

Modernising the Luxembourg Investment Funds Toolbox

Executive Summary

- On 11 July 2023, the Luxembourg Parliament (*Chambre des Députés*) voted the bill of law 8183 amending the five existing laws about investment funds in Luxembourg (the “**New Law**”).
- The bill was passed without extensive amendments. For a comprehensive summary of the bill please refer to our [GSK Update](#) dated 6 April 2023.
- The New Law has now been adopted and is expected to come into force very shortly (i.e. 3 days after its publication).

The New Law consists of amendments among which are updates on references to the national and European laws and some clarifications. *Inter alia*, the following **main** amendments have been introduced by the New Law:

I. Amendments applicable to SICARs, SIFs and RAIFs

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

The New Law 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 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**”) and the law of 23 July 2016 on reserved alternative investment funds (“**RAIF**”) (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 New Law 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. Additionally, it allows 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 new Law 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 New Law 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 New Law, this ascertainment is only necessary for RAIFs that are not incorporated with a notary.



II. Amendments to UCITS and Part II Fund

Possible corporate forms:

To modernise the law of 17 December 2010 relating to undertakings of collective investment (“UCI”) (the “Law of 2010”) without jeopardizing the protection of investors, the new Law 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 new Law 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. Tax aspects

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

IV. Conclusion

The New Law amendments 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.

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