

Luxembourg to further modernise the legal framework for investment funds and their managers

On 27 March 2023, the Ministry of Finance has submitted to the Luxembourg Parliament its bill of Law N° 8183 (the Bill), bringing substantial improvements to the Luxembourg toolbox for investment funds and their managers, by proposing amendments to the SICAR Law¹, the SIF Law², the UCI Law³, the RAIF Law⁴ (together with the SICAR Law, the SIF Law and the UCI Law, the Product Laws), as well as the AIFM Law.⁵

The Bill aims to further increase the competitiveness of the Luxembourg fund center, including in the context of the democratization of alternative investment funds, as evidenced by the increased interest for funds under Part II of the UCI Law (Part II UCIs), as well as the European Long Term Investment Fund (ELTIF) under ELTIF 2.0.⁶

The most significant proposed amendments are outlined hereafter.

1 The law on the law of 15 June 2004, as amended, relating to the investment company in risk capital (SICAR).

2 The law of 13 February 2007, as amended, relating to specialized investment funds (SIFs).

3 The law of 17 December 2010, as amended, on undertakings for collective investment (UCI).

4 The law of 23 July 2016, as amended, on reserved alternative investment funds (RAIFs).

5 The law of 12 July 2013, as amended, on alternative investment fund managers (AIFMs).

6 Regulation (EU) 2023/606 of the European Parliament and of the Council of 15 March 2023 amending Regulation (EU) 2015/760 as regards the requirements pertaining to the investment policies and operating conditions of European long-term investment funds and the scope of eligible investment assets, the portfolio composition and diversification requirements and the borrowing of cash and other fund rules.

1. Amendments related to Product Laws

1.1 Funds under Part II of the UCI Law

1.1.1 Extension of legal corporate forms available

The Bill is proposing to extend the corporate forms available for Part II UCIs, thus providing increased flexibility to fund initiators and managers for structuring the governance of their fund. While for the moment Part II SICAVs can only be incorporated as a public limited liability company (**SA**), the aim of the Bill is to extend the choice of legal forms to the corporate partnership limited by shares (**SCA**), the common and special limited partnerships (**SCS/SCSp**), the private limited liability company (**SARL**), as well as the cooperative organised as a public company limited by shares (**SCoSA**).

In addition, it is proposed to amend the UCI Law so as to require the inclusion of the reference to "SICAV-Part II UCI" in the corporate denomination of the fund, in line with the current requirements under the SIF Law and the RAIF Law.

1.1.2 Free determination of the issuance price

The Bill proposes the possibility for closed-ended Part II funds to determine in their constitutive documents the rules for the determination of the issue price of their shares/interests, allowing therefore the possibility to not use the NAV, as currently required.

1.2 Other changes to Product Laws

1.2.1 Lowering the eligibility threshold for "Well Informed investors"

The Bill amends the definition of "Well-informed investors" contained respectively in the SICAR Law, the SIF Law and the RAIF Law to harmonize investor eligibility conditions within the Product Laws, in line with European Union standards that can be found in the EuSEF and EuVECA regulations. The minimum investment threshold regarding well-informed investors would thus be reduced from currently EUR 125,000 to EUR 100,000.

1.2.2 Doubling the timeframe for reaching the minimum regulatory capital

A minimum regulatory capital threshold of EUR 1,250,000 is currently imposed on SIFs, RAIFs and Part II funds, while

a threshold of EUR 1,000,000 is imposed for SICARs. The Bill proposes to double the timeframe within which the required capital must be reached, from 12 months to 24 months for SICARs, SIFs and RAIFs, and from 6 months to 12 months for Part II funds.

1.2.3 Increased flexibility (notice period of the depositary agreement and suspension of redemptions of shares/interests)

In respect of SICARs, SIFs, Part II funds and UCITS, the replacement of the depositary will no longer have to occur within 2 months following the termination of the depositary agreement. The Bill provides that the depositary agreement shall provide a notice period allowing for the depositary's replacement and should no new depositary be appointed, the CSSF will withdraw the fund from the official list, leading to its liquidation.

The Bill further provides for a suspension of the subscriptions and redemptions of shares/interests where there is no longer a depositary, or in case of its liquidation, declaration of bankruptcy, suspension of payments, arrangement with the creditors or management supervision. An exception is provided where such actions are necessary for the purpose of the liquidation proceedings.

1.2.4 Notarial acknowledgement no longer required for RAIFs established by public deed

Based on the Bill, the requirement for a notary to acknowledge that a RAIF has been established and an AIFM duly appointed within five days from its establishment is only maintained for RAIFs formed under private deed.

1.2.5 Confirmation that RAIFs can be marketed to non-professional investors in Luxembourg

The Bill clarifies that RAIFs can also be marketed to non-professional investors in Luxembourg, provided they qualify as well-informed investors.⁷

⁷ Indeed, currently, the CSSF FAQ on the AIFM Law (Question 11 (D)), which is expected to be updated once the proposed changes will have been voted and entered into effect) stipulates that with respect to non-regulated Luxembourg AIFs, the marketing is limited to professional investors in the territory of Luxembourg.

2. Amendments related to AIFMs and Management companies

2.1 Rules on judicial liquidation for AIFMs and management companies of UCIs aligned

Regarding more specifically the withdrawal of the approval by the CSSF and the liquidation of AIFMs, the Bill adds a few new rules to the current legal framework. It provides amongst others that the AIFM, once it receives the notification of the withdrawal from the official CSSF list, is not allowed to proceed to any legal act, except conservatory acts, until the date of the decision pronouncing the liquidation, unless it is authorised to do so by a supervisory commissioner. One or more supervisory commissioners are appointed by the *Tribunal d'Arrondissement* (District court) for this purpose. In order to proceed to the aforementioned legal acts, the AIFM is required to obtain a written authorisation by the commissioner(s). The latter exercises its function until the dissolution and opening of liquidation of the entity. In case of liquidation, the court must receive a report from the supervisory commissioner regarding the usage of the AIFMs assets prior to the designation of the liquidator.⁸

2.2 Voluntary liquidation for AIFMs

The Bill introduces new rules on the voluntary liquidation of AIFMs and provides that, for the purpose of the liquidation, the AIFM is deemed to exist after the dissolution, that the liquidators must be approved by the CSSF and that the decision to liquidate taken by the AIFM can only take place once all management activities have come to a halt. The legal framework related to the voluntary liquidation of management companies of UCIs, which already existed prior to the new Bill, is also amended in order to be aligned with the new regime governing AIFMs.⁹

2.3 AIFMs allowed to use tied agents

According to the Bill, AIFMs that are established in Luxembourg will be allowed to appoint tied agents as defined by Article 1, point 1) of the Law of 5th April 1993

on the financial sector. When the AIFM appoints a tied agent, it must comply with the duties laid down in the aforementioned law. Amongst others, the AIFM 'remains fully and unconditionally responsible for any action or omission on the part of the tied agent when acting on behalf of the [investment firm]' and it '*shall monitor the activities of their tied agents so as to ensure that they continue to comply with this Law when acting through tied agents.*'¹⁰

2.4 New requirements for own funds

The Bill aims to introduce new own fund requirements for management companies of UCIs. They will be obliged to invest their own funds in liquid assets or in assets that are easily convertible in short term liquidities, and they should refrain from taking speculative positions with their own funds.

In addition, according to the Bill, if the requirements related to own funds are not met by the management companies of UCIs governed by Chapter 16 of UCI Law, the latter may be granted an additional deadline by the CSSF in order to comply with the legal requirements or to cease its activities.

⁸ For further information on the new regime, see Art.74, (3) to (11) of the Bill
⁹ See Art. 56 and 59 of the Bill amending Art.105 and 126 of the Law of 17th December 2010 on UCIs

¹⁰ See Art. 37-8 of the Law of 5th April 1993 on the financial sector

3. Exemption of subscription tax extended to ELTIFs and PEPPs

The Bill contains an exemption from the subscription tax for SIFs, RAIFs and Part II UCIs authorised as ELTIFs or if they are reserved to individual investors acting through a pan-European Personal Pension Product (**PEPP**).

Please reach out to one of our team members should you require more assistance on the matter.

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