



CHEVALIER & SCIALES
LUXEMBOURG LAW FIRM

Q3

INVESTMENT MANAGEMENT

Quarterly newsletter 2023 - Q3

JULY TO SEPTEMBER

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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AIFMD II – EUROPEAN PARLIAMENT AND COUNCIL REACH PROVISIONAL AGREEMENT ON THE ALTERNATIVE INVESTMENT FUND MANAGERS DIRECTIVE

The press release relating to the Provisional Agreement on new rules for alternative investment fund managers (“AIFMs”) was published on 20 July 2023. The Provisional Agreement pertains, *inter alia*, to the amendment of the alternative investment fund managers directive as amended from time to time (“AIFMD”) with the aim to improving the European capital market and bolstering investor protection within the EU.

The European Parliament and the Council have agreed to enhance the availability of liquidity management tools (“LMTs”) with new requirements to be provided when activating these LMTs. This measure is designed to ensure that AIFMs can handle significant outflows during periods of financial turbulence or turmoil.

Additional requirements have been agreed upon for loan origination funds. These requirements aim to address risks associated with financial stability and investor protection.

In the Provisional Agreement, the rules about the delegation by AIFMs to third parties have been expanded to further strengthen supervision and maintain market integrity.

Moreover, the European Parliament and the Council have agreed, among other things, on enhanced data sharing and cooperation between the national competent authorities and the EU authorities. They have also established new rules to identify undue costs that might be charged to alternative investment funds and rules against names that could be potentially misleading to investors.

Please note that the Provisional Agreement has not yet been published and is subject to further negotiations and confirmation by the Council and the European Parliament before the formal adoption and publication.

Access the press release related to the Provisional Agreement [here](#).

Discover our AIFMD II timeline [here](#).



LAW OF 21 JULY 2023: MODERNIZING LUXEMBOURG'S INVESTMENT FUND TOOLBOX AND ITS IMPACT ON RAIF, SIF, SICAR, AIFM & UCI

Luxembourg has taken a significant stride towards modernizing its investment fund laws with the entry into force of the law of 21 July 2023 on 28 July 2023. It adopted [Bill 8183](#) by the Luxembourg Parliament.

This law introduces amendments to several pivotal fund laws, including the Law of 2010 on Undertakings for Collective Investment ([UCI Law](#)), the Law of 2007 on Specialized Investment Funds ([SIF Law](#)), the Law of 2004 on Investment Companies in Risk Capital ([SICAR Law](#)), the Law of 2013 on Alternative Investment Fund Managers ([AIFM Law](#)), and the Law of 2016 on Reserved Alternative Investment Funds ([RAIF Law](#)).

These amendments are designed to update and strengthen the country's fund-related regulations, bolstering the competitiveness and attractiveness of Luxembourg's financial centre.

The adopted amendments encompass several significant changes, including inter alia:

- a. Undertakings for Collective Investment (UCITS and UCI Part II)
- b. Specialized Investment Funds (SIFs)
- c. Investment Companies in Risk Capital (SICARs)
- d. Reserved Alternative Investment Funds (RAIFs)
- e. Alternative Investment Fund Managers (AIFMs)

a. Undertakings for Collective Investment (UCITS and UCI Part II)

	New regime introduced by the law of 21 July 2023	Previous regime under UCI Law
Timeframe for reaching the minimum capital	The period for achieving subscribed capital has been extended to 12 months for UCIs Part II.	The period for achieving subscribed capital was 6 months for UCIs Part II.
Replacement of depositary	The depositary agreement must include prior notice provisions, and a replacement depositary must be appointed before the expiry of this notice period. During this transition period, outgoing depositaries are still required to safeguard the interests of investors. This change mitigates the risk of automatic de-listing, considering the necessary time for conducting due diligence and onboarding a new depositary.	A 2-month maximum period was previously foreseen to replace a depositary.
Suspension of subscription and/or redemption	Subscriptions and/or redemptions of a SICAV are prohibited: - for the period during which there is no depositary; or - when the depositary is in liquidation, declared bankrupt or undergoing a suspension of payments, an arrangement with its creditors or some other type of management supervision.	The prohibition of subscription and/or redemption of a SICAV for the period during which there was no depositary or when the depositary was in liquidation, declared bankrupt or undergoing a suspension of payments, an arrangement with its creditors or some other type of management supervision was not foreseen under the previous regime.
Formation	UCIs Part II opting for a corporate form as SICAV may take the form of a public limited liability company (SA), corporate partnerships limited by shares (SCA), common and special limited partnerships (SCS/SCSp), private limited liability companies (SARL), as well as cooperatives organized as public companies limited by shares (SCoSA).	UCIs Part II opting for a corporate form as SICAV may take the form of a public limited liability company (SA).



Issuance share/ interests	Closed-ended UCIs Part II may issue shares/interests at a price other than the NAV, provided it is stated in the constitutive documents.	Closed-ended UCIs Part II may issue shares/interests at a NAV price.
Tax	<ul style="list-style-type: none">i. UCIs Part II authorized as ELTIF are exempted from subscription taxii. UCIs Part II reserved to PEPPs are exempted from subscription taxiii. UCIs Part II may benefit from the reduced subscription tax of 0.01% provided that certain conditions are met.	

b. Specialized Investment Funds (SIFs)

New regime introduced by the law of 21 July 2023		Previous regime under SIF Law
Eligibility of well-informed investor	The investment threshold has been lowered to EUR 100,000, and the list of entities authorized to certify the experience of other well-informed investors has been aligned.	The investment threshold was set at EUR 125,000.
Timeframe for reaching the minimum capital	The period for achieving subscribed capital has been extended to 24 months for SIFs.	The period for achieving subscribed capital was 12 months for SIFs.
Replacement of depositary	The depositary agreement must include prior notice provisions, and a replacement depositary must be appointed before the expiry of this notice period. During this transition period, outgoing depositaries are still required to safeguard the interests of investors. This change mitigates the risk of automatic de-listing, considering the necessary time for conducting due diligence and onboarding a new depositary.	A 2-month maximum period was previously foreseen to replace a depositary.
Suspension of subscription and/or redemption	Subscriptions and/or redemptions of a SICAV are prohibited: - for the period there is no depositary; - the depositary is in liquidation, declared bankrupt or undergoing a suspension of payments, an arrangement with its creditors or some other type of management supervision	The prohibition of subscription and/or redemption of a SICAV for the period during which there was no depositary or when the depositary was in liquidation, declared bankrupt or undergoing a suspension of payments, an arrangement with its creditors or some other type of management supervision was not foreseen under the previous regime.
Marketing	Marketing of AIFs in the form of a SIF to well-informed investors in Luxembourg is permissible (see further point E below).	Marketing of AIFs in the form of a SIF was permissible only to professional investors.
Tax	SIFs authorized as ELTIF are exempted from subscription tax as well when they are authorized as MMFs considering some certain conditions apply.	

c. Investment Companies in Risk Capital (SICARs)

	New regime introduced by the law of 21 July 2023	Previous regime under SICAR Law
Eligibility of well-informed investor	The investment threshold has been lowered to EUR 100,000, and the list of entities authorized to certify the experience of other well-informed investors has been aligned.	The investment threshold was set at EUR 125,000.
Timeframe for reaching the minimum capital	The period for achieving subscribed capital has been extended to 24 months for SICARs.	The period for achieving subscribed capital was 12 months for SICARs.
Replacement of depositary	The depositary agreement must include prior notice provisions, and a replacement depositary must be appointed before the expiry of this notice period. During this transition period, outgoing depositaries are still required to safeguard the interests of investors. This change mitigates the risk of automatic de-listing, considering the necessary time for conducting due diligence and onboarding a new depositary.	A 2-month maximum period was previously foreseen to replace a depositary.
Suspension of subscription and/or redemption	Subscriptions and/or redemptions of a SICAV are prohibited: - for the period there is no depositary; - the depositary is in liquidation, declared bankrupt or undergoing a suspension of payments, an arrangement with its creditors or some other type of management supervision.	The prohibition of subscription and/or redemption of a SICAV for the period during which there was no depositary or when the depositary was in liquidation, declared bankrupt or undergoing a suspension of payments, an arrangement with its creditors or some other type of management supervision was not foreseen under the previous regime.
Marketing	Marketing of AIFs in the form of a SICAR to well-informed investors in Luxembourg is permissible (see further point E below).	Marketing of AIFs in the form of a SICAR was permissible only to professional investors.
Contributions in kind	All in-kind contributions in a SICAR should be backed up by a valuation report drawn by an auditor.	Under the previous regime, there was no explicit obligation for the contributions in kind to be backed up by a valuation report drawn by an auditor.

d. Reserved Alternative Investment Funds (RAIFs)

	New regime introduced by the law of 21 July 2023	Previous regime under RAIF Law
Eligibility of well-informed investor	The investment threshold has been lowered to EUR 100,000, and the list of entities authorized to certify the experience of other well-informed investors has been aligned.	The investment threshold was set at EUR 125,000.
Timeframe for reaching the minimum capital	The period for achieving subscribed capital has been extended to 24 months for RAIFs	The period for achieving subscribed capital was 12 months for RAIFs.
Formation formalities	The formation formalities for RAIFs have been streamlined. The requirement for a Luxembourg notary to acknowledge the establishment and appointment of an external Alternative Investment Fund Manager (AIFM) within five business days has been eliminated for RAIFs established through a notarial deed, though it still applies to RAIFs established through a private deed.	Luxembourg notary shall acknowledge the establishment and appointment of an external Alternative Investment Fund Manager (AIFM) within five business days for RAIFs established through a notarial deed or a private deed.
Marketing	Marketing RAIFs to well-informed investors in Luxembourg is permissible (see further point E below).	Marketing of RAIFs was permissible only to professional investors.
Replacement of depositary	The depositary agreement must include prior notice provisions, and a replacement depositary must be appointed before the expiry of this notice period. During this transition period, outgoing depositaries are still required to safeguard the interests of investors. This change mitigates the risk of automatic de-listing, considering the necessary time for conducting due diligence and onboarding a new depositary.	A 2-month maximum period to replace a depositary was previously foreseen.

Suspension of subscription and/or redemption	<p>Subscriptions and/or redemptions of a SICAV are prohibited:</p> <ul style="list-style-type: none"> - for the period there is no depositary; - the depositary is in liquidation, declared bankrupt or undergoing a suspension of payments, an arrangement with its creditors or some other type of management supervision 	The prohibition of subscription and/or redemption of a SICAV for the period during which there was no depositary or when the depositary was in liquidation, declared bankrupt or undergoing a suspension of payments, an arrangement with its creditors or some other type of management supervision was not foreseen under the previous regime.
Tax	RAIFs authorized as ELTIF are exempted from subscription tax.	

e. Alternative Investment Fund Managers (AIFMs)

New regime introduced by the law of 21 July 2023		Previous regime under AIFM Law
Tied Agents	<p>Authorized alternative investment fund managers are permitted to utilize tied agents as defined by article 1, point 1 of the law of 5 April 1993 on the financial sector.</p> <p>Where an AIFM decides to use tied agents, the AIFM shall, within the limits of the activities permitted under this law, comply with the same rules as those applicable to investment firms under Article 37-8 of the amended law of 5 April 1993 on the financial sector.</p>	The appointment of tied agents was foreseen under the previous regime for pre-marketing purposes.
Marketing	AIFMs may market shares/units of AIF SIFs, RAIFs and AIF SICARs to well-informed investors established or residing in Luxembourg even if they do not fall in the scope of the definition of a professional investor.	AIFMs may market shares/units of AIF SIFs, RAIFs and AIF SICARs only to professional investors.

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.



OLIVIER SCIALES

Head of Investment Management
Partner

Tel: +352 26 25 90 30

oliviersciales@cs-avocats.lu



CÉCILE RECHSTEIN

Investment Management
Partner

Tel: +352 26 25 90 30

cecilerechstein@cs-avocats.lu



CHEVALIER & SCIALES
LUXEMBOURG LAW FIRM

Chevalier & Sciales is a Luxembourg law firm established in 2005 with specialist expertise in investment management, litigation, arbitration and dispute resolution, tax, banking, finance and capital markets, private wealth management and corporate transactions. 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 service providers to provide you with the assistance and services you require through every aspect of your transactions and business.

Chevalier & Sciales is highly recommended for its expertise in investment funds, litigation, arbitration and dispute resolution.

LUXEMBOURG

36-38 Grand-Rue
L-1660 Luxembourg
Grand Duchy of Luxembourg

Tel : +352 26 25 90 30
Fax : +352 26 25 83 88

www.cs-avocats.lu //

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