



CHEVALIER & SCIALES
LUXEMBOURG LAW FIRM

Investment Management

Quarterly Newsletter

Q3 2022

July to September



INVESTMENT FUNDS

'Direct engagement with the partners. Specialised in setting up investment funds in Luxembourg.'

'The team provides impressive responsiveness and an outstanding expertise in relation to investment fund matters.'

'The team is friendly, (not arrogant at all) and very open to work for new business opportunity, especially in the world of crypto/blockchain.'

'It is a human scale firm where you are not considered as a small client.'

'Olivier Sciales has the ability to translate "law-speak" into clear common language.'

BANKING, FINANCE & CAPITAL MARKETS

'Although the firm is undoubtedly best known for its investment funds expertise, Chevalier & Sciales also handles capital markets and securitisation work. Rémi Chevalier is the main contact.'



'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.'



'Chevalier & Sciales Litigation practice with values of certain litigations exceeding a billion US dollars, has successfully created a strong and reputable presence in the Luxembourg courts as well as abroad. Combining creative litigation strategies with business practicality, the boutique consistently resolves high-stake disputes for private entities, companies, and investors in sectors such as investment funds and private banking.'

OTHER 2023 RANKINGS:

*Private equity
Restructuring & Insolvency
Mergers & Acquisitions
Banking & Finance*

Investment management - Quarterly Newsletter //

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CSSF ISSUES UPDATED FAQ ON SICAR

The CSSF has published on 10 June 2022 an updated version of its Frequently Asked-Questions (“FAQ”) regarding the société d’investissement en capital à risque, i.e. SICAR, an investment company whose purpose is to invest in risk capital.

The list of questions indicated in such FAQ are set out below:

1. What steps are to be taken to submit an authorisation request for a new SICAR?
2. What criteria shall the directors of a SICAR fulfil?
3. What are the CSSF’s requirements regarding the prospectus of SICARs?
4. What does the CSSF require for the central administration of SICARs?
5. What does the CSSF require for the depositary bank of SICARs?
6. What is the procedure in case of replacement of a director or service provider?
7. Which requirements regarding prudential reporting does the SICAR have to comply with?
8. What are the obligations for SICARs as regards information to be submitted to the investors and the dissemination method?
9. Which requirements are the SICARs subject to as regards the drawing-up, approval, statutory audit and publication of annual accounts?
10. To which particular requirements as regards the drawing-up, approval, audit and publication of the annual accounts are SICARs with multiple compartments subject?
11. Which general characteristics shall investment policies of SICARs present?
12. Under which conditions may SICARs carry out real estate investments?
13. Can SICARs invest in infrastructure projects?
14. Can a SICAR have an accessory investment policy which does not comply with the criteria of risk capital?
15. Can SICARs make indirect investments through intermediary investment vehicles or special purpose vehicles?
16. Can SICARs act as feeder fund in a master-feeder structure?
17. Under what conditions may a SICAR invest in securities listed on a stock exchange?
18. Under which conditions can a SICAR invest in derivative financial instruments?

19. In which manner can a SICAR invest its liquidity awaiting investment and reinvestment in risk capital as well as funds awaiting distribution?

20. Can SICARs make investments in commodities?

21. Can a SICAR invest in ABS and CDOs?

22. Under which conditions can a SICAR invest in Distressed Debt securities?

23. What are the SICARs' obligations with respect to risk management?

24. What requirements are SICARs subject to regarding due diligence in relation to their investments?

25. What requirements are the SICARs subject to regarding management of conflicts of interest?

26. What are the conditions to comply with in case of data transfer by a central administration or a depositary to another service provider?

27. Who to contact for further information?

The updated FAQ is available in English and can be found [here](#).

AMENDMENT TO THE LUXEMBOURG AML LAW - TIME TO UPDATE YOUR AML POLICIES

The law of 29 July 2022, which entered into force on 12 August 2022, amended the Law of 12 November 2004 on the fight against money laundering and terrorist financing, transposing Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering (the AML Law).

Following such amendments, professionals in the scope of such legislation will need to update their AML policies and procedures, in particular regarding customer due diligence, to provide, amongst other things, for the following obligations :

- To determine the extent of the customer due diligence requirements according to the assessment of risks relating to types of customers, countries or geographical areas and particular products, services, transactions or delivery channels;
- To compare the information collected with that in the registers (i.e. register of beneficial

owners, if available) in order to detect any erroneous data or the absence of all or part of the data or the lack of registration, amendment or deletion. Professionals shall proceed in the same way in the context of the exercise of constant vigilance of the business relationship;

- To retain copies of the documents, data and information collected as part of the due diligence process;
- To apply enhanced due diligence requirements where a customer or a person purporting to act on behalf of or for the customer or beneficial owner is a PEP, i.e., to:

a) have appropriate risk management systems, including risk-based procedures, to determine if the customer, the person purporting to act on behalf of or for the customer or beneficial owner is a politically exposed person;

(b) obtain senior management approval for establishing or continuing, for existing customers, business relationships with such persons;

(c) take reasonable measures to establish the source of wealth and source of funds that are involved in the business relationship or transaction with such persons;

(d) conduct enhanced ongoing monitoring of the business relationship.



CSSF FAST-TRACK PROCEDURE FOR VISA-STAMPING REGARDING SFDR RTS

Introduction

The CSSF issued communications, respectively on 27 July and 6 September 2022, to the investment fund industry relating to (i) the regulatory requirements concerning Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (the “SFDR”) and the upcoming entry into force of SFDR Level 2 provisions (the “SFDR RTS”), and (ii) the SFDR RTS confirmation letter.

The SFDR RTS requires financial market participants to present by 1 January 2023, for financial products subject to Articles 8 and 9 of SFDR, precontractual and periodic disclosure

information in the format of templates set out in the annexes of the SFDR RTS. A fast-track procedure relating to the visa stamp of the issuing documents is now available concerning articles 8 and 9 regulated funds, in other words, UCITS and regulated AIFs (alternative investment funds).

As a reminder, the SFDR RTS also precise mandatory website product disclosure requirements applicable to financial market participants through the need for a separate website section titled, 'Sustainability-related disclosures'. Regulation (EU) 2020/852 of 18 June 2020, on the establishment of a framework to facilitate sustainable investments (the "**Taxonomy Regulation**") requires financial market participants, for those financial products subject to Articles 8 and 9 of SFDR, to provide by January 1, 2023, for transparency in pre-contractual documents and periodic reports concerning the environmental objectives referred to in Article 9, points (c) to (f) of the Taxonomy Regulation.

Q.1 What is the fast track process relating to SFDR RTS?

The CSSF expects to receive the updated pre-contractual documents by October 31, 2022, at the latest, for financial market participants who have not yet submitted to the CSSF the required updates to the issuing documents of UCITS and/or regulated AIFs under the SFDR RTS and the Taxonomy Regulation. If submissions following the filing procedure in Q.3 are compliant and received by the CSSF by 31 October 2022, the CSSF will endeavour

to release the visa stamp before 31 December 2022.

Q.2 What are the conditions?

The CSSF will give priority for visa stamping to the issuing documents and may release the visa stamp before 31 December 2022, if the following conditions are fulfilled:

- changes made to the pre-contractual documents are limited to the insertion of the templates according to the annexes of SFDR RTS and that for all the sub-funds subject to Article 8 or 9 SFDR;
- the updated filed prospectus is accompanied by the RTS confirmation letter and the related table, duly filled in and signed by authorised persons; and
- any other changes made apart from changes made about the insertion of the standardised annexes pursuant to SFDR RTS must be minor, of editorial nature only and not entail a material change for investors.

Moreover, on an indicative basis, the precontractual and periodic disclosure templates shall not be amended except as foreseen under Article 2 of the SFDR RTS, i.e. the size and font type of characters and the colours. If a financial market participant deems sections of the pre-contractual or periodic template not relevant for a given fund or sub-fund/compartment, those sections shall still be maintained in the precontractual and periodic disclosure template and shown as being not applicable.

Where a notice is foreseen to inform investors of an update of the issuing documents, this notice shall also be uploaded and submitted to the CSSF. Regarding UCITS, the RTS confirmation letter shall be duly filled out and merged with the prospectus in the track change version.

Q.3 What is the procedure?

- Each duly updated UCITS prospectus, including only the sustainability-related disclosure changes, should be filed for visa stamp with an accompanying RTS confirmation letter. A template of the RTS confirmation letter is now available for UCITS from 6 September 2022.

- Each AIF regulated by the CSSF, which, on the basis of Article 6(3) of SFDR, is obliged or intends to publish the pre-contractual disclosure templates in an annexe to its issuing document, shall submit the issuing document to the CSSF within the set deadline. The RTS confirmation letter template for regulated AIFs is now available from 6 September 2022.

The updated pre-contractual documents for visa stamping shall be filed electronically with the CSSF under the provisions set out in Circular CSSF 19/708 relating to the electronic transmission of documents to the CSSF.

Finally, after submission for examination, the CSSF may ask for prompt clarification or confirmation, if needed, with potential reiteration until completion and consent on disclosures to be inserted. Thus, obtaining the visa stamp may also depend on the ability of the applicant to communicate relevant

information requested by the CSSF after the first submission of the updated version of the issuing document including the templates, the RTS confirmation letter, and the related table.



GLOSSARY OF TERMS

AIF: Alternative Investment Fund as defined by article 1 (39) of the AIFM Law, namely collective investment undertakings, including investment compartments thereof, which (a) raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and (b) do not require authorization pursuant to article 5 of Directive 2009/65/EC (i.e. UCITS).

AIFMD: Directive 2011/61/EU on alternative investment fund managers.

AIFMD registration regime: An AIFM that wishes to make use of the registration regime must have assets under management of less than EUR 100 million, or EUR 500 million if it manages only funds closed for at least 5 years not using leverage.

AIFM: A legal person whose regular business is managing one or more AIFs.

AIFM Law: Luxembourg law of 12 July 2013 on alternative investment fund managers (transposing the AIFM directive into Luxembourg law).

AIFM Law threshold: the thresholds provided for in article 3 (2) of the AIFM Law.

CSSF: The Luxembourg Supervisory Authority of the Financial Sector (*Commission de Surveillance du Secteur Financier*).

CLO: Collateralised Loan Obligation.

Company Law: The Luxembourg law of 10th August 1915 on commercial companies, as amended from time to time.

FCP: Common fund (*fonds commun de placement*).

Part II UCI: Undertaking for collective investment established under Part II of the Luxembourg law of 17 December 2010.

RAIF: Reserved alternative investment fund (*fonds d'investissement alternatif réservé*).

S.A.: Public limited liability company (*société anonyme*).

S.à r.l.: Private limited liability company (*société à responsabilité limitée*).

SAS: Simplified stock company (*société par actions simplifiée*).

S.C.A.: Corporate partnership limited by shares (*société en commandite par actions*).

SCoSA: Cooperative company organised as a public limited company (*société cooperative organisée comme une société anonyme*).

SCS: Common limited partnership (*société en commandite simple*).

SCSp : Special limited partnership (*société en commandite spéciale*).

SICAF: Investment company with fixed capital (*société d'investissement à capital fixe*).

SICAR: Investment company in risk capital (*société d'investissement en capital à risqué*).

SICAV: Investment company with variable capital (*société d'investissement à capital variable*).

SIF: Specialised investment fund (*fonds d'investissement spécialisé*).

SPF: Private wealth management company (*société de gestion de patrimoine familial*).

UCITS: Undertakings for collective investments in transferable securities.

Well-informed investors: A well-informed investor is an institutional investor, a professional investor or any other investor who has stated in writing that s/he adheres to the status of well-informed investor and invests a minimum of 125,000 Euro in the SIF/SICAR/RAIF, as applicable, or has been subject of an assessment made by a credit institution, by an investment firm or by a management company certifying his/her expertise, his/her experience and his/her knowledge to adequately appraise an investment in the SIF/SICAR/RAIF, as applicable.

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, 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 assistances 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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