

## The law of 24 October 2008 amending the law of 15 June 2004 (the "Sicar Law") was published on the Memorial A dated 29 October 2008

The Venture Capital and Private Equity industry will benefit from a modernized vehicle for attracting VC/PE foreign investors in Luxembourg.

The following **innovations** are significant:

- **Umbrella structure permitted**

The creation of a SICAR fund with several compartments is from now on allowed. Similar to the SIF regime, SICAR may be implemented with separate compartments enabling it to run different investment policies in each compartment. The rights of investors and of creditors relating to securities issued by a specific compartment or which pertain to the creation, operation or liquidation of that compartment will be limited to the assets of this compartment only (pursuant to the ring-fencing principle), unless otherwise provided for in the constitutive documents of the SICAR. Thus, it will be possible to liquidate a compartment separately without liquidating the others.

- **S.C.S corporate form with variable share capital allowed**

SICARs incorporated in the form of a limited partnership ("*Sociétés en Commandite Simple*") enjoying from a variable capital may attract more foreign investors familiar with the tax incentive vehicles of Anglo-Saxon limited partnerships.

- **Capitalization of SICAR**

The share premium is now taken into account for the computation of the one million Euro minimum capitalization. This significant change brings a broader spectrum of financing options to the investors.

- **Well-informed investors**

Managers and "*other persons who are involved in the management of the SICAR*" are no longer required to certify their status of "well-informed investor" to be an eligible investor. This clarification could be welcomed by all SICAR fund promoter's acting as founding partners/shareholders at the launch of the SICAR.

- **Assets valuation method based on fair value**

SICARs no longer need to follow the concept "foreseeable sales price estimated in good faith". The concept of "Fair value" shall be the reference instead (similar to the SIF regime).

- **Enlightened supervision duties for the depositary bank**

Depositary banks of SICARs will now benefit from the similar lightened regime as for the SIF i.e. monitoring duty restricted to the general safekeeping of the assets (similar to the Sicav/Sicaf SIF regime).

- **NAV publication**

Article 30 of the former SICAR law providing for bi-annual net asset value per share publications is fully repealed. As a result, there is no mandatory legal requirement to compute the NAV and inform the investors on a compulsory bi-annual basis.

- **Name of the SICAR**

A minor fine-tuning measure pertains to the denomination of SICAR which requires merely the mention of "*Investment Company in Capital Risk*" or "*SICAR*" without the need to indicate the corporate form of the company.

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As a conclusion, these changes are to be considered more as an alignment to the SIF regime rather than legal breakthrough for the PE/VC industry.

However, these amendments are a concrete positive response given by the Luxembourg legislator to the expectations of foreign fund promoters and investors for more flexibility and tax incentives in the PE/VC playing field.

**In a nutshell:**

	<i>Initial SICAR Law</i>	<i>New SICAR Law</i>
<b>Umbrella funds</b>	✘	✔
<b>Share premium included minimum capital requirement</b>	✘	✔
<b>Fair Market Value</b>	✘ (foreseeable sales price estimated in good faith)	✔
<b>Depository Bank duties</b>	✘ (as UCIT Part II)	✔ (as SIF)
<b>Publication of periodicity of NAV</b>	Annually required	Repealed
<b>SCS variable capital</b>	✘	✔

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