Comparison - Luxembourg investment vehicles

The purpose of this comparative table is to set out the different investment vehicles (regulated, lightly regulated as well as unregulated vehicles) that Luxembourg offers to foreign investors such as private equity investors, real estate investors and hedge fund investors.

	Unregulated			Lightly regulated		Regulated
	Soparfi	**Securitization vehicle**	**SPF** (private wealth management company)	**SIF** (specialized investment fund)	**SICAR**	**UCIs** (part II of the Law of 2002)
Supervision by the CSSF	No	No (unless continuous issue of securities to the public - interpreted as 4 or more issues yearly)	No	Yes (light supervision)	Yes (light supervision)	Yes (incorporation is only allowed after obtaining the prior approval of the CSSF)
Eligible assets	Unrestricted	Securitization of any kind of risky assets (securities, real estate, etc.) or risks	Only the acquisition, detention, management and disposal of financial assets (no commercial activity or real estate activity)	Unrestricted (any type of assets can be integrated or any type of investment strategies may be pursued)	Investments in venture capital and private equity (any direct or indirect investments to entities in view of their launch, their development or listing on a stock exchange)	Unrestricted (subject to CSSF prior approval)
Main risk diversification rules	No	No	No	Yes (CSSF has issued guidelines: no investments of more than 30% of its net	No	Yes (see circular 91/75)

				assets in securities of the same type of issuer; master feeder structures are permitted)		
Eligible investors	Unrestricted	Unrestricted	Restricted to: ▪ natural persons acting in the scope of their management of their private assets ▪ private assets entities (eg. trusts, foundations) ▪ intermediaries acting for the account of the above investors (eg bank acting under a fiduciary agreement)	Well informed investors: ▪ institutional investor; ▪ professional investor; and ▪ any other type of investor who has declared in writing that he is an informed investor and either (i) invests a minimum of 125.000 Euro or (ii) has an appraisal from a bank, investment firm certifying that he has the appropriate experience	Well informed investors: ▪ institutional investor; ▪ professional investor; and ▪ any other type of investor who has declared in writing that he is an informed investor and either (i) invests a minimum of 125.000 Euro or (ii) has an appraisal from a bank, investment firm certifying that he has the appropriate experience	Unrestricted
Segregated compartments	No	Yes	No	Yes	No (however this will be possible once the draft bill of 21 February 2008 has become law)	Yes
Capital	Depends on the form S.A.: minimum 31.000 Euro S.à r.l.:	For securitization companies there is a fixed minimum capital depending on the form	Depends on the form S.A.: minimum 31.000 Euro S.à r.l.:	Minimum 1.250.000 Euro (to be reached within 12 months from the approval by the	Minimum 1.000.000 Euro (to be reached within 12 months from the approval by the	Minimum 1.250.000 Euro (to be reached within 6 months from the approval by the Luxembourg regulator)

	minimum 12.500 Euro	S.A.: minimum 31.000 Euro S.à r.l.: minimum 12.500 Euro	minimum 12.500 Euro	Luxembourg regulator)	Luxembourg regulator)	
Required Luxembourg service providers	Independent auditors(depending on company form)	Independent auditor No depositary institution (unless subject to approval by the CSSF) No administrative agent (if managed by the securitization company itself)	No	▪ Depositary institution ▪ Administrative agent ▪ Independent auditor	▪ Depositary institution ▪ Administrative agent ▪ Independent auditor (does not need to be a professional of the Financial Sector)	▪ Depositary institution ▪ Administrative agent ▪ Independent auditor
Tax treatment	Income tax of 29.63%	▪ Subject to income tax of 29.63%, BUT they should be able to deduct from their gross profits their operational costs and the dividends or interests distributed to the shareholders / creditors. Therefore securitization companies should	▪ No corporate income tax ▪ Annual subscription tax of 0.25% on the amount of paid up capital and issue premium (if any) ▪ No WHT on dividend distributions and interest	▪ No corporate income tax ▪ Annual subscription tax of 0.01% on the net asset value ▪ No WHT on dividend distributions and interest payments	▪ Subject to income tax at 29, 63%, BUT income derived from transferable securities (for instance dividends received and capital gains on the sale of shares) is exempt. Income that is not related to investment in risk capital is	▪ No income tax ▪ Annual subscription tax of 0.05% of the NAV ▪ Fixed capital duty of 1.250 Euro ▪ No WHT on dividend

		not generate significant taxable profits and should therefore to a large extent be tax neutral. ▪ No wealth tax; ▪ No WHT on distributions to shareholders / creditors ▪ Fixed capital duty of 1.250 Euro ▪ VAT exempt	payments (except for application of Savings Directive) ▪ No wealth tax	(except for application of Savings Directive) ▪ No wealth tax	subject to corporate income tax of 29,63% (for example interest earned on bank deposits, management fees, etc…). There is no annual subscription tax. ▪ Fixed capital duty of 1.250 Euro	distributions
Benefit from double tax treaty network and European directives	Yes	Yes	No	Certain double tax treaties (if in the form of a SICAV)	Depends on jurisdiction of the target company	Certain double tax treaties (if in the form of a SICAV)
Thin capitalization rules (D/E ratio)	There is no provision in Luxembourg law. However the Luxembourg authorities use a 85/15 debt/equity	No debt-to-equity ratio	▪ 0.25% tax on the debt that exceeds 8 times the paid-up capital increased by the issue premium.	No debt-to-equity ratio	No debt-to-equity ratio	Yes

	ratio. If this ratio is not respected, and an interest is paid on the excess debt on a loan this may be considered as a hidden dividend distribution subject to a WHT of 15% and such interest is then not deductible.					
Filing duties with the CSSF	Not applicable	Not applicable, unless distributed to the public	Not applicable	▪ 1.500 Euro for a single compartment SIF ▪ 2.650 Euro for a multiple compartment SIF	1.500 Euro	▪ 2.650 Euro for a single compartment UCI ▪ 5.000 Euro for a multiple compartment UCI
Practical use	Can be used for various reasons such as private equity investments through the use of hybrid financial instruments (such as PECS, TPECs, etc.)	▪ Securitization of a portfolio of securities ▪ Securitization as structure for intra group financing activities	▪ Individuals wishing to optimize their personal tax planning (private wealth management purposes)		Investors investing in private equity and venture capital transactions.	

The choice between one of the above vehicles will be made on a case-by-case basis and can be influenced by different parameters such as ruling practice (amount of taxable margins that differ with regard to the different vehicles and instruments used), use of hybrid financial instruments, type of investments, etc.)

We set out here under some basic advantages of Luxembourg financing structures:

- No domestic WHT on interest payments (whoever is the beneficiary, unless application of the EU Savings directive);
- No thin capitalization rules for the financing of receivables;
- Taxation on a spread basis for back-to-back financing activities;
- Taxation on a spread basis with the use of hybrid financial instruments (such as PECS, TPECS, etc.). Under Luxembourg law, payments made under the PECs or TPECs are (subject to approval of the tax authorities), similar to interest payments, deductible from the tax base of the Luxembourg entity. Based on our experience, the tax laws of at least some jurisdictions treat payments received under PECs and TPECs as dividend income falling within domestic tax exemption or tax benefits.