

# General information on the regulatory conditions for Luxembourgian funds

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# Background to ‘fund legislation’ in L and G



	Luxembourg	Germany
Europe – Legal background	<p>Directive 85/611/EEC Known as the UCITS directive</p>	<p>Directive 85/611/EEC Known as the UCITS directive</p>
National law	<ul style="list-style-type: none"> <li>▪ Law of 20 December 2002 concerning Undertakings for Collective Investment</li> <li>▪ Circular CSSF (Luxembourgian supervisory authority) 07/308</li> <li>▪ Grand-Ducal Regulation of 8 February 2008</li> <li>▪ Law of 13 February 2007 concerning Specialised Investment Funds</li> <li>▪ SICAR law of 15 June 2004</li> </ul>	<ul style="list-style-type: none"> <li>▪ Investment law of 1.1.2004 (Investment Tax Act)</li> <li>▪ Derivatives ordinance</li> <li>▪ Corresponding legislation in investment law</li> <li>▪ German special funds are regulated under investment law</li> <li>▪ No equivalent</li> </ul>



# Possible regulated 'funds' in L and G



Luxembourg	Germany
F.C.P. (Fonds commun de placement = mutual fund); represented by a Luxembourgian KAG (capital investment company)	Special fund with a KAG (capital investment company)
SICAV/SICAF (Société d'Investissement à Capital Variable/Fixe = investment company with variable or fixed capital); with or without a KAG (capital investment company)	Investment stock corporation with variable capital, with or without a KAG (capital investment company)
SICAR (Société d'Investissement en Capital à Risque = investment company with fixed or variable capital; as a partnership or corporation)	no regulated vehicle for risk capital



Part I of the law of 20 December 2002 <sup>1</sup>	Part II of the law of 20 December 2002 <sup>2</sup>	Special funds according to the law of 13 February 2007 <sup>3</sup>	SICAR according to the law of 15 June 2004 <sup>4</sup>
Mutual funds in accordance with Directive 85/611/EEC	All other mutual funds outside the scope of Directive 85/611/EEC	Funds for experienced investors	Investment in risk capital, only for experienced investors
Public sale in EU states easily possible (known as EU-Pass)	Public sale in foreign countries only conditionally possible	No public sale possible	No public sale possible
Catalogue of eligible assets	No catalogue of eligible assets	No catalogue of eligible assets	No catalogue of eligible assets
Legal investment limits	No legally imposed investment limits, but the principle of risk spreading, defined to some extent through administrative practice (e.g. IML 91/75, chapter I ; CSSF 02/80)	No legal investment limits, merely the principle of risk spreading, specified by Circular CSSF 07/309	<ul style="list-style-type: none"> <li>▪ No legal investment limits → no risk spreading required</li> <li>▪ No investment limits through administrative practice</li> <li>▪ But investment can only be made in risk capital</li> </ul>

<sup>1</sup> Relevant circulars from the Luxembourg supervisory authority: IML: 91/75, 97/136; CSSF: 02/77, 02/81, 03/97, 03/108, 03/122, 04/146, 05/177, 05/185, 07/277, 07/308, 08/339, 08/348

<sup>2</sup> Relevant circulars from the Luxembourg supervisory authority: IML: 91/75, 97/136; CSSF: 02/77, 02/80, 02/81, 03/97, 08/348

<sup>3</sup> Relevant circulars from the Luxembourg supervisory authority: CSSF 07/283, 07/309, 07/310, 08/372

<sup>4</sup> Relevant circulars from the Luxembourg supervisory authority: CSSF 06/241, 08/376

Part I of the law of 20 December 2002 <sup>1</sup>	Part II of the law of 20 December 2002 <sup>2</sup>	Special funds according to the law of 13 February 2007 <sup>3</sup>	SICAR according to the law of 15 June 2004 <sup>4</sup>
Strict requirements for KAGs (capital investment companies) that are managing Part I funds			
Possible forms: FCP/ SICAV/ SICAF, Structuring as umbrella fund possible	Possible forms: FCP/ SICAV/ SICAF, Structuring as umbrella fund possible	Possible forms: FCP/ SICAV/SICAF, Structuring as umbrella fund possible  Nota bene: Special funds in accordance with the law of 1991 automatically come under the new law	Possible forms: SICAR with variable or fixed capital (no FCP), umbrella structure not possible

<sup>1</sup> Relevant circulars from the Luxembourg supervisory authority: IML: 91/75, 97/136; CSSF: 02/77, 02/81, 03/97, 03/108, 03/122, 04/146, 05/177, 05/185, 07/277, 07/308, 08/339, 08/348

<sup>2</sup> Relevant circulars from the Luxembourg supervisory authority: IML: 91/75, 97/136; CSSF: 02/77, 02/80, 02/81, 03/97, 08/348

<sup>3</sup> Relevant circulars from the Luxembourg supervisory authority: CSSF 07/238, 07/309, 07/310, 08/372

<sup>4</sup> Relevant circulars from the Luxembourg supervisory authority: CSSF 06/241, 08/376

# Legal forms (1)



	SICAR	SICAV/SICAF <sup>1</sup>	F.C.P. <sup>1</sup>
<b>I. COMPANY LAW</b>			
<b>Permitted legal forms</b>	<u>As a partnership</u> <ul style="list-style-type: none"> <li>▪ KG (limited partnership)</li> </ul> <u>As a corporation:</u> <ul style="list-style-type: none"> <li>▪ AG (stock corporation)</li> <li>▪ GmbH (limited liability company)</li> <li>▪ KGaA (partnership limited by shares)</li> <li>▪ In the form of a society organised as an AG (stock corporation)</li> </ul>	<u>Part I and Part II:</u> <ul style="list-style-type: none"> <li>▪ AG (stock corporation)</li> </ul> <u>SIF:</u> <ul style="list-style-type: none"> <li>▪ AG (stock corporation)</li> <li>▪ KGaA (partnership limited by shares)</li> <li>▪ In the form of a society organised as an AG (stock corporation)</li> <li>▪ GmbH (limited liability company)</li> </ul>	Special fund without legal personality
<b>Paying-up of capital</b>	In the case of AG, KGaA, GmbH and cooperatives, issued units must be fully subscribed at paid up to at least 5%; this can be done with cash or payment in kind	<u>Part I and Part II:</u> Issued shares must be fully paid up <u>SIF:</u> Issued units must be fully subscribed at paid up to at least 5%; this can be done with cash or payment in kind	Issued units must be fully paid up
<b>Capital</b>	Corporations can have fixed or variable capital (constitution)	Can have fixed (SICAF) or variable (SICAV) capital	Variable capital

<sup>1</sup> Unless otherwise specified, the statements apply equally to SIF, Part I and Part II vehicles



	SICAR	SICAV/SICAF <sup>1</sup>	F.C.P. <sup>1</sup>
<b>Restrictions to the payout of interim dividends</b>	Only in accordance with the respective constitution, i.e. rules on the payout of interim dividends according to the law on trading companies are not applicable	Only in accordance with the respective constitution, i.e. rules on the payout of interim dividends according to the law on trading companies are not applicable	Only in accordance with the management regulations, i.e. rules on the payout of interim dividends according to the law on trading companies are not applicable
<b>II. ELIGIBLE ASSETS</b>			
	<p><u>By law, only venture capital</u> i.e. direct or indirect contribution of funds into companies with regard to their start-up, development or flotation</p>	<p>Combination with other eligible assets possible</p> <p><b><u>Part I:</u></b></p> <ul style="list-style-type: none"> <li>▪ Definitive list of the eligible assets</li> <li>▪ No investments in commodities, precious metals and certificates of these, although a certificate or derivative on a recognised commodity index would be permitted</li> <li>▪ No investments in funds of funds</li> <li>▪ Target funds that do not comply with the Directive 85/611/EEC must in practical terms be equivalent to UCITS funds</li> </ul> <p><b><u>Part II and SIF:</u></b></p> <ul style="list-style-type: none"> <li>▪ No legal requirements or limitations to eligible assets</li> </ul>	

<sup>1</sup> Unless otherwise specified, the statements apply equally to SIF, Part I and Part II vehicles

# Legal forms (3)



	SICAR	SICAV/SICAF <sup>1</sup>	F.C.P. <sup>1</sup>
<b>III. SUPERVISORY LAW</b>			
Approval by the Luxembourg supervisory authority CSSF	Required before starting up business	<b>Part I and Part II:</b> Required before starting up <b>SIF:</b> Must be applied for no later than 1 month <u>after</u> formation	
Subject to approval	Founding documents and their amendments, prospectus, choice of custodian bank, business manager, auditor	<b>Part I and Part II:</b> Founding documents and their amendments, prospectus, choice of custodian bank, business manager, promoter, investment manager, auditor <b>SIF:</b> Founding documents and their amendments, prospectus, choice of custodian bank, business manager, auditor	
Location	Registered office and headquarters of SICAR, SICAV/SICAF or FCP , along with the custodian bank, must be in Luxembourg		
Legal investment limits	none	<b>Part I:</b> <ul style="list-style-type: none"> <li>▪ Max. 20 % exposure to one group</li> <li>▪ Max. 20 % cash at the custodian bank</li> <li>▪ Max. 20 % in one target fund</li> <li>▪ Max. 10 % in securities and money market instruments from one issuer</li> <li>▪ Max. 10 % in unquoted securities</li> <li>▪ The sum of all securities investments amounting to &gt; 5 % may not exceed 40 %</li> <li>▪ No short sales of money market instruments, securities or fund units</li> <li>▪ No borrowing for investment purposes, max. 10 % short-term borrowing</li> </ul>	

<sup>1</sup> Unless otherwise specified, the statements apply equally to SIF, Part I and Part II vehicles



# Legal forms (4)



	SICAR	SICAV/SICAF <sup>1</sup>	F.C.P. <sup>1</sup>
Legal investment limits	none	<p><b>Part II:</b> No legally prescribed investment limits</p> <p>Guidelines:</p> <ul style="list-style-type: none"> <li>▪ Max. 10 % unquoted securities (exceptions such as venture capital, life assurance or the like are possible)</li> <li>▪ Max. 10 % securities from the same issuers</li> <li>▪ Max. 20 % in one target fund (or sub-fund of an umbrella fund)</li> </ul> <p><b>SIF:</b> None, however the circular CSSF 07/309<sup>2</sup> stipulates risk spreading:</p> <ul style="list-style-type: none"> <li>▪ Max. 30 % in securities of the same type from the same issuer (and not by employing short sales)</li> </ul> <p>Exceptions:</p> <ul style="list-style-type: none"> <li>- Investments in securities issued or guaranteed by a member state of the OECD or its public regional administrative bodies etc.</li> <li>- Investments in target-UCIs that are subject to risk spreading requirements</li> </ul> <ul style="list-style-type: none"> <li>▪ Compliance with the principle of risk spreading when using financial derivatives</li> </ul>	
Types of investor	Only 'expert' investors (institutional investors, professional investors and wealthy private individuals under certain conditions)	<p><b>Part I and Part II:</b></p> <p>No limitations regarding types of investor</p> <p><b>SIF:</b></p> <p>Only 'expert' investors (institutional investors, professional investors and wealthy private individuals under certain conditions)</p>	

<sup>1</sup> Unless otherwise specified, the statements apply equally to SIF, Part I and Part II vehicles

<sup>2</sup> The sources quoted here are circulars from the Luxembourg supervisory authority (CSSF)



# Legal forms (5)



	SICAR	SICAV/SICAF <sup>1</sup>	F.C.P. <sup>1</sup>
<b>NAV calculation and publication</b>	NAV must be communicated free of charge at least every six months to investors who request it	<b>Part I:</b> At least 2 x per month <b>Part II:</b> At least 1 x per month <b>SIF:</b> At least 1 x per year	
<b>Reports</b>	<ul style="list-style-type: none"> <li>▪ Audited annual report within 6 months of the end of the business year (no consolidated report),</li> <li>▪ No long form report in accordance with CSSF 02/81<sup>2</sup></li> <li>▪ No semi-annual reports</li> <li>▪ No monthly reporting to CSSF and STATEC in accordance with IML 97/136<sup>2</sup>; CSSF 08/348<sup>2</sup></li> <li>▪ No forwarding of information to Finesti<sup>3</sup> in accordance with CSSF 03/97<sup>2</sup></li> </ul>	<b>Part I and Part II:</b> <ul style="list-style-type: none"> <li>▪ Audited annual report within 4 months of the end of the business year</li> <li>▪ Long form report in accordance with CSSF 02/81<sup>2</sup></li> <li>▪ Semi-annual reports within 2 months of the end of the half-year</li> <li>▪ Monthly reporting to CSSF and STATEC in accordance with IML 97/136<sup>2</sup></li> <li>▪ Forwarding of information to CCLUX in accordance with CSSF 03/97<sup>2</sup></li> </ul> <b>SIF:</b> <ul style="list-style-type: none"> <li>▪ Audited annual report within 6 months of the end of the business year</li> <li>▪ No long form report in accordance with CSSF 02/81<sup>2</sup></li> <li>▪ No semi-annual reports</li> <li>▪ Monthly reporting to CSSF and STATEC in accordance with CSSF 07/310<sup>2</sup></li> <li>▪ No forwarding of information to Finesti<sup>3</sup> in accordance with CSSF 03/97<sup>2</sup></li> </ul>	
<b>Valuation methods</b>	Valuation methods (to be described in the constitution) based on the probable realisable value as estimated by the company in good faith	Mutual funds: the latest available market value of the assets  SIF: fair value (to be determined by the constitution)	Mutual funds: the latest available market value of the assets  SIF: fair value (to be determined by the management regulations)

<sup>1</sup> Unless otherwise specified, the statements apply equally to SIF, Part I and Part II vehicles

<sup>2</sup> The sources quoted here are circulars from the Luxembourg supervisory authority (CSSF)

<sup>3</sup> Finesti was known as Centrale de Communications Luxembourg (CCLux) until 27.01.2009



# Legal forms(6)



	SICAR	SICAV/SICAF <sup>1</sup>	F.C.P. <sup>1</sup>
<b>Legal minimum capital</b>	€ 1 million, only needs to be achieved within 12 months of approval by CSSF	€ 1.25 million, must be achieved within 6 months of approval by CSSF (within 12 months in the case of a SIF)	€ 1.25 million, must be achieved within 6 months of approval by CSSF (within 12 months in the case of a SIF)
<b>Minimum content of sales prospectus / issue document</b>	No compulsory minimum content in tabular form, but the investor must be able to form a sound judgement about the investment and the risks associated with it	<p><b>Part I and Part II:</b> The minimum content of the sales prospectus is determined in accordance with Schema A of the law of 20 December 2002 concerning Undertakings for Collective Investment</p> <p><b>SIF:</b> No compulsory minimum content in tabular form, but the investor must be able to form a sound judgement about the investment and the risks associated with it</p>	
<p><b>Tax treatment</b> <u>Luxembourg:</u></p> <p><u>Germany:</u></p>	Taxe d'abonnement (subscription tax): not applicable	<p><b>FCP or SICAV:</b> no on-going taxation apart from the taxe d'abonnement - <b>Part I and Part II:</b> 0.05 % p.a. <b>SIF:</b> 0.01 % p.a.</p> <ul style="list-style-type: none"> <li>▪ <b>Investor:</b> no taxation</li> <li>▪ <b>Manager/Advisor:</b> Tax assessment of the advisor's fee in accordance with the law of the country of registration; currently no obligation to pay VAT</li> <li>▪ No tax deduction at source for non-resident investors (except in accordance with EU interest taxation directive – only applicable to the income of natural persons)</li> <li>▪ Fiscal transparency in accordance with the German Investment Tax Act: possible in principle</li> </ul> <p>▪ <b>FCP or SICAV:</b> n/a</p> <ul style="list-style-type: none"> <li>▪ <b>Investor:</b> Taxation in accordance with German law</li> <li>▪ <b>Manager/Advisor:</b> Tax assessment of the advisor's fee in accordance with German law; usually no obligation to pay VAT</li> </ul>	

<sup>1</sup> Unless otherwise specified, the statements apply equally to SIF, Part I and Part II vehicles



	SICAR	SICAV/SICAF <sup>1</sup>	F.C.P. <sup>1</sup>
<b>IV. EXECUTIVE BODIES</b>			
	<ul style="list-style-type: none"> <li>Administrative board/ management board/ general partners (depending on the legal form)</li> <li>General/ shareholders' meeting (depending on the legal form)</li> <li>Investment committee (optional, therefore no statutory regulation, no number of members stipulated; appointed by the administrative board or the general meeting)</li> <li>Voluntary: manager or advisor (do not need to be officially regulated)</li> </ul>	<ul style="list-style-type: none"> <li>Administrative board/ management board/ general partners (depending on the legal form)</li> <li>Supervisory board/ executive board (if applicable)</li> <li>General/ shareholders' meeting (depending on the legal form)</li> <li>Investment committee (optional, therefore no statutory regulation, no number of members stipulated; appointed by the administrative board or the general meeting)</li> <li>Voluntary: manager or advisor</li> </ul> <p><b><u>Part I and Part II:</u></b></p> <ul style="list-style-type: none"> <li>- Manager must be officially monitored</li> <li>- Advisor does not need to be officially monitored<sup>2</sup></li> </ul> <p><b><u>SIF:</u></b></p> <ul style="list-style-type: none"> <li>- Manager and advisor do not need to be officially monitored<sup>2</sup></li> </ul>	<ul style="list-style-type: none"> <li>Management company (one can be established for the fund or the fund can be set up under LuxInvest)</li> <li>Administrative board of the management company</li> <li>Investment committee (appointed optionally by the management company)</li> <li>Voluntary: manager or advisor</li> </ul> <p><b><u>Part I and Part II:</u></b></p> <ul style="list-style-type: none"> <li>- Manager must be officially monitored</li> <li>- Advisor does not need to be officially monitored<sup>2</sup></li> </ul> <p><b><u>SIF:</u></b></p> <ul style="list-style-type: none"> <li>- Manager and advisor do not need to be officially monitored<sup>2</sup></li> </ul>

<sup>1</sup> Unless otherwise specified, the statements apply equally to SIF, Part I and Part II vehicles

<sup>2</sup> However, the case may be that this is required under the law of the country of origin of the manager/ advisor. In Germany approval under the German Banking Act is also required for advisors according to current administrative practice.

# Requirements of the custodian bank



- It must be a Luxembourgian bank

Role of the custodian bank:

	FCP Part I	FCP Part II	SICAV Parts I + II	SIF		SICAR	SOPARFI
				FCP	SICAV		
1) Supervision of the assets (general task)	X	X	X	X	X	X	-
2) Daily management of the assets	X	X	-	X	-	-	-
3) Particular supervisory duties							
Monitoring the NAV calculation	X	-	-	-	-	-	-
Monitoring the sale, issue, redemption and rescission of units	X	X	X	-	-	-	-
Monitoring that the transaction value is transferred within the customary period	X	X	X	-	-	-	-
Monitoring the appropriate use of UCI income	X	X	X	-	-	-	-
Investment restrictions	X	X	-	-	-	-	-



# Luxembourg's double taxation agreements



## 1. List of countries in relation to which SICAVs can invoke agreements for the avoidance of double taxation:

1. Austria
2. China
3. Denmark
4. Finland
5. Germany\*
6. Indonesia
7. Ireland
8. Israel
9. Malaysia
10. Malta
11. Mongolia
12. Morocco
13. Poland
14. Portugal
15. Republic of Korea
16. Romania
17. San Marino
18. Singapore
19. Slovakia
20. Slovenia
21. Spain \*\*
22. Thailand
23. Trinidad and Tobago
24. Tunisia
25. Turkey
26. Uzbekistan
27. Vietnam

\* Depending on individual cases, requires confirmation that the applicant is not a holding company.

\*\* With respect to Spanish taxation, a double taxation agreement is only applicable if the SICAV concerned is approved for public sale in Spain in accordance with the rules of the directive 85/611/EEC (UCITS-directive).



# Luxembourg's double taxation agreements



2. Luxembourg has concluded double taxation agreements with the following countries, but these do not regulate conclusively whether SICAVs can access such agreements.

1. Bulgaria
2. Greece
3. Italy
4. Russia
5. Switzerland

3. A SICAV cannot invoke double taxation agreements with the following countries:

- |                   |               |                  |
|-------------------|---------------|------------------|
| 1. Belgium        | 8. Hungary    | 15. Netherlands  |
| 2. Brazil         | 9. Iceland    | 16. Norway       |
| 3. Canada         | 10. Japan     | 17. South Africa |
| 4. Czech Republic | 11. Latvia    | 18. Sweden       |
| 5. Estonia        | 12. Lithuania | 19. USA          |
| 6. France         | 13. Mauritius |                  |
| 7. Great Britain  | 14. Mexico    |                  |

The current list is published (in French) on the home page of the taxation authority responsible for direct taxation,  
see: <http://www.impotsdirects.public.lu/dossiers/conventions/opc/sicav/index.html>

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# Disclaimer

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