

Law of 21 July 2023 on the modernisation of the Luxembourg fund toolbox

Stibbe



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Introduction

On 24 July 2023, the Luxembourg law of 21 July 2023 aiming to improve and modernise the legal and regulatory framework applicable to investment fund products (the **Law**) was published in the Official Journal of the Grand Duchy of Luxembourg. Besides some tidy-up, harmonisation and updates of the relevant laws, it includes some substantial changes that have been requested by market professionals.

All investment structures are concerned whether regulated or not as it is intended to enhance the following regimes:

- **SICAR**: law of 15 June 2004 on the investment company in risk capital (**SICAR Law**)
- **SIF**: law of 13 February 2007 on specialised investment funds (**SIF Law**)
- **RAIF**: law of 23 July 2016 on reserved alternative investment funds (**RAIF Law**)
- **AIFM/AIF**: law of 12 July 2013 on alternative investment fund managers (**AIFM Law**)
- **UCITS/UCI**: law of 17 December 2010 on undertakings for collective investment (**UCI Law**)

The Law entered into force on 28 July 2023.

You will find below some key highlights on the main amendments presented per law in the above mentioned order. Please note that the amendments marked with “*” impact all SICAR, SIF and RAIF structures.

We remain available should you wish to discuss these changes in further details.



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Summary of main amendments – SICAR Law (1/2)

AMENDMENTS	DETAILS
Definition of well-informed investors*	Harmonisation of definition between SICAR, SIF and RAIF Laws via the following changes: <ul style="list-style-type: none"> • Professional investors: clear reference to MiFID II for classification. • Well-informed investors other than professional or institutional investors: <ul style="list-style-type: none"> - Minimum investment lowered from EUR 125,000 to EUR 100,000. - Update of the list of entities allowed to assess such investors expertise.
Period to reach minimum capital requirement*	Increased from 12 months to 24 months.
Issuance/redemption of units/shares*	Prohibition of issuance/redemption of units/shares if the SICAR has no depositary or if the depositary enters into liquidation or faces any type of insolvency proceeding.
Judicial liquidation	<ul style="list-style-type: none"> • Revised rules regarding the appointment and role of the supervisory commissioner (<i>commissaire de surveillance</i>) and role of the <i>Commission de Surveillance du Secteur Financier (CSSF)</i> in the context of a judicial liquidation following a withdrawal of authorisation. • Applicability of bankruptcy rules: possibility for the courts to apply in case of judicial liquidation all the rules of bankruptcy of the Commercial Code (e.g. suspension of payments, suspect period).
Clarifications	<ul style="list-style-type: none"> • The withdrawal of the authorisation pertaining to a compartment of a SICAR does not result in the withdrawal of the authorisation of the SICAR itself. • It is clearly indicated that a SICAR shall receive the prior approval of the CSSF before it is authorised to start its activities. This includes its “directors” (<i>dirigeants</i>), the directors of the depositary and the person(s) in charge of the portfolio management as well as ongoing obligation to inform the CSSF in case of change to the material information submitted in the context of the SICAR approval, including a change to the persons above mentioned.

Summary of main amendments – SICAR Law (2/2)

AMENDMENTS	DETAILS
Mandatory report for non-cash contributions	A report from an approved statutory auditor is necessary for contributions other than in cash.
Supervision	Where the interest of the investors so requires, the CSSF is given power to suspend the redemption of units/shares if the SICAR does not comply with the legal, regulatory or statutory provisions applicable to its activity and operation.
Replacement of depositary	The requirement to replace the depositary within a maximum two months notice period is replaced by the obligation to appoint a successor depositary within such notice period as provided for under the depositary agreement (mandatory clause). The CSSF may remove the SICAR from the official list of SICARs should no replacement depositary be appointed by the end of such period.
Deadline to submit report to CSSF	Clarification that the deadline to submit the annual report to the CSSF is the same as for investors: 6 months from the end of the period to which it refers.
Conditions of delegation by a SICAR	<ul style="list-style-type: none"> • Conditions aligned on the SIF Law regarding the requirements for authorisation to delegate certain functions, in particular in terms of CSSF information and supervision of the delegate (in the event of delegation of portfolio management), controls and incompatibilities. SICARs authorised before the entry into force of the Law will have a grand-fathering period of 12 months to comply with these rules. • For SICARs managed by a fully fledged AIFM, reference is made to AIFM law rules for delegation of function(s).

Summary of main amendments – SIF Law (1/2)

AMENDMENTS	DETAILS
Definition of well-informed investors*	Harmonisation of definition between SICAR, SIF and RAIF Laws via the following changes: <ul style="list-style-type: none"> • Professional investors: clear reference to MiFID II for classification. • Well-informed investors other than professional or institutional investors: <ul style="list-style-type: none"> - Minimum investment lowered from EUR 125,000 to EUR 100,000. - Update of the list of entities allowed to assess such investors expertise.
Period to reach the minimum net assets/capital requirement*	Increased from 12 months to 24 months.
Issuance/redemption of units/shares*	Prohibition of issuance/redemption of units/shares if the SICAV has no depositary or if the depositary enters into liquidation or faces any type of insolvency proceeding.
Judicial liquidation	<ul style="list-style-type: none"> • Revised rules regarding the appointment and role of the supervisory commissioner and role of the CSSF in the context of a judicial liquidation following a withdrawal of authorisation. • Applicability of bankruptcy rules: possibility for the courts to apply in case of judicial liquidation all the rules of bankruptcy of the Commercial Code (e.g. suspension of payments, suspect period).
New exemptions of subscription tax (<i>taxe d'abonnement</i>)	For money market funds (MMFs) and European long-term investment funds (ELTIFs).

Summary of main amendments – SIF Law (2/2)

AMENDMENTS	DETAILS
Replacement of depositary	The requirement to replace the depositary within a maximum two months notice period is replaced by the obligation to appoint a successor depositary within such notice period as provided for under the depositary agreement (mandatory clause). The CSSF may remove the SIF from the official list of SIFs should no replacement depositary be appointed by the end of such period.
Deadline to submit report to CSSF	Clarification that the deadline to submit the annual report to the CSSF is the same as for investors: 6 months from the end of the period to which it refers.

Summary of main amendments – RAIF Law (1/2)

AMENDMENTS	DETAILS
Definition of well-informed investors*	Harmonisation of definition between SICAR, SIF and RAIF Laws via the following changes: <ul style="list-style-type: none">• Professional investors: clear reference to MiFID II for classification.• Well-informed investors other than professional or institutional investors:<ul style="list-style-type: none">- Minimum investment lowered from EUR 125,000 to EUR 100,000.- Update of the list of entities allowed to assess such investors expertise.
Period to reach the minimum net assets/capital requirement*	Increased from 12 months to 24 months.
Issuance/redemption of units/shares*	Prohibition of issuance/redemption of units/shares if the SICAV has no depositary or if the depositary enters into liquidation or faces any type of insolvency proceeding.
Judicial liquidation	Revised rules regarding the appointment and role of the supervisory commissioner and role of the CSSF in the context of a judicial liquidation following a withdrawal of authorisation.

Summary of main amendments – RAIF Law (2/2)

AMENDMENTS	DETAILS
Certificate of incorporation (<i>constat de constitution</i>)	RAIFs incorporated by notarial deed no longer require a notarial confirmation of incorporation for recording purpose.
Update of the information on the RCS RAIFs list	Any amendment to the information communicated for the purpose of registration on the RAIFs list held by the RCS must be communicated to the RCS within 20 business days of the implementation of these changes.
New exemptions of subscription tax	For MMF and ELTIFs.
Marketing	Clarification that marketing to well-informed investors not qualifying as professional investors is possible in Luxembourg.

Summary of main amendments – AIFM Law

AMENDMENTS	DETAILS
Tied agents	AIFMs can appoint tied agents within the meaning of Article 1(1) of the law of 5 April 1993 on the financial sector for certain investment services subject to conditions.
Marketing	Marketing to non-professional investors is permitted in Luxembourg for SICARs and SIFs (also possible for RAIFs – see slide RAIF Law above).
Judicial liquidation	Revised rules regarding the appointment and role of the supervisory commissioner and role of the CSSF in the context of a judicial liquidation following a withdrawal of authorisation.
Non-judicial liquidation	Introduction of a non-judicial liquidation regime.

Summary of main amendments – UCI Law (generally)

AMENDMENTS	DETAILS
Issuance/redemption of units/shares	Prohibition of issuance/redemption of units/shares if the SICAV has no depositary or if the depositary enters into liquidation or faces any type of insolvency proceeding.
Replacement for depositary	The requirement to replace the depositary within a maximum two months notice period is replaced by the obligation to appoint a successor depositary within such notice period as provided for under the depositary agreement (mandatory clause). The CSSF may remove the UCI from the official list of UCIs should no replacement depositary be appointed by the end of such period.
Marketing	Foreign AIFs marketing to non-professional investors need to exclusively comply with the AIFM Law.
Management companies	<ul style="list-style-type: none"> • Chapter 16 ManCos: requirement of minimum own funds of EUR 125,000, or a minimum threshold set by a CSSF regulation, needs to be complied with at all times. • Chapter 15 and 16 ManCos: introduction of a non-judicial liquidation regime.
Judicial liquidation	<ul style="list-style-type: none"> • Revised rules regarding the appointment and role of the supervisory commissioner and role of the CSSF in the context of a judicial liquidation following a withdrawal of authorisation. • Applicability of bankruptcy rules: possibility for the courts to apply in case of judicial liquidation all the rules of bankruptcy of the Commercial Code (e.g. suspension of payments, suspect period).
Deadline to submit reports to CSSF	Clarification that the deadlines to submit the semi-annual and annual reports to the CSSF are the same as for investors: respectively 2 and 4 months from the end of the period to which they refer.
New exemptions of subscription tax	For MMFs, ELTIFs and pan-european pension products (PEPPs).

Summary of main amendments – UCI Law (Part II UCIs)

AMENDMENTS	DETAILS
<p>Period to reach the minimum net assets/capital requirement</p>	<p>Increased from 6 months to 12 months.</p>
<p>Additional eligible corporate forms</p>	<p>Besides the public limited liability (SA) form, a SICAV can be set up as a:</p> <ul style="list-style-type: none"> • Corporate partnership limited by shares (SCA) • Common limited partnership (SCS) • Special limited partnership (SCSp) • Private limited liability company (S.à r.l.) • Cooperative company set-up as an SA (SCoSA)
<p>Issuance/redemption of units/shares</p>	<p>Where the interest of the investors so requires, the CSSF is given power to suspend the redemption of units/shares if the SICAV does not comply with the legal, regulatory or statutory provisions applicable to its activity and operation.</p> <p>Prohibition of issuance/redemption of units/shares if the SICAV has no depositary or if the depositary enters into liquidation or faces any type of insolvency proceeding.</p> <p>Closed-end UCIs Part II SICAV or common funds (<i>fonds communs de placement</i>, FCPs) can issue units/shares at a price determined in accordance with their fund documentation (NAV is not mandatory anymore).</p>



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