



CHEVALIER & SCIALES
LUXEMBOURG LAW FIRM

Q2

INVESTMENT MANAGEMENT

Quarterly newsletter 2023 - Q2

APRIL TO JUNE

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.'

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LUXEMBOURG FUND LAW REFORMS: KEY PROPOSED CHANGES TO RAIF, SIF, SICAR, AIFM, AND UCI LAWS

On March 24, 2023, a [bill of law](#) was submitted to the Luxembourg Parliament, proposing amendments to the Luxembourg fund laws, namely the Law of 2010 on UCIs (UCI Law), the Law of 2007 on SIFs (SIF Law), the Law of 2004 on SICARs (SICAR Law), the Law of 2013 on AIFMs (AIFM Law), and the Law of 2016 on RAIFs (RAIF Law).

Below is a summary of the main changes:

Definition of “Well-informed Investor”

The proposed amendments aim to harmonize the “well-informed investor” definition in the SIF, SICAR, and RAIF Laws by reducing the investment threshold to EUR 100,000 and aligning the list of entities that can certify the experience of other well-informed investors.

Time Limit for Reaching Minimum Capital

The proposed amendments suggest increasing the subscribed capital time limit

for SICARs, SIFs, and RAIFs to 24 months, while for Part II funds, the time limit is proposed to be extended to 12 months.

Harmonization of Legal Form for Part II UCI

The proposed amendments aim to align the available legal forms for Part II SICAVs with the legal forms permitted under the SIF, SICAR, and RAIF Laws.

Simplification for RAIFs

The proposed amendments also seek to simplify the formation formalities for RAIFs where a RAIF is set up by virtue of articles of association, by eliminating the requirement for a Luxembourg notary to acknowledge the establishment and appointment of an external AIFM within five business days if established through notarial deed, although this requirement still applies to RAIFs established through private deed. Moreover, it clarifies that marketing RAIFs to well-informed investors in Luxembourg is permitted.

Amendments to the AIFM Law

The proposed amendments would allow authorized alternative investment fund managers to have recourse to tied agents as defined by the 1993 financial sector law.

In conclusion, the proposed amendments represent a significant step towards modernizing and improving Luxembourg’s fund toolbox by providing a more consistent and practical approach. It remains to be seen how the proposed amendments will be received by

the Luxembourg Parliament and whether they will ultimately be adopted. The bill of law is subject to the lawmaking procedure and may undergo further changes. We will keep you updated on the evolution of the Luxembourg funds rules..

LATEST EU REGULATIONS UPDATE: NAVIGATING SUSTAINABILITY-RELATED DISCLOSURES & INVESTMENTS IN 2023

In its communication dated 20 April 2023, the CSSF recently drew attention to several publications related to sustainability-related disclosures in the financial services sector. These publications include Regulation (EU) 2019/2088 – SFDR, Commission Delegated Regulation (EU) 2022/1288 (the SFDR RTS), and Regulation (EU) 2020/852 – the EU Taxonomy Regulation.

1. The European Commission adopted a third set of Q&As on the interpretation of SFDR, published by the ESAs on 14 April 2023. The first and second sets of Q&As were adopted and published by

the ESAs in July 2021 and May 2022, respectively. The third set of Q&As includes amendments to the first and second Q&As.

2. The European Commission also published two draft delegated acts relating to the EU Taxonomy Regulation on 5 April 2023. The first draft delegated act provides a new set of technical screening criteria for four environmental objectives, including sustainable use and protection of water and marine resources, the transition to a circular economy, pollution prevention and control, and protection and restoration of biodiversity and ecosystems. It also includes amendments to the Taxonomy Disclosures Delegated Act. The second draft delegated act adds or complements the technical screening criteria for climate change mitigation for certain economic activities in the transport and manufacturing sectors. The draft delegated acts are open for feedback until 3 May 2023.
3. Furthermore, the ESAs published a consultation paper on a proposed review of the SFDR RTS regarding PAI and financial product disclosures on 12 April 2023. The consultation period will be open until 4 July 2023.

In light of these recent publications and developments, financial services firms operating within the European Union must ensure that they are compliant with all relevant regulations and delegated acts. Firms should also stay abreast of any updates or changes to these regulations and delegated acts and adapt their compliance programs accordingly.

CSSF UPDATES ITS FAQ FOR INVESTMENTS IN VIRTUAL ASSETS: IMPACT ON AIFS

On April 6, 2023, the Commission de Surveillance du Secteur Financier (CSSF) released an update to its [Frequently Asked Questions \(FAQs\) regarding virtual assets and undertakings for collective investment \(UCIs\)](#). The update includes modifications to Question 2 and the publication of Question 3A.

Investment conditions for AIFs aimed at Professional Investors

Question 2 of the CSSF FAQ was updated to clarify the conditions under which investments in virtual assets can be made by AIFs aimed at professional investors, but not those aimed at retail investors. These investments can be made as long as they comply with existing regulatory requirements and do not affect the fund's risk profile. An AIF can invest directly and indirectly in virtual assets, provided its units/shares are marketed only to professional investors, and the AIFM must obtain an authorization extension from the CSSF for this new investment strategy.

Risk assessment and internal control functions

The CSSF underlines that investments in financial instruments, such as derivatives or transferable securities with underlying

virtual assets, are to be considered as indirect investments in virtual assets. The CSSF highlights the importance of proper risk assessment and internal control functions when integrating virtual assets into investment policies. Investment managers must make a case-by-case assessment of the impact of virtual assets on the risk profile of investment funds and ensure transparency and timely disclosure to investors.

Clarification on licensing requirements

The CSSF has also included in its updated FAQ, Question 3A, which clarifies that an "Other-Other Fund-Virtual assets" license is not required for a Luxembourg IFM managing an AIF investing in virtual assets through one or several target funds (TF). However, when the AIF invests more than 20% of its NAV in one or several TFs, an IFM authorization for the "fund of funds" strategy is required.

Assessing risks related to virtual assets

The CSSF emphasizes the importance of assessing the risks related to investing in virtual assets, and IFMs must evaluate the ability of the TF's manager to identify and manage such risks. The IFM should provide the CSSF with the results of its assessment upon request. The IFM is responsible for determining whether a TF has virtual assets as its main exposure.

Conclusion: The evolving virtual asset industry

The update to the CSSF FAQ reflects the rapidly evolving nature of the virtual asset industry and the need for regulatory clarity in this area.

As virtual assets continue to gain in popularity, it is likely that regulators around the world will continue to develop new rules and guidelines to govern their use. In Luxembourg, the CSSF will continue to play an important role in ensuring that investors are protected and that the virtual asset industry operates in a safe and secure manner.

CSSF EXTENDS SUBMISSION DEADLINE FOR SFDR PRE-CONTRACTUAL DISCLOSURE DATA COLLECTION

The Commission de Surveillance du Secteur Financier (CSSF) has made significant strides in its efforts to enhance transparency regarding sustainability-related information in the financial sector, guided by the Sustainable Finance Disclosure Regulation (SFDR) and the Taxonomy Regulation (TR). A vital part of this initiative is the data collection exercise relating to pre-contractual product disclosure information. In a recent turn of events, the CSSF announced an extension to the initial submission deadline for this exercise. In its communiqué issued on 27th July 2022, the CSSF announced its intention to launch a

data collection exercise related to SFDR and TR. This move was followed up by a communiqué published on 24th March 2023 detailing the launch of the data collection exercise.

Investment fund managers (IFMs) and institutions for occupational retirement provision (IORPs), qualifying as financial market participants (FMPs), were required to include sustainability-related information in the pre-contractual disclosures of financial products in accordance with SFDR, TR, and the SFDR Regulatory Technical Standards (RTS). The aim of this data collection exercise was to collect, in a digital format, information contained in pre-contractual disclosure documents/ templates.

A broad range of FMPs were included in the scope of this data collection exercise, covering UCITS management companies, authorized AIFMs, registered AIFMs in relation to all Luxembourg-domiciled regulated AIFs they manage, and IORPs subject to specific laws. The user guide provided clarifications on the content and the format of the information to be reported.

Following discussions with financial market participants, the CSSF recognized the complexities of SFDR reporting and extended the deadline for the initial report submission on pre-contractual information for all financial products within the scope of the data collection exercise. As per CSSF communiqué dated 4 May 2023, FMPs are now requested to submit their initial report(s) by 15th June 2023 on a best-effort basis, and in any event, by 31st October 2023.

The decision to extend the initial submission deadline for the SFDR data collection exercise on pre-contractual disclosures underscores the CSSF's commitment to engaging with market participants and recognizing the complexities of SFDR requirements. While the extension provides additional flexibility, it is critical for FMPs to stay vigilant and ensure that their disclosures are compliant, accurate, and up-to-date.

ESMA LAUNCHES CONSULTATION PAPER ON DRAFT REGULATORY TECHNICAL STANDARDS (RTS) UNDER THE REVISED ELTIF REGULATION

On 23 May 2023, the European Securities and Markets Authority (ESMA) initiated a consultation process on draft regulatory technical standards (RTS) under the [amended European Long-Term Investment Funds \(ELTIF\) Regulation](#). The consultation is part of ESMA's mandate to provide the European Commission with RTS further clarifying the revamped ELTIF Regulation.

The proposed provisions are comprehensive, encompassing:

- Criteria for establishing circumstances where the use of financial derivative instruments serves solely for hedging purposes;
- Circumstances that align the life of an ELTIF with the life-cycles of each of its individual assets, as well as different features of the ELTIF's redemption policy;
- The circumstances for the utilization of the matching mechanism, allowing for full or partial matching of transfer requests of units or shares of the ELTIF by exiting investors with transfer requests by potential investors;
- Criteria to be used for certain elements of the schedule for the orderly disposal of the ELTIF assets;
- Cost disclosure.

Interested stakeholders are invited to provide input by 24 August 2023. ESMA aims to submit the final report and draft RTS to the European Commission by 10 January 2024.

A copy of the ESMA consultation paper dated 23 May 2023 can be accessed [here](#).

Additional details about the revised ELTIF regulation can be found in our publication titled "[ELTIFs and Luxembourg ELTIF structures](#)".

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
LUXEMBOURG LAW FIRM

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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