

Bill of Law: Modernising the Luxembourg Investment Funds Toolbox

Executive Summary

- On 24 March 2023, the Luxembourg parliament (*Chambre des Députés*) published a draft bill of law amending the five existing laws about investment funds in Luxembourg (the “**Bill**”):

The law of 15 June 2004 relating to the investment company in risk capital (“**SICAR**”) (the “**Law of 2004**”), the law of 13 February 2007 on specialised investment funds (“**SIF**”) (the “**Law of 2007**”), the law of 23 July 2016 on reserved alternative investment funds (“**RAIF**”) (the “**Law of 2016**”), the law of 17 December 2010 relating to undertakings of collective investment (“**UCI**”) (the “**Law of 2010**”) and the law of 12 July 2013 on alternative investment fund managers (“**AIFM**”) (the “**Law of 2013**”).

- The objective of the Bill is to improve the Luxembourg investment funds toolbox and to introduce more flexibility and increase the attractiveness of the Luxembourg financial centre.

Amongst formal amendments such as updating references to the national and European laws and some clarifications, the following main amendments have been introduced by the Bill:

I. Amendments applicable to SICARs, SIFs and RAIFs

Marketing to retail investors in Luxembourg and definition of well-informed investors:

The Bill introduces the option to market shares or units of SICARs, SIFs and RAIFs to retail investors in Luxembourg

and amends the definition of well-informed investor in the Law of 2004, the Law of 2007 and the Law of 2016 pursuant to which the threshold to qualify as well-informed investor will be reduced from currently EUR 125,000 to EUR 100,000.

Prohibitions of issuance and redemption:

The Bill clarifies that the issue and redemption of shares or units will be prohibited if the fund does not appoint a depositary bank and in the event of the liquidation of the depositary bank.

The Bill allows for the financial supervisory authority, the *Commission de Surveillance du Secteur Financier* (the “**CSSF**”), to suspend the redemption of shares or units of a SICAR, if the SICAR does not comply with legal, regulatory or statutory provisions of the Law of 2004.

Notice period of the depositary bank:

The two-months’ notice period applicable in case of the replacement of the depositary bank will be removed. The Bill clarifies that the notice period to replace the depositary bank indicated in the depositary agreement shall be applicable.

Extension of the duration to reach the minimum capital:

The period to reach the minimum capital of currently 12 months will be extended to 24 months starting from authorisation by the CSSF or the establishment of the respective fund.

Ascertainment of a RAIF:

The Bill shall amend article 34 of the Law of 2016 pursuant to which the establishment of the RAIF as reserved alternative investment fund has to be recorded in a notarial deed (*constat de constitution*). Pursuant to the



Bill, this ascertainment is only necessary for RAIFs that are not incorporated with a notary.

II. Amendments to UCITS and Part II Funds

Possible corporate forms:

To modernise the Law of 2010 without jeopardizing the protection of investors, the Bill introduces the possibility for SICAVs subject to Part II of the Law of 2010 to adopt other corporate forms than a public limited liability company (*société anonyme*) or mutual fund (*fonds commun de placement*): Part II Funds may be established in the form of a 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 corporate company taking the form of a limited liability company (*société coopérative organisée sous forme d'une société anonyme*).

Extension of the duration to reach the minimum capital:

The duration during which the minimum capital of Part II Funds has to be reached is extended to 12 months.

Prohibitions of issuance and redemption:

Also, for UCITS and Part II Funds, the Bill clarifies that the issue and redemption of shares or units will be prohibited if the fund does not have a depositary bank and in the event of liquidation of the depositary bank.

III. Amendments affecting the AIFM

Non-judicial liquidation regime:

The Bill will extend the possibility of a non-judicial liquidation regime by way of derogation from the Luxembourg insolvency law which should simplify the entire liquidation process.

¹ In Art. 4 (29) MiFID II, a tied agent is defined as a natural or legal person who, under the full and unconditional responsibility of only one investment firm on whose behalf it acts, promotes investment and/or ancillary services to clients or prospective

Tied agents:

The Bill introduces the possibility for AFIMs to use tied agents¹ which aligns the legal framework applicable UCITS management companies. As a consequence, for (pre-) marketing of alternative investment funds the appointment of investment firms would no longer be required.

IV. Tax aspects

The Bill promotes the development of new European products such as (i) European Long-Term Investment Funds (ELTIFs) and (ii) Pan-European Personal Pension Products (PEPPs) by amending the existing subscription tax (*taxe d'abonnement*) regime.

The Bill amends the Law of 2007, the Law of 2016 and the Law of 2010 in order to provide for an exemption from the subscription tax for SIFs, RAIFs and UCIs (and their individual compartments) which are authorised as (i) money market funds as defined in Regulation (EU) 2017/1131 and (ii) ELTIFs as defined in Regulation (EU) 2015/760.

The Bill further foresees an additional exemption for UCIs (and their individual compartments) whose units are reserved for PEPP investors.

In addition, the conditions for the application of the subscription tax exemption are specified. Specifically, funds must indicate separately the value of the exempt assets while filing their periodical declarations.

V. Conclusion

The Bill proposes amendments that are in line with the ongoing regulatory update of the national and European legal framework. It aims to raise the attractiveness of the Luxembourg investment funds toolbox and aligns the Luxembourg regime with European standards.

clients, receives and transmits instructions or orders from the client in respect of investment services or financial instruments, places financial instruments or provides advice to clients or prospective clients in respect of those financial instruments or services.



VI. Next Steps

The Bill is still in the Luxembourg legislative process and will be reviewed by the State Council (*Conseil d'Etat*) and the Chamber of Commerce.

Corinna Schumacher, LL.M.

Local Partner
GSK Stockmann SA
corinna.schumacher@gsk-lux.com

Katharina Schiffmann

Counsel
GSK Stockmann SA
katharina.schiffmann@gsk-lux.com

Adrien Kleinschmidt, LL.M.

Senior Associate
GSK Stockmann SA
adrien.kleinschmidt@gsk-lux.com

Sophia Wen Schneider

Associate
GSK Stockmann SA
sophiawen.schneider@gsk-lux.com



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www.gsk-lux.com

GSK STOCKMANN

BERLIN

Mohrenstrasse 42
10117 Berlin
T +49 30 203907-0
F +49 30 203907-44
berlin@gsk.de

HEIDELBERG

Mittermaierstrasse 31
69115 Heidelberg
T +49 6221 4566-0
F +49 6221 4566-44
heidelberg@gsk.de

FRANKFURT/M.

Taunusanlage 21
60325 Frankfurt am Main
T +49 69 710003-0
F +49 69 710003-144
frankfurt@gsk.de

MUNICH

Karl-Scharnagl-Ring 8
80539 Munich
T +49 89 288174-0
F +49 89 288174-44
muenchen@gsk.de

HAMBURG

Neuer Wall 69
20354 Hamburg
T +49 40 369703-0
F +49 40 369703-44
hamburg@gsk.de

LUXEMBOURG

GSK Stockmann SA
44, Avenue John F. Kennedy
L-1855 Luxembourg
T +352 2718 02-00
F +352 2718 02-11
luxembourg@gsk-lux.com

LONDON

GSK Stockmann UK Limited
Queens House, 8-9 Queen Street
Cheapside
London EC4N 1SP, UK
T: +44 20 4512 6869
london@gsk-uk.com

