



Publication of law revising the rules governing Luxembourg funds



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Publication of law revising the rules governing Luxembourg funds

Yesterday, the 24 July 2023, the law of 21 July 2023 modernising the Luxembourg fund toolbox (the “**Law**”) has been published in the Luxembourg Official Gazette (*Mémorial*).

The Law amends the following Luxembourg laws:

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

Objective

The purpose of the Law is to improve and modernise the Luxembourg toolbox for investment funds and thereby increase the attractiveness and competitiveness of Luxembourg’s financial sector. The Law amends the five sectoral laws, which currently govern investment funds and fund managers in Luxembourg.

Overview

The Law has several objectives, the main one being to enhance and modernise the Luxembourg fund toolbox.

In order to support the European long-term investment fund (“**ELTIF**”) legal framework and retailisation of alternative investment funds (“**AIFs**”) the following changes were approved:

- (i) for SICARs, SIFs and RAIFs – lowering the current minimum investment threshold from EUR 125,000 to EUR 100,000 for well-informed investors that are not professional or institutional investors;
- (ii) tax incentives through exemption of subscription tax have been introduced for pan-European personal pension products (“**PEPPs**”) and ELTIFs to support the launch of ELTIFs (UCIs subject to the part II of the UCI Law (“**Part II UCIs**”) and undertakings for collective investment in transferable securities (“**UCITS**”) dedicated to PEPP investors;
- (iii) extension of the time to reach the prescribed minimum amount of capital (now 24 months for SICARs, SIFs and RAIFs, and 12 months for Part II UCIs);
- (iv) clarification that SICARs, SIFs and RAIFs may be marketed to Luxembourg retail investors who qualify as well-informed investors; and
- (v) for Part II UCIs – allowing issuance of units/shares at a price which is not based on net asset value (“**NAV**”).

The other provisions mainly aim at (i) reducing inconsistencies between the various Product Laws and legal form regimes (ii) putting CSSF practices on paper, (iii) making short-term money market funds (“**MMFs**”) and PEPPs tax-friendly, and (iv) rectifying clerical errors.

For more details, please find below the main changes for each regulated investment fund and the AIFM Law:

- [UCITS and Part II UCI](#)
- [SICAR](#)
- [SIF](#)
- [RAIF](#)
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UCITS and Part II UCI (“UCIs”)

- New regime in case of replacement of depositary

The 2-month statutory deadline to appoint a new depositary in the event of removal or resignation of the current depositary is removed. The depositary agreement in place between the UCI and its depositary has to set out the notice period required to replace the depositary. If the replacing depositary is not appointed by the end of this notice period, the UCI shall be removed from the Luxembourg financial supervisory authority’s (*Commission de Surveillance du Secteur Financier*, the “**CSSF**”) official list and may be liquidated.

- Suspension of subscriptions and redemptions of shares/units of investment companies with variable capital (*Sociétés d’Investissement à Capital Variable*, “**SICAV**”) in certain circumstances

To bring it into line with the common fund (*Fonds Commun de Placement*, “**FCP**”) legal form, the issuance and redemption of shares/units of SICAV are prohibited under the following circumstances:

- during any period where the UCI does not have a depositary; and
- in the event of liquidation, declaration of bankruptcy or other insolvency or similar measures concerning the depositary.

- New regime for judicial and non-judicial legislation

Supervisory commissioners (who act on behalf of the UCI once it has been withdrawn from the official list and pending a decision on its judicial legislation) must now have sufficient qualifications and professional experience with regard to the type and investment strategies of the relevant UCI.

The Law introduces a new annual report for supervisory commissioners until the UCI is liquidated.

In the event of a judicial liquidation, the judge has now the ability to apply all the bankruptcy rules of the Luxembourg Commercial Code such as suspension of payments and suspect period (*période suspecte*).

- Filing with the CSSF of annual and semi-annual reports

It has now been clarified that UCIs have to file with the CSSF their annual reports and semi-annual reports within the same time period as those reports have to be submitted to their investors (i.e. respectively 4 months and 2 months from the end of the relevant period to which they refer for UCITS and 6 months and 3 months for Part II UCIs).

- New subscription tax exemption and reduction

In order to align with EU terminology it is clarified that UCIs (or sub-funds of UCIs) that qualify as MMF benefit from the reduced subscription tax of 0.01%.

MMFs that (i) qualify as short-term MMFs, (ii) are only available to institutional investors, and (iii) have obtained the highest possible rating from a recognised rating agency, are exempt from the subscription tax.

In order to support the development of PEPPs as requested by the European Commission, UCIs reserved for PEPP investors are exempt from subscription tax.

To encourage investment into ELTIFs the UCI Law now provides that Part II UCIs (or sub-funds thereof) authorised as ELTIFs are also exempt from subscription tax.

- Additional legal forms available for Part II UCI SICAVs

Keeping in step with Part II UCI SICAFs, SIFs and RAIFs, Part II UCI SICAVs are now allowed to adopt, in addition to the form of public limited liability company (SA), the form of partnership limited by shares (SCA), common limited partnership (SCS), special limited partnership (SCSp), private limited liability company (S.à r.l.), or cooperative company organised as a public limited liability company (CoopSA).

- Extension of the time to reach the minimum capital requirements

The time limit has been extended from 6 months to 12 months for Part II UCI. Therefore, the minimum of EUR 1,250,000 must now be reached within 12 months of the CSSF's authorisation.

- Issuance of units/shares of closed-ended funds at a price which is not based on NAV

To adapt Part II UCIs to private equity standards, Part II UCIs that are closed-ended can now issue units/shares at a price different to their NAV. The conditions applicable to the issuance of those shares/units will have to be set out in their constitutive documents.

- Valuation of the assets

Unless the constitutional documents of the Part II UCI provide otherwise, the valuation of the assets of a SICAV must be based on the fair value.

- Specification of the corporate name of Part II UCI SICAVs

The reference to public limited liability company (SA), partnership limited by shares (SCA), common limited partnership (SCS), special limited partnership (SCSp), private limited liability company (S.à r.l.), or cooperative company organised as a public limited liability company (CoopSA) must be followed by *société d'investissement à capital variable – fonds d'investissement soumis à la partie II de la loi 2010* (investment company with variable capital – investment fund subject to Part II of the UCI law) or by *SICAV-OPC partie II* (SICAV-OPC Part II).

SICAR

- Revised “well-informed investor” definition with lower requirements

The definition of “well-informed investor” (*investisseur averti*) has been amended to (i) align the Luxembourg regime with the European standard, by referring to the professional investor concept under Directive 2014/65 (“**MiFID II**”), (ii) allow an AIFM to evaluate the status of a well-informed investor and to (iii) lower the current minimum investment threshold from EUR 125,000 to EUR 100,000 for well-informed investors that are not professional or institutional investors.

- Extension of the time limit to reach the minimum capital requirements

The time limit has been extended from 12 months to 24 months. Therefore, the minimum of EUR 1,000,000 must now be reached within 24 months of the CSSF’s authorisation.

The aim is to give managers more time to solicit small investors and to support the use of financial arrangements common in private equity, such as equity bridge facilities.

- New regime in case of replacement of depositary

The 2-month statutory deadline to appoint a new depositary in the event of removal or resignation of the current depositary is removed. The depositary agreement in place between the SICAR and its depositary has to set out the notice period required to replace the depositary. If the replacing depositary is not appointed by the end of this notice period, the SICAR shall be removed from the CSSF official list and may be liquidated.

- New regime for judicial and non-judicial legislation

Supervisory commissioners must now have sufficient qualifications and professional experience with regard to the type and investment strategy of the relevant SICAR.

The Law introduces a new annual report for supervisory commissioners until the SICAR is liquidated.

In the event of a judicial liquidation, the judge has now the ability to apply all the bankruptcy rules of the Luxembourg Commercial Code such as suspension of payments and suspect period (*période suspecte*).

- Filing with the CSSF of the annual report

SICARs have to file with the CSSF their annual reports within the same time period as those reports have to be submitted to their investors (i.e. 6 months from the end of the relevant financial year).

- Suspension of subscriptions and/or redemptions of shares/partnership interest of SICAR in certain circumstances

The issuance and redemption of shares/partnership interests of a SICAR are prohibited under the following circumstances:

- during the period where the SICAR does not have a depositary; and
- in the event of liquidation, declaration of bankruptcy or other insolvency or similar measures concerning the depositary.

As from an event giving rise to the liquidation of a SICAR the issuance of shares/partnership interests is suspended, except if necessary for the purpose of such liquidation.

If it is in the investors' interests, redemptions may be suspended by the CSSF if legal or regulatory provisions or provisions of the constitutive documents governing the activity and operation of the SICAR are no longer complied with.

- In-kind contributions

All in-kind contributions to a SICAR (regardless of its legal form) require now to be backed by a valuation report drawn up by an auditor (*réviseur d'entreprise*).

- Various amendments to bring the SICAR regime into line with the SIF regime

This includes, *inter alia*, the following:

- authority of the CSSF to withdraw the authorization of a sub-fund without affecting the license of the umbrella SICAR;
- clarification that appointment of directors is subject to CSSF's approval; and
- clarification of the need to notify the CSSF spontaneously of any material change in the information on which the CSSF relied in order to assess the authorisation application, including, *inter alia*, the directors and the individuals in charge of the investment portfolio management.

SIF

- Revised "well-informed investor" definition with lower requirements

The definition of "well-informed investor" (*investisseur averti*) has been amended to (i) align the Luxembourg regime with the European standard, by referring to the professional investor concept under Directive 2014/65 ("MiFID II"), (ii) allow an AIFM to evaluate the status of a well-informed investor and to (iii) lower the current minimum investment threshold from EUR 125,000 to EUR 100,000 for well-informed investors that are not professional or institutional investors.

- Extension of the time limit to reach the minimum capital requirements

The time limit has been extended from 12 months to 24 months. Therefore, the minimum of EUR 1,250,000 must now be reached within 24 months of the CSSF's authorisation.

The aim is to give managers more time to solicit small investors and to support the use of financial arrangements common in private equity, such as equity bridge facilities.

- Suspension of subscription and redemptions of shares/units of SICAV in certain circumstances

To bring it into line with the FCP legal form, the issuance and redemption of shares/units of a SICAV are prohibited under the following circumstances:

- during the period where the SIF does not have a depositary; and
- in the event of liquidation, declaration of bankruptcy or other insolvency proceedings or similar measures concerning the depositary.

- Amendment to the regime in case of replacement of depositary

The 2-month statutory deadline to appoint a new depositary in the event of removal or resignation of the current depositary is removed. The depositary agreement in place between the SIF and its depositary

has to set out the notice period required to replace the depositary. If the replacing depositary is not appointed by the end of this notice period, the SIF shall be removed from the CSSF official list and may be liquidated.

- Amendments to the regime for judicial and non-judicial legislation

SIFs will be withdrawn from the CSSF official list prior to being placed into liquidation.

Supervisory commissioners must now have sufficient qualifications and professional experience with regard to the type and investment strategies of the relevant SIF.

The Law introduces a new annual report for supervisory commissioners until the SIF is liquidated.

In the event of a judicial liquidation, the judge has now the ability to apply all the bankruptcy rules of the Luxembourg Commercial Code such as suspension of payments and suspect period (*période suspecte*).

- Filing with the CSSF of the annual report

SIFs have to file with the CSSF their annual reports within the same time period as those reports have to be submitted to their investors (i.e. 6 months from the end of the relevant financial year).

- New subscription tax exemption

In order to encourage investment into ELTIFs the SIF Law now provides that SIFs (or sub-funds thereof) authorised as ELTIFs are exempt from subscription tax.

SIFs authorised as MMFs are exempt from subscription tax if they (i) qualify as short-term MMFs, (ii) are only available to institutional investors, and (iii) have obtained the highest possible rating from a recognised rating agency.

RAIF

- Revised “well-informed investor” definition with lower requirements

The definition of “well-informed investor” (*investisseur averti*) has been amended to (i) align the Luxembourg regime with the European standard, by referring to the professional investor concept under Directive 2014/65 (“**MiFID II**”), (ii) allow an AIFM to evaluate the status of a well-informed investor and to (iii) lower the current minimum investment threshold from EUR 125,000 to EUR 100,000 for well-informed investors that are not professional or institutional investors.

- Extension of the time limit to reach the minimum capital requirements

The time limit has been extended from 12 months to 24 months. Therefore, the minimum of EUR 1,250,000 must now be reached within 24 months of the RAIF’s establishment.

The aim is to give managers more time to solicit small investors and to support the use of financial arrangements common in private equity, such as equity bridge facilities.

- Suspension of subscription and redemptions of shares/units of SICAV in certain circumstances

To bring it into line with the FCP legal form, the issuance and redemption of shares/units of a SICAV are prohibited under the following circumstances:

- during the period where the RAIF does not have a depositary; and
 - in the event of liquidation, declaration of bankruptcy or other insolvency proceedings or similar measures concerning the depositary.
- New subscription tax exemption

In order to encourage investment into ELTIFs the RAIF Law now provides that RAIFs (or sub-funds thereof) authorised as ELTIFs are exempt from subscription tax.

RAIFs authorised as MMFs are exempt from subscription tax if they (i) qualify as short-term MMFs, (ii) are only available to institutional investors, and (iii) have obtained the highest possible rating from a recognised rating agency.

- Marketing of RAIFs to Luxembourg retail investors that qualify as well-informed investors

The RAIF Law now makes clear that RAIFs can be marketed to Luxembourg retail investors that qualify as well-informed investors despite the RAIF not being supervised by the CSSF.

- Removal of the *constat de constitution* for RAIFs established by notarial deed

The Law abolishes the need to draw up a *constat de constitution* with a notary for RAIFs established by notarial deed (which is always the case for public limited liability companies (*sociétés anonymes*), private limited liability companies (*sociétés à responsabilité limitée*) and partnerships limited by shares (*sociétés en commandite par actions*)). Such *constat de constitution* remains necessary only for RAIFs established under private seal.

ELTIF

In order to encourage investment into ELTIFs, the Law provides that Part II UCIs, RAIFs and SIFs that are authorized as ELTIF (or sub-funds thereof) are exempt from subscription tax.

AIFM

- Possibility for AIFMs to use tied agents

AIFMs are now authorised to use the services of tied agents as has previously been the case for UCITS management companies. AIFMs can appoint tied agents subject to the same conditions as credit institutions and investment firms appointing tied agents under the provisions of the law of 5 April 1993 on financial sector, thus aligning the legal framework applicable to AIFM with that of management companies authorized under Part IV, Chapter 15 of the UCI Law.

The AIFM remains fully and unconditionally responsible for any action or omission on the part of the tied agent and it shall monitor the activities of their tied agents so as to ensure that they continue to comply with the Law when acting through tied agents.

- New regime for judicial and non-judicial liquidation of AIFMs and management companies



Update to the regime for judicial and non-judicial liquidation of AIFMs and management companies to align it with the regime applicable for UCITS, Part II UCIs, SIFs and SICARs (see above).

- Marketing to non-professional investors

It is clarified that AIFMs can market units/shares of SIFs and SICARs to well-informed investors established or residing in Luxembourg even if those do not qualify as professional investors within the meaning of AIFM Law.

What is next?

The Law will come into force on 28 July 2023.



About BSP

BSP is an independent full-service law firm based in Luxembourg.

We are committed to providing the very best legal services to our domestic and international clients in all aspects of Luxembourg business law.

Talented and multilingual, our teams of lawyers work side by side with our clients to help them reach their objectives and support them with tailor-made legal advice, creating in the process professional relationships based on mutual trust and respect.

Our lawyers have developed particular expertise in banking and finance, capital markets, corporate law, dispute resolution, employment law, investment funds, intellectual property, private wealth, real estate and tax. In these practice areas, as in others, our know-how, our ability to work in cross-practice teams and to swiftly adapt to new laws and regulations allow us to provide to our clients timely and integrated legal assistance vital to the success of their business.

Building on the synergy of our different professional experiences and the richness of our diverse cultural background, we stand ready to meet our clients' legal needs, no matter how challenging they are.

For more information please browse through our website (<https://www.bsp.lu>) or contact us at mail@bsp.lu.



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