UPDATE

Luxembourg Investment Fund Changes

Bill of Law n° 8183, which was introduced into the Luxembourg Parliament on 24 March 2023, was adopted on 11 July 2023. This new law dated 21 July 2023 was published in the Luxembourg official gazette (*Mémorial*) on 24 July 2023 (the "Law") with the objective of modernising the various Luxembourg investment fund laws.

The Law entered into force on 28 July 2023.

Executive Summary

The Law contains a series of targeted updates to harmonise and amend key Luxembourg fund laws. While some of these are administrative in nature others present structuring and deal enhancements. We believe our clients and their advisers will particularly welcome the new structuring options for Part II UCI, the simplification of RAIF formalities and the tax changes to the ELTIF regime discussed below.

What laws are affected by these changes?

The Law amended the four laws currently regulating investment funds, more commonly known as the 'product' laws.

These product laws are:

(a) the law of 23 July 2016 relating to reserved alternative investment funds ("RAIF Law");
(b) the law of 17 December 2010 relating to undertakings for collective investment ("UCI Law");
(c) the law of 13 February 2007 relating to specialised investment funds ("SIF Law"); and
(d) the law of 15 June 2004 relating to the investment company in risk capital ("SICAR Law").

In addition, the Law also amends the law of 12 July 2013 on alternative investment fund managers which implements the AIFMD in Luxembourg.

Key Improvements

Consolidation of the CSSF's Administrative Practice

The Law, among other enhancements, codifies, to a certain extent, the Luxembourg regulator's *Commission de Surveillance du Secteur Financier* ("CSSF") administrative practice.

Such codification concerns are:

(a) the requirement for the depositary of a SICAR to keep open or to open all the accounts necessary for the custody of the various assets of the SICAR until the closing of the liquidation operations of the SICAR following the withdrawal of the latter from the official list held by the CSSF;
(b) the obligation for management companies governed by the UCI Law to invest their capital in liquid assets or assets that are easily and swiftly convertible into cash and the prohibition to include speculative positions; and
(c) the requirement that a UCITS management company may only be voluntarily wound up if it has previously ceased all management activities of UCIs.

Well-Informed Investor Definition

The Law amends the definitions of 'well-informed investor' contained in the SICAR, SIF and RAIF laws in order to reinforce the coherence between the different laws and to align the Luxembourg regime with the European standard by lowering the current minimum investment threshold from EUR125,000 to EUR100,000.

General Modernisation of the SICAR Law

As the oldest of the product laws, the SICAR Law was, to a certain extent, lacking some of the more modern features contained in the SIF and RAIF Laws. As such, the Law aims at aligning the SICAR Law to the SIF Law by:

(a) harmonising the definition of 'well-informed investor';
(b) including an obligation for SICARs to have means in place to ensure the verification of the status of well-informed investors;
(c) allowing for the suspension of issuance of shares / interests on the occurrence of a SICAR liquidation event; and
(d) allowing for the CSSF to withdraw authorisation of one or more compartments of a SICAR without necessarily withdrawing authorisation of the umbrella SICAR as a whole.

Expansion of Available Structuring Options for Part II UCIs

Part II UCIs, which to date, could only be set up as public limited companies, may in the future adopt other corporate and partnership legal forms similar to SIFs, SICARs and RAIFs.

Extended Time to Reach Legal Minimum Capital

The Law extends the period within which the minimum required capital [PXS – what is the minimum capital requirement? We should insert it below in (a) and (b)] must be reached:

(a) from 12 to 24 months for SIFs, SICARs and RAIFs; and
(b) from 6 to 12 months for Part II UCIs.

Simplification of RAIF Formalities

Article 34 of the RAIF Law required that a Luxembourg notary acknowledges the establishment of a RAIF, whether or not it has been formed by notarial deed. The Law aims at simplifying this process, thereby reducing notary costs for RAIFs, by requiring such acknowledgement only for RAIFs that have **not** been incorporated by notarial deed (meaning those adopting the legal form of a common limited partnership (SCS) or special limited partnership (SCSp) and which were formed under private seal).

More Clarity as to Liquidation Rules for Fund Managers

The Law brings clarity in relation to the liquidation regimes applicable to AIFMs and UCITS management companies, namely by extending the voluntary liquidation regime available to fund products to UCITS management companies and AIFMs.

Tied Agents

The Law introduces the possibility for AIFMs to use tied agents, thus aligning the legal framework applicable to them with that of UCITS management companies.

Depositary's Obligation to Remain in Place

The earlier forms of the SICAR Law, SIF Law and UCI Law provided that the duties of the depositary regarding the SICAR, the SIF and Part II UCI shall cease in the case of voluntary withdrawal of the depositary or of its removal until it is replaced, which must occur within two months.

The Law replaces the two-month period with a notice period that is required to be agreed on between the parties to the depositary agreement and reflected therein. This contractually negotiated notice period must be long enough to permit the appointment of a new depositary.

Fixed Issue Price Instead of NAV for Part II UCIs

The Law introduces the possibility for closed-ended Part II UCIs to issue shares / units at an issue price that can be freely determined in the constitutive documents of the relevant Part II UCI thereby removing the requirement that the issue price be based on the net asset value of such fund.

Exemption from Subscription Tax

The Law also proposes to exempt UCITS and Part II UCIs reserved to pan-European Personal Pension Product investors and European Long Term Investment Funds (ELTIFs) from the annual subscription tax (the so-called *taxe d'abonnement*).

Key Date

The Law entered into force on 28 July 2023 and is applicable as of that date.

Further Information

Our recent webcast in our *In the Spotlight* series[1] also provides an overview of these enhancements in Luxembourg.

How can Maples Group help?

We can assist you in analysing the key provisions of the Law which apply to your business and can also support with reviewing your fund documentation to identify relevant amendments whether for efficiencies or effect some of the key structuring changes introduced by the Law.

The Maples Group is recognised as a market-leader in providing legal services to the global investment funds industry. We operate across 16 global locations many of which are key fund domiciles for our clients and their international advisers.

In Europe, our experienced teams of lawyers and professionals in Dublin, London, Luxembourg and Jersey provide expert advice and world-class service in the legal aspects of setting up, managing and investing across a broad range of fund structures and management entities. Should you require further information and assistance, please reach out to your usual Maples Group contact or one of the contacts listed below.

Luxembourg

Johan Terblanche
+352 28 55 12 44
johan.terblanche@maples.com

Michelle Barry
+352 28 55 12 47
michelle.barry@maples.com

Manfred Dietrich
+352 28 55 12 10
manfred.dietrich@maples.com

Jennifer Burr
+352 28 55 12 68
jennifer.burr@maples.com

Donnchadh McCarthy
+352 28 55 12 22
donnchadh.mccarthy@maples.com

Ireland

Peter Stapleton
+353 1 619 2024
peter.stapleton@maples.com

Adam Donoghue
+353 1 619 2041
adam.donoghue@maples.com

Eimear O'Dwyer
+353 1 619 2065
eimear.o'dwyer@maples.com

[1] https://maples.com/en/in-the-spotlight

Jersey

Simon Hopwood
+44 1534 671 314
simon.hopwood@maples.com

Tim Morgan
+44 1534 671 325
tim.morgan@maples.com

London

Heidi de Vries
+44 20 7466 1651
heidi.devries@maples.com

Harjit Kaur
+44 20 7466 1655
harjit.kaur@maples.com

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