



newsflash

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AIFMD - bill of law submitted to Luxembourg Parliament

The bill of law n°6471 transposing the Alternative Investment Fund Managers Directive (the “Directive” or “AIFMD”) was submitted to the Luxembourg Parliament on 24 August 2012.

As you may know, the deadline for transposing the Directive into national law is 22 July 2013. As was the case for the implementation of the UCITS Directive into national law, Luxembourg is keen to become one of the first jurisdictions to implement the AIFMD and wishes to position itself as a first mover. The Luxembourg law is expected to pass Parliament before the end of the year.

More details are provided below.

I. Direct impact on managers of alternative investment funds (AIFM)

- AIFM which manage alternative investment funds (AIFs), comprising for the most part hedge funds, private equity funds and real estate funds, are impacted in the first place. Unless excluded, exempted or grand-fathered, they will need to be registered and to comply with strict authorization requirements, operating conditions, organizational rules and transparency requirements. Existing managers of AIFs on 22 July 2013 will benefit from a transitional period and shall have until 22 July 2014 to submit an application for authorization as an AIFM.
- Benefit of EU passport as from 22 July 2013 for AIFM domiciled in the EU: the EU passport will allow them to market EU AIFs they manage to professional investors across the EU.
- Benefit of EU passport after a transitional period (at the earliest by 2015) for non-EU AIFM and AIFs: between 2013 and 2018, they will be allowed to market the AIFs they manage in the EU by using national private placement rules, subject to complying with a certain number of requirements, such as transparency requirements and cooperation agreements to be entered into between the relevant authorities of the AIFM and the home state authority of the AIF.
- Marketing of AIFs to retail investors in Luxembourg: flexibility provided by the bill of law, irrespective of whether such AIFs are marketed on a domestic or cross-border basis or whether they are EU or non-EU AIFs.

II. Impact on the product: Part II UCIs, SIFs, SICARs, unregulated vehicles

- Part II funds of the 2010 law, SIFs governed by the 2007 law or SICARs governed by the 2004 law will also be indirectly impacted. Non-regulated vehicles such as SOPARFIs will also be impacted if they qualify as AIFs.
- Adaptations to the existing legislations are therefore foreseen for those products which qualify as AIFs and which are impacted in particular with regard to the rules on the depositary, the delegation of functions, the valuation of assets and the information provided to investors.

UCI Part II ¹ , SIF and SICAR qualifying as AIF	UCI Part II, SIF and SICAR qualifying as AIF AIFM below the “ <i>de minimis</i> ” thresholds	SIF and SICAR not qualifying as AIF
<ul style="list-style-type: none">■ Can be self-managed (if legal form permits internal management) or appoint an external AIFM■ Marketing passport available■ AIFMD depositary regime■ AIFMD delegation + valuation rules■ AIFMD transparency requirements	<ul style="list-style-type: none">■ Registration and ongoing reporting to the CSSF by the AIFM■ Current regime maintained	<ul style="list-style-type: none">■ Current regime maintained (no impact by AIFMD)

III. Flexibility granted to management companies (Chapter 15 and 16 Mancos of the 2010 Law) to act as AIFM or to designate an AIFM

UCITS Manco (Chapter 15)	Non-UCITS Manco (Chapter 16)
<ul style="list-style-type: none">■ May act as external AIFM■ Double license UCITS/AIFM: lighter authorization requirements (i.e. no need to provide information or documents which have already been provided when applying for authorization as a UCITS ManCo)■ Management passport available under both regimes UCITS/AIFM	<ul style="list-style-type: none">■ (i) May act as Manco for all types of investment vehicles not qualifying as AIF■ (ii) May act as Manco for AIF below the thresholds■ (iii) May act as Manco for FCP, SICAV or SICAF qualifying as AIF provided that it has designated an AIFM²■ May seek AIFM license: lighter authorization requirements (i.e. no need to provide information or documents already provided when applying for authorization as non-UCITS Manco (Chapter 16) and management passport available:■ Must seek authorization as AIFM if the <i>de minimis</i> thresholds are no longer complied with and if it has not designated an AIFM or has chosen to become an AIFM.

¹ All Part II UCIs qualify as AIF pursuant to the Bill.

² According to the Bill non-UCITS Manco (Chapter 16) may not act as ManCo for entities referred to under (i) without acting as ManCo for AIFs referred to under (ii) or (iii), unless the investment vehicles not qualifying as AIF are regulated by specific sector legislations (i.e. SIFs or SICARs).

IV. Structuring opportunity for Luxembourg products: introduction of a new form of limited partnership (*société en commandite spéciale*)

The Law of 10 August 1915 on commercial companies introduces a new form of limited partnership (*société en commandite spéciale*). This tax transparent form has no legal personality and is governed by the terms of a limited partnership agreement which may be drafted in a very flexible manner in terms of interests, governance, distributions etc.

Please see our special [Newsflash](#) on that matter.

V. Depositary: introduction of a new professional of the financial sector (PFS)

The Law of 5 April 1993 on the financial sector introduces a new category of specialized PFS, which may act as depositary for AIFs having no redemption rights exercisable during a period of 5 years from the date of the initial investments and which generally do not invest in financial instruments that must be held in custody or generally invest in issuers or non-listed companies in order to potentially acquire control over such companies.

VI. ASSEPs and SEPCAVs

The Law of 13 July 2005 on institutions for occupational retirement provision in the form of ASSEPs and SEPCAVs is amended so as to allow ASSEPs and SEPCAVs to delegate asset management to Luxembourg or other EU managers which are duly authorized to carry out investment portfolio management in accordance with the Directive.

VII. What's next?

Managers of AIFs, but also their promoters, risk takers or depositaries should as from now consider the impact of the future law on their business models and the products they manage. A mapping exercise should be conducted as soon as possible in order to assess the manager's maturity regarding organizational requirements and operating conditions and to map the options, with a view to anticipating and structuring their business models and to being ready to get on board once the legislation becomes effective.

The bill of law can be accessed [here](#).

We can help you undertake these steps using a methodic and pragmatic approach. Please follow these links to read our brochures on the subject:

[AIFMD – How to get there?](#)

[AIFMD and VAT](#)

[AIFMD](#)

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