, benefit from the Luxembourg double tax treaty network as well as the EU parent-subsidiary directive; would such a benefit be denied, dividends and interests, if any, received from investments by the SICAR may be liable to withholding taxes in the countries concerned at varying rates and such withholding taxes are usually not recoverable.

Dividends, redemption amounts and liquidation proceeds paid by the SICAR, whether in partnership or corporate form, are not subject to any Luxembourg withholding tax, regardless of the country of residence of the recipient.

Finally, a SICAR under the corporate form is subject to a minimum NWT of EUR 4,815 if it holds fixed financial assets, receivables, transferable securities and cash at bank which exceed 90% of its total gross assets and EUR 350,000.

Accounting aspects

SICARs must publish accounts on an annual basis. The accounts have to be made available to investors and the CSSF, the Luxembourg regulator, within six months of the year-end. No semi-annual reports are required.

SICARs typically report under Luxembourg GAAP and may use IFRS by agreement with the CSSF and in particular if the SICAR is listed in accordance with EU regulation.

The SICAR's assets must be valued using fair-market value, determined in accordance with the procedures laid down in the articles of association. Accounts must be reviewed by an independent auditor that is approved by the CSSF.

SICARs are exempt from the obligation to prepare consolidated accounts.

SICARs must provide a set of financial information to the CSSF which the CSSF will use for its supervision of SICARs as well as for statistical purposes.



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Services offers by Halsey Group

HALSEY has been established in Luxembourg for more than 20 years and has licenses from the "Commission de Surveillance du Secteur Financier" (CSSF), the Luxembourg Regulator, to provide domiciliation, fund administration and other corporate services. We provide a fast and reliable service to many private investors, leading institutions, major international corporations and private equity firms.

HALSEY offers its clients an extensive range of high quality services in connection with Luxembourg financial companies both at the time of incorporation and throughout the life of the company:

- Company formation
- Administrative and accounting
- Corporate secretarial
- Fund administration
- Company management
- Assistance in setting-up own offices & management of client staff

The objective of this fact sheet is to provide the reader with a general view of relevant aspects relating to the SICAR. No action shall be taken without prior consultation with Halsey Group, as this document alone cannot cover all aspects relating to the incorporation and administration of the SOPARFI. Finally, please note that this document is provided for information purposes only and should not be understood as legal or fiscal advice.