

# New structuring opportunities for democratised private asset vehicles and other forthcoming changes: upgrading of the Luxembourg investment fund toolbox

A new bill of law N°8183 ("Bill 8183") was deposited at the end of March 2023 with the Luxembourg Parliament with the aim to improve and modernise the Luxembourg toolbox relating to investment funds by proposing certain targeted amendments to the following Luxembourg laws:

- Law of 15 June 2004 on the investment company in risk capital ('SICAR Law"),
- Law of 13 July 2007 on specialised investment funds ('SIF Law"),
- Law of 17 December 2010 on undertakings for collective investment ('UCI Law"),
- Law of 12 July 2013 on alternative investment fund managers ('AIFM Law"), and
- Law of 23 July 2016 on reserved alternative investment funds ('RAIF Law").

## Why is Bill 8183 important for managers engaging in the democratisation of their private asset strategies?

By modernising the Luxembourg investment fund toolbox, Bill 8183 intends to increase structuring opportunities for sponsors that wish to expand to non-professional investors the access to their private strategies (a trend known as 'democratisation of private assets') which is likely to reflect on the attractiveness and competitiveness of the Luxembourg financial centre.

In this respect, Bill 8183 proposes, in particular, to modernise the Part II UCIs regime (in which any type of investors - including retail - may invest) by offering new structuring options and flexibilities (including the possibility to structure Part II UCIs as partnerships), as well as wider access to RAIFs' alternative investment strategies by well-informed investors other than professional investors, including through active marketing of RAIFs in Luxembourg. These amendments will also indirectly broaden the scope of available legal structures for ELTIFs, which will be of particular relevance in the context of ELTIF 2. ELTIF

funds are often structured in Luxembourg as Part II UCIs or RAIFs.

Besides the above new perspectives for private asset democratisation, Bill 8183 also proposes certain other improvements, adjustments and harmonisation of the UCI, SIF, SICAR, RAIF and AIFM Laws, the most important of which are briefly addressed below with the exception of those changes that are not new but just codify in the laws the CSSF's existing regulatory practice.

## What is new for Luxembourg investment funds?

### *New perspectives for democratisation of private assets*

- **Additional legal forms for Part II SICAVs** Possibility for Part II SICAVs, as is already the case for SICAV-SIFs/RAIFs, to be formed as partnerships limited by shares (SCA), common limited partnerships (SCS), special limited partnerships (SCSp), private limited companies (Sàrl) or cooperatives in the form of a public limited company (SCSA).
- **Valuation of assets of Part II SICAVs** Flexibility for Part II SICAVs, as is already the case for SIFs and RAIFs, to have their assets valued at fair value (and not necessarily on the last known stock exchange quotation or probable realisation value) unless otherwise provided for in their constitutive documents. Surprisingly, no similar flexibility has been provided for Part II FCPs by Bill 8183, whilst such a possibility does exist for FCP-SIFs/RAIFs.
- **Determination of issue price for closed-ended Part II FCPs/SICAVs** Possibility for closed-ended Part II FCPs/SICAVs to issue their units/shares/partnership interests at a price determined in accordance with their constitutive documents (and not necessarily at a price obtained by dividing the NAV of the FCP/SICAV by the number of units/shares/partnership interests outstanding). This change may be particularly relevant for listed closed-ended funds as well as for non-listed and closed-ended private equity funds, which generally issue their units/shares/partnership interests based on the stock market price respectively at fixed price subject to the application of "equalisation" mechanisms.
- **Marketing of RAIFs in Luxembourg** Bill 8183 proposes to end a debate in Luxembourg on the scope of investors to which a RAIF may be marketed in Luxembourg by clearly setting out that such RAIFs may be marketed in Luxembourg to all well-informed investors, even those that do not qualify as professional investors.

### *Other proposed amendments*

- **Harmonisation of the legal definition of "well-informed investors" for SIFs, SICARs and RAIFs:** This includes (i) explicit cross-reference to MiFID to define professional investors, (ii) lowering of the current EUR 125,000 minimum investment amount required from well-informed investors other than professional and institutional investors to **EUR 100,000** (threshold aligned with EuVECA and EuSEF Regulations) and (iii) reference to the same entities (including explicitly authorised AIFMs) to certify the status of other well-informed investors.
- **Time limit to reach minimum subscribed capital/net assets for Part II UCIs, SIFs, SICARs and RAIFs:** Increase of the period of time within which SIFs, SICARs and RAIFs must reach the legally prescribed minimum amount of subscribed capital/net assets to **24 months** (previously 12 months) and increase of this period of time to **12 months** (previously 6 months) for Part II UCIs.

- **Simplification of the constitution formalities for SICAV/SICAF-RAIFs** Removal of the requirement to have the constitution of the RAIF recorded in a notarial deed within 5 working days from the constitution in respect of SICAV/SICAF-RAIFs incorporated by notarial deed.
- **Limits to issue and redemption of securities for SICARs and SICAVs/SICAFs** Extension to SICARs and SICAVs/SICAFs set up as UCITS, Part II UCIs, SIFs and RAIFs of the prohibition already applicable to FCPs under the SICAR, SIF, UCI and RAIF Laws to issue or redeem securities or partnership interests (i) during any period where there is no depositary, and (ii) where the depositary is put into liquidation, declared bankrupt or is subject to any similar proceedings.
- **New delegation and other provisions in SICAR Law** Introduction into the SICAR Law of new provisions aligned, to a large extent, with the provisions of the SIF Law. This includes, amongst others, (i) specific conditions for the delegation of functions also for SICAR non-AIFs (subject to transitional provisions), (ii) approval by the CSSF of the persons in charge of the investment portfolio management, (iii) obligation to have a statutory auditor's report in the case of in-kind contributions, and (iv) possibility for CSSF to withdraw the authorisation of a SICAR's sub-fund without this giving rise to the withdrawal of the SICAR from the official list.
- **Replacement of depositary of regulated funds** The provisions dealing with the replacement of a resigning or dismissed depositary of UCITS, Part II UCI, SIF or SICAR are amended in a manner to require that the contract concluded with the depositary must contain prior notice provisions and that a replacement depositary must be appointed prior to the expiry of such notice period, failing which the CSSF will remove the relevant fund from the CSSF's official list. The change aims at avoiding that there can be a period where no depositary is officially/contractually appointed.
- **Reform of supervisory commissioner regime applicable to regulated funds:** Regime already existing for UCITS, Part II UCIs, SIFs and SICARs withdrawn from the CSSF's official list before they are put into judicial liquidation, but Bill 8183 slightly modifies and further specifies the required competences, professional experience, duties and reporting obligations of the supervisory commissioner(s) to be appointed by the district court.
- **Application of bankruptcy rules to regulated funds:** Possibility for the district court, in the case of judicial liquidation of UCITS, Part II UCIs, SIFs and SICARs, to apply the full set of rules governing bankruptcy (including those concerning the cessation of payment and suspect period) to any such liquidation.
- **Tax amendments:** New exemption from subscription tax for (i) Part II UCIs, SIFs and RAIFs (or their sub-funds) authorised as ELTIF in accordance with the ELTIF Regulation<sup>1</sup>, and (ii) UCITS/Part II UCIs (or their sub-funds) reserved to investors who are savers in the context of a PEPP established under the PEPP Regulation<sup>2</sup>. Subscription tax exemption and reduction provisions of UCI, SIF and RAIF Laws are also aligned, subject to certain transitional provisions, with the new terminology and conditions of the MMF Regulation<sup>3</sup>. For UCITS and Part II UCIs, the changes imply that all funds (or their sub-funds) that qualify as Money Market Funds under the MMF Regulation benefit of the reduced subscription tax rate of 0.01% and, if in addition they qualify as Short Term Money Market Funds, are reserved to institutional investors and have obtained the highest possible rating from a recognized rating agency, they are exempt from the subscription tax.

## What is new for Luxembourg investment fund managers?

- **Tied Agents for AIFMs:** Possibility for authorised AIFMs to appoint tied agents within the meaning of the Law of 5 April 1993 on the financial sector for the purposes of exercising the activities for which they have been authorised, in which case the AIFMs must comply with the same conditions and rules as are already applicable to Chapter 15 ManCos appointing tied agents.
- **Dissolution and liquidation of Chapter 15/16 ManCos and authorised AIFMs ("IFMs")**  
Extension, to a large extent, to IFMs of (i) the regime of voluntary liquidation as is already applicable to regulated funds, and (ii) the revised regime of supervisory commissioners and judicial liquidation procedure applicable to regulated funds withdrawn from the CSSF's official list (see above).

## When will the changes come about?

The deposit of Bill 8183 with the Luxembourg Parliament constitutes the start of the legislative procedure, but it is anticipated that the full legislative process could be completed soon.

In principle, most of the proposed amendments to the SICAR, SIF, UCI, AIFM and RAIF Laws (as described above but possibly with certain modifications as may be agreed during the legislative procedure) should apply and be complied with immediately on the fourth day following the publication of the new law in the *Mémorial A*.

Only a few limited transitional provisions are currently foreseen in respect of certain amendments, e.g. in favour of SICARs for compliance with the new delegation requirements.

- 1 Regulation (EU) 2015/760 of the European Parliament and of the Council of 29 April 2015 on European long-term investment funds
- 2 Regulation (EU) 2019/1238 of the European Parliament and of the Council of 20 June 2019 on a pan-European Personal Pension Product (PEPP).
- 3 Regulation (EU) 2017/1131 of the European Parliament and of the Council of 14 June 2017 on money market funds.

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