

# Newsletter Luxembourg

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## Investment Funds

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### ■ The Reserved Alternative Investment Fund

On 14 July 2016, the Luxembourg Parliament has passed a new law creating the Reserved Alternative Investment Fund (the “RAIF”). The law governing the RAIF is dated 23 July 2016 (the “RAIF Law”) and has been published in the Luxembourg official gazette, the *Mémorial A*, on 28 July 2016.

The RAIF is a new type of investment vehicle which positions the Grand Duchy of Luxembourg as a leading, innovating, competing and attractive country for fund initiators wishing to offer investors an easy, non-bureaucratic and flexible legal structure. It further enhances the product choice available in Luxembourg for private equity firms and alternative investment fund vehicles asset managers.

## The RAIF in 10 Key Points

### 1. RAIF Definition

A RAIF is an unregulated alternative investment fund.

A RAIF must comply with the definition of an alternative investment fund provided for in the law of 12 July 2013 (the “AIFM Law”) implementing EU Directive 2011/61/EU relating to alternative investment managers (the “AIFM Directive”). Under the AIFM Law, is to be considered as an alternative investment fund “any 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 which (b) do not require authorisation pursuant to Article 5 of Directive 2009/65/EC”.

### 2. Supervision

As a RAIF is an unregulated entity, it is not subject to the Luxembourg financial supervisory authority’s (*Commission de Surveillance du Secteur Financier*, the “CSSF”) prior clearance nor to its prudential supervision. In concrete terms, this means that the launch of a RAIF is not subject to the CSSF approval and that nor its issuing document, neither its articles of incorporation, nor its directors have to be approved by the CSSF. RAIFs may immediately be marketed upon incorporation. This is a significant step towards faster “time to market”.

This further means that changes occurring to the RAIF’s activities like changes to its investment policy, the launch of a new compartment, the launch of a new share class or its liquidation are not subject to the CSSF clearance.

### 3. Eligible Investors

RAIFs are eligible only to “well informed investors” defined as any institutional investor,

professional investor or other investor who has stated in writing that it adheres to the status of a 'well-informed' investor and who invests a minimum of EUR 125,000 in the RAIF, or who has been subject to an assessment by a credit institution, investment firm, management company or authorised AIFM to confirm its expertise, knowledge and experience for correctly appraising an investment in the RAIF.<sup>1</sup>

#### 4. Legal Type and Forms

RAIFs may be established in (i) a contractual form, i.e. a common investment fund (*fonds commun de placement* - FCP) managed by a management company, or (ii) a corporate form as an investment company with variable or with fixed capital (*société d'investissement à capital variable / fixe* – SICAV / SICAF).

As a corporate structure, the available corporate forms are the following: public or private limited liability company (*société anonyme* - SA or *société à responsabilité limitée* - Sarl), cooperative company in the form of a public limited company (*société coopérative organisée sous forme de société anonyme* – SCOSA), partnership limited by shares (*société en commandite par actions* - SCA), partnership (*société en commandite simple* – SCS), or special limited partnership (*société en commandite spéciale* - SCSp).

#### 5. Management

Only an external and authorised alternative investment fund manager (the “AIFM”) governed by the AIFM Directive is allowed to manage the RAIFs’ assets.

According to the AIFM Directive, the AIFM may be established in Luxembourg, another European Member State, or in any other third country provided that it has obtained the required authorisation under the AIFM Directive.

The AIFM must comply with the AIFM Directive in full and must perform the core functions of an AIFM including portfolio and risk management functions. All provisions of the AIFM Directive pertaining to the AIFM apply in this respect.

#### 6. Eligible Assets and Risk Diversification

The RAIF Law is largely inspired by the law of 13 February 2007 relating to specialised investment funds (the “SIF”) and takes advantage of the already existing diversification rules and requirements applicable to SIFs.

Pursuant to the SIF regime, a RAIF may invest in any kind of assets (meaning that no asset restrictions come into consideration and that the most untraditional type of assets may be envisaged like, for instance, wine, art or diamonds) provided that the specific risk diversifications rules specified in the CSSF circular 07/309 are complied with. Pursuant to this circular, a RAIF may not invest more than 30% of its assets or commitments in securities of the same type issued by the same issuer. For the application of this restriction, every sub-fund of a target umbrella undertaking for collective investment is to be considered as a separate issuer, provided that the principle of segregation of liabilities among the various sub-funds vis-à-vis third parties is ensured. Furthermore, short sales must not result in the RAIF holding a short position in securities of the same type issued by the same issuer, which represents more than 30% of the RAIF’s assets. Finally, when using financial derivative instruments, the RAIF must ensure a similar level of risk-spreading, via appropriate diversification of the underlying assets. Similarly, the counterparty risk in an over-the-counter transaction must, where applicable, be limited according to the quality and qualification of the counterparty.

Alternatively, the RAIF Law also allows the RAIF to opt for the regime applicable to risk capital vehicles (*société d'investissement à capital à risque* – SICAR) permitting investments of all the RAIF assets, without restrictions, in risk capital characterised targets. Should the RAIF elect to invest in risk capital, no risk spreading rules must be complied with.

#### 7. Service Providers

Any RAIF must mandatorily appoint a Luxembourg depositary bank (or a Luxembourg branch of a EU depositary bank), a Luxembourg located central administration, and an external auditor.

Other service providers, not necessarily based in Luxembourg, may be appointed (such as, for instance an investment manager, a distributor or a paying agent).

## 8. The Issuing Document

RAIFs must establish an issuing document including the information necessary for investors to be able to make an informed judgment of the investment proposed to them and, in particular, of the risks attached thereto. The issuing document must clearly make the investors aware that the RAIF is not subject to a Luxembourg prudential supervision.

## 9. Taxation

If the RAIF opts for the SIF regime, it will enjoy the same tax regime as the SIF, meaning that it will be only subject to the annual subscription tax (*taxe d'abonnement*) at the 0.01% rate.

Should the RAIF opt for the SICAR regime, the tax treatment of SICARs applies. It will be subject to the ordinary corporate income tax at the current standard rate of 29,22%. It may benefit from (i) the double tax treaties network concluded by the Grand Duchy of Luxembourg, (ii) from the so-called "EU parent-subsidiary directive", and from (iii) the Luxembourg provisions regarding participation exemption. Finally, RAIFs opting for the SICAR regime are not in scope of withholding tax on dividends payments and net wealth tax.

Management services provided to the RAIF by the AIFM are exempt from Luxembourg VAT.

## 10. Marketing - European Passport

RAIFs benefit from the European passport meaning that they may be marketed to well-informed investors throughout the European Union without prior burdensome steps to be carried out.

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1) Article 2(1) of the RAIF Law.

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