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Upgrades to Luxembourg Investment Fund Laws

On 11 July 2023, the Luxembourg Parliament voted Bill of Law n°8183, which seeks to amend five existing laws governing investment funds and alternative investment fund managers (AIFMs). Specifically, the bill proposed modifications to the UCI Act, SICAR Act, SIF Act, RAIF Act and the AIFM Act.

The primary objective behind this new law is to enhance and modernise Luxembourg's framework for alternative investment funds (AIFs), taking into account recent and forthcoming changes in European Union legislation. Notably, these changes include the adoption of Regulation (EU) 2023/606, which amends Regulation (EU) 2015/760 concerning European long-term investment funds (ELTIF), enacted on 15 March 2023.

The key modifications that are set to shape the future landscape of Luxembourg's AIF industry are outlined in the following.

Amendments to the formalities to set up a RAIF

The current two-step incorporation of a RAIF is simplified by waiving the second notarial deed in case the incorporation has been done in front of a notary. A notarial deed is still required for RAIFs established under private seal. The registration of the RAIF must be made within 20 working days of its incorporation, if the RAIF is formed by notarial deed, or of the notarisation of the incorporation of the RAIF.

Harmonisation of the "well-informed investors" definition

With the new law, the definition of "well-informed investors" is changed. In addition to a clear cross-reference to the definition of "professional" investor in Annex II of Directive 2014/65/EU on markets in financial instruments (MiFID II), the required minimum threshold has been reduced from EUR 125,000 to EUR 100,000 for well-informed investors who are not professional or institutional investors, and the list of entities authorised to assess the expertise of "other investors" is standardised (i.e. credit institutions, investment firms, UCITS managers and AIFMs).

Asset valuation for closed-end Part II Fund

For Part II Funds that are structured as closed-end funds, there is the new possibility of issuing their shares/units at a price determined in accordance with their constitutive documents and not necessarily at a price obtained by dividing the net asset value by the number of shares/units outstanding

New corporate forms available for Part II Fund SICAVs

Part II Fund SICAVs may be structured under the new law not only as public limited companies (SA), but also as partnerships limited by shares (SCA), common limited partnerships (SCS), special limited partnerships (SCSp), private limited liability partnerships (S.à r.l.) or cooperatives organised as public limited company (SCoSA).

Extension of the launch period

The launch period to reach the minimum amount of capital/net assets has been extended. For Part II funds, the minimum required net assets/capital must be reached within a period of 12 months (previously six months) from the date of authorisation of the fund and for SIFs, SICARs and RAIFs the time limit is increased to 24 months (previously 12 months).

Replacement of depositary

For UCITS, UCI or Part II Funds, SIFs and SICARs, there is no longer the requirement to replace the depositary within a two-month period following the termination of the depositary agreement. However, the new law provides that the depositary agreement shall provide a notice period allowing for the depositary's replacement.

If no new depositary has been appointed after the end of the transition period, the CSSF may remove the fund from the official list.

The new law further provides for a suspension of subscriptions and redemptions of shares/units where there is no longer a depositary, or in case of its liquidation, declaration of bankruptcy, suspension of payments, arrangement with the creditors or management supervision.

Exemption from subscription tax

- ELTIF
  Part II Funds, SIFs and RAIFs are exempt from the subscription tax when authorised as ELTIF.
- Money Market Fund (MMF)
  UCITS, Part II Funds, SIFs and RAIFs authorised as MMFs, given they qualify as short-term MMFs, reserved exclusively for institutional investors and have obtained the highest credit rating by a recognised credit rating agency are exempt from the subscription tax;

UCITS and Part II Funds that do not meet these criteria still benefit from a reduced subscription tax of 0.01%.

Alternative Investment Fund Managers

The new law allows authorised AIFMs to appoint tied agents, similar to UCITS management companies. Tied agents are defined as non-regulated individuals or companies appointed by credit institutions or investment firms under MiFID II. They promote services, solicit business, receive and transmit orders from clients, place financial instruments, and provide advice. When an AIFM appoints a tied agent, they have the same obligations as credit institutions and investment firms, i.e. amongst others, the AIFM remains fully and unconditionally responsible for any action or omission on the part of the tied agent when acting on behalf of the AIFM.

Entering into force

The new law will enter into force four days after the publication in the Luxembourg Memorial which could occur in July or August 2023.

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