



CHEVALIER & SCIALES  
LUXEMBOURG LAW FIRM

Q1

# INVESTMENT MANAGEMENT

Quarterly newsletter 2023 - Q1

JANUARY TO MARCH

# INVESTMENT FUNDS



*'Investment funds work informs much of boutique independent law firm Chevalier & Sciales' deal flow and it is this determined focus on work in the sector which ensures that clients receive 'very client focused and pragmatic' advice to fund managers on their fund structuring, regulatory and operational requirements. Although it also handles work in the retail space, the firm has gained most traction within the alternatives space, including on debt, private equity and hedge funds.'*

*Testimonial: 'The practice is very client focused and pragmatic. But most importantly, the partners have an extensive knowledge in their respective fields.'*



*'Well-positioned to handle alternative funds, whether first-time managers or historical players, the firm advises on time-to-market vehicles with a high demand for RAIFs and SCSps. Concerning asset classes, Chevalier & Sciales practice covers a diversity of assets, such as PE and real estate and is increasingly active in relation to crypto, hedge and debt funds.'*

# LITIGATION, ARBITRATION & DISPUTE RESOLUTION



*'The boutique combines creative strategies with a practical, business-centric approach, whether managing high-stakes disputes for private entities and financial institutions, advising on contentious matters or in alternative dispute resolutions. They successfully represented a financial institution in the enforcement of a €500 million arbitral award against a European State in the Grand-Duchy of Luxembourg.'*



*'Headed by Rémi Chevalier, the arbitration department recently handled the defense of claimants in an investment arbitration regarding the application of the \$1 billion bilateral investment treaty between Switzerland and the Czech Republic. Chevalier has been appointed counsel before the European Courts of Human Rights.'*

## OTHER 2023 RANKINGS:

*Private equity*

*Restructuring & Insolvency*

*Mergers & Acquisitions*

*Banking, finance & capital markets*

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# CSSF LAUNCHES DATA COLLECTION EXERCISE FOR IFMS ON SFDR RELATED DISCLOSURES

The CSSF has launched a data collection exercise related to the SFDR. The exercise focuses on the collection of information regarding organisational arrangements of IFMs.

The data collection is necessary for the CSSF to assess the compliance of IFMs with the requirements applicable under SFDR .

The CSSF is requiring Luxembourg-domiciled UCITS management companies, SIAGs, authorised AIFMs, managers of a qualifying venture capital fund registered in accordance with Article 14 of Regulation (EU) No 345/2013 and managers of a qualifying social entrepreneurship fund registered in accordance with Article 15 of Regulation (EU) No 346/2013 to complete a dedicated questionnaire via the launch of a new eDesk module, "SFDR-IFM disclosures" as from 2 February 2023.

The questionnaire must be completed and submitted by an eDesk user linked to the IFM.

The deadline for submission of the

questionnaire is 2 March 2023.

IFMs must ensure that the information provided is being kept up-to-date, and can use the "Create update declaration" function under the new eDesk module to allow the amendment of information initially submitted.

The CSSF will communicate further details on timing and practical proceeding of the data collection for the collection of information contained in the PAI statements and in the precontractual and periodic disclosure templates.

The CSSF also reminds industry participants that a Common Supervisory Action exercise (CSA) in relation to sustainability risks and disclosures is currently under discussion at ESMA level, focusing on both SFDR Level 1 and Level 2 provisions as well as the requirements outlined in the ESMA Supervisory Briefing on Sustainability risks and disclosures in the area of investment management.

## CSSF COMMUNICATION ON NOTIFICATION TEMPLATES

On 8 February 2023, the CSSF updated the communication dated 19 January 2023 relating to the publication of the notification templates which investment fund managers shall use and submit to the CSSF when:

- An application of an investment fund manager is submitted to the CSSF for:
  - i. its registration as an alternative investment fund manager subject to the Law of 12 July 2013 on alternative investment fund managers where the alternative investment fund manager exclusively manages alternative investment funds which are not subject to authorisation and prudential supervision by an official supervisory authority in Luxembourg; or
  - ii. its registration as an alternative investment fund manager subject to Regulation (Eu) No 345/2013 of the European Parliament and of the Council of 17 April 2013 on European Venture Capital Funds (Euveca) and/or Regulation (Eu) No 346/2013 of the European Parliament and of the Council of 17 April 2013 on European Social Entrepreneurship Funds (EUSEF);
  - iii. or its authorisation according to the Law of 17 December 2010 relating to undertakings for collective investment and/or Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers.

The notification template for the registration and/or authorisation of an investment fund manager is available [here](#).

- Or, an application of an investment fund manager is submitted to the CSSF requesting:
  - i. the extension of the activities performed by the investment fund manager seeking the approval of additional investment services and/or services regulated by MiFID; or
  - ii. the modification of the shareholding

structure of the investment fund manager.

The notification template for the extension of the services performed by the investment fund manager and/or the modification of its shareholding structure is available [here](#).

For more insights, the updated CSSF communication is available [here](#).

## CSSF INTRODUCES NEW NOTIFICATION TEMPLATE FOR CRITICAL ICT OUTSOURCING

The Commission de Surveillance du Secteur Financier (CSSF) has recently announced on 17 February 2023 the publication of a new notification template for critical or important ICT outsourcing. The new template is effective from 20th February 2023 and replaces the previous notification template for outsourcing of material IT activities.

This update is in line with the guidelines set out in Circular CSSF 22/806 on outsourcing arrangements. The new template has been designed to align the terminology and structure of the notification with the circular.

The notification period and communication channels remain unchanged, and In-Scope Entities must use the new template to notify the CSSF of critical or important ICT outsourcing arrangements from 20th February 2023 onwards.

However, to avoid penalizing entities that are well advanced in the preparation of notifications based on the previous template, In-Scope Entities may use the previous template during a transitional period until 20th March 2023. After this date, the new template will be the only acceptable notification format.

It is important for In-Scope Entities to comply with the instructions and forms set out in the circular. Failure to do so may result in penalties or other consequences. In case of any questions or concerns, In-Scope Entities are advised to liaise with their usual contact person within the CSSF.

In conclusion, this new notification template for critical or important ICT outsourcing arrangements is an important development in the financial sector. The CSSF's efforts to standardize and improve communication regarding ICT outsourcing arrangements will contribute to greater transparency and security in the financial sector.

The notification template for outsourcing of material IT activities is available [here](#). The CSSF communication is available [here](#).

## EU UPDATES AML/ CFT BLACKLIST AND ADDS FIVE COUNTRIES OUTSOURCING

The European Commission has issued a new regulation to amend Delegated Regulation (EU) 2016/1675 by adding the Democratic Republic of the Congo, Gibraltar, Mozambique, Tanzania and the United Arab Emirates to Table I of the Annex and deleting Nicaragua, Pakistan, and Zimbabwe from that table. The regulation is aimed at ensuring the effective protection of the integrity and proper functioning of the financial system and the internal market of the Union from money laundering and terrorist financing.

The European Union has been identifying countries with strategic deficiencies in their regimes on Anti-Money Laundering and Countering Financing of Terrorism (AML/CFT) that pose significant threats to the financial system of the Union. In line with Article 9(4) of Directive (EU) 2015/849, the Commission takes the recent available information into account, in particular recent Financial Action Task Force (FATF) Public Statements, the FATF list of 'Jurisdictions under Increased Monitoring', and FATF reports of the International Cooperation Review Group in relation to the risks posed by individual third countries.

Since the latest amendments to Regulation (EU) 2016/1675, the FATF has significantly updated its list of 'Jurisdictions under Increased Monitoring'. At its plenary meeting in March 2022, the FATF added the United Arab Emirates (UAE) to its list and deleted Zimbabwe from its list. At its plenary meeting in June 2022, the FATF added Gibraltar to its list. At its plenary meeting in October 2022, the FATF added the Democratic Republic of the Congo (DRC), Mozambique and Tanzania to its list and deleted Nicaragua and Pakistan from its list. All those changes were assessed by the Commission in line with Article 9 of Directive (EU) 2015/849.

The UAE made a high-level political commitment in February 2022 to work with the FATF and the Middle East and North Africa Financial Action Task Force to strengthen the effectiveness of its AML/CFT regime. Since then, the UAE demonstrated positive progress, including by providing additional resources to the Financial Intelligence Unit (FIU) to strengthen the FIU analysis and providing financial intelligence to Law Enforcement Authorities and the Public Prosecutors for combating high-risk ML threats. The UAE should continue to work to implement its FATF action plan.

Despite that commitment and progress, the concerns that led to the listing of the UAE by the FATF have not yet been fully addressed. The UAE should therefore be considered as a country that has strategic deficiencies in its AML/CFT regime under Article 9 of Directive (EU) 2015/849.

In June 2022, Gibraltar made a high-level political commitment to work with the FATF and

MONEYVAL, the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism of the Council of Europe, to strengthen the effectiveness of its AML/CFT regime. Gibraltar has made progress on a significant number of its MER's recommended actions since the adoption of its MER in December 2019, such as completing a new national risk assessment, addressing the technical deficiencies in relation to Beneficial Owner-related recordkeeping, introducing transparency requirements for nominee shareholders and directors, strengthening the financial intelligence unit, and refining its ML investigation policy in line with risks.

The DRC, Mozambique and Tanzania have been identified as countries that have strategic deficiencies in their AML/CFT regimes. The FATF identified significant strategic deficiencies in their AML/CFT regimes, resulting in the countries being listed as 'Jurisdictions under Increased Monitoring'. The Commission has considered the recent available information, including FATF reports of the International Cooperation Review Group in relation to the risks posed by the three countries.

The European Commission has reviewed the progress made by Nicaragua, Pakistan, and Zimbabwe in addressing strategic deficiencies in their AML/CFT regimes, which led to their delisting by the FATF in 2022. The FATF has welcomed the significant progress made by these countries, noting that they have established legal and regulatory frameworks to meet their commitments in their respective action plans. The Commission's assessment concludes that





Nicaragua, Pakistan, and Zimbabwe no longer have strategic deficiencies in their AML/CFT regimes and have addressed related technical deficiencies to meet their commitments. These countries will continue to work with regional bodies to further improve their AML/CFT systems, including oversight of non-profit organizations in line with FATF standards.

As of today the following countries are identified as high-risk third countries:

Afghanistan  
Barbados  
Burkina Faso  
Cambodia  
Cayman Islands  
Democratic Republic of the Congo  
Gibraltar  
Haiti  
Jamaica  
Jordan  
Mali  
Morocco  
Mozambique  
Myanmar  
Panama  
Philippines  
Senegal  
South Sudan  
Syria  
Tanzania  
Trinidad and Tobago  
Uganda  
United Arab Emirates  
Vanuatu  
Yemen

The Commission Delegated Regulation (EU) 2023/410 of 19 December 2022 amending Delegated Regulation (EU) 2016/1675 as regards adding the Democratic Republic of the Congo, Gibraltar, Mozambique, Tanzania and the United Arab Emirates to Table I of the Annex to Delegated Regulation (EU) 2016/1675 and deleting Nicaragua, Pakistan and Zimbabwe from that table is available [here](#).

## CSSF NOTIFICATION REGARDING THE AMENDED SFDR RTS

The CSSF would like to bring to the attention of Financial Market Participants (FMPs) that the amended SFDR RTS has entered into force on 20 February 2023. These amendments require precontractual and periodic transparency obligations in relation to Taxonomy-aligned fossil gas and nuclear energy-related activities for financial products disclosing under Articles 8 and 9 of SFDR.

Regarding precontractual documents, FMPs must provide the disclosure information in the format of the templates outlined in the annexes of the amended SFDR RTS for:

Investment funds launched after the entry into force of the amended SFDR RTS; and Existing investment funds that introduce changes in the prospectus/issuing document after

the entry into force of the amended SFDR RTS.

With the purpose of simplifying the CSSF review process, in cases where changes to the prospectus/issuing document are limited to the usage of new templates outlined in the appendices of the updated SFDR RTS, FMPs must confirm in the application file submitted to the CSSF that (i) they have utilized the new templates and (ii) no further modifications have been made.

Regarding periodic reports, FMPs must present the periodic disclosure information in the format of the templates set out in the annexes of the amended SFDR RTS for annual reports of investment funds issued after the amended SFDR RTS comes into effect, regardless of the financial year-end of the investment funds.

## SFDR CSSF FAQ UPDATES: FUND NAMES, SUSTAINABLE INVESTMENTS & EPM TECHNIQUES

The CSSF (Commission de Surveillance du Secteur Financier) has released on 13 March 2023 an [updated FAQ on the Sustainable Finance Disclosure Regulation \(SFDR\)](#) which offers guidance on adhering to the SFDR requirements. In this article, we will delve into the latest revisions made to questions 7, 8, and 9 in the FAQ.

Q7: Use of ESG and/or Sustainability related terminology in fund names

Question 7 focuses on the use of ESG and sustainability-related terminology in fund names. The CSSF emphasizes that fund names should not be misleading and must align with the fund's investment objective and policy as well as the applicable guidance on fund names. The CSSF expects Financial Market Participants (FMPs) to utilize terminology like "ESG," "sustainable," or "ethical" only when substantiated by evidence of sustainability characteristics that are reflected in the fund's investment objectives, policies, and strategy as described in the relevant documentation. FMPs must also take note of any updates on this topic at the European level.

Q8: Methodology used to define sustainable investments

Question 8 pertains to the methodology used to define sustainable investments. FMPs must provide investors with the necessary information to make informed judgments about the proposed investment, and they must publish and maintain information on the methodologies used to assess, measure, and monitor the impact of sustainable investments chosen for the financial product. Although further clarification is awaited at the European level, FMPs must provide investors with the methodology used to define sustainable investment and the applied thresholds through mandatory disclosure templates, prospectus, or website disclosures.

Q9: Efficient portfolio management ("EPM") techniques

Question 9 discusses Efficient Portfolio Management (EPM) techniques. A fund disclosing under Article 9 SFDR may include investments or techniques used for hedging purposes or relating to cash as ancillary liquidity, provided that they align with the sustainable investment objective of the fund. The CSSF expects FMPs to assess the precise purpose of any use of EPM techniques and determine whether they could fall within the “remaining portion” of the investment portfolio when used in the context of funds disclosing under Article 9 SFDR.

In conclusion, the updated FAQ provides more detailed guidance on how FMPs can comply with SFDR requirements, particularly regarding questions 7, 8, and 9. It is critical for FMPs to comply with SFDR requirements and ensure that their fund names are not misleading. Furthermore, FMPs must provide investors with information on the methodology used to define sustainable investments and assess, measure, and monitor their impact.

## AIFMD II - LATEST DEVELOPMENTS

On 15 February 2023, the European Parliament confirmed the entry into the triologue negotiations by plenary vote. The provisional agreement resulting from the dialogues must then be voted on by both Parliament and Council.

For more information, please discover [our timeline of the latest developments in the AIFMD II legislative process](#).

## ELTIF - LATEST DEVELOPMENTS

Discover our new comprehensive [brochure on the ELTIF \(European Long-Term Investment Funds\) and Luxembourg ELTIF structures](#).

On 15 February 2023, the European Parliament passed the ELTIF 2 Regulation to revive ELTIFs and facilitate funds flowing towards the real economy, including green and digital priority areas. The [ELTIF 2 Regulation](#) has been published in the Official Journal of the EU on 20 March 2023. It will enter into force on 9 April 2023 and will apply as from 10 January 2024.

Our informative guide provides an in-depth overview of the ELTIF, covering topics such as:

- Key features and regulatory oversight
- Fund structuring options and marketing rules
- Investment, portfolio composition, and diversification restrictions
- Documentation and reporting requirements
- Distribution and redemption rules
- Legal forms, compartments, and share classes
- Investor eligibility and taxation
- Practical use and a comparison table of Luxembourg alternative investment funds (AIFs)

For more information, visit our [website](#).

# HOW CAN WE ASSIST YOU?

Our team:

- Supports clients in finding appropriate investment vehicles to meet their requirements and goals from a marketing, regulatory and legal perspective.
- Introduces clients to service providers that meet their requirements, including custodian banks, AIFMs, fund administrators, registrars and transfer agents, auditors, paying agents and listing agents.
- Assists with the establishment of UCITS and alternative investments funds such as SIFs, RAIFs, SICARs, ELTIFs, special limited partnerships (SCSp and common limited partnerships (SCS) as well as securitisation companies and securitisation funds including drafting of PPMs, assistance with incorporation of the fund, the general partner, carried interest vehicles, the co-investment vehicles and SPVs and regulatory filing with the CSSF.
- Assists with the migration of offshore funds to Luxembourg.
- Provides corporate support services throughout a fund's lifetime, including amendment of fund documents, restructuring, and launch or closure of sub-funds or share classes.
- Assists with changes of service provider.
- Assists with the clearing and the listing of shares, units, notes and bonds on the Luxembourg Stock Exchange's regulated or EURO MTF markets.
- Supports registration of the fund in other jurisdictions, in co-operation with local service providers.
- Advises on AIFMD-related issues.
- Advises fund promoters on domestic private placement rules for marketing their funds in Luxembourg.
- Keeps clients up to date with legal and regulatory developments.



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Chevalier & Sciales is a Luxembourg law firm established 17 years ago with specialist expertise in investment management, corporate transactions, banking and finance as well as high-level litigation and dispute resolutions. Our dynamic litigation and transaction teams have an international reputation for bringing together excellence and intellectual rigour with a practical and business-minded approach in serving our clients.

Our aim is to offer a one-stop-shop service to our clients and to provide tailored solutions to meet their needs, responsively and cost-effectively. Our practice areas are structured to ensure a comprehensive understanding of our clients' business and markets. We work with recognised tax experts and other service providers to provide you with the assistance and services you require through every aspect of your transactions and business.

Chevalier & Sciales is recommended and listed in the area of investment funds, litigation and dispute resolution and banking and finance.

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