



# Luxembourg modernises its investment fund laws

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Clients should be aware of the entry into force of a new law on 28 July updating certain elements of the Luxembourg investment fund toolbox. In this briefing, partner Anne-Gaëlle Delabye, counsel Philippe Burgener, managing associate Milan Hauber, senior associate Anne-Sophie Lliteras and associate Caroline Lecomte summarise the main changes.

On a general note, the objective of the new law is to modernise the various Luxembourg product laws in light of the recent and upcoming changes in the European Union law and especially in the context of the democratisation of assets. The proposed amendments aim at increasing the competitiveness of the Luxembourg financial centre. The new law showcases the reactivity of the Luxembourg legislator, who has taken up the various impulses from the Luxembourg fund industry by proposing amendments in order to increase structuring opportunities for fund managers, and ease access to their products for non-professional investors.

Amendments concern the following product laws governing investment funds in Luxembourg:

- Luxembourg law of 13 February 2007 on specialised investment funds (**SIF**), as amended (the **SIF Law**)
- Luxembourg law of 23 July 2016 on reserved alternative investment funds (**RAIF**), as amended (the **RAIF Law**)
- Luxembourg law of 15 June 2004 relating to the investment company in risk capital (**SICAR**), as amended (the **SICAR Law**)
- Luxembourg law dated 17 December 2010 relating to undertakings for collective investment, as amended (the **UCI Law**)
- Luxembourg law dated 12 July 2013 on alternative investment fund managers (**AIFM**), as amended (the **AIFM Law**, and together with the SIF Law, the RAIF Law, the SICAR Law and the UCI Law, the **Laws**)

## Key changes

We have summarised below the main changes in relation to each type of fund:

### Amendments to the definition of "well-informed investor"

For harmonisation purposes among the SIF Law, the RAIF Law and the SICAR Law, the definition of "well-informed investor" has been amended to add an explicit reference to MiFID in relation to the term "professional investors", and to reduce the current minimum investment amount applicable to non-professional investors from €125,000 to €100,000.

### Increased period for reaching the minimum amount of capital

Currently set to 12 months (for SIFs, SICARS and RAIFs) and six months (for undertakings for collective investment subject to part II of the UCI Law, **Part II UCIs**), the period to reach the minimum capital requirement will be doubled. The ramp-up period of six months to reach the minimum capital remains unchanged for undertakings for collective investment in transferable securities (**UCITS**). The period for capitalisation begins as from the authorisation by the Commission de Surveillance du Secteur Financier (**CSSF**) for regulated funds (SIFs, SICARs, Part II UCIs, and UCITS), and as from establishment for RAIFs.

### Amendment of the rule on the nominal value of capital contributions for SIFs

The amendment introduced by the new law rectifies an omission in article 39 of the SIF Law and aligns it with article 27 of the SIF Law. The new reference to the nominal value of capital contributions gives the possibility to determine the capital amount by taking into account the nominal value of capital contributions ("valeur de la mise constitutive des parts d'intérêts").

### Clarifications on marketing of RAIFs, SICARs and SIFs to retail investors

The new law provides for the possibility to market RAIFs, SICARs, and SIFs to retail investors as long as these qualify as well-informed investors under the SICAR Law, the SIF Law and the RAIF Law, respectively.

### SIF delegation regime mirrored in SICAR Law

The new law implements the practice developed by the CSSF on delegation by a SICAR of the portfolio management which replicates the relevant provisions of the SIF Law pursuant to which portfolio management may be delegated with prior approval by the CSSF and only to an entity that is appropriately authorised for asset management in its home jurisdiction.

### Depositary replacement period

Regarding SICARs, UCITS, SIFs and Part II UCIs, the new law removes the reference to the two-month notice period applicable for the replacement of the depositary. A notice providing for sufficient time for a replacement of the depositary now needs to be foreseen in the depositary agreement. The new law provides that the CSSF will withdraw the fund from the relevant CSSF official list when a depositary has not been found at the end of the replacement period, such removal leading to the liquidation of the fund.

For the avoidance of doubt, the new law still requires the resigning depositary to continue its activities to safeguard the interests of the investors, until the fund appoints a new depositary.

On a related note, the new law also restricts any issuance or redemption of shares / securities during the period when a SICAR, RAIF, SIF or Part II UCI (i) does not have a depositary, (ii) or the depositary is put into liquidation, declared bankrupt or is subject to any similar proceedings.

## SICAR - suspension of redemptions or subscriptions

The new law provides for the possibility for the CSSF to suspend redemptions if a SICAR does not comply with the SICAR Law.

In addition, as soon as the event leading to the liquidation of a SICAR occurs, issuance of shares or interests is prohibited except where required in the context of the liquidation.

## Introduction of tied agents for AIFMs

With the aim of aligning the rules applicable to Chapter 15 management companies under the UCI Law to the legal framework for AIFMs, the new law introduces the possibility for AIFMs to appoint tied agents within the meaning of the Luxembourg law of 5 April 1993 on the financial sector (as amended).

## New legal forms for Part II UCIs

Prior to the adoption of the new law, Part II UCIs could only take the form of a public limited liability company ("société anonyme") - the new law introduces the possibility for Part II UCIs to be formed as a corporate partnership limited by shares ("société en commandite par actions"), a common limited partnership ("société en commandite simple"), a special limited partnership ("société en commandite spéciale"), a private limited liability company ("société à responsabilité limitée"), or a cooperative company taking the form of an SA ("société cooperative sous forme d'une société anonyme").

If Part II UCIs takes the form of a partnership, it must appoint an authorised AIFM. This contributes to a modernisation of the UCITS Law without jeopardising the protection of investors.

## Subscription tax and other changes

The Bill provides that, among others, an exemption from subscription tax for European Long Term Investment Funds (ELTIFs) adopting the form of a SIF, RAIF or Part II UCI.

With the ELTIF regulation having been amended on 15 February 2023, such exemption further enhances the attractiveness of ELTIFs.

The new law has also introduced further welcomed changes such as easing the registration formalities with Luxembourg notaries for RAIFs, or harmonising the use of the terms "manager" as opposed to "director" across the laws, along with a clarification on the required CSSF approval for new managers / directors for regulated funds.

Should you have any questions on the new law or the Luxembourg fund toolbox in general, please contact Ogier in Luxembourg.

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