

**LAW OF 15 JUNE 2004  
RELATING TO THE INVESTMENT COMPANY IN RISK CAPITAL  
("SICAR")**

**Chapter I: *General provisions***

Article 1

(1) For the purpose of this Law, an investment company in risk capital<sup>1</sup>, in abbreviation "SICAR"<sup>2</sup>, shall be any company:

- that has adopted the legal form of a limited partnership<sup>3</sup>, a partnership limited by shares<sup>4</sup>, a cooperative in the form of a public limited company<sup>5</sup>, a limited company<sup>6</sup> or a public limited company<sup>7</sup> governed by Luxembourg law, and
- the object of which is to invest its assets in securities representing risk capital in order to provide its investors with the benefit of the result of the management of its assets in consideration for the risk which they incur, and
- the securities of which are reserved to well-informed investors<sup>8</sup> as defined in Article 2 of this Law, and
- the articles of incorporation of which provide that it is subject to the provisions of this Law.

(2) Investment in risk capital<sup>9</sup> is to be understood as the direct or indirect contribution of assets to entities in view of their launch, their development or their listing on a stock exchange.

(3) The registered office and the head office of a Luxembourg SICAR must be situated in Luxembourg.

Article 2

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<sup>1</sup> The French text of the Law uses the term "*société d'investissement en capital à risque*"

<sup>2</sup> Abbreviation of the French term mentioned in footnote 1

<sup>3</sup> *société en commandite simple*

<sup>4</sup> *société en commandite par actions*

<sup>5</sup> *société coopérative organisée sous forme de société anonyme*

<sup>6</sup> *société à responsabilité limitée*

<sup>7</sup> *société anonyme*

<sup>8</sup> *investisseurs avertis*

<sup>9</sup> *capital à risque*

(Law of 24 October 2008) Within the meaning of this Law, a well-informed investor shall be any institutional investor, professional investor or any other investor who meets the following conditions:

- 1) he has confirmed in writing that he adheres to the status of well-informed investor, and
- 2) he invests a minimum of 125,000 Euro in the company, or
- 3) he has obtained 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 2001/107/EC certifying his expertise, his experience and his knowledge in adequately appraising an investment in risk capital.

The conditions set forth in this Article do not apply to directors<sup>10</sup> and other persons taking part in the management of the SICAR.

### Article 3

(Law of 24 October 2008) (1) SICARs shall be subject to the general provisions applicable to commercial companies, insofar as this Law does not derogate therefrom.

- (2) SICARs may include multiple compartments, each compartment corresponding to a distinct part of the SICAR's assets and liabilities.
- (3) The constitutional documents of the SICAR must expressly provide for that possibility and the applicable operational rules. The prospectus must describe the investment policy of each compartment.
- (4) The shares of the SICAR with multiple compartments may be of different value with or without indication of a par value.
- (5) The rights of investors and of creditors concerning a compartment or which have arisen in connection with the creation, operation or liquidation of a compartment are limited to the assets of that compartment, unless a clause included in the constitutional documents provides otherwise.

The assets of a compartment are exclusively available to satisfy the rights of investors in relation to that compartment and the rights of creditors whose claims have arisen in connection with the creation, operation or liquidation of that compartment, unless a clause included in the constitutional documents provides otherwise.

For the purpose of the relations between investors, each compartment will be deemed to be a separate entity, unless a clause included in the constitutional documents provides otherwise.

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<sup>10</sup> *dirigeants*

(6) Each compartment of a SICAR may be separately liquidated without such separate liquidation resulting in the liquidation of another compartment. Only the liquidation of the last remaining compartment of a SICAR will result in the liquidation of the company as referred to in Article 21(1) of this Law.

#### Article 4

(1) The subscribed share capital of the SICAR, increased by the share premium, shall not be less than EUR 1 million.”<sup>11</sup> This minimum must be reached within a period of twelve (12) months following the authorisation of the company. A grand-ducal regulation may increase such minimum amount up to a maximum of EUR 2 million.

(2) Limited partnerships,<sup>12</sup> partnerships limited by shares, limited companies, public limited companies and cooperatives in the form of a public limited company, subject to this Law may provide in their articles of incorporation that the share capital amount is always equal to the total net assets. In such case, variations in the capital shall be effected *ipso jure* and without compliance with measures regarding publication and entry in the register of commerce and companies.

(3) (Law of 24 October 2008) Article 17 of the amended Law of 10 August 1915 on commercial companies does not apply to the SICAR in the form of a limited partnership with variable capital. By way of derogation from Article 6 of the amended Law of 10 August 1915 on commercial companies and Article 6 of the Law of 19 December 2002 on the trade and companies register, as well as the accounting and annual accounts of companies as amended, the SICAR under the form of a limited partnership with variable capital is exempted from the obligation to register with the trade and companies register or to publish the identity of the limited partners or indications on their participation in the SICAR or their obligations towards the latter

#### Article 5

(1) The SICAR can issue new shares in accordance with the conditions and procedures set forth in the articles of incorporation.

(2) The capital of a partnership limited by shares, a public limited company, a limited company and a cooperative in the form of a public limited company, subject to this Law, must be entirely subscribed, and at least 5% of each share must be paid-up in cash or by means of a contribution other than cash.

(3) The valuation of the assets of the company shall be based on the fair value.”<sup>13</sup>

Such value must be determined in accordance with the rules set forth in the articles of incorporation.

#### Article 6

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<sup>11</sup> Law of 24 October 2008

<sup>12</sup> Law of 24 October 2008

<sup>13</sup> Law of 24 October 2008

- (1) SICARs shall not be obliged to create a legal reserve.
- (2) Repayments and distribution of dividends to investors are not subject to any restrictions other than those set forth in the articles of incorporation.
- (3) SICARs are not subject to any rules in respect of payment of interim dividends other than those set forth in their articles of incorporation.

#### Article 7

(Law of 24 October 2008) For companies falling within the scope of this Law, the denomination of the company followed or not by the words "limited partnership", "partnership limited by shares", "limited company", "public limited company " or "cooperative in the form of a public limited company" shall be supplemented by the words "investment company in risk capital", in abbreviated form: "SICAR".

### **Chapter II: *The depositary***

#### Article 8

- (1) The custody of the assets of a SICAR must be entrusted to a depositary. The depositary must either have its registered office in Luxembourg or be established in Luxembourg if its registered office is in another Member State of the European Union. It must be a credit institution within the meaning of the Law of 5 April 1993 concerning the financial sector, as amended<sup>14</sup>.
- (2) The depositary's liability shall not be affected by the fact that it has entrusted all or some of the assets in its custody to a third party.
- (3) (...) <sup>16</sup>

#### Article 9

- (1) In carrying out its duties, the depositary must act independently and solely in the interest of the investors.
- (2) The depositary shall be liable in accordance with Luxembourg law to the company and to investors for any loss suffered by them as a result of its wrongful failure to perform its obligations or its wrongful improper performance thereof.
- (3) The liability to investors shall be invoked through the SICAR. Should the company fail to act despite a written notice to that effect from an investor within a period of three

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<sup>14</sup> *La loi du 5 avril 1993 relative au secteur financier, telle que modifiée*

<sup>15</sup> Repealed by the Law of 24 October 2008

months following receipt of such a notice, the investor may directly invoke the liability of the depositary.

#### Article 10

The duties of the depositary regarding the SICAR shall cease, respectively:

- a) in the case of voluntary withdrawal of the depositary or of its removal by the company; until it is replaced, which must happen within two months, the depositary shall take all necessary steps for the good preservation of the interests of the investors;
- b) where the SICAR or the depositary has been declared bankrupt, has entered into a composition with creditors, has obtained a suspension of payment, has been put under court-controlled management or has been the subject of similar proceedings or has been put into liquidation;
- c) where the supervisory authority withdraws its authorisation of the SICAR or the depositary;
- d) in all other cases provided for in the articles of incorporation.

### **Chapter III: *Authorisation and supervision***

#### Article 11

- (1) The authority which is to carry out the supervision of SICARs is the Commission for the Supervision of the Financial Sector<sup>16</sup>, hereafter the "CSSF".
- (2) The CSSF carries out its duties exclusively in the public interest.
- (3) The CSSF ensures that SICARs and their directors<sup>17</sup> comply with the applicable legal and contractual rules.

#### Article 12

- (1) SICARs subject to this Law must, in order to carry out their activities, be authorised by the CSSF.
- (2) A SICAR shall be authorised only if the CSSF has approved its constitutional documents and the choice of the depositary.
- (3) The directors of the SICAR and of the depositary must be of sufficiently good repute and have sufficient experience for performing their functions. To that end, their identity must be notified to the CSSF. "Directors" shall mean, in the case of limited partnerships, the

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<sup>16</sup> *Commission de Surveillance du Secteur Financier*

<sup>17</sup> Abbreviation of the French term mentioned in footnote 10

general partners and in the case of public limited companies and limited companies, the members of the board of directors and the manager(s), respectively.

(4) The replacement of the depository or of a director and the amendment of the constitutional documents of the SICAR are subject to the approval by the CSSF.

(5) The authorisation is subject to justifying that the head office of the SICAR is situated in Luxembourg<sup>18</sup>.

### Article 13

(1) Authorised SICARs shall be entered by the CSSF on a list. Such entry shall be tantamount to authorisation and shall be notified by the CSSF to the SICAR concerned. Applications for entry must be filed with the CSSF within the month following the constitution or formation of the SICAR. The said list and any amendments made thereto shall be published in the Mémorial by the CSSF.

(2) The entering and the maintaining on the list referred to in paragraph (1) shall be subject to observance of all legislative, regulatory or contractual provisions relating to the organisation and operation of the SICARs.

(3) (...) <sup>19</sup>

### Article 14

The fact that a SICAR is entered on the list referred to in Article 13 (1) shall not, under any circumstances, be described in any way whatsoever as a positive assessment made by the CSSF of the quality of the securities offered.

### Article 15

(1) Any person who works or who has worked for the CSSF, as well as the auditors or experts instructed by the CSSF, shall be bound by the obligation of professional secrecy provided for by Article 16 of the amended Law of 23 December 1998 creating a Commission for the Supervision of the Financial Sector<sup>20</sup>. Such secrecy implies that no confidential information which they may receive in the course of their professional duties may be divulged to any person or authority whatsoever, save in summary or aggregate form such that SICARs and depositories cannot be individually identified, without prejudice to cases covered by criminal law.

(2) Paragraph (1) shall not prevent the CSSF from exchanging information with the supervisory authorities of the other Member States of the European Union within the limits provided by this Law.

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<sup>18</sup> The term « head office » is the English translation of the French equivalent « administration centrale »

<sup>19</sup> Repealed by the Law of 10 July 2005

<sup>20</sup> *La loi modifiée du 23 décembre 1998 portant création d'une Commission de Surveillance du Secteur Financier*

The CSSF shall closely cooperate with the supervisory authorities of other Member States of the European Union for the purpose of the fulfilment of their duty of supervision of SICARs and other investment companies in risk capital and shall communicate for that sole purpose all required information.

The supervisory authorities of countries other than Member States of the European Union which are party to the Agreement on the European Economic Area are assimilated to the supervisory authorities of the Member States of the European Union within the limits provided by that Agreement and the instruments relating thereto.

- (3) Paragraph (1) shall not prevent the CSSF from exchanging information with:
- authorities of third countries with public responsibilities for the supervision of investment companies in risk capital,
  - the other authorities, bodies and persons referred to in paragraph (5), with the exception of central credit registers, when they are established in third countries,
  - the authorities of third countries referred to in paragraph (6).

The communication of information by the CSSF authorised by this paragraph is subject to the following conditions:

- the transmitted information must be required for the purpose of performing the supervisory duty of the recipient authorities, bodies and persons,
- information received shall be subject to the professional secrecy of the recipient authorities, bodies or persons and the professional secrecy of such authorities, bodies or persons must offer guarantees at least equivalent to the professional secrecy of the CSSF,
- the authorities, bodies or persons which receive information from the CSSF may only use such information for the purposes for which it has been communicated to them and must be able to ensure that no other use can be made therewith,
- the authorities, bodies or persons who receive information from the CSSF grant the same right of information to the CSSF,
- the CSSF may only disclose information received from EU authorities responsible for the prudential supervision of investment companies in risk capital with the express agreement of such authorities and, where appropriate, solely for the purposes for which those authorities gave their agreement.

For the purpose of this paragraph third countries are countries other than those referred to in paragraph (2).

- (4) Where the CSSF receives confidential information under paragraphs (2) and (3), the CSSF may use it only in the course of its duties:

- to check that the conditions governing the taking-up of the business of SICARs and depositories are met and to facilitate the monitoring of the conduct of that business, of administrative and accounting procedures and of internal control mechanisms; or
- to impose sanctions; or
- in administrative appeals against decisions taken by the CSSF; or
- in court proceedings initiated against decisions refusing or withdrawing an authorisation.

(5) Paragraphs (1) to (4) shall not preclude:

a) the exchange of information within the European Union between the CSSF and:

- authorities with public responsibility for the supervision of credit institutions, investment firms, insurance undertakings and other financial organisations and the authorities responsible for the supervision of financial markets,
- bodies involved in the liquidation, bankruptcy or other similar proceedings concerning investment companies in risk capital and depositories,
- persons responsible for carrying out statutory audits of the accounts of credit institutions, investment firms, other financial institutions or insurance undertakings, in the performance of their functions,

b) the disclosure by the CSSF within the European Union to bodies, which administer investor compensation schemes or central credit registers, of information necessary for the performance of their functions.

The communication of information by the CSSF authorised by this paragraph is subject to the condition that such information is covered by the professional secrecy of the authorities, bodies or persons receiving the information and is only authorised to the extent the professional secrecy of such authorities, bodies or persons offers guarantees at least equivalent to the professional secrecy of the CSSF. In particular, authorities which receive information from the CSSF may only use such information for the purposes for which it has been communicated and must be able to ensure that no other use can be made therewith.

Countries other than Member States of the European Union which are party to the Agreement on the European Economic Area are assimilated to the Member States of the European Union within the limits provided by that Agreement and the instruments relating thereto.

(6) Paragraphs (1) and (4) do not prevent exchanges of information within the European Union between the CSSF and:

- the authorities responsible for overseeing the bodies involved in the liquidation, bankruptcy or other similar proceedings concerning credit institutions, investment firms, insurance undertakings, investment companies in risk capital and depositories,

- the authorities responsible for overseeing persons entrusted with the carrying out of statutory audits of the accounts of credit institutions, investment firms, insurance undertakings and other financial institutions.

The communication of information by the CSSF authorised by this paragraph is subject to the following conditions:

- the transmitted information is intended to be used for the purpose of performing the supervisory duty of the recipient authorities,
- information received shall be subject to the professional secrecy of the recipient authorities and the professional secrecy of such authorities must offer guarantees at least equivalent to the professional secrecy of the CSSF,
- the authorities which receive information from the CSSF may only use such information for the purposes for which it has been communicated to them and must be able to ensure that no other use can be made therewith,
- the CSSF may only disclose information received from supervisory authorities referred to in paragraphs (2) and (3) with the express agreement of such authorities and, where appropriate, solely for the purposes for which those authorities gave their agreement.

Countries other than Member States of the European Union which are party to the Agreement on the European Economic Area are assimilated to the Member States of the European Union within the limits provided by that Agreement and the instruments relating thereto.

(7) This Article shall not prevent the CSSF from transmitting to central banks and other bodies with a similar function in their capacity as monetary authorities information intended for the performance of their duties.

The communication of information by the CSSF authorised by this paragraph is subject to the condition that such information is covered by the professional secrecy of the recipient authorities and is only authorised to the extent the professional secrecy of such authorities offers guarantees at least equivalent to the professional secrecy of the CSSF. In particular, authorities which receive information from the CSSF may only use such information for the purposes for which it has been communicated and must be able to ensure that no other use can be made therewith.

This Article shall furthermore not prevent the authorities or bodies referred to in this paragraph from communicating to the CSSF such information as it may need for the purposes of paragraph (4). Information received by the CSSF shall be subject to its professional secrecy.

(8) This Article shall not prevent the CSSF from communicating the information referred to in paragraphs (1) to (4) to a clearing house or other similar body recognised under the law for the provision of clearing or settlement services for a market in Luxembourg, if the CSSF

considers it is necessary to communicate such information in order to ensure the proper functioning of those bodies in relation to defaults or potential defaults by a market participant.

The communication of information by the CSSF authorised by this paragraph is subject to the condition that such information is covered by the professional secrecy of the recipient bodies, and is only authorised to the extent the professional secrecy of such bodies offers guarantees at least equivalent to the professional secrecy of the CSSF. In particular, bodies which receive information from the CSSF may only use such information for the purposes for which it has been communicated and must be able to ensure that no other use can be made therewith.

The information received by the CSSF pursuant to paragraphs (2) and (3) may not be disclosed in the circumstances referred to in this paragraph without the express agreement of the supervisory authorities which have disclosed such information to the CSSF.

#### Article 16

(1) The decisions to be adopted by the CSSF in implementation of this Law shall state the reasons on which they are based and, unless the delay entails risks, they shall be adopted after preparatory proceedings at which all parties are able to state their case<sup>21</sup>. They shall be notified by registered letter or delivered by a bailiff<sup>22</sup>.

(2) The decisions by the CSSF concerning the grant, refusal or withdrawal of the authorisations provided for in this Law may be referred to the administrative court<sup>23</sup> which will be dealing with the substance of the case. The case must be filed within one month from the date of notification of the contested decision, or else shall be time barred.

#### Article 17

(1) The directors of SICARs, as well as the liquidators in the case of voluntary liquidation of a SICAR, may have imposed upon them by the said authority a fine of fifteen to five hundred Euro in the event of their refusing to provide the financial reports and the requested information or where such documents prove to be incomplete, inaccurate or false, and in the event of any infringement of Article 23 of this Law or in the event of any other serious irregularity being recorded.

(2) The same fine may be imposed upon any person who infringes the provisions of Article 14.

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<sup>21</sup> *instruction contradictoire*

<sup>22</sup> *huissier*

<sup>23</sup> *tribunal administratif*

## Chapter IV: *Dissolution and liquidation*

### Article 18

The decision of the CSSF withdrawing a SICAR from the list provided for in Article 13 shall, as from the notification thereof to such company and at its expense, until the decision has become final, *ipso jure* entail for such company suspension of any payment by said company and prohibition for such company, on pain of nullity, to take any measures other than protective measures, except with the authorisation of the supervisory commissioner<sup>24</sup>. The CSSF shall *ipso jure* hold the office of supervisory commissioner, unless at its request, the District Court dealing with commercial matters appoints one or more supervisory commissioners. The application, stating the reasons on which it is based and accompanied by supporting documents, shall be lodged for that purpose at the Registry of the District Court<sup>25</sup> in the district within which the undertaking has its registered office.

The Court shall give its ruling within a short period.

If it considers that it has sufficient information, it shall immediately make an order in public session, without hearing the parties. If it deems necessary, it shall convene the parties by notification from the registrar<sup>26</sup> at the latest within three days from the lodgement of the application. It shall hear the parties in chambers<sup>27</sup> and give its decision in public session.

The written authorisation of the supervisory commissioners is required for all measures and decisions of the SICAR and, failing such authorisation, they shall be void.

The Court may, however, limit the scope of operations subject to authorisation.

The commissioners may submit for consideration to the relevant bodies of the SICAR any proposals which they consider appropriate. They may attend proceedings of the administrative, management, executive and supervisory bodies of the SICAR.

The Court shall decide as to the expenses and fees of the supervisory commissioners; it may grant them advances.

The judgement provided for in paragraph (1) of Article 19 of this Law shall terminate the functions of the supervisory commissioner who must, within one month after his replacement, submit to the liquidators appointed in such judgement a report on the use of the SICAR's assets together with the accounts and supporting documents.

If the withdrawal decision is amended on appeal in accordance with paragraphs (2) and (3) above, the supervisory commissioner shall be deemed to have resigned.

### Article 19

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<sup>24</sup> *commissaire de surveillance*

<sup>25</sup> *greffe du tribunal*

<sup>26</sup> *greffier*

<sup>27</sup> *chambre du conseil*

(1) The District Court<sup>28</sup> dealing with commercial matters shall, at the request of the Public Prosecutor<sup>29</sup>, acting on its own motion or at the request of the CSSF, pronounce the dissolution and order the liquidation of the SICARs, whose entry on the list provided for in Article 13, paragraph (1) has finally been refused or withdrawn.

When ordering the liquidation, the Court shall appoint a reporting judge<sup>30</sup> and one or more liquidators. It shall determine the method of liquidation. It may render applicable to such extent as it may determine the rules governing liquidation in bankruptcy. The method of liquidation may be changed by subsequent decision, either of the Court's own motion or at the request of the liquidator(s).

The Court shall decide as to the expenses and fees of the liquidators; it may grant advances to them. The judgment pronouncing dissolution and ordering liquidation shall be enforceable on a provisional basis.

(2) The liquidator(s) may bring and defend all actions on behalf of the SICAR, receive all payments, grant releases with or without discharge, realise all the transferable securities of the SICAR and reemploy the proceeds therefrom, issue or endorse any negotiable instruments, compound or compromise all claims. They may alienate immovable property of the SICAR by auction.

They may also but only with the authorisation of the Court, mortgage and pledge its assets and alienate its immovable property by private treaty.

(3) As from the day of the judgment, no legal actions relating to movable or immovable property or any enforcement procedures relating to movable or immovable property may be pursued, commenced or exercised otherwise than against the liquidators.

The judgment ordering liquidation shall terminate all seizures effected at the instance of general creditors who are not secured by charges<sup>31</sup> on movable and immovable property.

(4) After payment or payment into court of the sums necessary for the discharge of the debts, the liquidators shall distribute to shareholders the sums or amounts due to them.

(5) The liquidators may convene at their own initiative, and must convene at the request of holders of shares representing at least one fourth of the assets of the SICAR, a general meeting of shareholders for the purpose of deciding whether instead of an outright liquidation it is appropriate to contribute the assets of the SICAR in liquidation to another SICAR. That decision shall be taken, provided that the general meeting is composed of a number of shareholders representing at least one half of the outstanding shares or corporate capital of the SICAR, by a majority of two thirds of the votes of the shareholders present or represented.

(6) The court decisions pronouncing the dissolution and ordering the liquidation of a SICAR shall be published in the *Mémorial*<sup>32</sup> and in two newspapers with adequate circulation

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<sup>28</sup> *tribunal d'arrondissement*

<sup>29</sup> *procureur d'Etat*

<sup>30</sup> *juge-commissaire*

<sup>31</sup> *créanciers chirographaires et non privilégiés*

specified by the Court, one of which at least must be a Luxembourg newspaper. The liquidator(s) shall arrange for such publications.

(7) If there are no or insufficient assets, as ascertained by the reporting judge, the documents relating to the proceedings shall be exempt from any registry and registration duties and the expenses and fees of the liquidators shall be borne by the Treasury and paid as judicial costs.

(8) The liquidators shall be responsible both to third parties and to the SICAR for the discharge of their duties and for any faults committed in the conduct of their activities.

(9) When the liquidation is completed, the liquidators shall report to the Court on the use made of the funds of the SICAR and shall submit the accounts and supporting documents thereof. The Court shall appoint auditors<sup>33</sup> to examine the documents.

After receipt of the auditors' report, a ruling shall be given on the management of the liquidators and the closure of the liquidation.

The closure of the liquidation shall be published in accordance with paragraph (6) above.

Such publication shall also indicate:

- the place designated by the Court where the books and records must be kept for at least five years;
- the measures taken in accordance with Article 22 with a view to the payment into court<sup>34</sup> of the sums and funds due to creditors, shareholders or members to whom it has not been possible to deliver the same.

(10) Any legal actions against the liquidators of SICARs, in their capacity as such, shall be prescribed five years after publication of the closure of the liquidation provided for in paragraph (9).

Legal actions against the liquidators in connection with the performance of their duties shall be prescribed five years after the date of the facts or, in the event of concealment thereof by wilful misconduct, five years after the discovery thereof.

(11) The provisions of this Article shall equally apply to the SICARs which have not applied to be entered on the list provided for in Article 13 within the time limit laid down therein.

## Article 20

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<sup>32</sup> The *Mémorial C, Recueil des Sociétés et Associations* is the part of the official gazette in which certain required corporate publications and notifications are made

<sup>33</sup> *commissaires*

<sup>34</sup> *consignation*

(1) SICARs shall, after their dissolution, be deemed to exist for the purpose of liquidation. In the case of a non-judicial liquidation, they shall remain subject to the supervision of the CSSF.

(2) All documents issued by a SICAR in liquidation shall indicate that it is in liquidation.

#### Article 21

(1) In the event of a non-judicial liquidation of a SICAR, the liquidator(s) must be approved by the CSSF. The liquidator(s) must provide all guarantees of honourability and professional skill.

(2) Where a liquidator does not accept office or is not approved, the District Court dealing with commercial matters shall, at the request of any interested party or of the CSSF, appoint the liquidator(s). The judgment appointing the liquidator(s) shall be provisionally enforceable, on the production of the original thereof and before registration, notwithstanding any appeal or objection.

#### Article 22

In the event of a voluntary or compulsory liquidation of a SICAR within the meaning of this Law, the sums and assets payable in respect of shares whose holders failed to present themselves at the time of the closure of the liquidation, shall be paid to the public trust office<sup>35</sup> to be held for the benefit of the persons entitled thereto.

### **Chapter V: *Publication of a prospectus and an annual report***

#### Article 23

(Law of 24 October 2008) (1) The SICAR must establish a prospectus and an annual report for each financial year.

(2) The annual reports together with the auditor's report must be available to the investors within six months from the end of the period these reports refer to.

#### Article 24

(1) The prospectus must include the information necessary for investors to be able to make an informed judgement on the investment proposed to them and of the risks attached thereto.

(2) The annual report must include a balance sheet or a statement of assets and liabilities, an income and expenditure account for the financial year, a report on the activities of the past financial year, as well as any significant information enabling investors to make an informed judgment on the development of the activities and the results of the SICAR.

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<sup>35</sup> *Caisse de Consignation*

(3) Notwithstanding Article 309 of the amended Law of 10 August 1915 on commercial companies, the SICAR shall be exempt from the obligation of preparing consolidated accounts.

#### Article 25

(1) The constitutional documents of the SICAR shall form an integral part of the prospectus and must be annexed thereto.

(2) However, the documents referred to in paragraph (1) need not be annexed to the prospectus, provided that the investor is informed that on his request, he will either be sent those documents or be apprised of the place where he may consult them.

#### Article 26

The essential elements of the prospectus must be up to date when new shares are issued.

#### Article 27

(1) The SICARs must have the accounting information provided in their annual report audited by an authorised auditor<sup>36</sup>.

The auditor's report and its qualifications, if any, are set out in full in each annual report.

The auditor must establish that he has appropriate professional experience.

(2) The auditor shall be appointed and remunerated by the SICAR.

(3) The auditor must report promptly to the CSSF any fact or decision of which he has become aware while carrying out the audit of the accounting information contained in the annual report of a SICAR or any other legal task concerning a SICAR, where such fact or decision is liable to:

- constitute a material breach of this Law or the regulations adopted for its execution, or
- affect the continuous functioning of the SICAR, or
- lead to a refusal to certify the accounts or to the expression of reservations thereon.

The auditor shall likewise have a duty to promptly report to the CSSF, in the accomplishment of its duties referred to in the preceding sub-paragraph in respect of a SICAR, any fact or decisions concerning the SICAR and meeting the criteria referred to in the preceding sub-paragraph of which he has become aware while carrying out the audit of the accounting information contained in the annual report of another undertaking having close

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<sup>36</sup> *réviseur d'entreprises agréé*

links resulting from a control relationship with the SICAR or while carrying out any other legal task concerning such other undertaking.

For the purposes of this Article, a close link resulting from a control relationship shall mean the link which exists between a parent undertaking and a subsidiary in the cases referred to in Article 77 of the amended Law of 17 June 1992 concerning the annual accounts and consolidated accounts of credit institutions<sup>37</sup>, or as a result of a relationship of the same type between any individual or legal entity and an undertaking; any subsidiary undertaking of a subsidiary undertaking is also considered as a subsidiary of the parent undertaking which is at the head of those undertakings. A situation in which two or more individuals or legal persons are linked to one and the same person by a control relationship on a long term basis shall also be regarded as constituting a close link between such persons.

If, in the discharge of his duties, the auditor ascertains that the information provided to investors or to the CSSF in the reports or other documents of the SICAR does not truly describe the financial situation and the assets and liabilities of the SICAR, he shall be obliged to inform the CSSF forthwith.

The auditor shall moreover be obliged to provide the CSSF with all information or certificates required by the latter on any matters of which the auditor has or ought to have knowledge in connection with the discharge of his duties. The same applies if the auditor ascertains that the assets of the SICAR are not or have not been invested according to the regulations set out by the law or the prospectus.

The disclosure in good faith to the CSSF by the auditor of any fact or decision referred to in this paragraph shall not constitute a breach of professional secrecy or of any restriction on disclosure of information imposed by contract and shall not result in liability of any kind for the auditor.

The CSSF may regulate the scope of the auditor's mandate and the contents of the audit report on the annual accounting documents.

The CSSF may request an auditor to perform a control on one or several particular aspects of the activities and operations of a SICAR. This control is performed at the expense of the SICAR concerned.

(4) The CSSF shall refuse or withdraw the entry on the list of SICARs whose auditor does not satisfy the conditions or does not discharge the obligations prescribed in this Article.

(5) The institution of statutory auditors<sup>38</sup> provided for by Articles 61, 109, 114 and 200 of the amended Law of 10 August 1915 on commercial companies, is repealed with respect to Luxembourg SICARs. The directors are solely competent in all cases where the amended Law of 10 August 1915 on commercial companies provides for the joint action of the statutory auditors and the directors.

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<sup>37</sup> *Loi modifiée du 17 juin 1992 relative aux comptes annuels et comptes consolidés des établissements de crédit*  
<sup>38</sup> *commissaires aux comptes*

The institution of statutory auditors provided for by Article 151 of the amended Law of 10 August 1915 on commercial companies is not applicable to SICARs. Upon completion of the liquidation, a report on the liquidation shall be drawn up by the auditor. This report shall be tabled at the general meeting at which the liquidators report on the application of the corporate assets and submit the accounts and supporting documents. The same meeting shall resolve on the approval of the accounts of the liquidation, the discharge and the closure of the liquidation.

#### Article 28

The SICAR must send its prospectus and any amendments thereto, as well as its annual reports, to the CSSF.

#### Article 29

- (1) The prospectus in force and the latest annual reports must be offered to subscribers free of charge before the conclusion of the contract.
- (2) The annual reports shall upon request be supplied to investors free of charge.

### **Chapter VI: *Publication of other information***

#### Article 30 (...)<sup>39</sup>

#### Article 31

Any invitation to purchase shares of a SICAR must indicate that a prospectus exists and the places where it may be obtained.

### **Chapter VII: *Transmission of other information to the CSSF***

#### Article 32

The CSSF may request SICARs to provide any information relevant to the fulfillment of its duties and may, for that purpose, itself or through appointees, examine the books, accounts, registers or other records and documents of SICARs.

### **Chapter VIII: *Protection of name***

#### Article 33

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<sup>39</sup> Repealed by the Law of 24 October 2008

- (1) No SICAR shall make use of designations or of a description giving the impression that it is subject to this Law if it has not obtained the authorisation provided for in Article 12.
- (2) The District Court dealing with commercial matters of the place where the SICAR is situated or of the place where the designation has been used, may at the request of the Public Prosecutor issue an injunction, prohibiting anyone from using the designation as defined in paragraph (1), if the conditions provided for by this Law are not or no longer met.
- (3) The judgment or final court decision which delivers this injunction, is published by the Public Prosecutor and at the expense of the person sentenced in two Luxembourg or foreign newspapers with adequate circulation.

## **Chapter IX: Fiscal provisions**

### Article 34

- (1) The amended Law of 4 December 1967 on income tax<sup>40</sup> is amended as follows:
  - a) Article 14, number 1, is completed by the following sentence: "The investment company in risk capital (SICAR) organised under the legal form of a limited partnership shall however not be considered to be a commercial company;"
  - b) Number 3 of Article 147 is amended and completed as follows: "3. if the income is allocated by a Luxembourg holding company as defined by the Law of 31 July 1929<sup>41</sup> or by an undertaking for collective investment (UCI), including a Luxembourg investment company in risk capital (SICAR), without prejudice however to the taxation of the aforementioned income if received by residents."
  - c) Article 156, number 8, is completed by a point c) worded as follows: "c) However, the income resulting from the transfer of a participation in an investment company in risk capital (SICAR) is not covered by numbers 8a and 8b."
  - d) Article 164bis is completed by the insertion, after indent 4, of a new indent 5 worded as follows:

"(5) Investment companies in risk capital (SICAR) are excluded from the scope of this Article." The other indents are renumbered accordingly.
- (2) Income resulting from transferable securities as well as income resulting from the transfer, contribution or liquidation of these assets does not constitute taxable income of joint stock companies subject to this Law. Realised losses resulting from the transfer of transferable securities as well as unrealised losses accounted for upon the reduction of the value of these assets may not be deducted from the taxable income of the company.

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<sup>40</sup> La loi modifiée du 4 décembre 1967 concernant l'impôt sur les revenus

<sup>41</sup> La loi du 31 juillet 1929

(3) Income arising from funds held pending their investment in risk capital does not constitute taxable incomes for SICARs; this exemption is only applicable for a period of twelve months preceding their investment in risk capital and where it can be established that the funds have effectively been invested in risk capital.

#### Article 35

The first indent of paragraph 3 of the amended Law of 16 October 1934 on wealth tax<sup>42</sup> is completed by the insertion of a number 5 worded as follows:

"5. investment companies in risk capital (SICAR) organised under the form of a company having a share capital."

#### Article 36

The amended Law of 1 December 1936 on commercial communal tax<sup>43</sup> is amended as follows:

a) Indent 2 of paragraph 2 is completed by the insertion of a number 4 worded as follows:

"4. The provisions under number 3 are not applicable to investment companies in risk capital (SICAR) organised under the form of a limited partnership."

b) Paragraph 9 is completed by a number 2b which states as follows:

"2b. participating shares added pursuant to paragraph 8 number 4 to the operating profit of a partnership limited by shares, as long as they are included in the operating profit determined pursuant to paragraph 7."

#### Article 37

(...)<sup>44</sup>

#### Article 38

Article 44 paragraph 1, under point d) of the amended Law of 12 February 1979 concerning value added tax<sup>45</sup> is amended by adding the words ",comprising also SICAR" after the word "UCI"<sup>46</sup>.

### **Chapter X: Criminal law provisions**

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<sup>42</sup> *La loi modifiée du 16 octobre 1934 concernant l'impôt sur la fortune*

<sup>43</sup> *La loi modifiée du 1<sup>er</sup> décembre 1936 concernant l'impôt commercial communal*

<sup>44</sup> Repealed by the Law of 19 December 2008

<sup>45</sup> *La loi modifiée du 12 février 1979 concernant la taxe sur la valeur ajoutée*

<sup>46</sup> "OPC"

Article 39

A fine of five hundred to twenty five thousand Euro shall be imposed upon any person who in infringement of Article 33 purports to use a designation or description giving the impression that they relate to the activities subject to this Law if they have not obtained the authorisation provided for in Article 12.

Article 40 (...)<sup>47</sup>

Article 41

A penalty of imprisonment of one month to one year and a fine of five hundred to twenty five thousand Euro or either of such penalties shall be imposed upon the founders or directors of a SICAR who have infringed the provisions of Articles 5(1) and 5(3) of this Law.

Article 42

A penalty of imprisonment of three months to two years and a fine of five hundred to fifty thousand Euro or either of such penalties shall be imposed on anyone who has carried out or caused to be carried out operations involving the receipt of savings from investors if the SICAR for which they acted was not entered on the list provided for in Article 13.

Article 43

A penalty of imprisonment of one month to one year and a fine of five hundred to twenty five thousand Euro or either of such penalties shall be imposed on the directors of SICARs who, notwithstanding the provisions of Article 18, have taken measures other than protective measures without being authorised for that purpose by the supervisory commissioner.

**Chapter XI: *Final provision***

Article 44

This Law may, in abbreviation, be referred to as the "Law of 15 June 2004 relating to the investment company in risk capital (SICAR)".

**Chapter XII: *Modifying provision***

Article 45

Paragraph 3 of Article 129 of the amended Law of 20 December 2002 concerning undertakings for collective investment<sup>48</sup> is completed by a point c) worded as follows:

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<sup>47</sup> Repealed by the Law of 24 October 2008

"c) UCIs whose securities are reserved for i) institutions for occupational retirement provision, or similar investment vehicles, created on the initiative of a same group for the benefit of its employees and ii) undertakings of this same group investing funds they hold, to provide retirement benefits to their employees."

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<sup>48</sup> *Loi modifiée du 20 décembre 2002 concernant les organismes de placement collectif*