

SICAV/SICAF Investment Fund in Luxembourg

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The following text is an extract from LCG's brochure "Business Luxembourg Company Formation".

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Your LCG Team

SICAV/SICAF Investment Fund in Luxembourg

1. Legal structure of a SICAV/SICAF Investment Fund in Luxembourg

1. Concept

The SICAV and SICAF are investment fund structures in Luxembourg which may be formed as UCITS Funds (Undertakings for Collective Investment of Transferable Securities) or as Specialised Investment Funds (SIF).

A SICAV (Société d'Investissement à Capital Variable) in Luxembourg is an investment fund in the form of an Investment Company whose share capital is variable and the value of which at any time matches the value of the net assets of all the sub-funds, constituted as shares without a statement of their nominal value.

In contrast thereto, a SICAF Investment Fund (Société d'Investissement à Capital Fixe) in Luxembourg exists in the form of an Investment Company whose share capital is fixed.

Due to both of the afore-mentioned Investment Funds not having legal personality, they are either self-managed or externally managed Investment Companies.

The SICAV and SICAF Investment Funds are only permitted to manage the assets in their own portfolios.

2. Purpose

Their purpose is the investment of the share capital in securities or in other liquid financial investments in accordance with the principle of diversification to allow the shareholders to receive the income generated from the management of their assets.

3. Investment policy

Due to it being possible to mix both the SICAV and SICAF Investment Funds with other investment assets, they may be formed as, among others, Security-; Real Estate-; Money market- as well as Holding- Funds.

4. Investors

If a SICAV and SICAF in Luxembourg are formed as UCITS funds, no restrictions apply as to who may be an investor. In contrast thereto, Specialised Investment Funds (SIF) are reserved for “qualified investors” only.

5. Formation

The SICAV is formed as a Public Limited Company (PLC., Corp./SA).

In contrast, the SICAF can be formed as a corporation in Luxembourg in the form of the Public Limited Company (PLC., Corp./SA), Limited Liability Company (LLC., Ltd./SARL), Partnership Limited by Shares (SCA) or Co-operative in the form of the Public Limited Company (SCOSA). A SICAV and SICAF in Luxembourg are frequently formed as umbrella funds with several sub-funds. Therein, the different sub-funds can be structured in such a way that the assets and liabilities of each sub-funds are separate. This results in the independence of each of the different sub-funds to the greatest possible extent. Additionally, each sub-fund may have its own specific investment strategy and investment manager.

6. Minimum capital

The subscribed capital of a SICAV/SICAF Investment Fund in Luxembourg amounts to at least 1.25 million EUR and requires to be reached within a period of 6 months following the obtaining of approval from Luxembourg's Financial Market Authority (CSSF) if it is an UCITS Fund and within a period of 12 months in the case of a Specialised Investment Fund (SIF) respectively.

The minimum share capital depends upon the particular legal form chosen.

7. Registered office

The registered office and main place of control and management of a SICAV and SICAF under the articles of association must be located in Luxembourg. This includes, among others, the production and safekeeping of all documents provided to the investors as well as the issuance and redemption of shares.

8. Custodian

It is required that the assets of a SICAV/SICAF be transferred to a custodian resident in Luxembourg (depository bank). This is to ensure that shares are issued and redeemed in compliance with the statutory provisions. Moreover, the custodian is to ensure that the income and/or profits are used in accordance with the articles of association.

The custodian is liable to the SICAV/SICAF Investment Funds in Luxembourg as well as to the shareholders only for loss arising from the culpable non-performance or defective performance of its duties.

9. Investment and distribution policy

A SICAV and SICAF in Luxembourg can issue and cancel new shares at any time not exceeding its net asset value.

Both Funds may regulate freely the distribution of dividends or other repayments to their investors by way of formal conditions in the article of associations. Both Investment Funds in Luxembourg are not subject to a duty to create legal reserves.

10. Supervision aspects

10.1. Approval

A SICAV and SICAF in Luxembourg are subject to the supervision of Luxembourg's Financial Market Authority (CSSF). Both Investment Funds, as well as the investment managers and advisers of the said funds, require a licence prior to commencing business. Notwithstanding this, there exist no restrictions on the nationality of the person or the company managing or advising the said Funds.

10.2. Reports

A SICAV and SICAF must produce annual accounts and half-yearly accounts which must be audited by an independent auditor. The accounts are subsequently required to be published no later than 4 months (and no later than 6 months in the case of a Specialised Investment Fund (SIF) in Luxembourg) after the conclusion of the year.

Moreover, Investment Funds in Luxembourg are required to prepare, with the exception of those Investment Funds in the form of a closed UCITS Fund, a sale prospectus which must contain, among others, the founding documents in order to enable the investors to carry out an informed evaluation of the proposed investment and of the associated risks in particular.

II. Tax structure of a SICAV/SICAF Investment Fund in Luxembourg

1. Corporate taxation

SICAV and SICAF Investment Funds which are domiciled in Luxembourg are exempt from corporate taxation. They are liable to the so-called "subscription tax" at an annual rate of 0.05% on their net assets or at a rate of 0.01% if the Investment Funds are formed as a Specialised Investment Fund (SIF) in Luxembourg.

2. Tax exemptions

Both the SICAV and SICAF in Luxembourg are exempt from the net wealth tax and from withholding tax on the distribution of dividends to non-resident investors.

Moreover, Fund management services provided by a Management Company in Luxembourg are not liable to value-added tax (VAT). Notwithstanding this, other services may remain subject to value-added tax (VAT) in Luxembourg at a rate of 15%.

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