



UKRAINE INVESTOR GUIDE

**LUXEMBOURG
EDITION >>>>**

UKRAINE TEASER



From : European Business Association
Date : 22 July 2023
Subject : **Investment map of Ukraine**

In February 2023, the European Business Association, in collaboration with Global Business for Ukraine and Ukraine Invest, launched the **Investment Map of Ukraine**. This interactive platform showcases a wide range of investment ready projects across various sectors, thereby facilitating investment in the country.

This tool helps potential investors learn about available investment opportunities in different regions of Ukraine, get details on their characteristics, and apply if interested. The description of each project contains information about its initiator, status, location, investment opportunity, the amount of necessary funding, goals, and timelines.

Additionally, it offers details about every Ukrainian region, including size, location, population, local taxes, educational establishments, available resources, and developed sectors. The Map is available via the link: <https://investmentmap.com.ua/>

Currently, the Map includes **126 projects** – 43% from businesses and 57% from municipalities. The total investment potential of all projects is about \$2.4 billion. The projects cover 14 industries, particularly transport and logistics, agriculture, construction, food and processing, education and development, fuel and energy, health care, administrative services, heavy industry, light industry, tourism, waste management, extraction, and industrial parks. The leading regions in terms of the number of projects are Kirovograd, Dnipropetrovsk, Odesa, and Sumy regions.

The primary project areas include industrial parks, plant construction, manufacturing, medical and recreational facilities, sports and educational centers, startups, eco-town and residential complex development, geological surveys, mining, energy, renewable energy, water infrastructure, and logistics.

Investing in Ukraine during wartime holds significant importance for businesses and the state as it contributes to the country's economic revival. Despite the challenges posed by the war, strategic investments can yield substantial returns in the long run and present unique opportunities for investors. By providing comprehensive information about regions and ready-to-invest projects, the Map serves as a valuable tool to guide both local and international investors interested in identifying these opportunities.

For investors seeking promising investment prospects in Ukraine, explore the Map to discover the available projects. In case you have any questions about the Investment Map or would like to receive advice on investment opportunities, please get in touch with us at join@gb4u.org.



INVESTMENT STRUCTURING

From : Arendt & Medernach S.A. – Francis Kass / Dr. Thomas Krück
 Date : June 2023
 Subject : **Alternative investment funds and club deal / non-AIF investment vehicles**

Unless investing in risk capital, alternative investment fund managers (**AIFM**) or other fund initiators wishing to set-up an alternative investment fund (**AIF**) in Luxembourg may choose between four main structuring solutions

- the undertaking for collective investment subject to part II of the UCI Law (**UCI Part II**; since 1988);
- the specialised investment fund (**SIF**; since 2007);
- the common or special limited partnership (**CLP** and **SLP**; since 2013); and
- the reserved alternative investment fund (**RAIF**; since 2016).

In case an investment vehicle which shall invest in risk capital shall be created, an investment company in risk capital (*société d'investissement en capital à risque*) (**SICAR**) or a RAIF investing in risk capital would be the appropriate options.

	Non-regulated SCS or SCSp	RAIF	SIF	SICAR	Part II UCI
AIFMD framework	Generally, yes	Yes	Generally, yes	Generally, yes	Yes
Eligible investors	All	Well-Informed Investors	Well-Informed Investors	Well-Informed Investors	All
Time to market	Short	Short	CSSF prior approval required	CSSF prior approval required	CSSF prior approval required
Legal forms	SCS or SCSp	FCP, SICAV or SICAF (SA, SCA, SARL, SCS, SCSp)	FCP, SICAV or SICAF (SA, SCA, SARL, SCS, SCSp)	SA, SCA, SARL, SCS, SCSp	FCP, SICAV (SA), SICAF (SA, SCA, SARL, SCS, SCSp)
Umbrella structure	No	Yes	Yes	Yes	Yes
Instruments issued	Partnership interests (can be unitized)	Partnership interests, Shares, Units	Partnership interests, Shares, Units	Partnership interests, Shares, Units	Partnership interests, Shares, Units
Permitted assets	Any	Any	Any	Risk capital	Any
Diversification	No	Yes	Yes	No	Yes
Tax	Tax transparent	Subscription tax only	Subscription tax only	Tax exempted	Subscription tax only

The purpose of the present memorandum is to provide an overview of the regulatory framework applicable to the present matter and to give an overview the following topics:

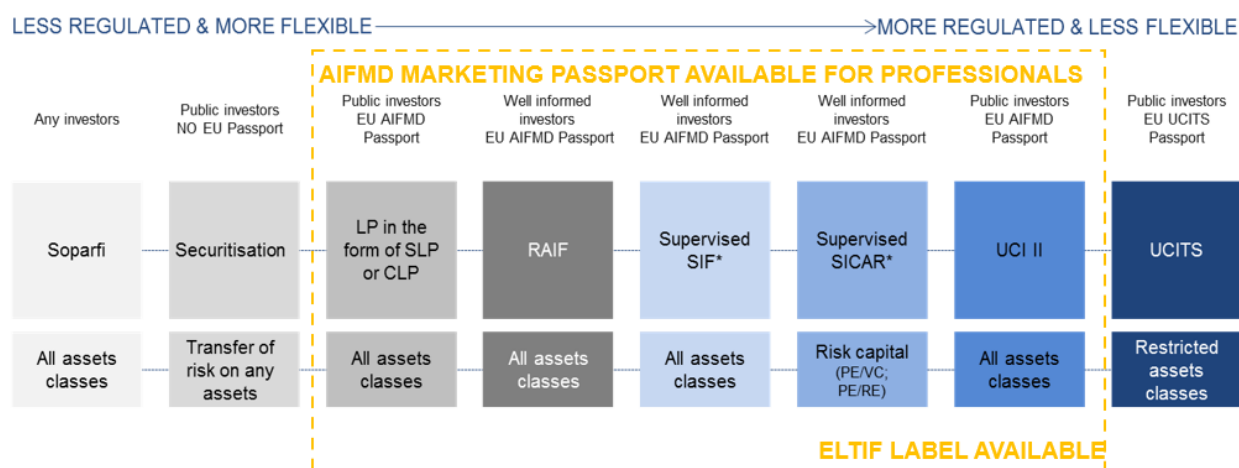
- Possible structuring alternatives;
- An overview on the available regulatory and legal forms;

- (iii) The authorisation procedure and the supervision by the *Commission de Surveillance du Secteur Financier* (CSSF), the Luxembourg supervisory authority;
- (iv) The required service providers; and
- (v) High-level assessment of the taxation of the AIF in Luxembourg.

For a better legibility and a better comparability of the different structuring alternatives, the details of the different types of vehicles are set out in tabular form.

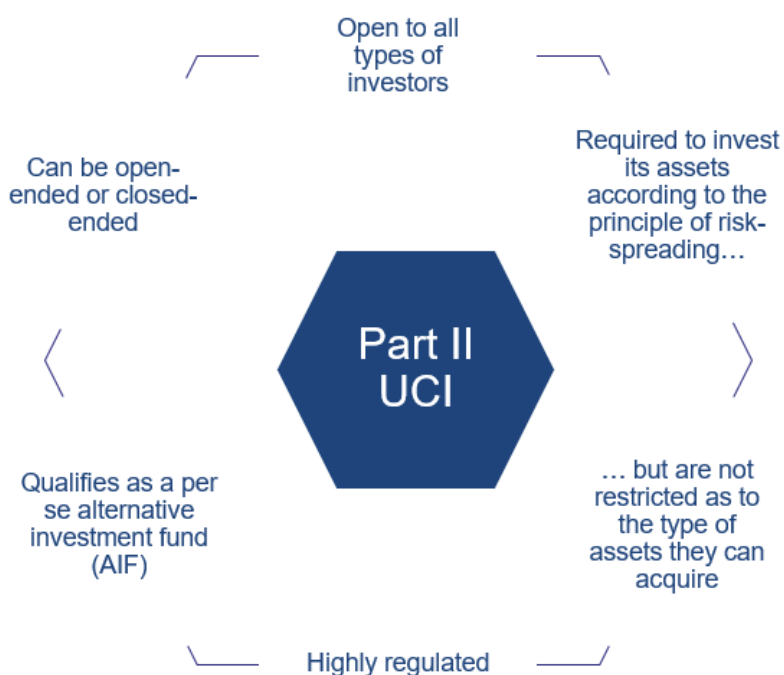
In addition, the present memorandum also provides an overview of investment vehicles not qualifying as AIF.

Overview on the main structuring solutions



UCI Part II

The UCI Part II is a regulated investment fund which exists since 1988 and qualifies *per se* as AIF.



UCIs Part II are subject to regulatory supervision of the CSSF thereby ensuring appropriate protection for investors.

UCIs Part II (i) can market their shares or units via the AIFM passport to professional investors across the EU and (ii) qualify for retail investor distribution in Luxembourg, and subject to compliance with any local law requirements in other (EU) jurisdictions.

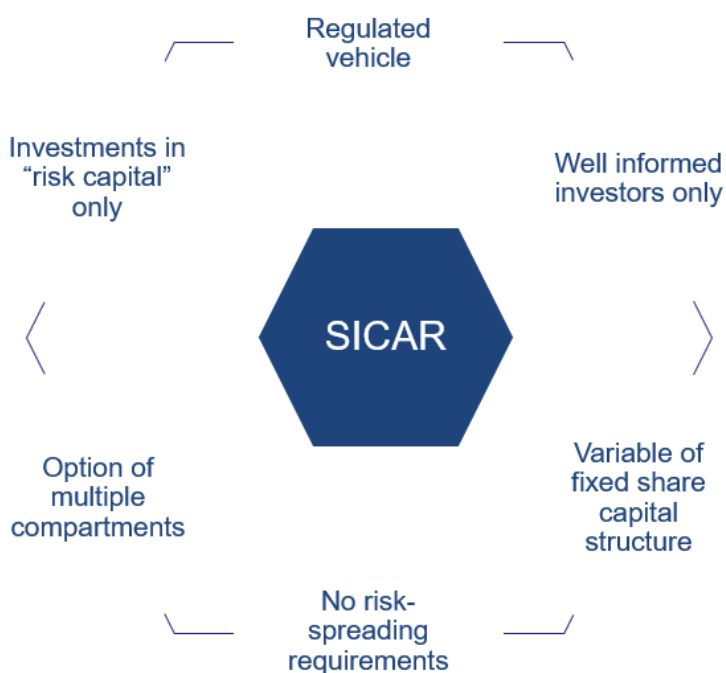
A UCI Part II may be set-up either as an investment company with variable capital as SA, as an investment company with fixed capital as SA SCA, SAS, or as a partnership (CLP or SLP) or in the contractual form of an FCP. It may be set up either as a stand-alone or as an umbrella structure (i.e., with multiple segregated compartments).

Key features

- Legal form: investment company with variable capital, investment company with fixed capital or contractual form (FCP);
- Option of multiple compartments;
- No investment restrictions as regards the eligible investments;
- Subject to mandatory risk-spreading requirements;
- Prior authorisation and ongoing prudential supervision by the CSSF;
- UCIs Part II must appoint an AIFM;
- UCIs Part II can market their shares or units via AIFM passport to professional investors across the EU;
- UCIs Part II qualify for retail investor distribution in Luxembourg, and subject to compliance with any local law requirements in other (EU) jurisdictions;
- Independent audit requirement;
- Depositary requirement.

SICAR

The SICAR was introduced by the law of 15 June 2004 on investment companies in risk capital, as amended (the SICAR Law). SICARs are organised in a corporate form subject to the 1915 Law. As its name suggests, the SICAR is a dedicated private equity and venture capital investment company regime. A SICAR must invest in assets qualifying as risk capital investments in order to provide its investors with the benefit of the management of these risk capital assets. The SICAR is subject to the prior approval and ongoing supervision of the CSSF.



The SICAR was designed for private equity and venture capital investment policies. A SICAR must directly or indirectly contribute its assets to entities in view of their launch, development or listing on a stock exchange.

A SICAR is not subject to risk-spreading requirements.

The CSSF has in its Circular 06/241 clarified the concept of risk capital under the SICAR Law, indicating that it fulfils the two following cumulative criteria:

- A high risk factor;
- (Active) development intent in respect of the target entities (creation of added value upon exit).

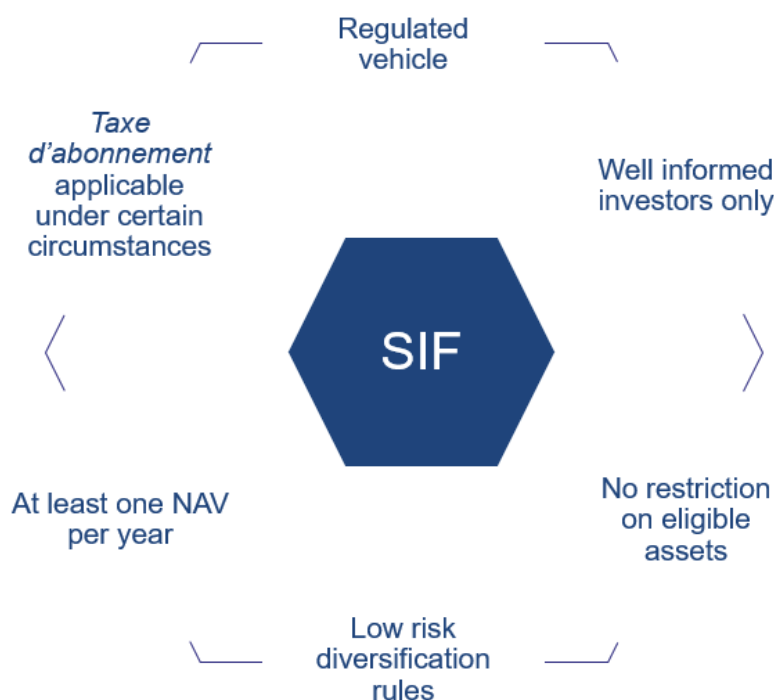
The SICAR is typically organised as an SCA, SA, SARL, CLP or SLP.

Key features

- Legal form: company or partnership forms only, no contractual form (FCP);
- Option of multiple compartments;
- Investments in “risk capital” only;
- No risk-spreading requirements;
- Well-informed investors only;
- Prior authorisation and ongoing prudential supervision by the CSSF;
- Variable or fixed share capital structure;
- Flexible financing, distribution and exit options;
- Standard minimum accounting and publication requirements subject to corporate form chosen;
- Independent audit requirement;
- Depositary requirement;
- Fully subject to tax status if established as a company, but exemption of income and gains derived from risk capital securities and entitlement to double tax treaty benefits (subject to limitations on a treaty by treaty basis).

SIF

The SIF is a regulated (alternative) investment fund regime which offers a maximum of structuring flexibility.



SIFs are subject to regulatory supervision of the CSSF thereby ensuring appropriate protection for investors.

A SIF may be offered to a wide range of well-informed investors. In addition to institutional investors, SIFs may indeed be offered to professional investors, as well as to other well-informed investors as defined below.

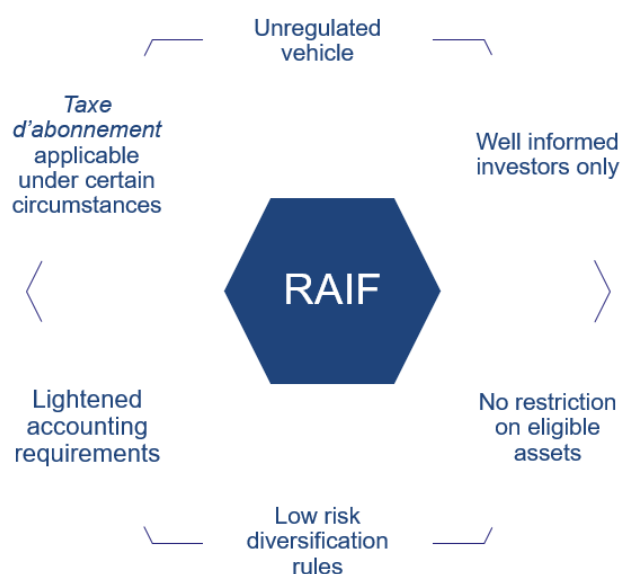
The SIF may be organised either under a corporate form as an SCA, SA, SAS¹, SARL, as a partnership (CLP or SLP) or in the contractual form of a mutual fund (*fonds commun de placement*, FCP). It may be set up either as a stand-alone or as an umbrella structure (i.e., with multiple segregated compartments).

Key features

- Legal form: corporate form, partnership or contractual form (FCP);
- Option of multiple compartments;
- No investment restrictions as regards the eligible investments;
- Subject to mandatory risk-spreading requirements (i.e., in general, 30% rule) unless organised as a feeder structure;
- Eligible for well-informed investors only;
- Prior authorisation and ongoing prudential supervision by the CSSF;
- Variable or fixed share capital structure possible;
- Flexible financing, distribution and exit policy;
- Standard minimum accounting and publication requirements subject to corporate form chosen;
- Independent audit requirement;
- Depositary requirement;
- Tax exempt status with limited entitlement to double tax treaties, if established as a company.

RAIF

The RAIF was introduced by the law of 23 July 2016 (the RAIF Law). The RAIF regime allows fund initiators and AIFMs to set up a new type of alternative investment fund, similar to the features of the SIF and SICAR fund regimes. However, a RAIF may be launched in accordance with the AIFMD marketing rules but does not require the prior authorisation by the CSSF and is not subject to the ongoing direct prudential supervision of the regulator. Instead, given that the RAIF has to be managed by an authorised AIFM, prudential oversight is exercised indirectly through the AIFM.



¹ SAS currently possible only in case of fixed capital structure.

The RAIF offers a very attractive fund product structuring solution for the implementation of all types of alternative investment strategies. The RAIF may invest in any asset class (i.e., private equity, real estate, hedge, infrastructure, debt acquisition and loan origination, as well as listed securities of any type) and can be closed-ended or open-ended, leveraged or unleveraged.

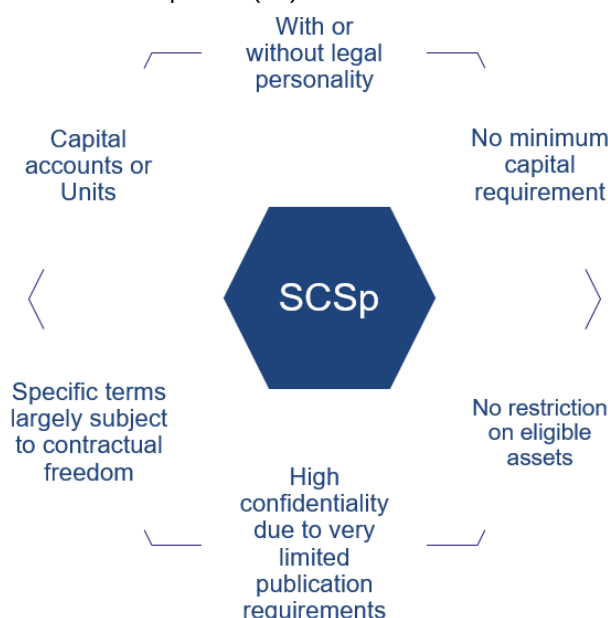
RAIFs may be organised either under a corporate form as an SCA, SA, SARL, SAS², as a partnership (CLP or SLP) or in the contractual form of a mutual fund (*fonds commun de placement*, FCP). It may be set up either as a stand-alone or as an umbrella structure (i.e., with multiple segregated compartments).

Key features

- Legal form: corporate form, partnership or contractual form (FCP);
- Option of multiple compartments;
- Investment in any asset class and any investment policy or strategy applicable;
- Risk-spreading requirements are aligned with those applicable to SIFs except if the RAIF elects to invest in qualifying risk capital investments only (no risk-spreading requirement);
- Eligible for well-informed investors only;
- No prior authorisation and ongoing prudential supervision by the CSSF;
- Appointment of an authorised AIFM required;
- Variable or fixed share capital structure possible;
- Flexible financing, distribution and exit options;
- Standard minimum accounting and publication requirements subject to corporate form chosen;
- Independent audit requirement;
- Depositary requirement;
- The RAIF regime follows the tax regime applicable to SIFs or SICARs depending if the RAIF elects to the SIF or SICAR regime.

Limited Partnerships

Limited partnerships may have legal personality (CLP) or not (SLP) and are formed between at least one unlimited partner (general partner, GP) and at least one limited partner (LP).



CLPs and SLPs are tax transparent. Furthermore they are in principle not eligible for double tax treaty benefits. In practice however, CLPs and SLPs may often be a suitable alternative if a tax transparent and non-regulated alternative investment fund solution is desired.

² Ibidem

Key features

- Flexibility: limited partnership agreements set the terms of the partnership otherwise default rules will apply;
- No investment restrictions or limitations;
- No risk-spreading requirements;
- No investor eligibility requirements (except as regards marketing under the AIFMD);
- No authorisation or supervision by the CSSF;
- Capital accounts or unitised models available;
- Simplified accounting obligations;
- GP and manager may be two different entities; only the GP has unlimited liability;
- Also eligible under the SIF and RAIF regimes (in this case their particular features are addressed together with the description of the relevant specific regulatory regime).

Legal forms

	UCI Part II	SICAR	SIF/RAIF	Partnership not subject to any product law
Legal forms	A UCI Part II may be set-up either as an investment company with variable capital as SA, as an investment company with fixed capital as SA SCA, SAS, or as a partnership (CLP or SLP) or in the contractual form of an FCP.	A SICAR may be set-up in corporate form as an SCA, SA or SARL, as a partnership (CLP or SLP).	SIFs and RAIFs may be set-up either in corporate form as an SCA, SA, SAS ³ or SARL, as a partnership (CLP or SLP) or in the contractual form of an FCP.	Limited partnerships may have legal personality (CLP) or not (SLP).

Need for tax transparency?

- Taxable entity: Sàrl, SA or SCA; or
- Tax transparent entity: FCP, SCS or SCSp

Need for flexibility in management?

- No separate management entity: Sàrl or SA; or
- Separate GP: SCA, SCS or SCSp / Separate ManCo: FCP

Need for contractual freedom?

- More legal provisions imposed: Sàrl, SA or SCA; or
- Less legal provisions imposed: FCP, SCS or SCSp

Need for confidentiality?

- Formation under notarial deed: Sàrl, SA or SCA; or
- Formation under private deed: FCP, SCS or SCSp

³ Only as an investment company with fixed capital.

Overview on the features of the legal forms

	SARL	SA	SAS	SCA	CLP	SLP	FCP
Key Features	Closely held company (<i>intuitu personae</i>), as evidenced by applicable specific rules. Listing not permitted.	Particularly suitable for joint venture structures as the corporate governance rules relating thereto are very flexible. Listing permitted.	Suitable when flexible governance required. Listing not permitted.	Particularly convenient for initiators who want to retain control over the management function. Listing permitted.	Suitable for structuring open-ended funds and closed-ended funds. Particularly convenient for transactions where (i) tax transparency is required at the level of the partnership and (ii) fund initiators want to retain total control over the management. The CLP has a legal personality of its own. Listing permitted.	Suitable for structuring open-ended funds and closed-ended funds. Particularly convenient for transactions where (i) tax transparency is required at the level of the partnership and (ii) fund initiators want to retain total control over the management. No legal personality. Listing permitted.	Undivided collection of assets, without legal personality, managed by a Luxembourg management company on behalf of joint owners whose rights are represented by units. Allows for total control over the management. No legal personality. Listing of units permitted.
Constitutive Document	Articles of association. Notarial deed required.				LPA. High contractual freedom. Formation generally under private seal, however, formation by notarial deed is possible.		Management regulations. High contractual freedom. No notarial deed required.
Minimum Capital	EUR 12,000	EUR 30,000			No requirement.		The minimum capital requirement of EUR 1.25 million must be met within one year after authorisation under the SIF regime / within one year after formation under the RAIF regime. The minimum capital requirement of EUR 1.25 million must be met within six months after authorisation under the UCI Part II regime. The minimum capital requirement of EUR 1 million must be met within one year after authorisation under the SICAR regime. The minimum capital requirement of EUR 1.25 million must be met within six months
	The minimum capital requirement of EUR 1.25 million must be met within one year after authorisation under the SIF regime / within one year after formation under the RAIF regime. The minimum capital requirement of EUR 1.25 million must be met within six months after authorisation under the UCI Part II regime. The minimum capital requirement of EUR 1 million must be met within one year after authorisation under the SICAR regime.						

					after authorisation under the UCI Part II regime.
Contributions	In cash or in kind: contributions in kind are not subject to a valuation report from an independent auditor (<i>réviseur d'entreprises</i>).⁴ Contributions by way of services (<i>apport en industrie</i>) permissible under conditions set out in the by the articles of association.	In cash or in kind: contributions in kind are subject to a valuation report from an independent auditor (<i>réviseur d'entreprises</i>).		In cash, in kind or by way of services (<i>apport en industrie</i>). Contributions in kind are not subject to a valuation report from an independent auditor (<i>réviseur d'entreprises</i>).⁵	In cash or in kind: contributions in kind to the FCP are subject to a valuation report from an independent auditor (<i>réviseur d'entreprises agréé</i>).
Form of Securities	Registered shares.	Bearer, registered or dematerialised shares.		Partnership interests which may take the form of units (registered form only). Otherwise capital accounts mechanism.	Bearer or registered units.
Shareholding	One or more limited shareholders (no more than 100).	One or more limited shareholders (no upper limit).	An SCA is formed between at least one unlimited partner (GP) and at least one limited partner (no upper limit) which have to be different entities.	A CLP or a SLP is formed between at least one unlimited partner (GP) and at least one limited partner (no upper limit) which have to be different entities.	One or more unitholders (no upper limit).
Liability	Shareholders are only liable up to the amount paid-up or committed.		GPs are indefinitely, jointly and severally liable (but may be incorporated as limited liability companies or limited partnerships). Limited shareholders are only liable up to the amount paid-up or committed.	GPs are indefinitely, jointly and severally liable (but may be incorporated as limited liability companies or limited partnerships). Limited partners are only liable up to the amount paid-up and/ or committed.	Unitholders are only liable up to the amount paid-up or committed.
Management	By one or several managers.	One-tier SA: by a board of directors of three directors at	Freely determined by the articles of association. An SAS	By one or more managers who do not need to be GPs.	By a Luxembourg management company.

⁴ However, both the RAIF Law and the SIF Law require a valuation report from an independent auditor (*réviseur d'entreprises agréé*) notwithstanding the legal form adopted by the related RAIF or SIF.

⁵ Ibidem.

	For UCIs Part II, SICARs, SIFs and RAIFs, 3 managers are required. In the case of UCIs Part II, SICARs and SIFs, these need to be approved by the CSSF.	least, if the SA has several shareholders. Two-tier SA: by a management board of two members at least, supervised by a supervisory board of three members at least. For UCIs Part II, SICARs, SIFs and RAIFs, 3 board / supervisory board members are required. In the case of UCIs Part II, SICARs and SIFs, these need to be approved by the CSSF.	is represented by a chairman (<i>président</i>) and does not necessarily have any other representative body. For UCIs Part II, SICARs, SIFs and RAIFs, 3 board / supervisory board members are required. In the case of UCIs Part II, SICARs and SIFs, these need to be approved by the CSSF.	In case the manager is not the GP: only liable for the execution of its mandate. GPs cannot be dismissed without their consent, unless otherwise provided for by the articles of association. For UCIs Part II, SICARs, SIFs and RAIFs, 3 managers are required (either at the level of the SCA or at the level of the GP). In the case of UCIs Part II, SICARs and SIFs, these need to be approved by the CSSF.	In case the manager is not the GP: only liable for the execution of its mandate. For UCIs Part II, SICARs, SIFs and RAIFs, 3 managers are required (either at the level of the CLP/SLP or at the level of the GP). In the case of UCIs Part II, SICARs and SIFs, these need to be approved by the CSSF.	
Amendments to constitutive documents	By the affirmative vote of shareholders representing at least three-quarters of the share capital, in the presence of a Luxembourg notary.	By the affirmative vote of two thirds of the shareholders present or represented with a quorum requirement of at least half of the share capital Amendment to the constitutive documents in the presence of a Luxembourg notary. If the quorum is not reached at the first meeting, a second meeting without a quorum requirement will be convened.	Quorum and majority rules to be freely determined by the articles of association. Amendment to the constitutive documents in the presence of a Luxembourg notary.	By the affirmative vote of two thirds of the shareholders present or represented with a quorum requirement of at least half of the share capital Amendment to the constitutive documents in the presence of a Luxembourg notary. If the quorum is not reached at the first meeting, a second meeting without a quorum requirement will be convened.	Unless otherwise determined in the LPA, by partners representing three-quarters of partnership interests and by all GPs.	The management regulations of an FCP may be amended by its management company, unless otherwise specified in the management regulations. Unitholders may be entitled to withdraw in case of amendments having a materially adverse effect on them.

Authorisation

	UCI Part II / SICAR / SIF	RAIF	Partnership not subject to any product law
Authorisation	A UCI Part II / SICAR / SIF may not start its activities until it is authorised by the CSSF. Once authorised, the UCI Part II / SICAR / SIF is registered on the official list of UCIs Part II / SICARs / SIFs maintained by the CSSF.	N/A However, the formation of a RAIF shall be acknowledged by a Luxembourg notary within 5 days following its formation. The RAIF shall subsequently be registered with the RCS. The latter will keep an official list of RAIFs.	Partnerships are not subject to authorisation by the CSSF and may therefore be set up very quickly.
Items subject to authorisation	The authorisation is granted only if the CSSF approves: - the constitutive documents (offering document, articles of incorporation, LPA, etc.); - the directors or managers; - the depositary; - the auditor; - further service providers (such as central administration, delegated portfolio manager, if any, and others); - the agreements to be entered into with the service providers; - the description of the risk management process and a written confirmation that the conflict of interests policy has been put in place for UCI Part II/SIF/SICAR managed by registered AIFM and the conflict of interest policy for the registered AIFM. For the substance reasons in Luxembourg, it is strongly recommended that the majority of the directors are Luxembourg residents. Registered address should be also located in Luxembourg (ex. Domiciliation agreement). Directors/managers must be of sufficiently good repute and have sufficient experience for performing their functions. The same requirement applies to the persons or delegates entrusted with the portfolio management. If and when applicable, the CSSF will also verify how the UCI Part II / SICAR / SIF complies with the AIFMD, i.e., whether a registered or authorised AIFM is to be appointed or whether the SICAR/SIF is internally managed (CSSF forms to be completed).	N/A	N/A

Procedure and timeline of the authorisation of a UCI Part II / SICAR / SIF

Step	Action	Timing	Comment
Submission to CSSF	Submission of the finalised documentation (i.e. offering document, articles of association, service provider agreements) and of further support documents as well as of other relevant information relating to the UCI Part II / SICAR / SIF to the CSSF.	Upon approval of the documentation by all parties involved.	The CSSF will initiate the instruction process and review the documentation. It will eventually address one or several sets of comments. Please note that the CSSF deadlines are merely indicative.
CSSF meeting	A meeting with the CSSF may be recommended or requested to provide a description of the project.	At the discretion of the CSSF.	Such meeting is usually requested by the CSSF or recommended in case of the first project in Luxembourg.
CSSF comments	Receipt of the CSSF comments.	To be expected within 3 to 4 weeks after submission.	
Answers to CSSF comments	The CSSF comments will be addressed and the documentation will be re-filed.	After receipt of comments.	Additional rounds of CSSF comments should be expected and additional filings may be required.
Approval	Approval of the UCI Part II / SICAR / SIF by the CSSF.	To be expected within 8 to 12 weeks after submission.	The UCI Part II / SICAR / SIF may be incorporated once the CSSF approval has been obtained. Service provider agreements may be signed.
Visa-stamping	Submission to the CSSF of the Issuing Document, as approved, for visa-stamping purposes.	After incorporation/formation of the UCI Part II / SICAR / SIF and after execution of the service provider agreements.	E-filing of the final version of the offering document of the UCI Part II / SICAR / SIF.
Registration on the UCI Part II / SICAR / SIF list	Registration of the Fund on the official list of specialised investment funds of the CSSF.	Upon receipt by the CSSF of copies of all documents duly executed.	The registration of the Fund on the official list is the final step of the CSSF approval procedure.

Regulatory supervision

	UCI Part II / SICAR / SIF	RAIF	Partnership not subject to any product law
Supervision by the CSSF	UCIs Part II / SICARs / SIFs are subject to the permanent supervision of the CSSF until the close of their liquidation. Any amendment to the constitutive documents and any changes in the various appointments (i.e., management, delegates and services providers) are subject to prior CSSF approval.	RAIFs are not subject to the supervision of the CSSF. However RAIFs have to be managed by an external authorised AIFM.	Partnerships not subject to any product law are not subject to the supervision of the CSSF. However as the Partnership qualifies as an AIF and is managed by an authorised AIFM, the AIFM will be supervised by the CSSF or its respective regulatory authority.
Depository	Depository bank or professional of the financial services sector providing depository services, subject to conditions.		As the Partnership qualifies as an AIF and is managed by an authorised AIFM, a depository bank or professional of the financial services sector providing depository services, subject to conditions, will need to be appointed.
Conflicts of interest	UCIs Part II / SICARs / SIFs must be structured and organised in such a way as to minimise the risk of investors' interests being prejudiced by conflicts of interests arising between the UCI Part II / SICAR / SIF and any person contributing to the business activity of the UCI Part II / SICAR / SIF or linked to the UCI Part II / SICAR / SIF.	N/A at the level of the RAIF. However, the AIFM of the RAIF will be required to have a conflict of interest policy in place which takes the management of the RAIF into account.	N/A at the level of the CLP/SLP. However, as the Partnership qualifies as an AIF and is managed by an authorised AIFM, the AIFM of the Partnership will be required to have a conflict of interest policy in place taking into account the management of the Partnership.

Audit	A Luxembourg independent auditor (<i>réviseur d'entreprises agréé</i>) shall audit the accounting information contained in the annual report of UCIs Part II / SICARs / SIFs. The auditor's report and qualifications, if any, shall be included in full in the annual report. In addition, the auditor has duties of notification to and of extensive supervision at the request of the CSSF.	A Luxembourg independent auditor (<i>réviseur d'entreprises agréé</i>) shall audit the accounting information contained in the annual report of RAIFs. The auditor's report and qualifications, if any, shall be included in full in the annual report.	No auditor is required for SLPs. For CLPs, a Luxembourg independent auditor (<i>réviseur d'entreprises agréé</i>) shall audit the accounting information contained in the annual report if certain quantitative thresholds are exceeded. However, the AIFMD requires an audit of AIFs.
Risk Management	Appropriate risk management systems must be implemented to detect measure, manage and monitor the risk of positions and their contribution to the overall risk profile of the portfolio.	N/A at the level of the RAIF. However, the AIFM of the RAIF is required have a risk management process in place which takes the risks inherent to the RAIF into account.	As the Partnership qualifies as an AIF and is managed by an authorised AIFM, the AIFM will be required to have a risk management process in place taking into account the risks inherent to the Partnership.

Eligible investments

	UCI Part II	SICAR	SIF	RAIF	Partnership not subject to any product law
Investment limitations	UCIs Part II may invest into any asset class and apply any investment policy or strategy.	A SICAR must invest its funds in assets representing risk capital. Investment in risk capital is defined in the SICAR Law as the direct or indirect contribution of assets to entities in view of their launch, development or listing on a stock exchange. Two conditions shall be cumulatively met: (i) the risk relating to the investments of the SICAR must	SIFs may invest into any asset class and apply any investment policy or strategy subject to prior approval by the CSSF	RAIFs may invest into any asset class and apply any investment policy or strategy.	An SLP/CLP may invest into any asset class and apply any investment policy or strategy.

		be high and (ii) the SICAR must aim at contributing to the development of the entities in which it invests.			
Risk-spreading requirement	The IML Circular 91/75 sets out general rules applicable to UCIs Part II. In addition, CSSF Circular 02/80 sets forth specific rules applicable to UCIs Part II pursuing alternative investment strategies.	A SICAR is not subject to risk spreading requirements and may thus invest in a single target company only.	The CSSF Circular 07/309 on risk spreading in the context of specialised investment funds complements the SIF Law and provides clarification on the investment restrictions that must be adhered to in order to ensure adequate risk diversification: As a general rule, a SIF may not invest more than 30% of its assets or commitments in securities of the same type, issued by the same issuer. This restrictions is not, however, applicable to investments in: Securities issued, or guaranteed, by an OECD Member State or by its local authorities or by supranational bodies or organisations of an EU, regional or worldwide nature. Target UCIs that are subject to risk diversification principles that are at least comparable to those relevant to SIFs. Short selling cannot, in principle, result in the SIF holding uncovered securities of the same nature issued by the same issuer representing more than 30% of its assets. When using financial derivative instruments, the SIF must ensure, through an appropriate diversification policy of the	A RAIF must spread the risks of its investments. The risk-spreading requirements of SIFs, although not directly applicable to RAIFs, are used as a reference for RAIFs. By way of derogation, RAIFs which invest exclusively in risk capital as per their constitutive documents are not subject to any risk-spreading requirement.	Partnerships are not subject to risk risk-spreading requirements. The LPA may however foresee such risk diversification.

			underlying assets a comparable level of risk spreading. It is possible to introduce a period during which the aforementioned rules of risk spreading are not applicable after the CSSF's approval.		
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Stand-alone, umbrella, fund of funds, feeder funds and cross investments	A UCI Part II may invest directly in other funds. The UCI Part II may also be used as a feeder fund provided that the underlying master fund is subject to equivalent diversification. If the UCI Part II is organised as an umbrella structure, investments across compartments may be permitted.	A SICAR may invest in other private equity funds provided the underlying private equity or venture capital funds comply with the risk capital investment requirements as per the SICAR Law. A SICAR may be organised as an umbrella structure.	A SIF may invest directly in other funds. The SIF may also be used as a feeder fund provided that the underlying master fund is subject to equivalent diversification. • If the SIF is organised as an umbrella structure, investments across compartments may be permitted.	A RAIF may invest in other funds. The RAIF may also be used as a feeder fund provided the underlying master fund (i) is subject to equivalent diversification or (ii) complies with the risk capital investment requirements in the case of RAIFs which invest exclusively in risk capital. If the RAIF is organised as an umbrella structure, investments across compartments may be permitted.	A Partnership may invest in other funds and be organised as a fund of fund or a feeder fund. The Partnership may not be organised as an umbrella structure.
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Eligible investors

	UCI Part II	SICAR	SIF	RAIF	Partnership not subject to any product law
Categories of eligible investors	There are no restrictions on the eligibility of investors of UCIs Part II. Unless subject to the ELTIF regime, UCIs Part II (qualifying as AIFs) may however only be marketed within the EU to professional investors.	Only well-informed investors may invest in a SICAR, SIF or RAIF. Well-informed investors are: institutional investors, professional investors or investors investing certain minimum amounts (at least EUR 125,000) or obtaining a special certification.			There are no restrictions on the eligibility of investors of Partnerships. AIFs with an authorised AIFM may however only be marketed within the EU to professional investors.
Institutional investors		Firms and organisations, the purpose of which leads them to manage substantial funds and assets. Examples of these investors are banks and other professionals of the financial sector, insurance and reinsurance undertakings, social security institutions, pension funds, large industrial and financial groups and dedicated structures set up by those entities.			
Professional investors		Entities which are required to be authorised or regulated to operate in the financial markets such as credit institutions, insurance companies and commodity derivatives dealers, among others. Large undertakings which meet two of the following size criteria on a company basis: (i) balance sheet total of EUR 20,000,000; (ii) net turnover of EUR 40,000,000; (iii) own funds of EUR 2,000,000. This category also includes some States or international bodies or institutions and other institutional investors, the main activity of which is to invest in financial instruments, including entities dedicated to the securitisation of assets or other financing transactions. If the SICAR or SIF qualifies as an AIF and is managed by an authorised AIFM, it may only market its interests and shares to investors which are professional clients or may, on request, be treated as professional clients within the meaning of Annex II of the Directive 2004/39/EC.			

Well-informed investors	There are no restrictions on the eligibility of investors of UCIs Part II. Unless subject to the ELTIF regime, UCIs Part II (qualifying as AIFs) may however only be marketed within the EU to professional investors.	Those who, although not qualifying as institutional or professional investors, may evidence that they are sufficiently sophisticated to understand and bear the risks associated with the nature of investments of the SICAR, SIF or RAIF. In addition to confirming in writing that he/she/it adheres to the status of well-informed investor, such investor shall invest a minimum of EUR 125,000 in the SICAR, SIF or RAIF or obtain an assessment made by one of the financial sector entities listed by the SICAR Law, SIF Law or RAIF Law which certifies the investor's expertise, experience and knowledge in adequately appraising an investment in a SICAR, SIF or RAIF.	There are no restrictions on the eligibility of investors of Partnerships. AIFs with an authorised AIFM may however only be marketed within the EU to professional investors.
Exception for managing persons and other persons taking part in the management		The eligible investor requirements do not apply to persons that take part in the management of a SICAR, SIF or RAIF.	

Capital

	UCI Part II	SICAR	SIF	RAIF	Partnership not subject to any product law
Variable capital possible	A UCI Part II set up as a SA may opt for a variable capital structure, i.e. a capital the amount of which is equal to the NAV of the entity at all times. A UCI Part II with variable capital, as well as a UCI Part II structured as an FCP may always issue new shares/units in accordance with the conditions and procedures set forth in its constitutive documents.	A SICAR, SIF or RAIF set up as a SA, SCA, SARL, CLP or SLP may opt for a variable capital structure, i.e. a capital the amount of which is equal to the NAV of the entity at all times. A SICAR, a SIF or a RAIF with variable capital, as well as a SIF or a RAIF structured as an FCP may always issue new shares/units in accordance with the conditions and procedures set forth in its constitutive documents.			The mechanisms to admit new partners and increase / reduce the partners' contributions are determined by the LPA.

Issue price	New shares/units of UCIs Part II may be issued in accordance with the method set forth in their constitutive documents,.	New shares/units/interests of SICARs, SIFs or RAIFs may be issued in accordance with the method set forth in their constitutive documents.			
Minimum capital	The minimum capital requirement of EUR 1.25 million must be met within six months after authorisation under the UCI Part II regime.	The minimum capital requirement of EUR 1 million must be met within one year after authorisation under the SICAR regime.	The minimum capital requirement of EUR 1.25 million must be met within one year after authorisation under the SIF regime.	The minimum capital requirement of EUR 1.25 million must be met within one year after formation under the RAIF regime.	No minimum capital requirement
Umbrella structure	A UCI Part II, SICAR, SIF or a RAIF may be set up as an umbrella structure with segregated portfolios of assets and liabilities represented by compartments/sub-funds.				The Partnership may not be organised as an umbrella structure.

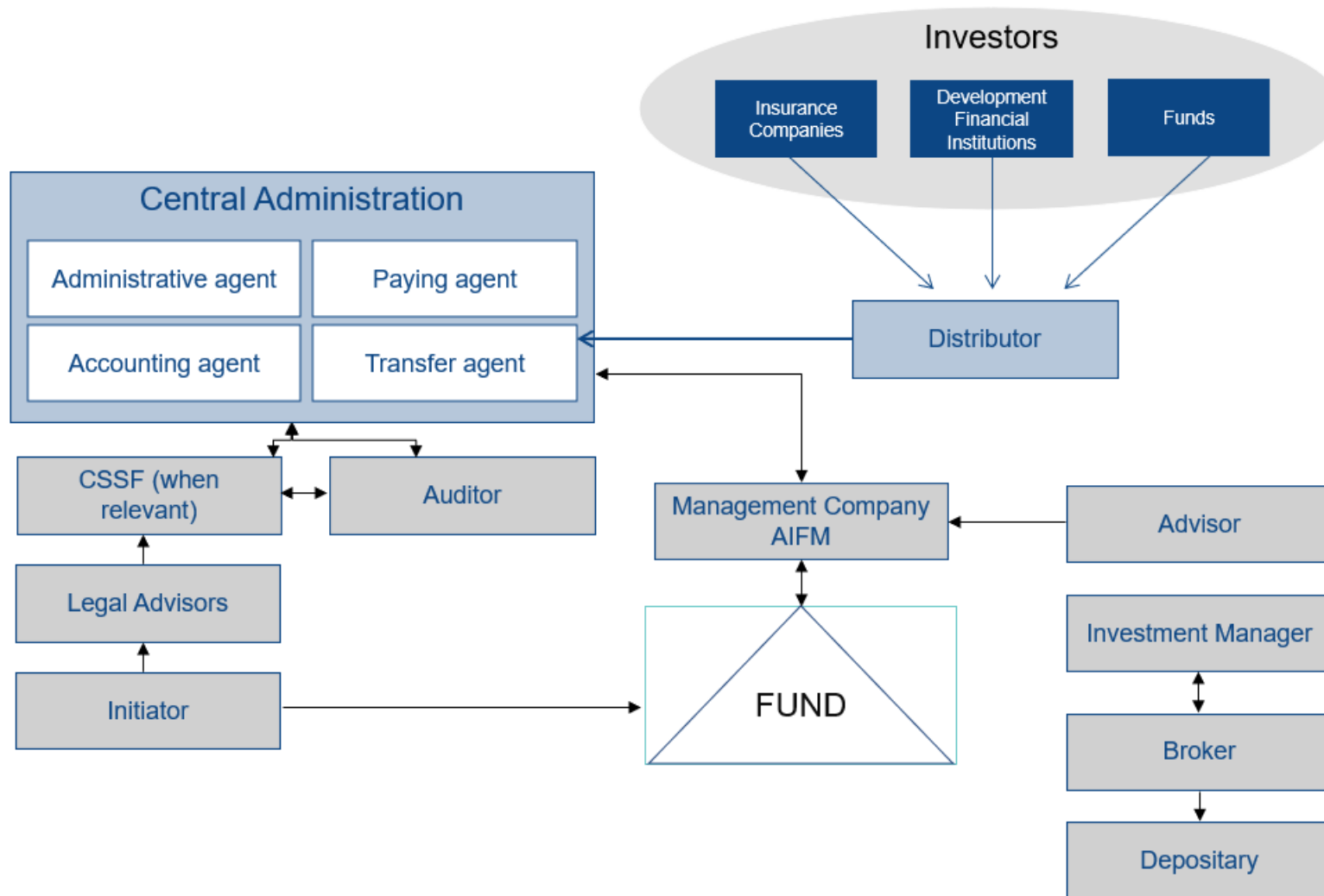
Redemptions / withdrawals

	UCI Part II / SICAR / SIF / RAIF	Partnership not subject to any product law
Statutory requirements applicable to redemptions / withdrawals	Redemptions (and subsequent cancellation) of shares of a UCI Part II, SICAR, SIF or RAIF with variable share capital are not subject to any restrictions other than those set forth in their constitutive documents, provided that (i) the capital of the UCI Part II, SIF or RAIF will not fall below the minimum of EUR 1.25 million or (ii) the capital of the SICAR will not fall below the minimum of EUR 1 million Redemptions of units of a UCI Part II, SIF or RAIF structured as an FCP are not subject to any restrictions other than those set forth in its management regulations, provided that the capital of the UCI Part II, SIF or RAIF will not fall below the minimum of EUR 1.25 million. As a matter of principle and as per the 1915 Law, shares of a structure with fixed share capital set up as an S.à r.l., SA, SAS or SCA may not be redeemed without shareholders' approval and provided that certain conditions are fulfilled. Shares may be redeemed by way of a capital reduction if (i) they comply with specific restrictions (i.e. among others, only fully paid-up shares can be redeemed without exceeding 10% of the subscribed capital) or (ii) they qualify as "redeemable shares" as such shares are issued in accordance with the legally imposed terms and conditions to be set forth in the constitutive documents. Shares may also be redeemed and cancelled by way of a capital reduction, or partial liquidation, under certain conditions (i.e. among other restrictions, approval of the shareholders under the requirements applicable to amendments of constitutive documents and protective measures in favour of creditors).	The procedure for the withdrawal of a limited partner is set forth in the LPA.

Valuation and reporting requirements

	UCI Part II / SICAR / SIF / RAIF	Partnership not subject to any product law
Fair value asset valuation	The assets of a UCI Part II, SICAR, SIF or RAIF shall be valued on the basis of their fair value in accordance with its constitutive documents.	Valuation is subject to the provisions set forth in the LPA.
Prospectus / offering document requirements	UCI Part II, SICAR, SIF or RAIF must establish an issuing document. There is no obligation to establish an offering document if a prospectus according to the Prospectus Regulation (EU 2017/1129) is published. The issuing document must include the information necessary for investors to be able to make an informed judgment of the investment proposed to them and, in particular, of the risks attached thereto. The essential elements of the issuing document of a UCI Part II shall always be kept up to date. The essential elements of the issuing document of a SICAR, SIF or RAIF shall be up to date when securities are issued to new investors.	There is no specific legal obligation to establish a prospectus or offering document. However, the disclosure requirements under the AIFMD have to be met.
Minimal reporting requirements	UCIs Part II shall issue (i) an audited annual report for each financial year within 4 months from the end of the financial year to which it relates and (ii) a half-yearly report within 2 months from the end of the period to which it relates. SICARs, SIFs and RAIFs shall issue an audited annual report for each financial year within 6 months from the end of the financial year to which it relates. Additional reporting requirements may apply under the AIFM Law / AIFMD, the scope and frequency of which depend among others on the type of AIF managed by the and the amount of its assets under management.	SLPs have no legal obligation to file their annual accounts with the RCS. CLPs shall file their annual accounts on a yearly basis in case their turnover exceeds 100,000 EUR. Additional reporting requirements may apply under the AIFM Law / AIFMD, the scope and frequency of which depend among others on the type of AIF managed by the and the amount of its assets under management.

The main service providers for AIFs



Function	Description
AIFM	When managing an AIF, the AIFM performs at least the following functions: • portfolio management; • risk management. In addition, the following functions may be performed in the course of the collective management of an AIF: • administration: ○ legal and fund management accounting services; ○ customer inquiries; ○ valuation and pricing, including tax returns; ○ regulatory compliance monitoring; ○ maintenance of unit-/shareholder register; ○ distribution of income; ○ unit/shares issues and redemptions; ○ contract settlements, including certificate dispatch; ○ record keeping; • marketing; • activities related to the assets of AIFs, namely services necessary to meet the fiduciary duties of the AIFM, facilities management, real estate administration activities, advice to undertakings on capital structure, industrial strategy and related matters, advice and services relating to mergers and the purchase of undertakings and other services connected to the management of the AIF and the companies and other assets in which it has invested. The entities which are eligible to act as depositaries of an AIF are the following: • Luxembourg credit institution; • Luxembourg branch of an EU credit institution; • Luxembourg investment firm (under certain conditions); • Luxembourg branch of an EEA investment firm (under certain conditions); • Professional depositaries of assets other than financial instruments (for specific AIFs investing in certain asset classes). Functions of the AIFM may be delegated to third parties. However, when delegating either portfolio management or risk management the respective other function has to remain with the AIFM and may not be delegated.

Depository	The Depository is entrusted with the custody and/or, and it shall fulfil oversight obligations and duties provided for by law. In particular, the depository shall ensure an effective and proper monitoring of the AIF's cash flows. Therefore, the Depository is responsible for: • Safekeeping: ○ Financial instruments (e.g. securities) to be held in custody; ○ Ownership verification and record-keeping duties with regard to „other assets“. • Oversight: ○ Control of issue, repurchase, redemption and cancellation of shares/units; ○ Control of NAV calculation; ○ Control that consideration for portfolio transactions is remitted within usual time limits; ○ Ensure compliance with investment restrictions. • Cash flow monitoring: ○ Ensure that income is applied correctly; ○ Check that subscription monies are received; ○ Check that cash is properly booked in segregated accounts.
Paying Agent	The Paying Agent is responsible for the payment of dividends and redemption proceeds to Shareholders/Unitholders/Partners.
Central Administration Agent	The Central Administration Agent is generally responsible for: • Fund accounting; • NAV calculation and portfolio valuation / pricing; • Investment compliance monitoring; • Reporting; • Record keeping.
Registrar and Transfer Agent	The Registrar and Transfer Agent is generally responsible for: • Arranging issue, transfer allotment, conversion, subscription, redemption and/or purchase and sale of shares; • Keeping the shareholder/unitholder/partner's register; • Verification of identity of investors (unless entrusted to distributor); • Identification and prevention of market timing / late trading.

Domiciliation Agent	The Domiciliation Agent provides the AIF with a registered office in Luxembourg and is usually in charge of corporate governance services.
Auditor	The Auditor will inspect the accounting information contained in the annual report of the AIF and fulfil other duties prescribed by law.

Taxation at the level of the UCI Part II/SICAR/SIF/RAIF and Partnership

	UCI Part II	SICAR	SIF and RAIF (not qualifying for Risk Capital-like taxation)	Unregulated Partnership qualifying as an AIF
Income tax / corporate income tax (CIT)	A UCI Part II is exempt from Luxembourg income tax. However a UCI Part II is as a rule in Luxembourg subject to a subscription tax at a rate of 0.05%. This annual subscription tax is payable quarterly on the basis of total net assets of such UCI Part II valued at the end of the relevant quarter. A reduction or exemption from the subscription tax applies under certain conditions.	A SICAR is subject to CIT but a 100% exemption applies to profits derived from (i) risk capital investments and (ii) funds to be invested within 12 months in risk capital investments.	A SIF and RAIF are exempt from Luxembourg income tax. However a SIF and RAIF are as a rule in Luxembourg subject to a subscription tax at a rate of 0.01%. This annual subscription tax is payable quarterly on the basis of total net assets of such a SIF or RAIF valued at the end of the relevant quarter. An exemption from the subscription tax applies under certain conditions.	An unregulated Partnership is transparent for income tax purposes and is not subject to CIT and the employment fund surcharge on its income, profits or gains.

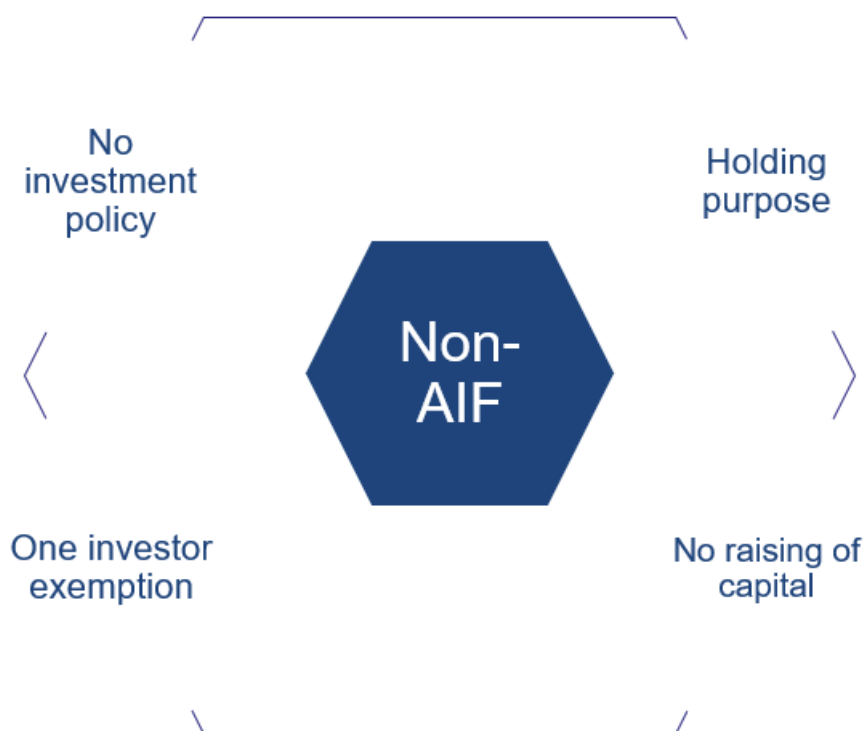
Municipal business tax (MBT)	A UCI Part II is exempt from MBT	A SICAR is subject to MBT but a 100% exemption applies to profits derived from (i) risk capital investments and (ii) funds to be invested within 12 months in risk capital investments.	A SIF and RAIF are exempt from MBT.	An unregulated Partnership may be subject to MBT if (i) it pursues a commercial activity or (ii) if it is deemed to pursue a commercial activity by virtue of the business-tainted theory (Geprgetheorie), i.e., if the GP owns at least 5% of the capital or economic interests in the unregulated Partnership. A “business activity” is generally defined as any independent for profit activity that is exercised in a permanent manner and participates to the economic life in general. The Luxembourg tax authorities confirmed in a Circular Letter L.I.R. n° 14/4, dated 9 January 2015, that a Partnership which qualifies as an AIF within the meaning of the AIFM Law is deemed not to be conducting a business activity. Based on that understanding, an unregulated Partnership should thus not be subject to MBT, unless its GP holds 5% or more of the capital or economic interests in the unregulated Partnership.
Withholding tax (WHT)	There is no WHT on any distributions made by a UCI Part II to its investors.	There is no WHT on any distributions made by a SICAR to its investors	There is no WHT on any distributions made by a SIF or RAIF to its investors.	An unregulated Partnership is not subject to WHT in Luxembourg in case of distributions to its LPs. An unregulated Partnership is deemed to be tax transparent and distributions are performed for corporate reasons only, but are disregarded from a tax perspective, as any income and loss derived at the level of an unregulated Partnership is directly attributable to the LPs.

Net wealth tax (NWT)	A UCI Part II is exempt from NWT.	A SICAR is exempt from NWT.	A SIF and RAIF are exempt from NWT.	An unregulated Partnership is transparent for NWT purposes and thus not being subject to net wealth taxation, including the minimum NWT.
Registration duties	A fixed registration duty of EUR 75 is payable in Luxembourg upon incorporation or any amendment of the constitutive documents. The fixed registration duty may also be due by Partnerships in certain circumstances and in case of a voluntary legislation.			
VAT	In Luxembourg, a UCI Part II, SICAR, SIF and a RAIF have the status of taxable persons for VAT purposes. Accordingly, a UCI Part II, SICAR, SIF and a RAIF are considered in Luxembourg as taxable persons for VAT purposes without input VAT deduction right. A VAT exemption applies in Luxembourg for services qualifying as fund management services. Other services supplied to a UCI Part II, SICAR, SIF and a RAIF could potentially trigger VAT and require the VAT registration of a UCI Part II, SICAR, SIF and a RAIF in Luxembourg as to self-assess the VAT regarded as due in Luxembourg on taxable services (or goods to some extent) purchased from abroad. No VAT liability arises in principle in Luxembourg in respect of any payments by a UCI Part II, SICAR, SIF and a RAIF to its investors, to the extent such payments are linked to their subscription to shares and do therefore not constitute the consideration received for taxable services supplied.			In Luxembourg, an unregulated Partnership qualifying as an AIF is considered as taxable persons for VAT purposes. Accordingly, such unregulated Partnership has the status of a taxable person without any input VAT deduction right. A VAT exemption applies in Luxembourg for services qualifying as fund management services. Other services supplied to an unregulated Partnership qualifying as an AIF could potentially trigger VAT and require the VAT registration of the unregulated Partnership in Luxembourg. As a result of such VAT registration, an unregulated Partnership will be in a position to fulfil its duty to self-assess the VAT regarded as due in Luxembourg on taxable services (or goods to some extent) purchased from abroad. No VAT liability in principle arises in Luxembourg in respect of any payments by an unregulated Partnership to its LPs

		to the extent such payments are linked to their subscription to the interests in an unregulated Partnership and do not constitute the consideration received for taxable services supplied. As the relevant an unregulated Partnership will qualify as an AIF, the services rendered qualify as fund management services are exempt of VAT.
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Club deal / non-AIF investment vehicles

Under certain circumstances, investment vehicles may also be structured outside of the scope of the AIFMD, i.e. so as not to fall automatically under the definition of AIFs, i.e. collective investment undertakings, including investment compartments thereof, which (i) raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors and (ii) do not require authorisation pursuant to Article 5 of Directive 2009/65/EC, as set forth in article 1 (39) of the AIFM Law and article 4(1)(a) of the AIFMD.



In order not to qualify as AIF, the investment vehicle shall have pre-defined set of investment targets, of contribution schedules and/or of partners, which allow avoiding such qualification and the consequent regulatory obligations.

In particular, the documentation of the investment vehicle should exclude one or more of the AIF's constitutive elements mentioned above:

- the qualification as "*collective investment undertaking*". This element can for instance be excluded when the Partnership has a purely holding purpose;
- the engaging in the activity of "*raising capital*". This element can for instance be excluded by (i) excluding any initiative by the managing body with respect to the transfer or commitment of capital by the investors for the purpose of investing it in the acquisition and holding of the assets, (ii) instance by including club deal features in the documentation of the investment vehicle, i.e. by providing that all investors, present and future, are individually identified from the outset in the documentation of the investment vehicle and (iii) including in the documentation of the investment vehicle a schedule of contributions setting out the binding amounts and deadlines for the contributions by the investors;
- the existence of a "*number of investors*". This element can be by limiting the investment vehicle to a sole investor;
- the existence of an "*investment policy*". This element can for instance be excluded by individually listing each target asset combined with the limitation of the purpose to the acquisition and holding of the target assets.

The more elements are excluded as set out above, the safer is the determination that the investment vehicle does not qualify as an AIF.

From an operation point of view, when the investment vehicle qualifies as non-AIF,

- no AIFM will be required;
- no depositary bank or professional of the financial services sector providing depositary services will be required;
- no auditor will be required; and
- the administration function (*i.e.* registrar, calculation and accounting and client communication function) will be very light.

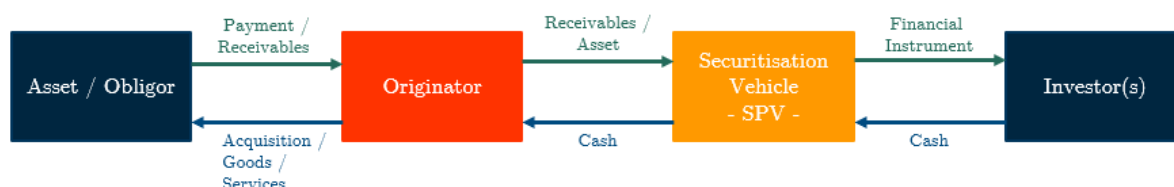
For tax reasons, *i.e.* in order to avoid the ordinary company taxation, non-AIF investment vehicles are typically set up as tax transparent limited partnerships (CLP or SLP). It has to be noted that the fees incurred in the context of the management of a non-AIF investment vehicle do not benefit from the VAT exemption for AIFs.

INVESTMENT STRUCTURING

ALTERNA·S+A

From : Alterna SA GmbH
Date : July 2023
Subject : **Securitization Vehicles**

Securitisation is the process of pooling or bundling various cash generating assets in a special purpose vehicle (SPV) and the financing of the acquisition of these pooled assets by the SPV via the issuance of securities or financial instruments.



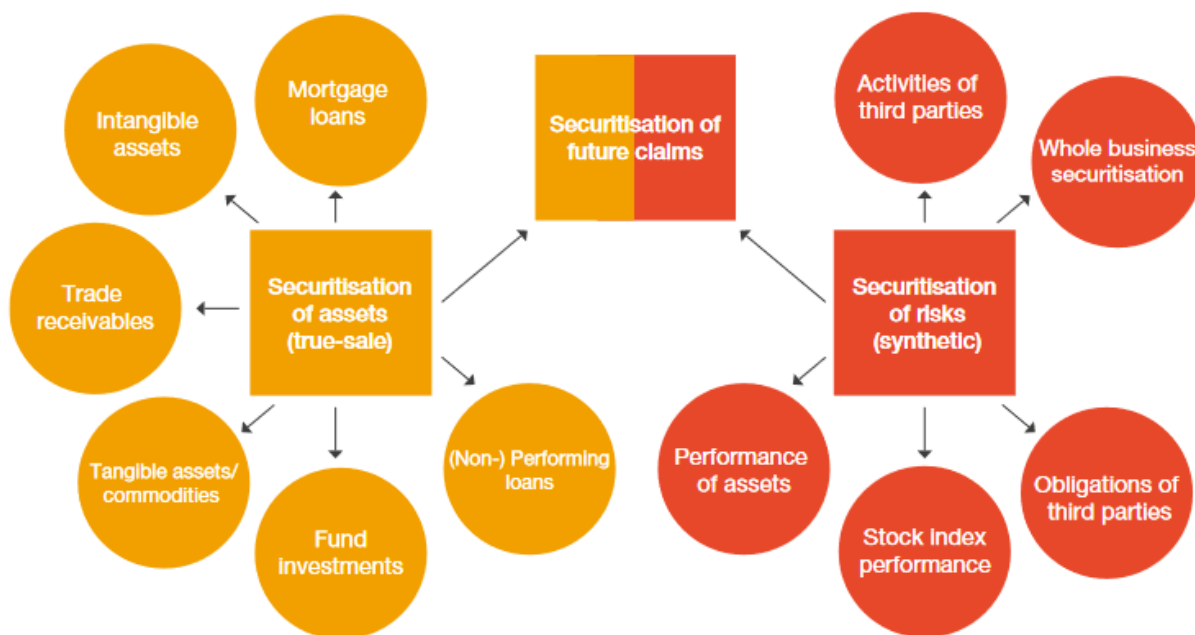
Traditionally securitisation structures are characterized by splitting up the associated credit risk of the asset into various tranches with different risk profiles, with each tranche protected via its priority in the cash flow received from the asset (tranching / subordination) and adding additional internal / external enhancements to bolster the creditworthiness of the financial instruments.

Luxembourg Securitisation Law offers a broad understanding and definition of 'securitisation'. Entities opting-in to the Luxembourg Securitisation Law must be engaged in transactions that meet the following parameters:

- direct or indirect acquisition or assumption of (any, not just credit) risks relating to claims, assets or obligations assumed by third parties or inherent in activities of third parties, and
- acquisition or assumption is funded via issues financial instruments whose value or yield is directly correlated to / dependent on the assumed risks

Where structures including tranching generally place the securitisation transaction into a more cumbersome framework of the EU Securitisation Regulation, the issuance of uni-tranche securities allow for a securitisation structure to remain exclusively within the purview of the Luxembourg Securitisation Law.

The comparatively few limitations set out by the Luxembourg Securitisation Law provides for unparalleled scope of application and therefore provides a powerful, flexible and cost-efficient investment tool for realizing a broad range of investments.



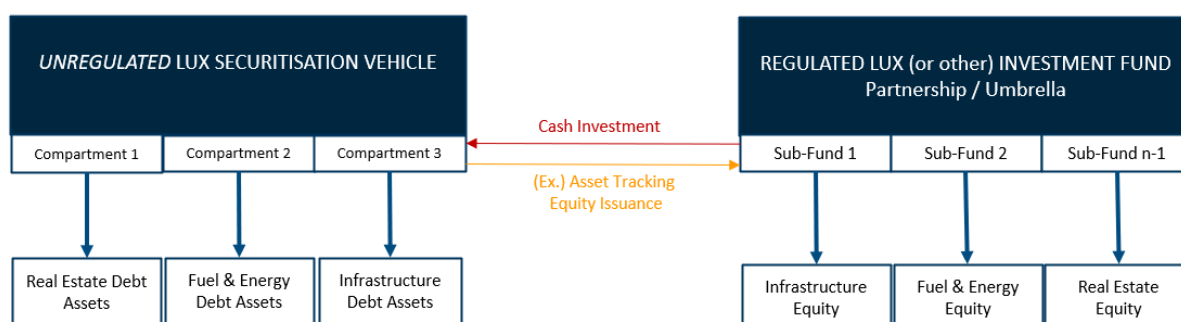
Key Facts (General):

Luxembourg securitization transactions are subject to a comprehensive legal framework that does not compromise flexibility and efficacy. Key features of the general framework are:

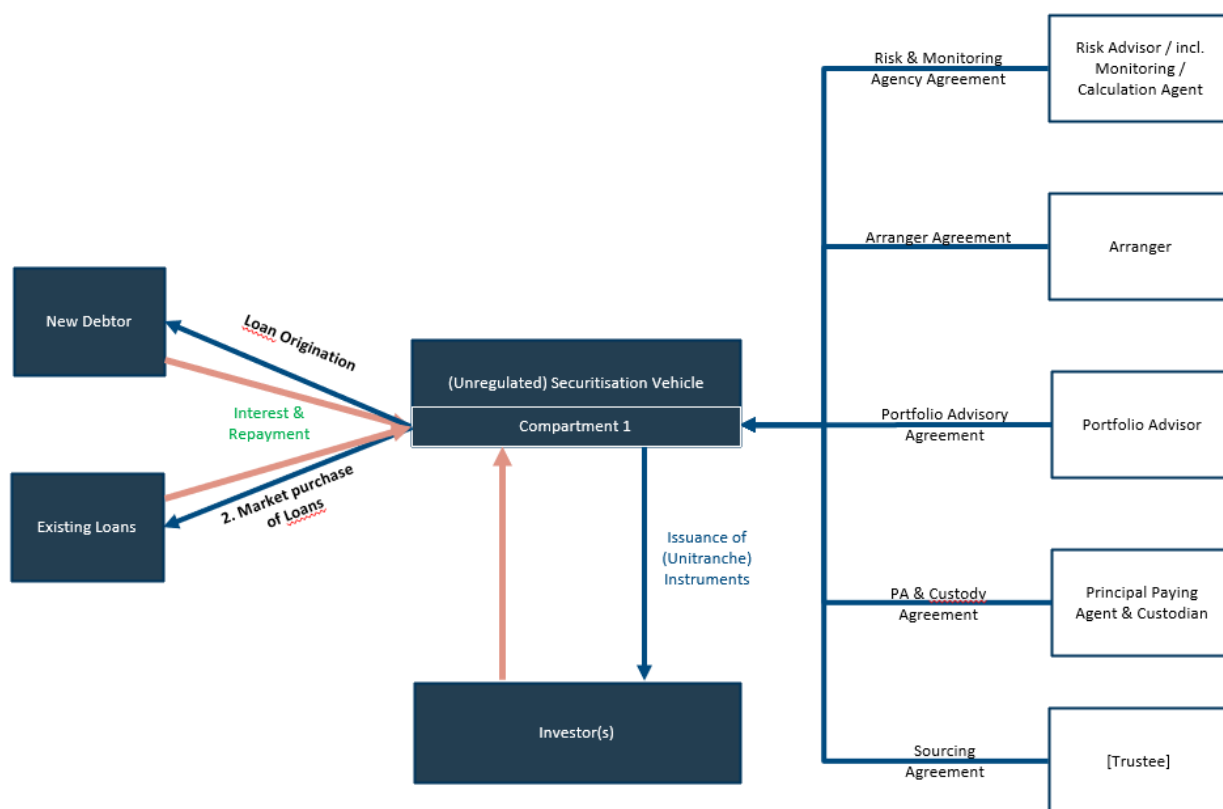
- **Lower volume thresholds:** In comparison to investment fund vehicles that require critical mass of ca. EUR 50mm+ in capital commitments prior to launch, securitization structure can be structured profitably at volumes as low as EUR 5 to 10mm.
- **Time-to-market:** Where investment fund structures regularly take several months to structure and launch, securitization structures can go to market within several weeks.
- **Scalability and flexibility of compartmentalisation:** i.e., the ability to create within a single securitisation SPV an unlimited number of segregated (insolvency remote) compartments, each representing a separate part of the assets and liabilities of the securitisation vehicle. Such assets and liabilities are, by law, ring-fenced on a compartment-by-compartment basis, including in case of insolvency.
- **Lower regulatory burden:** No regulation or supervision of securitisation SPVs by the financial regulator is required unless specific conditions are met.
- **Bankruptcy remoteness:** The principles of bankruptcy remoteness apply through compartmentalisation (i.e., ring-fenced subdivisions of the securitisation SPV), limited recourse (i.e., the rights of the investors and creditors of the securitisation SPV or of its compartments are limited to the assets of such vehicle or compartments), non-petition (i.e., investors and creditors of a securitisation SPV cannot start insolvency proceedings for a certain period of time or as an absolute undertaking), and subordination rules with respect to the various financial instruments issued by a securitisation SPV.
- Compartmentalisation, limited recourse, non-petition and subordination are expressly recognized by the Luxembourg Securitisation Law.
- Both "true sale" and "synthetic" securitisation are possible.
- Sound and flexible legal framework suitable to collateralised loan obligation (CLO) or collateralised debt obligation (CDO) structures.
- **Flexible tax structuring:** The law enables tax transparency (for funds and tax-transparent companies) or tax neutrality (for tax-opaque companies).
- Possibility to use partnership structures for securitization.
- Robust investor protection.

Specifics of Luxembourg Law securitisation vehicles are:

- It is possible to securitise a broad range of underlying tangible or intangible assets, ranging from mortgage-backed loans and other asset-backed receivables (including but not limited to consumer loans, credit card receivables, trade receivables, real estate, intellectual property rights, life insurance policies, commodities, and rental receipts from cars or yachts) to CDOs.
- Active management of risks linked to debt securities, or debt financial instruments or claims (by the securitisation SPV or a third party) is allowed to the extent that the transactions are not financed by a public offering.
- A broad range of financial instruments, such as shares, notes, warrants, options, payment instruments, structured or hybrid products, and all other instruments evidencing ownership rights, claim rights or securities can be issued by the securitisation SPVs to finance themselves.
- Securitisation SPVs can also finance their activities and transactions through loans or any form of borrowing, whether on an exclusive basis or in addition to the issuance of financial instruments.
- Issued financial instruments can be offered through private placement or through public offering (under conditions) and could be listed in Luxembourg or on another stock market.
- The structure is subject to corporate tax if the securitisation SPV is set up as a tax-opaque company that benefits from the tax-neutral regime.
- Dividends or interest paid to investors are in principle tax deductible and not subject to withholding taxes, thus achieving tax neutrality.
- Opaque vehicles should be subject only to the minimum net wealth tax of EUR 4,815 per annum.
- There is potential for access to double tax treaties.
- In equity-financed compartments, annual accounts as well as allocation to legal reserves and decisions on distribution of profits and reserves, can be approved at the compartment level.
- It is possible to grant security interests over securitised assets in favor of any party involved in the securitisation transaction, which may not necessarily be either direct creditors or investors.
- It is possible to acquire, directly or indirectly, assets that are securitised as well as assets generating the cash flows that are securitised



Main stakeholders:



Advantages:

- Authorization / Licensing Requirements – Authorized vs. Non-Authorized entities
- Initial vs. Ongoing CSSF Supervision
- Investor Protection (Subordination, Non-Recourse, Non-Petition, etc.)
- Compliance / AML
- Tax Aspect

REAL ESTATE AND PROJECT FINANCING



From : White Star
Date : 22 July 2023
Subject : **Real estate and project finance structuring in Ukraine**

Real estate development consists of the following activities:

- Identifying and purchasing the land
- Developing plans and receiving necessary permits
- Securing financing for the development
- Building the project and leasing or selling it

A detailed budget of the project (pro-forma) is created based on which financing is obtained. Main financing sources are:

- Developer equity
- Ranges from 2-10% and is used for preliminary project expenses and due diligence
- Investment partner equity

- Ranges from 30-40% and is used for all soft costs, land purchase and some preliminary hard costs
- Debt
- Ranges from 50-60% and is the primary source for all hard costs and any changes during construction

Definitions

AIF	Alternative investment fund
AIFM	Alternative investment fund manager or, as the case may be, internally managed AIF
AIFMD	Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC
AIFM Law	Law of 12 July 2013 on alternative investment fund managers, as amended
CIT	Corporate income tax
CLP	Common limited partnership (<i>société en commandite simple</i>)
CSSF	Supervisory authority of the financial sector in Luxembourg (<i>Commission de Surveillance du Secteur Financier</i>)
EU	European Union
FCP	Common fund (<i>fonds commun de placement</i>)
GP	General partner
LP	Limited partner
LPA	Limited partnership agreement (<i>contrat social</i>)
MBT	Municipal business tax
NAV	Net asset value
N/A	Not applicable
NWT	Net wealth tax
Partnership	For needs of this memorandum, the SCA is excluded, we refer only to CLP and SLP
RAIF	Reserved alternative investment fund (<i>fonds d'investissement alternatif réservé</i>)
RAIF Law	Law of 23 July 2016 on the reserved alternative investment funds
RCS	The Luxembourg trade and companies' register (<i>Registre de commerce et des sociétés de Luxembourg</i>)

SA	Public limited company (<i>société anonyme</i>)
SAS	Simplified limited company (<i>société par actions simplifiée</i>)
SARL	Private limited company (<i>société à responsabilité limitée</i>)
SCA	Partnership limited by shares (<i>société en commandite par actions</i>)
SICAR	Investment company in risk capital (<i>société d'investissement en capital à risque</i>)
SICAR Law	Law of 15 June 2004 relating to the investment company in risk capital
SIF	Specialised investment fund (<i>fonds d'investissement spécialisé</i>)
SIF Law	Law of 13 February 2007 on specialised investment funds, as amended
SLP	Special limited partnership (<i>société en commandite spéciale</i>)
UCI Law	Law of 17 December 2010 relating to undertakings for collective investment
UCI Part II	Undertakings for collective investment subject to part II of the UCI Law
VAT	Value added tax
WHT	Withholding tax
1915 Law	Law of 10 August 1915 on commercial companies, as amended

CORPORATE GOVERNANCE IN UKRAINE

From : Sayenko Kharenko
Date : June 2023
Subject : **Ukraine corporate governance framework**

I SOURCES OF CORPORATE GOVERNANCE RULES AND PRACTICES

1 Primary sources of law, regulation and practice

The primary sources of law relating to corporate governance in Ukraine are:

- the Civil Code of Ukraine (2003);
- the Commercial Code of Ukraine (2003);
- the Law of Ukraine “On Joint Stock Companies” (2022) (the **JSC Law**); and
- the Law of Ukraine “On Limited and Additional Liability Companies” (2018) (the **LLC Law**).

The focus of this chapter is on limited liability companies (**LLCs**) and joint-stock companies (**JSCs**) – the most popular organisational forms of commercial companies for medium-sized and large businesses.

The Civil Code of Ukraine contains general provisions on legal entities, including the general regulatory framework for commercial companies. Scarce regulation concerning commercial companies can be found in the Commercial Code of Ukraine, which is primarily concerned with enterprises – a loosely regulated corporate form used by small businesses and in the state sector. The LLC Law and the JSC Law stipulate rules for the governance of LLCs and JSCs, respectively. The JSC Law envisages two types of JSCs – public JSCs, whose shares are publicly offered or listed on a stock exchange (organised capital market), and private JSCs, whose shares have not been publicly offered, but in some cases may be traded on a stock exchange.

In addition, there are specific laws and subordinate legislation relating to corporate governance in certain business sectors, such as the Law of Ukraine “On Banks and Banking Activity” (2001) for banks, the Law of Ukraine “On Capital Markets and Organized Commodities Markets” (2006) (the **Capital Markets Law**) for professional participants of the capital and organised commodities markets, or the Law of Ukraine “On Management of State Property Objects” (2006) for state-owned companies. This overview does not cover these specific rules.

The National Securities and Stock Market Commission (the **Securities Commission**) approved the Principles of Corporate Governance (2020) (the **Corporate Governance Principles**). The rules of a stock exchange may require JSCs listed on such stock exchange to adhere to the Corporate Governance Principles. Such JSCs are required to explain non-compliance with these principles in the annual management report. Other JSCs may adhere to the Corporate Governance Principles voluntarily.

2 Responsible entities

The general framework for corporate governance is established in the codes and laws enacted by the Ukrainian parliament. The Securities Commission is the primary regulator for JSCs and professional participants of the capital and organised commodities markets (investment firms, asset managers, depositories, stock exchanges, etc). The Securities Commission elaborates corporate governance rules for JSCs, oversees their application and has certain enforcement powers (e.g, by ordering to remove violations or imposing fines).

The Ministry of Justice is responsible for ensuring the operation of the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organisations – the public register containing information on all legal entities registered in Ukraine. The enforcement of corporate governance rules may also take place in Ukrainian courts pursuant to actions brought by shareholders or other interested persons in their own name or derivative suits brought by shareholders on behalf of the company.

II GENERAL OVERVIEW OF CORPORATE GOVERNANCE STRUCTURES

Since 2023 Ukrainian legislation has provided a possibility for JSCs to implement either a one-tier or a two-tier corporate governance structure. Under the one-tier structure, the governing bodies of a JSC are the general meeting of shareholders (**GMS**) as the highest body and the board of directors (**BD**) as the collegial executive body, which should combine the functions of control and management of the JSC's activities (i.e. includes executive and non-executive directors).

Since the possibility of using a one-tier structure was introduced only at the beginning of 2023, most JSCs operate under the two-tier structure, which comprises the GMS, a sole director or a management board (**MB**) as the executive body, and a supervisory board (**SB**) as the governing body overseeing and regulating the activity of the MB and protecting shareholders' rights.

The corporate governance structure of a JSC is determined by its charter. A JSC incorporated with the two-tier governance structure has the right to decide on the transition to the one-tier structure, except for cases determined by the relevant special law, and *vice versa* for a JSC created with the one-tier structure.

Generally, LLCs have a two-tier corporate governance structure. Nevertheless, while having an executive body (a sole director or the MB) is mandatory, formation of an SB is at the discretion of the general meeting of participants (**GMP**). Therefore, in most cases, Ukrainian LLCs do not have SBs. Since 2023, LLCs may also choose to have a corporate governance structure envisaging a BD as a collegial executive body with executive and non-executive directors.

III THE RIGHTS AND EQUITABLE TREATMENT OF SHAREHOLDERS

3 Shareholder's powers

Regardless of the corporate governance structure, the highest governing body of a JSC is the GMS.

Under the one-tier structure, the GMS elects members of the BD. Under the two-tier structure, members of the SB are elected and dismissed by the GMS, and, as a general rule, members of the MB are elected and dismissed by the SB. However, the JSC's charter may determine that election and dismissal of the MB is a matter reserved for the GMS rather than SB.

The GMS may terminate the powers of an SB or BD member at any time, and in cases where the SB or the BD was elected by cumulative voting, the decision on termination applies to the whole composition of the respective body. The GMS does not need to have any grounds for such termination.

In addition, if an SB member was elected as a representative of a shareholder (as opposed to an independent member), the shareholder may replace its representative at any time by giving written notice to the company (i.e., without the need to convene a GMS and, in case the SB is elected by cumulative voting, re-elect the whole composition of the SB).

In JSCs, each shareholder may nominate candidates to the company's governing bodies to be appointed by the GMS if the number of nominees from one shareholder does not exceed the number of members of the respective body. Nominations must be made at least seven days prior to the GMS. Nominations from shareholders owning 5 per cent or more of shares are mandatory for inclusion into the GMS agenda.

The GMS may not decide on matters falling within the exclusive competence of the SB or BD unless the SB or BD itself brings such matter for consideration at the GMS (this rule may be waived only in private JSCs without a majority stake of the state).

As regards LLCs, the appointment and dismissal of SB members is within the exclusive competence of the GMP. Appointment and removal of a sole director or a management board of an LLC is by default within the exclusive competence of the GMP and may be delegated to the supervisory board, if established. The relevant decision requires restatement of the LLC's charter, for which purpose a decision has to be taken by the GMP by at least three-quarters of votes of all participants (unless a different number of votes is required by the charter). Moreover, the GMP generally has the right to decide on all matters relating to the activity of an LLC, excluding matters falling to the exclusive competence of other governing bodies.

The procedure of nomination of officials of an LLC is not regulated in detail by the law and is determined in the charter.

4 Shareholders' decisions

Ukrainian law reserves a number of decisions to the exclusive competence of the GMS or GMP (depending on the corporate form). The exclusive competence of the GMS of a JSC includes *inter alia*:

- determination of main areas of activity of the company;
- amending the company's charter;
- increasing or decreasing the company's charter capital;
- placement, cancellation, split-up, consolidation, redemption of shares, placement of securities convertible into shares or securities for the amount exceeding 25% of the company's assets, waiver of shareholders' pre-emptive right to purchase new shares placed by the company;
- determination of the type of the JSC (public or private) or corporate governance structure (one-tier or two-tier);
- approval of internal regulations on the GMS, the SB or BD, and on choosing the corporate governance code;

- approval of internal regulation on remuneration of BD or SB and executive body members and reports on the remuneration of BD or SB and MB members;
- approval of annual reports of the company;
- election of BD or SB members, approval of the terms of their engagement and remuneration, termination of their powers;
- hearing of the report of the BD or SB and approval of measures based on consideration of such report;
- hearing of the report of the executive body and approval of measures based on consideration of such report;
- appointing an independent auditor, hearing of the results of independent audit and approval of measures based on consideration of such results;
- distribution of profit and covering losses, approval of the amount of annual dividends;
- approval of significant transactions if the market value of the property, works or services in the transaction exceeds 25 per cent of the company's assets;
- approval of interested-party transactions if the market value of the property, works or services in the transaction exceeds 10 per cent of the company's assets; and
- spin-off from the company, wind-up and liquidation of the company.

The exclusive competence of the GMP of an LLC includes:

- determination of main areas of activity of the company;
- amending the company's charter;
- increase or decrease the company's charter capital;
- approval of monetary value of in-kind contributions to the charter capital;
- redistribution of participatory interests between the company's participants in cases determined in the law;
- appointment and removal of the SB members, establishing the amount of their remuneration;
- appointment and removal of the sole executive body or members of collegial executive body (management board), establishing the amount of their remuneration;
- determination of forms of control over the executive body;
- creation of other bodies of the company and determination of procedures of their activity;
- redemption of participatory interest in the company;
- approval of annual reports or reports for other periods;
- distribution of profit, payment of dividends;
- wind-up and liquidation of the company; and
- decision on accounting or stopping the accounting of participatory interests in an LLC's charter capital in the accounting system of shares, maintained by the Central Securities Depository.

In addition to the decisions listed above, the law allows to include additional matters to the exclusive competence of the GMS or GMP in companies' charters.

5 Disproportionate voting rights of shareholders

As a general rule, one ordinary share in a JSC gives a shareholder one vote to decide on all issues considered at the GMS, but there are a number of exceptions, outlined below.

Cumulative voting is a type of voting used at the GMS for electing members of collegial bodies. Cumulative voting is mandatory for the election of SB members in public JSCs and banks and is a default rule for private JSCs unless otherwise established by its charter. Cumulative voting may also be used for the election of other governing bodies if this is provided for in the company's charter. During cumulative voting, the total number of votes of a shareholder is multiplied by the number of members to be elected, and the shareholder may give all votes to one nominee or distribute the votes between several nominees. Cumulative voting takes place for all nominees simultaneously. The nominees who receive the most votes secure election.

During voting at the GMS on the issue of approval of an interested-party transaction, the interested shareholders do not vote, and the decision is passed by a majority of those participating shareholders who do not have a conflict of interest. This rule may be waived in private JSCs.

Treasury shares and shares owned by companies controlled by the JSC in question are not taken into account for the purpose of determination of quorum and voting at the GMS.

If a shareholder of a JSC has acquired one of the following:

- (i) controlling block of shares of a JSC (more than 50% of ordinary shares);
- (ii) a significant controlling block of shares of a public JSC (more than 75% of ordinary shares); or
- (iii) a dominant controlling block of shares of a JSC (more than 95% of ordinary shares),

but failed to give a mandatory bid or perform their obligations under the mandatory bid procedure in cases (i) and (ii), or to perform their obligations related to squeeze-out or sell-out, until such shareholder performs the respective obligations in case (iii), it has voting rights only in respect of (i) 50% of the JSC's shares, (ii) 75% of the JSC's shares, or (iii) 95% minus one share of the JSC, respectively. In any of these cases, the excessive shares of this JSC owned by this shareholder do not carry voting rights and are not taken into account when determining the quorum of the GMS.

The Law of Ukraine "On the Depository System of Ukraine" (2012), which took effect in October 2013, established that all shares must be converted into non-documentary (electronic) form and required owners of all JSC shares existing in the documentary form to open securities accounts with depository institutions and transfer their shares to such accounts by October 2014. If a shareholder fails to do so, their shares are not taken into account for the purpose of determining a quorum and voting at the GMS. According to the current version of the Capital Markets Law, all shares exist in electronic form only. JSCs may issue preference shares or several classes of preference shares, whereas ordinary shares cannot be converted into preference shares. Preference shares may not exceed 25 per cent of the charter capital of the JSC. Preference shares carry limited voting rights. Owners of preference shares of a certain class have voting rights on the following decisions:

- wind-up of the company that provides for conversion of preference shares of this class into preference shares of another class, ordinary shares or other securities;
- making amendments to the company's charter providing for limitation of rights of owners of this class of shares;
- making amendments to the company's charter providing for the placement of a new class of preference shares whose owners will have priority for receipt of dividends or distributions in case of the company's liquidation or the increase of shareholder rights of owners of preference shares having priority for receipt of dividends or distributions in case of company liquidation; and
- decrease of the company's charter capital.

The charter of a private JSC may also provide owners of preference shares with voting rights on other issues.

A JSC may not establish limitations on the number of shares or the number of votes under shares owned by one shareholder. Participants of an LLC, by default, have a number of votes at the GMP proportional to their participatory interests (i.e., stakes held in the charter capital of an LLC), unless otherwise established in its charter. Participatory interest redeemed by the company is not taken into account for the purpose of voting at the GMP.

6 Shareholders' meetings and voting

A JSC is obliged to convene an annual GMS to be held not later than 30 April each year. An extraordinary GMS can be convened by the SB or the BD at their own initiative, or at the request of the shareholders owning at least 5 per cent of voting shares (individually or collectively), and in other cases provided by the charter. If the SB/BD does not convene an extraordinary GMS within 10 days of receipt of the convocation demand, the GMS may be convened by the requesting shareholders.

Under the two-tier corporate governance structure, extraordinary GMS is also convened at the request of the MB for initiating the company's bankruptcy proceedings or for entering into a significant transaction.

A written notice on holding of the GMS and its agenda shall be sent to the shareholders by the person convening the GMS no later than 30 days before the date of its holding. In case an extraordinary GMS is convened under shortened procedure, the notice shall be sent no later than 15 days in advance.

Each shareholder of a JSC has the right to submit proposals to the agenda of the GMS at least 20 days in advance of the GMS and propose nominees to the company's governing bodies at least 7 days in advance of the GMS. Proposals of shareholders owning at least 5 per cent of voting shares are mandatory for inclusion into the agenda of the GMS.

Persons included on the list of shareholders having the right to participate in the GMS and their proxies may participate in the GMS. This list is prepared by the central depository as of 23:00 on a business day two business days before the day of such meeting. It is prohibited to amend this list after its establishment. Shareholders or their proxies must register with the registration commission, which is appointed by a person convening the GMS. Powers of attorney for representation at the GMS must be made in writing, and, if issued by an individual, must be notarised or certified by a depository institution.

A GMS is deemed quorate if shareholders owning more than 50 per cent of voting shares are registered for participation in the GMS. The quorum requirement is mandatory and may not be derogated in the charter of a JSC.

The GMS decision is generally adopted by a simple majority of the votes of the shareholders who have registered to participate in the GMS and are the owners of voting shares on the specified issue. For some decisions to be adopted, a higher threshold is required – more than three-quarters of votes of shareholders present at the meeting or more than 95 per cent of votes of all shareholders.

Voting at the GMS may be carried out only with the use of voting bulletins. The GMS can be held by:

- (i) voting in person;
- (ii) electronic voting – conducted exclusively by electronic absentee voting of shareholders using an authorised electronic system;
- (iii) polling (remote GMS) – carried out by remote filling in of bulletins by shareholders and sending them to the company through the depository system of Ukraine.

If a JSC has a sole shareholder, written resolutions of this shareholder have the status of GMS minutes, and there is no need to convene and hold a GMS. If owners of 100% of voting shares meet in one place, they may take any decision within the GMS competence without complying with the procedure of convocation and holding the GMS provided that all shareholders sign the GMS minutes.

The shareholder may appoint a proxy to participate and vote in a GMS on their behalf. A proxy may be an individual, an authorised person of a legal entity or an authorised person of the state or territorial community. A depository institution servicing a shareholder's securities account may act as their representative, provided that the appropriate powers are included in the agreement between them. At the same time, such representation is possible only if the shareholder participates in in person or electronic GMS through an authorised electronic system.

In order to ensure due representation, the JSC Law defines a list of cases in which a conflict of interests will arise between a shareholder and a potential representative, in particular, if the latter is the owner of a controlling stake in a JSC (more than 50% of ordinary shares), or a member of the management body of a JSC, or a person connected by family relations with such persons, etc.

An annual GMP of an LLC is convened within six months from the end of the year. Participants of an LLC owning more than 10 per cent of charter capital have the right to demand the convocation of an extraordinary GMP at any time and on any matter. If the company fails to convene the GMP within 10 days, the participants may proceed with the convocation by themselves.

Any participant owning more than 5 per cent of charter capital may demand an issue to be considered at the GMP. The GMP may take decisions on issues that were not included in the agenda if all participants are present at the GMP and agree to consider such issues.

The participants of the LLCs take part in the GMP personally or through their proxies. The proxy of the participant can be an individual whose powers are confirmed by a duly executed power of attorney.

GMP envisages a joint presence of the participants in one place, but may also be held as a videoconference, provided that all participants of the GMP may see and hear each other simultaneously, or with the use of other means of electronic identification. Participants may participate in a GMP by absentee voting by giving a notarised notice to the GMP identifying their will. The GMP may also be conducted by way of polling (except for consideration of certain issues specified by the LLC Law or the company's charter, e.g. election of SB members or members of the executive body, making changes to a charter, merger, etc.). A GMP decision taken in the way of polling voting may also be performed by a written resolution, signed by all participants.

In case the LLC has one participant, decisions within the competence of the GMP are made by such a participant individually in writing.

7 Shareholder's responsibility

As a general rule, shareholders of a JSC and participants of an LLC are not liable for the obligations of the company and bear the risk of losses related to the company's activity within the value of their shares or contributions to the company's charter capital.

However, shareholders of a JSC may face joint and several liability for damages caused to the company if:

- (i) the damages to the company were caused by a shareholder's representative in the SB (together with such representative);
- (ii) the requirements for granting approval for interested-party transactions were violated (if a shareholder is a person liable for this violation, he/she/it bears liability together with an interested party).

Additionally, officials of the LLC who are guilty of misleading the LLC's participants regarding its financial condition, in particular by submitting (including) false information to the LLC's documents, which led to making illegal payments, are jointly and severally liable with the participants for the obligation to return payments to the LLC.

The position is different for participants of additional liability companies, who jointly bear additional (subsidiary) liability for the company's obligations at their own expense. However, such a company form is rarely used in Ukraine.

8 Issuance of new shares

In JSCs, taking decisions on the issuance of new shares is within the exclusive competence of the GMS. Generally, the SB/BD or MB are not permitted to issue new shares or securities convertible into shares or decide on increases of charter capital, except for a decision to issue shares to ensure repayment of the JSC's convertible bonds, which is made by the SB or BD.

Owners of ordinary shares of a JSC enjoy a pre-emptive right to purchase newly issued ordinary shares proportionally to their shareholding. Owners of preference shares enjoy a pre-emptive right to purchase newly issued preference shares of the same class or of a new class of preference shares if such shares grant their owners priority for receipt of dividends or distributions in case of the company's liquidation.

Pre-emptive right to acquire newly issued shares may be waived by a GMS decision taken by more than 95 per cent of votes of all shareholders.

LLCs do not have shares as such, but rather participatory interests in the charter capital, which do not qualify as securities. In case the GMP of an LLC decides to increase the charter capital by means of additional contributions of its participants and/or third parties, the LLC's participants enjoy a pre-emptive right to make additional contributions within the amount pro rata to their participatory interests in the LLC's charter capital. Third parties and other participants can make additional contributions only after the pre-emptive right has been exercised or waived by participants, except when the pre-emptive right is waived by the company's charter or by a unanimous resolution of all LLC's participants. The company's charter or a unanimous resolution of all LLC's participants may also establish the possibility of participants to make additional contributions without observing the proportions of their participatory interests or the right of only certain participants or only third parties to make additional contributions.

IV CORPORATE CONTROL

9 Corporate agreement

Ukrainian legislation allows shareholders of a JSC and participants of an LLC to determine the procedure for exercising their corporate rights, including rules for the transfers of shares/participatory interests and voting, through a corporate agreement. A corporate agreement should be concluded in writing.

An important advantage of a corporate agreement is its confidentiality (subject to exceptions for public JSCs and an agreement to which the state, municipal community, state or municipal enterprise is a party, as well as a legal entity having 25 per cent or more in its charter capital directly or indirectly belonging to the state or municipal community).

JSC or LLCs themselves, as well as third parties (for example, potential investors, and creditors), can be additional parties to such an agreement together with shareholders/participants.

In addition, the parties to a corporate agreement are able to choose the law governing the corporate agreement, subject to compliance with the provisions of the Law of Ukraine "On Private International Law". Therefore, the shareholders/participants of the Ukrainian JSC or LLC will be able to choose foreign law as the law applicable to the corporate agreement between them if there is a foreign shareholder/participant among them.

10 Anti-takeover devices

Because of a lack of actual public takeovers, the concept of anti-takeover devices is not developed in Ukraine.

The JSC law provides that any person (or persons acting in agreement) intending to acquire a significant shareholding in a JSC (more than 10 per cent of voting shares) must give a 30-day written notice to the JSC, the stock exchange where the JSC's shares are traded, and the Securities Commission, and to publish such notice in the public securities market database administered by the Securities Commission. The JSC Law expressly states that the target JSC does not have the right to take measures aimed at preventing such acquisition.

11 Restrictions on the transfer of fully paid shares

Shareholders of any type of JSC may dispose of their shares without the consent of other shareholders of the company. Shareholders of a JSC do not have a pre-emptive right to buy shares disposed by other shareholders.

By default, the LLC's participants may dispose of and pledge their participatory interests freely. Respective restrictions may be envisaged by the company's charter or by corporate agreement. Nevertheless, a participant of an LLC has a pre-emptive right to purchase a participatory interest of another participant, which is being sold to a third party (but not to another participant), unless such right is waived by a participant or waived by the company's charter or a corporate agreement.

12 Compulsory repurchase rules

Compulsory share repurchase in a JSC at the company's initiative is not allowed. Yet owners of ordinary shares of a JSC have the right to demand the mandatory buyout of their shares by the company if they voted at a GMS against any of the following decisions: corporate reorganisation or change of company type; approval of a significant or interested party transaction; change of the amount of charter capital; or waiver of pre-emptive right of shareholders to acquire newly issued shares.

Owners of preference shares of a JSC have the right to demand mandatory buyout if they voted at a GMS against any of the following decisions: making amendments to the company's charter providing for placement of a new class of preference shares whose owners will have a priority for receipt of dividends or distributions in case of the company's liquidation; increase of rights of shareholders – owners of preference shares having priority for receipt of dividends or distributions in case of the company's liquidation; or waiver of the pre-emptive right of shareholders to acquire newly issued shares.

The JSC is obliged to buy shares from shareholders who have made a mandatory buyout demand at a price that may not be lower than the market value determined based on stock exchange quotations or, failing that, by an independent evaluator. Also, a shareholder who is the owner of a dominant controlling block of shares of the company (more than 95% ordinary shares), or any of its affiliates, or an authorised person has the right to send the company a public irrevocable demand for the purchase of shares from all owners of shares. The price increase step must be at least 5 percent higher than the price specified in the public irrevocable demand.

V BOARD OF DIRECTORS

13 Legal responsibilities of the board of directors

In JSCs, the BD is the collegial executive body, which should combine the functions of control and management of JSC's activities. The control function should be ensured by a complex structure of the BD – it should include executive directors and may include non-executive directors; a part of the non-executive directors may be independent. The BD is accountable to the GMS and independently organises the implementation of its decisions. The BD resolves all issues of the JSC's activity, except for issues that fall within the exclusive competence of the GMS. The BD may submit any issues within its competence to the consideration by the GMS.

In LLCs, the BD is the collegial executive body, which may include executive and non-executive directors, which may be independent. Nevertheless, creation of the BD does not exclude the possibility to form the SB. Therefore, by default, the BD's competence as an executive body includes resolving of all issues related to the management of the current activities of the company, except for issues belonging to the exclusive competence of the GMP and the SB (in case of formation). The BD is accountable to the GMP and SB.

14 Size and composition of the board of directors

In JSCs, the BD consists of executive and non-executive directors, whereas the latter can be independent. The minimum number of BD members is three individuals, and the maximum number is unlimited. A private JSC with up to 10 shareholders can form a BD with executive directors only or appoint a sole executive body (director) who will exercise the powers of the BD. Individuals who have previously violated the duties of the officials of JSC and were found guilty by a court decision may not be elected to the BD. Such restriction applies for three years from the date of execution of such court decision.

The independency rules for the independent non-executive director are established by the JSCs Law and can also be envisaged by the company's charter and internal documents. A BD member may not be deemed independent if such a member:

- was a member of a governing body of the company or its affiliate within the last five years;
- receives or received within the last three years additional remuneration exceeding 5 per cent of gross annual income of such person in the respective year from the company or its affiliate;
- is a direct or indirect owner of 5 or more per cent of charter capital or an official or manager of a legal entity or an individual contractor who had substantial business relations with the company or its affiliate within the last year;
- is or was within the last three years a key partner or an official or an employee of an audit firm which provided services on compulsory independent audit to the company or its affiliate;
- is or was within the last three years an employee of an audit firm which, within the last three years, has been providing audit services to the company or its affiliate;
- is or was within the last three years an employee of the company or its affiliate;
- is an owner of a controlling shareholding in the company or a representative of an owner of a controlling shareholding in any civil relations;
- was the company's SB member for more than 12 years in total; or

- is a close relative of the above-mentioned persons.

Management of the day-to-day activities of a JSC is carried out by the executive directors. Non-executive directors perform functions of supervision, risk management and control over the activities of a JSC and executive directors.

The JSC Law specifies that the criteria to be met by an executive, non-executive or independent director must be defined in the charter or the regulation on the BD.

A JSC enters into:

- an employment agreement (contract) with an executive director;
- a civil-law agreement or an employment agreement (contract) with a non-executive director (except for independent non-executive director); and
- a civil-law agreement with an independent non-executive director.

BD members (except for the chief executive officer) must perform their duties personally and cannot delegate their powers to another person.

Powers of a BD member can be terminated without a decision of the GMS: 1) at his/her request (with a notice two-week in advance); 2) in the event a court judgment/decision prohibiting a BD member from performing his/her functions took effect, or in the event a court decision for violation of BD member's obligations to act in the best interests of the company, reasonably and in good faith within his/her powers becomes legally binding; 3) in case of death, recognition of his/her incapacity, limited capacity, unknown absence, deceased; 4) in the case a BD member violates a non-compete statutory requirement related to prohibition of holding a position of an official in another company having activities in the same sphere as a JSC in question; 5) in case of disposal by the shareholder(s), whose representative is a BD member, of all company shares belonging to such shareholder.

A non-executive director must cease to perform his/her powers if he/she loses the ability to perform the functions of supervision, risk management and control or does not meet the independence requirements (for independent BD member). The charter of a JSC may provide additional grounds for terminating the powers of a BD member.

In LLCs, the amount of BD members must be established in the charter. By default, the BD members are elected by the GMP, however this competence may also be transferred to the SB (if formed).

Non-executive directors of the BD may be individuals performing functions of supervision, risk management and control over the activities of the company and executive directors. The non-executive director has no right to interfere in the current activities of the company in any other way than to participate in decision-making by the BD or its committees (if formed). The independency rules for an independent non-executive director are not fixed in the LLC Law and should be envisaged in the company's charter or other internal regulations. LLC enters into an employment agreement (contract) or a civil-law agreement with BD members.

15 Duties of a chairperson and other members of the board of directors

For JSCs, the JSC Law distinguishes two specific positions in the BD – a chairperson of the BD and the chief executive director (the CEO). Both the chairperson and the CEO are elected by the BD members unless otherwise provided by the charter of the JSC; respectively, shareholders can retain such powers, if necessary. On the same time, the CEO may be elected as a BD chairperson.

The BD chairperson organizes work of the BD, convenes and conducts its meetings, presides over them, exercises other powers provided for by the charter and regulations on the BD. According to the charter, the chairperson can have a right of casting vote in case of equal distribution of the votes of the BD members.

The CEO represents the interests of the JSC, acts on its behalf without a power of attorney in accordance with the decision of the BD, including, executing transactions, issuing orders which are mandatory for all company's employees. The scope and limits of the powers of the CEO (restrictions on the disposal of assets, the obligation of a second signature, etc.) should be determined exclusively by the charter. The CEO is obliged to convene a BD meeting to make decisions on matters falling within his/her competence, but going beyond the scope of the company's day-to-day activities.

Other powers of the executive directors are defined in the charter of a JSC, whereas distribution of powers between non-executive directors is within the competence of the BD. BD members cannot delegate their voting rights to other persons.

In LLCs, by default, one of the BD members shall be elected as a head of the BD by the GMP or SB, if such SB's competence is envisaged by an LLC's charter.

16 Committees of the board of directors

In order to ensure its activities, the BD of a JSC may form permanent or temporary committees from among its members and other persons for preliminary study and preparation for consideration at the meeting of issues belonging to its

competence. In public JSCs and in JSCs with the state's stake of more than 50%, the creation of committees on appointments, remuneration and audit is mandatory.

The LLCs Law does not impose any requirements for creation of the BD committees.

VI SUPERVISORY BOARD

According to the Corporate Governance Principles, the SB is a collegial body that acts exclusively in the interests of the company and its shareholders. The SB also performs the function of monitoring compliance with the interests of other stakeholders (e.g. employees). It determines the company's development strategy, monitors compliance with financial plans, determines risk appetites, control and manage potential conflicts of interest, and protects the company's reputation. Most JSCs operate under a two-tier structure: JSCs have the SB and the MB (executive body).

The two-tier corporate governance structure provides for a clear division of the functions of direct management of the current (operational) activities of the JSC, which are performed by the executive body, and the functions of monitoring the work of the executive body and other officials of the JSC (including control and internal audit units), which are performed by the SB. Prior to the introduction of one-tier corporate governance structure in 2023, only some types of JSCs were required to compose the SB. However, after the adoption of a new JSC Law, those JSCs (of any type) in which the SB has not been established by the date of entry into force of the JSC Law, were considered to have chosen a one-tier structure, and the collegial executive body of such a company, therefore, shall perform the functions of the BD. LLCs do not usually form the SB.

17 Competence of the supervisory board

The SB of a JSC is responsible for protecting shareholders' rights while controlling and regulating the activity of the MB. The JSC Law refers a number of matters to the exclusive competence of the SB that cannot be delegated to the MB. Such matters include the appointment and removal of the MB members, convocation of a GMS, placement and buyout of securities (other than shares and securities convertible into shares), approving and providing recommendations to the GMS based on the results of the review of the external audit report, approval of certain significant and interested party transactions, etc. The charter may extend the exclusive competence of the SB.

The SB of an LLC controls and regulates the activity of the executive body. The LLC law does not prescribe the competence of the SB, leaving this matter for the charter. It only mentions that the SB's competence may include the appointment and removal of the executive body and determining the remuneration of its members.

18 Size and composition of the supervisory board

The size of the SB is determined in the JSC's charter, whereas the minimal size of the SB of a public JSC is 5 members. The election of SB members is within the exclusive competence of the GMS.

SB members of a JSC are elected for a term not exceeding 3 years. In public JSCs and banks, SB members are elected by way of cumulative voting. In private JSCs, the type of voting for the election of SB members (i.e, by cumulative voting or by a simple or qualified majority of votes) is determined in the charter, but the default rule is cumulative voting.

If the SB is elected by cumulative voting, filling a vacancy is possible only by the termination of powers of the entire SB and the election of a new SB by the GMS. These rules do not affect the rights of shareholders whose representatives were elected to the SB to replace such SB members at any time by notice to the company (i.e, without the need to convene a GMS).

The powers of a member of the SB are terminated in the following cases:

- 1) by the decision of the GMS;
- 2) at his/her request, subject to written notice two weeks in advance;
- 3) at his request in case of impossibility to perform the duties due to health condition;
- 4) in the event that a sentence or a court decision, which excludes the possibility of performing the duties;
- 5) in case a shareholder applies to the court with a claim for recognition of a person who cannot be considered an independent director;
- 6) in case of a court decision, according to which a member was found guilty of violating the duties of the of officials of JSC's bodies;
- 7) in case of death, recognition of him/her as incapable, limitedly capable, missing, deceased;
- 8) in case the company receives a written notification about the replacement of a who is a shareholder's representative;
- 9) in the cases the member is an official of another business entity that carries out activities in the field of the JSC's activities, unless otherwise provided by the charter;

- 10) in case of disposal by the shareholder(s), whose representative is a member, of all shares belonging to him/her in the company;
- 11) in the event that an independent director ceases to meet the requirements specified in the JSC's Law during the term of his authority;
- 12) in other cases, provided by the charter of a JSC.

JSCs are required to disclose to the Securities Commission the following information on the SB composition:

- information on members of the SB (name, date of birth, education, work experience, number of shares of the JSC owned by the member, if any) and their terms of powers, specifying whether they are independent members or shareholders' representatives; and
- information on changes in the composition of the SB, specifying reasons.

The duties of SB members are outlined in the company's charter and internal documents, as well as agreements between the SB members and the company. Ukrainian law does not provide for any differences in the duties of individual SB members depending on their skills or experience, etc.

The SB elects a chairperson of the SB to organize its work, convene and conduct meetings of the SB and to preside over those meetings, etc. The chairperson is elected by SB members from their number by a simple majority of votes from the total composition of the SB, unless otherwise provided by the charter of a JSC.

The JSC law requires SB meetings at least once a quarter. The charter may provide for more frequent meetings of the SB.

The size of the SB of an LLC is not regulated by the law and may be determined in the charter. The frequency of meetings of the SB of an LLC is not regulated and may be determined in the charter.

19 Independent directors of the supervisory board

Ukrainian law does not distinguish between 'executive' and 'non-executive' SB directors in the two-tier corporate governance structure where SB members generally do not have executive functions.

The SB of a public JSC or a JSC in which the state owns more than 50 per cent of shares must have at least one-third and no fewer than two independent members. The JSC Law does not establish any different duties and responsibilities of shareholders' representatives and independent SB members save for an obligation of an independent SB member to step down should they cease to comply with the independence criteria. An SB member may not be deemed independent if such a member:

- was a member of a governing body of the company or its affiliate within the last five years;
- receives or received within the last three years additional remuneration exceeding 5 per cent of gross annual income of such person in the respective year from the company or its affiliate;
- is a direct or indirect owner of 5 or more per cent of charter capital or an official or manager of a legal entity or an individual contractor who had substantial business relations with the company or its affiliate within the last year;
- is or was within the last three years a key partner or an official or an employee of an audit firm which provided services on compulsory independent audit to the company or its affiliate;
- is or was within the last three years an employee of an audit firm which, within the last three years, has been providing audit services to the company or its affiliate;
- is or was within the last three years an employee of the company or its affiliate;
- is an owner of a controlling shareholding in the company or a representative of an owner of a controlling shareholding in any civil relations;
- was the company's SB member for more than 12 years in total; or
- is a close relative of the above-mentioned persons.

Additional independence criteria may be envisaged in the company's charter and internal documents.

Powers and responsibilities of the SB that fall under its exclusive competence in accordance with the law or the company's charter may not be delegated to its committees, the MB or other persons.

20 Committees of the supervisory board

The SB may create committees for reviewing and preparing conclusions on issues within its competence, and even though in public JSCs the SB may adopt decisions on matters within the competence of its committees only based on such committee's proposals, the SB committees as such are not vested with decision-making powers.

Establishing an audit committee, a nomination committee and a remuneration committee is mandatory in public JSCs and JSCs in which the state owns more than 50 per cent of shares, given that the nomination committee and remuneration committee may be joined. These committees must be composed predominantly of independent SB members and presided over by them. JSCs may establish other temporary or permanent SB committees for consideration of issues within the SB's competence.

21 Disclosure of practices of the supervisory board

A publicly disclosed annual management report of a JSC, which includes a corporate governance report, should contain, *inter alia*, information on the composition of the SB, specifying whether they are independent members or shareholders' representatives, requirements to members of SB, SB meetings and general description of resolutions passed, committees created in the SB, and how the amount of remuneration of SB members is defined. Public JSCs additionally disclose information on functional obligations of SB members, the influence of SB's activities on the commercial development of the company and evaluation of performance of SB members and committees.

VII OFFICIALS' DUTIES, LIABILITIES AND REMUNERATION

The officials of a JSC are SB or BD members, MB members, a corporate secretary, as well as members of other bodies (except the advisory ones) if the formation of such bodies is provided for by law or the charter of a JSC.

Duties of officials of the JSC include:

- acting with a reasonable degree of care, professionalism and diligence;
- contributing to the achievement of successful results by the company;
- complying with the information confidentiality regime, including JSC's commercial secret;
- making independent decisions, i.e. acting in accordance with the legislation and the charter of JSC; and
- avoiding conflict of interest, *inter alia* in case of interest in the transaction; refraining from accepting benefits from third parties.

The officials of an LLC are SB members, members of an executive body (including BD) and other persons specified by the charter of an LLC. An LLC's official must act in good faith in the interests of the company, complying with the information confidentiality regime and avoiding conflict of interest.

22 Liability of officials

For failure to fulfil their duties, officials are liable for damages caused to JSC by their actions or inaction.

Generally, officials of JSCs and LLCs (including members of the SB and the MB) are liable for damages caused to the company by their guilty actions, in particular, if such damages were caused by: excess or abuse of the official's powers or actions committed by the official without prior approval when required, or if they received prior approval for such actions by providing false information or other guilty damaging actions of the official.

A claim against the official for recovery of such damages may be filed by the company or by shareholders or participants owning (independently or collectively) at least 5 per cent of the company's charter capital on behalf of the company (a derivative suit).

Particular attention should be paid to the provisions on the duties of officials in the event of a decrease in the value of JSC's or LLC's net assets. If the JSC's net assets make up less than 50% of the amount of the charter capital or have decreased by more than 50% compared to the same indicator as of the end of the previous year, the officials of the SB or the BD are obliged to conduct GMS. In this regard, the agenda of the GMS should include issues on the measures to be taken to improve the company's financial condition, on the reduction of the company's charter capital or on the liquidation of the company, as well as on the review of the report of the executive body on the consequences of the reduction of the company's equity capital and the approval of measures based on the results of the review of this report.

In the event that JSC is declared bankrupt before the expiration of the 3-year period from the date of the decrease in the value of net assets, members of the SB or BD who did not fulfil the above obligation and members of the executive body who did not notify the SB or the BD about the decrease in the value of net assets JSCs shall jointly bear subsidiary liability for the obligations of the company.

The LLCs Law establishes a general rule that the members of the SB and the MB, respectively, bear joint and several liability before the company. However, an SB member or MB member will not be held liable if they prove that they are not guilty of causing damages to the company.

If the LLC's net assets decreased by more than 50% compared to the same indicator as of the end of the previous year, the executive body is obliged to conduct GMS, which must consider issues on the measures to be taken to improve the company's financial condition, on the reduction of the company's charter capital or on the liquidation of the company. In the event that JSC is declared bankrupt before the expiration of the 3-year period from the date of the decrease in the value of

net assets, members of the executive body who did not fulfil the above obligation shall jointly bear subsidiary liability for the obligations of the company.

Officials of the LLC who are guilty of misleading the LLC's participants regarding its financial condition, in particular by submitting (including) false information to the LLC's documents, which led to making illegal payments, are jointly and severally liable with the participants for the obligation to return payments to the LLC.

Ukrainian law does not prohibit or constrain the indemnification of officials for liabilities incurred in their professional capacity but it is not very common in practice. D&O liability insurance is permitted, and the company may pay premiums, but it is not common in Ukraine.

23 Remuneration of directors of the supervisory board and the board of directors

In JSCs, approval of regulations and reports on the remuneration of the SB members and establishing the amount of remuneration of SB members are within the exclusive competence of the GMS. Public JSCs must determine the remuneration procedures in a separate regulation on remuneration of SB or BD members and annually revise it (in necessary), whereas private JSCs may regulate these procedures either in the charter or regulation. Regulation on remuneration of SB members should comply with the basic principles of the company's remuneration policy and disclose the main constituents of remuneration and criteria of performance evaluation.

Remuneration must be determined in a civil-law or employment agreement with the SB/BD member. The length of contracts with SB/BD members is dependent on the term of powers for which they are appointed.

The Corporate Governance Principles recommend that SB members receive reasonable remuneration for their work, providing incentives including variable remuneration elements dependent on the performance of the respective member and the company as a whole. The Corporate Governance Principles also recommend that the company's policy on lending officials should be clearly defined in its internal documents and that decisions to provide a loan to a company's official are approved by the SB.

In LLCs, the remuneration of the SB members is approved by the GMP.

24 Remuneration of senior management

In JSCs, approval of regulations and reports on the remuneration of the MB members (sole director) and establishing the amount of remuneration of MB members (sole director) is within the competence of the GMS. Public JSCs must determine the remuneration procedures in a separate regulation on remuneration of MB members and annually revise it (in necessary), whereas private JSCs may regulate these procedures either in the charter or regulation. Regulation on remuneration of MB members should comply with the basic principles of the company's remuneration policy and disclose the main constituents of remuneration and criteria of performance evaluation.

Remuneration must be determined in the employment agreement with the MB member (sole director). The length of the agreement is dependent on the term of powers for which they are appointed.

According to the Corporate Governance Principles, the amount and form of remuneration of MB members should be determined by the SB pursuant to recommendations of the nomination and remuneration committee (if created) and should correlate with the company's performance in view of the company's and shareholders' long-term interests.

In LLCs, establishing MB members' remuneration is within the exclusive competence of the GMP, unless delegated to the SB. Levels of remuneration are determined in employment agreements.

25 Corporate secretary

The position of corporate secretary is obligatory in:

- 1) JSC whose shares are admitted to trading on the organized capital market or whose securities have been publicly offered;
- 2) banks, insurers, non-state pension funds, other JSCs, which are enterprises of public interest in accordance with the Law "On Accounting and Financial Reporting in Ukraine";
- 3) private JSC with 100 or more shareholders.

The corporate secretary is appointed by the SB or the BD, unless otherwise provided by the charter of a JSC.

The corporate secretary must be responsible for the effective ongoing interaction of a JSC with shareholders and investors, coordination of actions of a JSC to protect the rights and interests of shareholders, maintaining the effective work of the BD or the SB, must perform other functions defined by the law and JSC's charter.

Although the LLCs Law does not envisage such a position as a corporate secretary, LLCs can envisage such position in the charter or internal documents.

26 Corporate rights advisor

JSC may also have a corporate rights advisor that provides shareholders with the information they need for them to make a decision "regarding the exercise of voting rights." The information must be the result of the regular and systematic work of the advisor on analysis of the disclosure of regulated information about the issuer and analysis of other information about JSC, the shares of which have been publicly offered or the shares of which are admitted to trading on the organised market. The advisor is required to publish on its own website information about the results of its research, consultations and any other recommendations "regarding the exercise of voting rights" each year.

Currently, only two conditions are put forward to the advisor – it must be exclusively a legal entity that has notified the Securities Commission in writing of its intention to carry out activities to disseminate research results, provide consultations and any other recommendations on the use of voting rights. The list of advisers is to be published by the Securities Commission on its official website.

VIII DISCLOSURE AND TRANSPARENCY

27 Charter and company's internal documents

A public JSC must publish its charter and by-laws on its governing bodies on its own website.

In addition, charters of all companies (including JSCs and LLCs) registered after 1 January 2016, and charters restated after that date are contained in the Unified State Register of Legal Entities, Individual Entrepreneurs and Public Organisations in electronic form; however, they can only be downloaded with an access code that should be requested from the respective company.

28 Company information

The Securities Commission requires JSCs to disclose regular and special information in a publicly available database (www.stockmarket.gov.ua) and on their website. In addition, issuers of publicly traded securities or securities admitted to trade on a stock exchange are obliged to disclose on their websites an annual calendar plan for their information disclosure. Regular information includes annual and interim reporting information on the issuer's activity. Regular annual information of a JSC should be disclosed no later than on 30 April of the year following the reporting year and includes:

- name and address of the company, amount of its charter capital;
- information on the company's governing bodies, officials and founders;
- information on the company's commercial and financial activity;
- information on the company's securities, including whether they were publicly offered or admitted to trade on a stock exchange;
- annual financial statements, if applicable, confirmed by an independent auditor;
- a list of owners of 5 per cent or more of the company's shares and information on change of owners of voting shares whose shareholding reaches or crosses the thresholds of 5, 10, 15, 20, 25, 30, 50, 75 or 95 per cent of voting shares;
- information on change of owners of financial instruments attached to voting shares of the company reaching or crossing the thresholds of 5, 10, 15, 20, 25, 30, 50, 75 or 95 per cent of voting rights;
- management report;
- assurance of the management that the annual financial statements and the management report are true and accurate;
- information on the company's participation in other legal entities;
- information about the corporate secretary;
- information on capital structure indicating the types and classes of shares and the rights and obligations of shareholders;
- information on any limitations on trading of the company's securities, including the requirement to receive consent of the company or other owners of securities for transfer of such securities;
- information on ownership by the company's employees of any securities of the company and the company's shares in an amount exceeding 0.1 per cent of the company's charter capital;
- information on shareholders' agreements known to the company;
- information on any agreements or transactions, the validity of which is dependent on absence of change of control over the company;

- information on the total number of voting shares, the number of voting shares with restricted voting rights and the number of voting shares, voting rights under which were transferred to another person due to such restrictions;
- information on payment of dividends and other return on securities in the reported period;
- information on repurchase of the company's shares; and
- information on branches and other separated subdivisions of the company.

Annual information of a public JSC should additionally include:

- a report by the independent auditor on the audit of the company's financial statements;
- information on the conclusion of significant or interested party transactions or pre-approval of such transactions;
- information on persons interested in conclusion by the company of interested party transactions and circumstances existence of which causes such interest;
- information on the change of owners of voting rights reaching or crossing the thresholds of 5, 10, 15, 20, 25, 30, 50, 75 or 95 per cent of voting rights;
- information on any remuneration or compensation to be paid to the company's officials in case of their dismissal;
- information on licenses obtained for certain types of activities.

Regular interim information must be disclosed quarterly by public JSCs whose shares were publicly offered or are admitted to trade on a stock exchange and includes:

- the name and address of the company, amount of its charter capital;
- information on the company's governing bodies, officials and founders;
- information on the company's commercial and financial activity;
- information on the company's securities;
- interim financial statements accompanied by the auditor's confirmation;
- an interim management report;
- assurance of the management that the interim annual financial statements and the interim management report are true and accurate;
- information on the company's participation in other legal entities;
- information on the conclusion of significant or interested party transactions and on persons interested in conclusion by the company of interested party transactions and circumstances existence of which causes such interest; and
- information on the total number of voting shares, the number of voting shares with restricted voting rights and the number of voting shares, voting rights under which were transferred to another person due to such restrictions.

Special information must be disclosed by the JSCs within one business day upon occurrence of the respective event:

- a decision on the placement of securities for the amount exceeding 25 per cent of charter capital;
- a decision on the repurchase of the company's shares;
- facts of listing or delisting of securities on a stock exchange;
- a decision on the approval of significant transactions, pre-approval of significant transactions or approval of interested party transactions
- information on persons interested in conclusion by the company of interested party transactions and circumstances existence of which causes such interest;
- a change of the company's officials;
- a change of owners of voting shares whose shareholding reaches or crosses the thresholds of 5, 10, 15, 20, 25, 30, 50, 75 or 95 per cent of voting shares;
- a decision on establishing or liquidation of branches or representative offices;
- a decision to reduce charter capital;
- initiation of proceedings on recovery by the company's official of damages caused to the company;
- initiation of bankruptcy proceedings;

- initiation of the rehabilitation procedure;
- a decision of the company's GMS to liquidate the company or of the court on declaring the company bankrupt;
- direct or indirect acquisition by a person or persons acting in concert of a block of shares exceeding 50 or 95 per cent of the company's shares;
- change of type of joint stock company;
- changes to the charter of a private JSC related to the pre-emptive rights of shareholders;
- change of the address of the company's own website; and
- information on approval of the remuneration report of SB members and/or the MB members.

JSCs are also obliged to publish in the above-mentioned manner notices on the convocation of the GMS and on changes in its agenda (if any).

In addition, public JSCs are obliged to disclose the following documents on their websites:

- the company's charter and by-laws on the GMS, the SB, the MB, the audit commission and other governing bodies (if any);
- the by-laws of branches and representative offices;
- the corporate governance code;
- GMS minutes;
- conclusions of the audit commission and independent auditor;
- annual financial statements;
- reports submitted to the state authorities;
- securities issue prospectuses or decisions on issue of securities, certificates on registration of securities;
- a list of the company's affiliated persons;
- the company's special information;
- reports of the SB, the MB and the audit commission (internal auditor);
- the by-laws on remuneration of members of the SB and MB; and
- the protocols of voting results at the GMS.