

New law modernising Luxembourg investment funds takes effect today

On 28 July 2023, the law of 21 July 2023, which modernises the laws governing UCITS, Part II UCIs, SIFs, SICARs, RAIFs and Luxembourg asset managers, enters into force (the **Law**).

The key changes are reflected in this document, per type of fund product and type of asset manager.

 This document is interactive. Please choose from one of the following options:



RAIF

Easing access of Luxembourg funds to well-informed investors

Broadening of the definition of well-informed investors

The Law lowers the minimum investment amount for well-informed investors from EUR125,000 to EUR100,000.

Allowing marketing to well-informed investors in Luxembourg

RAIFs can be marketed in Luxembourg to all well-informed investors, including those who are not professional investors.

Simplifying RAIF formation and ensuring the reliability of RAIF information published in RCS

Waiving the *constat de constitution* for RAIF established by notarial deed

The ascertainment of constitution (*constat de constitution*) is maintained only for RAIFs established under private seal.

Duty to maintain RCS information up to date

RAIFs have 20 days to update the information communicated to the RCS in case such information changes. This includes a change of name, of registered address of the RAIF and of AIFM.

Tax incentives for European products

Exemption from subscription tax for ELTIF

RAIFs-ELTIF are exempted from the subscription tax.

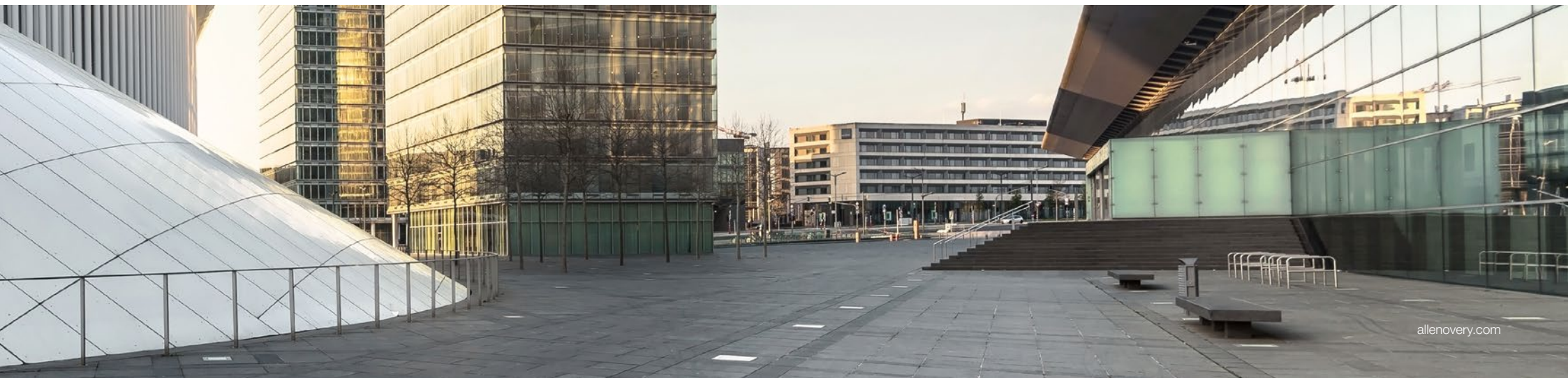
Depository

Alignment between SICAV and FCP regime on the suspension of subscriptions and redemptions in case of depository's insolvency proceedings

Subscriptions and redemptions are suspended if a RAIF-SICAV has no depository or its depository enters into insolvency proceedings.

Extension of the period to reach the minimum capital

The Law extends the deadline to meet the minimum capital requirement from 12 months to 24 months.



SIF

Easing access of Luxembourg funds to retail investors

Broadening of the definition of well-informed investors

The Law lowers the minimum investment amount for well-informed investors from EUR125,000 to EUR100,000.

Broadening and harmonising the entities that can assess the expertise of a retail investor to qualify as well-informed investor

The Law allows AIFM along credit institutions, MiFID investment firms and UCITS management companies to assess the expertise of investors.

Tax incentives for European products

Exemption from subscription tax for ELTIF

SIFs-ELTIF are exempted from the subscription tax.

Depository

Contractual flexibility to depart from the 2-month notice period for a depository change

A SIF depository contract can be terminated with a notice period set by the parties. If the SIF has no depository after that period, the CSSF may liquidate it and remove it from the official list.

Alignment between SICAV and FCP regime on the suspension of subscriptions and redemptions in case of depository's insolvency proceedings

Subscriptions and redemptions are suspended if a SIF-SICAV has no depository or its depository enters into insolvency proceedings.

Auditor valuation report for non-cash contribution

Valuation of contribution in kind

The valuation report for contribution in kind in a SIF must be drawn up by an auditor (*révisEURd'entreprise*) instead of an approved auditor (*révisEURd'entreprise agréé*).

Extension of the period to reach the minimum capital

The Law extends the deadline to meet the minimum capital requirement from 12 months to 24 months.

Clarification

Dirigeants

Each dirigeant of a SIF must be approved by the CSSF and meet the requirements set out in the SIF act. Each of the following persons is to be considered as a *dirigeant*:

- for a SIF in the form of an SCA, an SCS or an SCSp or Sàrl: each of the managers (*gérants*); and
- for a SIF in the form of an SA: each member of the managing board or the supervisory board.

A common framework for efficient liquidation of asset managers and regulated funds

New supervisory commissioners to speed-up non-judicial liquidations

The CSSF currently automatically acts as supervisory commissioner by virtue of law in case of withdrawal of a SIF from the CSSF official list. The withdrawal from the official list entails a suspension from all payments and prohibition of any acts other than conservatory acts unless authorised by the supervisory commissioner.

As there is an increasing number of withdrawal and lengthening of procedures, the Law allows the appointment of one or more independent supervisory commissioners by the Luxembourg commercial court upon CSSF's request to ease its workload.

SICAR

Easing access of Luxembourg funds to retail investors

Broadening of the definition of Well-informed investors

The Law lowers the minimum investment amount for well-informed investors from EUR125,000 to EUR100,000.

Broadening and harmonising the entities that can assess the expertise of a retail investor to qualify as well-informed investor

The Law allows AIFM along credit institutions, MiFID investment firms and UCITS management companies to assess the expertise of investors.

A common framework for efficient liquidation of asset managers and regulated funds

New supervisory commissioners to speed-up non-judicial liquidations

The CSSF currently automatically acts as supervisory commissioner by virtue of law in case of withdrawal of a SICAR from the CSSF official list. The withdrawal from the official list entails a suspension from all payments and prohibition of any acts other than conservatory acts unless authorised by the supervisory

Depository

Contractual flexibility to depart from the 2-month notice period for a depository change

A SICAR depository contract can be terminated with a notice period set by the parties. If the SICAR has no depository after that period, the CSSF may liquidate it and remove it from the official list.

Suspension of subscriptions and redemptions in case of depository's insolvency proceedings

Subscriptions and redemptions are suspended if a SICAR-SICAV has no depository or its depository enters into insolvency proceedings.

commissioner. As there is an increasing number of withdrawal and lengthening of procedures, the Law allows the appointment of one or more independent supervisory commissioners by the Luxembourg commercial court upon CSSF's request to ease its workload.

Measures aiming to align the SICAR regime to the SIF regime

SICAR's resources

The SICAR must have adequate resources to check the eligibility of investors.

CSSF prior authorisation

The SICAR must obtain the CSSF authorisation before the SICAR can start its activities.

Valuation of contribution in kind

The valuation report for contribution in kind in a SICAR must be drawn up by an auditor (*révisEURd'entreprise*).

Liquidation of sub-fund

The CSSF can withdraw the authorisation of a sub-fund in a SICAR without affecting the SICAR's overall licence, which will remain on the official list.

Suspension of subscription in case of liquidation

After an event giving rise to liquidation, SICARs can only accept subscriptions for liquidation purposes.

CSSF powers to suspend redemptions

The CSSF can suspend redemptions in the interest of investors in case of breach to legal requirements relating to the organisation or functioning of a SICAR.

Clarification

Dirigeants

Each *dirigeant* of a SICAR must be approved by the CSSF and meet the requirements set out in the SICAR act. Each of the following persons is to be considered as a dirigeant:

- for a SICAR in the form of an SCA, an SCS or an SCSp or Sàrl: each of the managers (*gérants*); and
- for a SICAR in the form of an SA: each member of the managing board or the supervisory board.

Extension of the period to reach the minimum capital

The Law extends the deadline to meet the minimum capital requirement from 12 months to 24 months.

PART II UCI

Using Part II UCIs as private funds: More flexible features

Expanding corporate forms available for Part II UCIs

Part II UCIs may be established as SICAV SCA, SCS, SCSp and Sàrl, in addition to SICAV-SA.

However, Part II UCIs established as SICAV SCA, SCS or SCSp must appoint an authorised AIFM.

Issuance of shares/units by closed-ended Part II UCIs

Closed-ended Part II UCIs SICAVs and FCPs can determine in their constitutive documents rules regarding the issue price of their shares/units.

Ensuring the identification of Part II UCI in a growing market

Part II UCIs in the form of SICAVs must add the abbreviation "SICAV-Part II UCI" (SICAV-OPC *partie II* in French) or the full expression "investment company with variable capital – investment fund subject to Part II of the UCI act" (*société d'investissement à capital variable – fonds d'investissement soumis à la partie II de la loi 2010*), after their corporate form.

Extension of the period to reach the minimum capital

The Law extends the deadline to meet the minimum capital requirement from 6 months to 12 months.

Tax incentives for European products

Exemption from subscription tax for ELTIF

Part II UCIs-ELTIF are exempted from the subscription tax.

Exemption from subscription tax for PEPP

Part II UCIs-PEPP are exempted from the subscription tax.

Depository

Contractual flexibility to depart from the 2-month notice period for a depository change

A Part II UCI depository contract can be terminated with a notice period set by the parties. If the Part II UCI has no depository after that period, the CSSF may liquidate it and remove it from the official list.

Alignment between SICAV and FCP regime on the suspension of subscriptions and redemptions in case of depository's insolvency proceedings

Subscriptions and redemptions are suspended if a Part II UCI-SICAV has no depository or its depository enters into insolvency proceedings.

A common framework for efficient liquidation of asset managers and regulated funds

New supervisory commissioners to speed-up non-judicial liquidations

The CSSF currently automatically acts as supervisory commissioner by virtue of law in case of withdrawal of a Part II UCIs from the CSSF official list. The withdrawal from the official list entails a suspension from all payments and prohibition of any acts other than conservatory acts unless authorised by the supervisory commissioner. As there is an increasing number of withdrawal and lengthening of procedures, the Law allows the appointment of one or more independent supervisory commissioners by the Luxembourg commercial court upon CSSF's request to ease its workload.

Tax incentives for European products

Exemption from subscription tax for PEPP

Part II UCIs-PEPP are exempted from the subscription tax.

Depositary

Contractual flexibility to depart from the 2-month notice period for a depositary change

A UCITS depositary contract can be terminated with a notice period set by the parties. If the UCITS has no depositary after that period, the CSSF may liquidate it and remove it from the official list.

Alignment between SICAV and FCP regime on the suspension of subscriptions and redemptions in case of depositary's insolvency proceedings

Subscriptions and redemptions are suspended if a UCITS-SICAV has no depositary or its depositary enters into insolvency proceedings.

Alignment of management companies regime with AIFM regime

Own funds

The own funds may only be invested in liquid assets or assets easily convertible in short-term liquidity that are not speculative.

A common framework for efficient liquidation of asset managers and regulated funds

Harmonisation of liquidation requirements between funds and their managers

The CSSF must approve the liquidator in case of voluntary liquidation, who must be of good repute and have the adequate professional skills. No liquidation auditor (*Commissaire à la liquidation*) is needed. UCITS Management companies must cease all their activities related to fund management, discretionary portfolio management, and any ancillary activities (if applicable) before entering into voluntary liquidation.

New supervisory commissioners to speed-up non-judicial liquidations

The CSSF currently automatically acts as supervisory commissioner by virtue of law in case of withdrawal of a UCITS Management company from the CSSF official list. The withdrawal from the official list entails a suspension from all payments and prohibition of any acts other than conservatory acts unless authorised by the supervisory commissioner. As there is an increasing number of withdrawal and lengthening of procedures, the Law allows the appointment of one or more independent supervisory commissioners by the Luxembourg commercial court upon CSSF's request to ease its workload.



Alignment of management companies regime with AIFM regime

Tied Agent

AIFMs can now use tied agents, such as UCITS management companies.

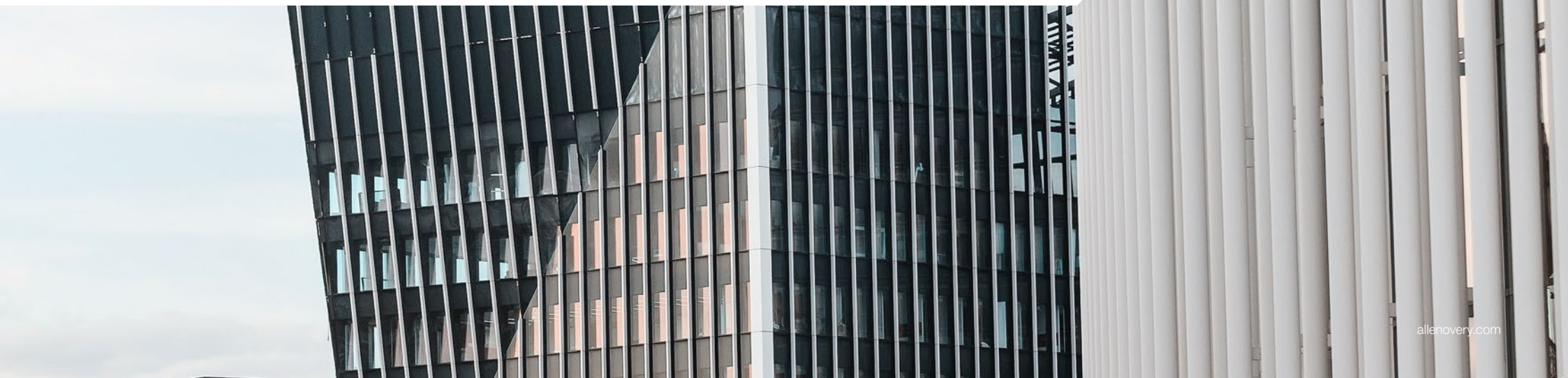
A common framework for efficient liquidation of asset managers and regulated funds

Harmonisation of liquidation requirements between funds and their managers

The CSSF must approve the liquidator in case of voluntary liquidation, who must be of good repute and have the adequate professional skills. No liquidation auditor (*Commissaire à la liquidation*) is needed. AIFM must cease all their activities related to fund management, discretionary portfolio management, and any ancillary activities (if applicable) and must sell their participations in AIFs before entering into voluntary liquidation.

New supervisory commissioners to speed-up non-judicial liquidations

The CSSF currently automatically acts as supervisory commissioner by virtue of law in case of withdrawal of an AIFM from the CSSF official list. The withdrawal from the official list entails a suspension from all payments and prohibition of any acts other than conservatory acts unless authorised by the supervisory commissioner. As there is an increasing number of withdrawal and lengthening of procedures, the Law allows the appointment of one or more independent supervisory commissioners by the Luxembourg commercial court upon CSSF's request to ease its workload.



Alignment of Management companies regime with AIFM regime

Own funds

The own funds may only be invested in liquid assets or assets easily convertible in short-term liquidity that are not speculative.

A common framework for efficient liquidation of asset managers and regulated funds

New supervisory commissioners to speed-up non-judicial liquidations

The CSSF currently automatically acts as supervisory commissioner by virtue of law in case of withdrawal of a Chapter 16 management company from the CSSF official list. The withdrawal from the official list entails a suspension from all payments and prohibition of any acts other than conservatory acts unless authorised by the supervisory commissioner. As there is an increasing number of withdrawal and lengthening of procedures, the Law allows the appointment of one or more independent supervisory commissioners by the Luxembourg commercial court upon CSSF's request to ease its workload.

Abbreviations

AIF	Alternative Investment Fund
AIFM	Alternative Investment Fund Manager
Chap 16	Management company authorised under Chapter 16 of the Luxembourg law of 17 December 2010 on undertakings for collective investment, as amended from time to time
CSSF	<i>Commission de Surveillance du Secteur Financier</i> , the Luxembourg supervisory authority for the financial sector
ELTIF	European Long-Term Investment Fund
FCP	Common fund (<i>Fonds Commun de Placement</i>)
Part II UCI	Undertakings for collective investment, subject to Part II of the Luxembourg law of 17 December 2010 on undertakings for collective investments, as amended from time to time
PEPP	Pan-European Personal Pension product
RAIF	Reserved Alternative Investment Fund
RCS	The Luxembourg Trade and Companies Register (<i>Registre de Commerce et des Sociétés</i>)
SA	Public limited liability company (<i>Société Anonyme</i>)
Sàrl	Private limited liability company (<i>Société à responsabilité limitée</i>)
SCA	Corporate partnership limited by shares (<i>Société en Commandite par Actions</i>)
SCS	Common limited partnership (<i>Société en Commandite Simple</i>)
SCSp	Special limited partnership (<i>Société en Commandite Spéciale</i>)
SICAR	Investment Company in Risk Capital
SICAR act	Luxembourg act of 15 June 2004 on the investment company in risk capital, as amended
SICAV	Investment Company with Variable Capital
SIF	Specialised Investment Fund
SIF act	Luxembourg act of 13 February 2007 on Specialised Investment Funds, as amended
UCI act	Luxembourg act of 17 December 2010 on Undertakings for Collective Investment, as amended
UCITS	Undertakings for Collective Investment in Transferable Securities
UCITS Manco	Management company authorised under Chapter 15 of the Luxembourg law of 17 December 2010 on Undertakings for Collective Investment, as amended from time to time, managing one or more UCITS

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