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RAIF (RESERVE ALTERNATIVE INVESTMENT FUNDS)

Updated in September 2023

On 14 July 2016, the Luxembourg Parliament approved bill of law n°6929 introducing a new type of Luxembourg investment fund: the reserved alternative investment fund (**RAIF** - or fonds d'investissement alternatif réservé, FIAR).

1. Overview

In the Grand Duchy of Luxembourg the management supervision introduced by the directive 2011/61/UE on alternative investment funds manager (the **AIFMD**) has come as an additional layer of supervision on top of the existing Luxembourg fund supervision. In some extent, this double layer may be seen by professionals of the fund industry as excessive when the funds are targeted to sophisticated investors.

On 14 December 2015, a bill of law n°6929 (the **Bill**) was deposited with the Luxembourg Parliament to introduce a new type of investment vehicle called “reserved alternative investment fund” (the **RAIF**).

RAIF is an alternative investment fund which has very similar features to SIFs (and in a certain extent to SICARs) regime with the difference that RAIF does not need to be approved as well as supervised by the Luxembourg *Commission de surveillance du secteur financier*, the **CSSF**.

This bill has been adopted on **23 July 2016** by the Luxembourg Parliament (“*the Law*”) and published on **28 July 2016** in the *Memorial A*. Entry into force of the RAIF Law occurred three days following its publication in the official gazette. It is another step towards for increasing the attractiveness of the Luxembourg investment fund and asset management industry after implementing Directive 2011/61/EU on alternative investment funds managers (**AIFMD**).

I. An optional regime creating a regulated vehicle strictly reserved to well-informed investors.

A. An optional regime

The RAIF regime is an optional regime. Indeed a promoter willing to establish a Luxembourg based investment vehicle to be marketed to well informed investors has the choice to opt for the RAIF regime but also for the creation of a regulated vehicle governed by the law of 10 August 1915 relating to the commercial companies, as amended from time to time (the **Company Law**) or for the creation of a regulated vehicle approved and supervised by the CSSF such as a specialised investment company (**SIF**) governed by the law of 13 February 2007, as amended from time to time (the **SIF Law**) or an investment company in risk capital (**SICAR**) governed by the law of 15 June 2004, as amended from time to time (the **SICAR Law**).

The statutory documentation of a RAIF must expressly mention that the vehicle created is subject to the provisions of the (in the process of being) RAIF law.

B. A regulated vehicle not approved and/or authorized by the CSSF

This is the key innovation of the RAIF regime. Creation, launch, termination as well as the daily management of the RAIF (eg amendment to the legal documentation, launching of new compartments or replacement of a service provider) do not require any prior or subsequent approval of the CSSF. The offering document (see par. II D. a.) must clearly specify in its covering page that the RAIF is not subject to CSSF's supervision.

C. Eligibility Requirements

1. Alternative investment fund

The RAIF regime is only be eligible to AIFs within the meaning of the Luxembourg law of 12 July 2013 which implemented the AIFMD in Luxembourg law (AIFM Law), i.e. “*collective investment undertakings, including investment compartments thereof, which (i) 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 (ii) do not require authorization pursuant to article 5 of Directive 2009/65/EC*” (“the UCITS Directive”).

2. Appointment of an authorized AIFM

RAIFs may only be managed by an authorized external AIFM. The AIFM may be established in Luxembourg, any other member state of the European Union or any other third country, provided that the third country AIFM holds the requisite AIFM licence. **This option is not yet available as the extension of the AIFM management/marketing passport to third countries is subject to an EU Commission Delegated Regulation, which has not yet been issued.**

Some entities will, however, be allowed to establish RAIFs without having to appoint an external authorized AIFM. These entities are listed in the AIFM Law¹ provided that the RAIFs managed by those institutions act in the public interest.

If the external AIFM loses its authorization or is deprived of or resigns from its mandate, the governing body of the RAIF must appoint a replacing external AIFM within two months following the withdrawal of the original AIFM. If this deadline is not respected, the RAIF's governing body must file a request with the competent Luxembourg district court to have the RAIF dissolved and liquidated.

3. A vehicle reserved to well-informed investors.

The Law defines a well informed investor as an institutional investor, a professional investor or any other investor who meets the following conditions:

- a) He has **confirmed in writing that he adheres to the status of well-informed investor**; and
- b) He invests a **minimum of EUR 125,000.-** in the RAIF or;
- c) He has been subject of **an assessment made by a credit institution** within the meaning of Regulation N° 575/2013, **by an investment firm** within the meaning of directive 2004/39/EC or **by an authorized alternative investment fund manager** within the meaning of Directive 2011/61/EU or **by a management company** within the meaning of directive 2009/65/EC or certifying his expertise, his experience and his knowledge in adequately appraising an investment in the RAIF.

Reserved alternative investment funds must have the necessary means to ensure compliance with the conditions laid down above. Conditions set forth above do not apply to officers and other persons taking part in the management of the RAIF. In practice it means that (i) persons involved in the management of the RAIF are deemed to be well-informed investors even if they do not fall within any of the above categories and (ii) subject to restrictions mentioned in part. V B) sophisticated retail or private investors should be authorised to invest in a RAIF through the production of the above-mentioned assessment.

II. Corporate and set up formalities

A. Legal forms

A RAIF can be incorporated or established either as:

1. A common fund (*fonds commun de placement, FCP*). An FCP-RAIF is managed by a Luxembourg management company which must be itself authorised under either:
 - article 125-1 of the law of 17 December 2010 relating to undertakings for collective investment (the **UCI Law**) in which case the management company has to appoint another entity based in Luxembourg or another EU Member State as AIFM of the FCP-RAIF, or
 - article 125-2 of the UCI Law in which case the management company may either act (i) as management company and AIFM of the FCP-RAIF or (ii) act as management company and appoint another entity based in Luxembourg or another EU Member State as AIFM of the FCP-RAIF; or
2. an investment company with fixed capital (*société d'investissement à capital fixe*) or variable capital (*société d'investissement à capital variable*) in the form of:
 - a public limited liability company (*société anonyme, S.A.*);
 - a private limited liability company (*société à responsabilité limitée, S.à r.l.*);
 - a corporate partnership limited by shares (*société en commandite par actions, S.C.A.*); or

¹ for instance, supranational institutions including the European Central Bank, the European Investment Bank, the European Stability Mechanism, the World Bank or other similar international organisations and national central banks),

- a special limited partnership (*société en commandite spéciale*, S.C.Sp.) or a common limited partnership (*société en commandite simple*, S.C.S.) or a cooperative company formed as a public limited liability company (*société cooperative sous forme de société anonyme*, SCoSA).

B. Set up and listing procedures

1. Incorporation/ establishment

a. Incorporation/establishment documents

The incorporation/establishment documents of a RAIF will vary depending on its corporate structure:

- Articles of incorporation to be established in front of a Luxembourg notary in case where the RAIF is set up as an SA, S.à r.l. or S.C.A.;
- Limited partnership agreement which can be executed under private seal or, as the case may be, in front of a Luxembourg notary in case where the RAIF is established as an SCSp or a SCS;
- Management regulations which can be executed under private seal or, as the case may be, in front of a Luxembourg notary in case where the RAIF is established as a FCP.

b. Minimum capitalization requirement

Law provides that minimum capitalization of a RAIF is EUR 1,250,000. - which must be reached within 12 months of the date of creation of the RAIF. Except in the case of an FCP this minimum amount corresponds to the subscribed capital plus any issue premium paid or the value of the amount constituting partnership interests, rather than the net assets.

RAIF set-up as an investment company can issue partly paid shares. Subscriptions in different tranches can thus be achieved through the successive subscriptions of new shares committed for through subscription commitments or by means of partly paid shares, the remaining amount of the issue price of the shares initially issued being payable in further installments. Shares must be paid up to a minimum of 5% per share. **RAIF may also finance its activities and the acquisition of its portfolio of investments**, where appropriate, on a substantially predominant basis, with borrowings as well as with the issue of bonds or other debt instruments.

c. Issuance/redemption procedure

The conditions applicable to the issuance and the redemption as well as the repurchase of the securities or the partnership interests are determined in the statutory documents. Under the Law there is no requirement that the issuance, the redemption and/or the repurchase price be based on the net asset value as it is the case for the FCP or SICAV governed by the UCI Law. In practice the RAIF can hence issue shares at a predetermined fixed price or repurchase shares at below net asset value.

2. Listing

Incorporation or establishment of the RAIF must be recorded by notarial deed within 5 business days from its establishment. Within a deadline of 15 business days from the date on which the set up of the RAIF was attested by a Luxembourg notary, a mention (establishment of the fund, and the manager) must be deposited with the Luxembourg trade and companies registry for the purpose of being published in the *Recueil électronique des sociétés et associations*. Within 20 business days following the notary's deed, the RAIF must be registered to the *Registre de Commerce et des Sociétés*.

It does imply that statutory documents of a FCP, an S.C.S. or an S.C.Sp. must take the form of a notarial deed or be enacted in front of a Luxembourg notary. So an S.C.Sp. which can be enacted under private seal in accordance with the provisions of the Company Law is not obligated to enact the limited partnership agreement governing the relationships between the limited partners and the general partner in front of the Luxembourg notary. In practice the appointed RAIF manager will attest *ex post* before the Luxembourg notary that the RAIF has been duly established, together with an indication of the appointed AIFM. RAIF must be registered with an official list of Luxembourg trade and companies registry within the 10 days mentioned above.

C. Name protection

No undertaking shall make use of designations or of a description giving the impression that its activities are subject to the legislation on RAIFs if it has not been placed on the list held by the Luxembourg trade and companies registry.

D. Document to issue and information to disclose to investors

1. Offering document

RAIF will be required to issue an offering document containing a series of information² necessary for the investors to be able to make an informed judgment in relation to the investments proposed to them, especially the risks attached thereto.

The offering document must include the disclosure requirements as further detailed in article 23 of the AIFMD, being specified that the government's comments on the Bill expressly mentions the possibility to comply with the requirements of disclosure by any other means (meaning other than through the offering document). In case of publication of a prospectus, it's not mandatory to establish an offering document.

2. Annual report

RAIF must publish an audited annual report within 6 months from the end of the period to which the report relates. Law refers to an appendix describing the information to be inserted in the annual report for the purpose of allowing the investors to have an informed judgment in relation to the activities and results achieved by the RAIF³. Should the RAIF be structured as an umbrella fund, separate annual accounts must be prepared for each compartment.

It does not require the publication of a semi-annual report to the attention of the investors. The RAIF is also exempt from the obligation to prepare consolidated accounts. As a result of the application of the AIFMD regime the RAIF is also required to disclose additional information⁴ in its annual report including among others (i) the total of remuneration paid to its staff for the concerned accounting year, (ii) the number of beneficiaries and, if any, (ii) the amount of carried interests paid.

3. Additional information to be provided to investors

The AIFM of a RAIF must provide additional information imposed by the AIFMD, as well as any material changes thereof to investors before investing in the RAIF. This information must be made available to investors.

III. Key features

RAIF Law is largely based on SIF Law (and to a certain extent, the SICAR law) **with a major difference resulting from the fact that RAIF is not supervised by the CSSF**. All references relating to the role and missions of the CSSF in relation to SIFs or SICARs have **therefore been excluded** from the Bill.

A. Corporate rules

1. Eligible assets and diversification

Like the SIF regime, the RAIF may invest in any kind of assets which may be legally acquired. Any type of investment strategy is permitted without any restriction whatsoever, provided that the RAIF's manager aims to spread the investment risks⁵. Taking these as guidance, the following principles should be considered as applicable to RAIFs:

- ✓ **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.
- ✓ Short sales (ventes à découvert) 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.
- ✓ When using financial derivative instruments, the RAIF must ensure a similar level of risk-spreading, via appropriate diversification of the underlying assets.

RAIF regime offers the choice of waiving the diversification regime if the RAIF's sole objective is to invest in securities representing risk capital and if it opts for the specific related tax regime. It is the responsibility of the governing body of the RAIF to ensure that the minimum diversification rules implied by the RAIF Law are complied.

2. Reserve and distribution policies

RAIF is not legally required to maintain a legal reserve. The Bill does not provide for any restrictions relating to the distribution of dividends or incomes provided of course that the minimum capitalization in the amount of EUR 1,250,000. - is complied with.

² It must contain a mention pointing out expressly that the fund isn't subject to the supervision of a Luxembourg control authority
³ The report must contain a balance, an account with the incomes and expenses, and a report about the previous year's results and any other information enabling to follow the business's evolution and the fund's results.
⁴ The annual audited report must be compliant with the minimum content requirements set out in schedule 1 of the Bill and article 22 of the AIFMD.

⁵ The RAIF Law itself is silent on the scope and meaning of this diversification requirement, but the legislative explanatory notes refer to the SIF regime and the related Circular CSSF 07/309 with respect to risk-spreading by SIFs.

3. Risk spreading rules

a. Principle

RAIF Law indicates that RAIF is subject to risk spreading principle. In practice Law does not provide a clear information as to minimum level of diversification in the RAIF portfolio. Articles' comments made by the government mention that reference should be made to the CSSF Circular 07/309 relating to risk spreading in the context of a SIF⁶.

b. Exception : investment in risk capital

RAIF can itself restrict to investment in risk capital for benefiting from same tax regime as the one applicable to SICARs.

4. Structuring aspects

a. Umbrella structure

Luxembourg Law offers the possibility to create a RAIF with multiple compartments ("*umbrella fund*") having their own rules (e.g. their own distribution or carried interest structure or their own fees structure). Each compartment is linked to a specific portfolio of investments which is segregated from the investment portfolios pertaining to the other compartments created by the RAIF. Assets of each compartment can only be used to satisfy the rights of investors in that compartment and the rights of creditors whose claims have arisen in connection with the operation of that compartment, unless a provision to the contrary is included in the statutory documents of the RAIF. Liquidation of a compartment does not trigger liquidation of other compartments or of the RAIF.

b. Class of securities or partnership interests

Different classes of securities or partnership interests can be created within a RAIF and in case where the RAIF is set up as an umbrella structure, within each and any of its compartments. Classes created may have different characteristics, notably with regard to their targeted investors or their distribution policy.

c. Cross compartment investment

A compartment of a RAIF can invest in one or more other compartments of the same RAIF. This type of investment should be disclosed in the RAIF offering document, but not necessarily in its constitutive documents. RAIF Law does not prohibit double charging of management fees and the possibility of a master/feeder structure within the same RAIF.

d. Valuation of the assets

RAIF is subject to flexible valuation rules. Unless otherwise provided for in its statutory documents, RAIF assets must be valued at fair value in accordance with provisions set forth in the statutory documents of the RAIF and the relevant provisions of the AIFMD. Assets must be valued and the net asset value must be calculated **at least once a year**.

B. Key actors in the management of the RAIF

1. AIFMD

RAIF regime is strictly reserved for an alternative investment fund (**AIF**) which appoints a duly authorized AIFM (established in the Grand Duchy of Luxembourg or in another Member State having passported its management services to the Grand Duchy of Luxembourg in accordance with article 33 of the AIFMD or, once the AIFM passport is available to third countries, in a third country in accordance with the provisions of the AIFMD), acting as its **external AIFM**. RAIF regime will not be available to (i) funds managed by an AIFM which benefit from an exemption⁷ (e.g. the AIFMD exemption) from the AIFMD and (ii) AIFs managed internally. Law mentions however an exemption from the obligation to appoint an external AIFM for funds which are exempted in accordance with article 2.3(c) or (d) of the AIFMD⁸, i.e. funds which are managed by an eligible supranational or international institution and funds managed by a national central bank.

⁶ In the context of a SIF, the CSSF Circular 07/309 mentions guidelines concerning the meaning of risk spreading (http://www.cssf.lu/fileadmin/files/Lois_reglements/Circulaires/Hors_blanchiment_terrorisme/cssf07_309.pdf).

⁷ It means an AIFM which benefits from one of the exemption of article 3 of the AIFMD which does not need to comply with the full provisions of the AIFMD but, as the result, is deprived of the benefit of the European passport for marketing.

⁸ We note that the article 4 (1) of the draft Bill provides that "*subject to the fulfillment of article 3, paragraph 2, points c) and d) of the amended law of 12 July 2013 on alternative investment fund managers ...*" This article does not exist so that it is certainly a clerical error which will be corrected shortly. We assume that the legislator refers to article 2, paragraph 2, points c) and d) of the amended law of 12 July 2013 on alternative investment fund managers.

In case of resignation or dismissal of the external AIFM, a new external AIFM shall be appointed within 2 months. Otherwise the management of the RAIF must within 1 month of the expiration of this 2-month period asks the relevant District Court (*Tribunal d'arrondissement de Luxembourg or Diekirch*) to put in liquidation the RAIF.

The AIFM may delegate portfolio management or risk management to third parties in accordance with the provisions of the AIFMD. Delegation arrangements must be disclosed in the offering document of the RAIF.

2. Depositary

Assets of the RAIF must be entrusted to a depositary for safekeeping. The depositary chosen by the RAIF must comply with the depositary regime as provided for by the AIFMD⁹. Moreover, the AIFMD regime impose specific duties on the depositary such as the duty to safekeeping the assets of the RAIF, the obligation to monitor the cash flow of the RAIF and specific oversight duties.

It has to be established in Luxembourg, otherwise, a branch, if its headquarter is set up in EU's member state.

Depositary is strictly liable in the event of a loss of financial instruments held in custody¹⁰ and must, without undue delay, **return financial instruments of an identical type or of a corresponding amount to the RAIF or the AIFM acting on behalf of the RAIF.** The depositary is further liable to the RAIF or its investors for the losses suffered by them as a consequence of its negligent or intentional failure to properly fulfill its obligations under the AIFMD.

A prime broker acting as counterparty to the RAIF is authorised to act as a depositary for the RAIF, if it has functionally and hierarchically separated the performance of its depositary functions from its functions as prime broker.

In addition, **a professional depositary of assets other than financial instruments may also be appointed as** depositary. This type of depositary may only be used by RAIFs which have no redemption rights exercisable during a period of five years from the date of the initial investments and that, in accordance with their investment policy, either (i) generally do not invest in financial instruments that must be held in custody in accordance with the relevant provisions of the AIFM Law or (ii) generally invest in issuers or non-listed companies in order to potentially acquire control over such companies within the meaning of the AIFM Law.

3. Statutory auditor

RAIF annual accounts of the RAIF must be audited by a Luxembourg approved statutory auditor (*réviseur d'entreprises agréé*) who must have proven adequate professional experience in that he already performs these functions for UCIs, SIFs or SICARs.

The statutory auditor of a RAIF having opted for the special tax regime (as further detailed in par. IV A. 2. above) has to establish at the end of each accounting year certifying that the RAIF has effectively invested in risk capital over the concerned period. This report has to be submitted to the Luxembourg Direct Tax Administration (*Administration des Contributions Directes*).

In this respect, the statutory auditor of a RAIF is a key actor who has to ensure that the RAIF exclusively invest in risk capital whereas, unlike SICARs, the CSSF does not supervise the RAIF including its compliance with the provisions allowing the RAIF to benefit from this optional tax regime.

4. Central administration/ investment manager

The central administration of a RAIF **must be located** in the Grand Duchy of Luxembourg. These functions are generally be entrusted to a specialised Luxembourg service provider.

One or several investment managers may be appointed by the external AIFM for the management of the RAIF assets (or any of its sub funds thereof). By contrast the management body, the AIFM, the depositary, the statutory auditor and the central administration agent must be one and the same at the level of the RAIF as a whole.

IV. Tax regime

The Luxembourg Land Registration and Estates Administration (*l'Administration de l'Enregistrement et des Domaines*) has in its attribution the supervision of the RAIF.

A. Taxation of the RAIF

RAIF is subject to a dual tax regime.

⁹ The depositary must be a Luxembourg credit institution or investment firm within the meaning of the Law of 5 April 1993 on the financial sector. Investment firms are, however, eligible to act as a depositary only if they fulfill certain conditions laid down by the AIFM Law (such as the capital and own funds requirements and the requirements to be in possession of appropriate organizational, administrative and corporate governance structures, experience requirement).

¹⁰ The depositary is also liable to the RAIF or its investors for other losses suffered by them as a result of the depositary's negligent or intentional failure to properly fulfill its obligations under the AIFM Law.

1. General tax regime applicable

The principle is that RAIF is subject to same tax regime as SIF. RAIF is exempt from Luxembourg wealth and income taxes. No taxation is levied on the income received or the capital gains realised by the RAIF. Individual compartments and classes which are reserved to pension schemes may also benefit from the subscription tax exemption.

Subject to certain exemptions¹¹ the RAIF is subject to an annual subscription tax (**taxe d'abonnement**) levied on its net assets at an **annual rate of 0.01%**, valued at the end of each calendar year.

Exemptions are possible if RAIF point out separately amounts of the assets to the *Administration de l'enregistrement et des domaines* (if the fund doesn't respect the law's provisions, it incurs a tax fine of 0.2% of its overall assets).

2. Optional tax regime

RAIFs (other than those established as FCPs) stating in their statutory documents that (i) their sole objective is to invest their funds in securities representing risk capital¹² and (ii) they are subject to the provisions of the article 48 of the (in the process of being) RAIF law are entitled to opt for a special tax regime which is similar to that currently applicable to SICARs. Insertion in the statutory documents of those two cumulative statements, there can no doubt as to which tax regime will apply. RAIF strictly investing in securities representing risk capital is subject to general corporate taxes applicable in the Grand Duchy of Luxembourg (aggregate rate of corporation taxes, including corporate income tax, municipal business tax and a solidarity surcharge stands currently at about 29 % in Luxembourg-City). It is at the same time in a position to exempt from its tax base all income / capital gains derived from securities or partnership interests held. Income generated by cash pending investments in risk capital are exempted provided that this is effectively invested in risk capital within a period of 12 months.

When RAIF is established as an umbrella fund it is not possible to have certain compartments subject to general tax regime and others subject to special tax regime. RAIF opting for this optional tax regime should benefit from double tax treaties signed by the Grand Duchy of Luxembourg. RAIF opting for this special tax regime is exempt from net wealth tax, except for a minimum net wealth tax applying to all fully taxable Luxembourg companies as of 1 January 2016 (unless the RAIF is established as tax transparent S.C.S. or S.C.Sp. in which case it will be exempted from this minimum wealth tax).

B. Taxation of the investors in the RAIF

Any payment of proceeds made upon the redemption of the securities or partnership interests of the RAIF as well as distributions made by it are not subject to Luxembourg withholding tax. A non Luxembourg resident investor in the RAIF is not taxed in the Grand Duchy of Luxembourg on any income or capital derived from its securities or partnership interests held in the RAIF.

C. VAT

No VAT provisions are included in the Law. Management services provided to the RAIF are **exempt from Luxembourg VAT**. This exemption covers the provision of portfolio management services, investment advisory services as well as certain administrative services. Mere technical services are however not exempt from VAT. A case-by-case analysis is highly recommended. Depository services, however, can benefit from a reduced VAT rate of 14%.

D. International tax aspects

RAIF structured under the form of a SICAV or SICAF may benefit from a large number of **double tax treaties** concluded by Luxembourg tax authorities. RAIFs, which have been established as an SLP, are regarded as fully tax transparent from a Luxembourg tax point of view and therefore enable the investors to claim the benefits of the tax treaties.

V. Marketing

A. Marketing to EU professional investors

RAIF is a specific AIF which must be managed by an authorised external AIFM. RAIF will therefore benefit from all EU AIFM's passporting advantages. As a result, securities or partnership interests of the RAIF shall be distributed by the AIFM by way of

¹¹ The Bill exempts from the subscription tax (*taxe d'abonnement*) the assets invested in (i) other Luxembourg based UCIs, SIFs and RAIFs already subject to this subscription tax, (ii) pension pooling funds, (iii) certain institutional cash funds as well as (iv) microfinance funds. This exemption applies *mutatis mutandis* to individual compartments /classes reserved to pension schemes.

¹² The Bill mentions that risk capital investment means direct or indirect provision of funds to entities with a view of their launch, development or their listing on a stock exchange. This concept is no further defined in the Bill. Government's comments on the Bill indicate that reference should be made to guidelines provided by the CSSF Circular 06/241 of 5 April 2006 on the concept of risk capital applicable to SICARs.

marketing passport across EU to only professional investors via the regulator-to-regulator notification regime. This advantageous marketing is currently limited to AIFMs established in the EU. Should the European Securities and Market Authority (ESMA) render a positive opinion the EU Commission could resolve to extend passport to non EU AIFM which, subject to the compliance with all the AIFMD requirements, may then benefit of the passport and manage a RAIF.

B. Marketing to other well-informed investors

In the Grand Duchy of Luxembourg marketing is authorised to any well-informed investor. Marketing within or outside EU to a well-advised investor who does not qualify as a professional investor requires compliance with the local placement of the country where the marketing of the RAIF is foreseen.

C. Closed-ended RAIFs

Closed-ended RAIFs or RAIFs not investing in accordance with principle of risk spreading may in addition be subject to provisions of Law of 10 July 2005 on prospectuses for securities in case where they intend to carry out a public offering or admission to trading of their shares / units. If they do not benefit from one of the exemptions provided for by the Prospectus Law, they might have to prepare a prospectus within the meaning of Prospectus Law. In practice, most of RAIFs will benefit from an exemption.

VI. Key takeaways

- Fast and efficient setting up
- In the absence of regulatory approval requirements, quick time to market
- Higher investor protection (compared with an unregulated non AIF vehicle) as indirectly supervised by its AIFM
- High flexibility by benefiting from investment fund features (eg multiple compartments, variable capital)
- Access to EU AIFMD marketing passport
- Advantageous tax treatment
- Expectation to convert into RAIF (i) regulated structure (in order to benefit from a better time to market in case of willingness to quickly launch new sub funds, being understood that this conversion is subject to the prior approval of the CSSF) or (ii) unregulated structure (in order to avail of the flexible umbrella structure)
- Possibility (i) to create in a first phase a RAIF for speeding the launch process and allowing a promoter to quickly invest in a targeted asset (could interest initial sophisticated investors for which the regulated or unregulated status of the fund is irrelevant) and (ii) to convert in a second phase the RAIF in a supervised structure (for the purpose of attracting new investors for which it remains essential to invest in a fund supervised by a local regulator)
- Alternative to regulated Irish ICAV: RAIF may make a “check the box” election to be treated as a partnership for US tax purposes (in the same way as can an Irish ICAV) - an important feature for hedge funds being sold to US taxable investors as it permits the use of “master-feeder” structures.

2. Chronology of events: key dates

- **14 December 2015:** Bill of law was deposited with the Luxembourg Parliament
- **23 July 2016:** Bill adopted by the Luxembourg Parliament.
- **28 July 2016:** Publication of the law in the Memorial A.
- **31 July 2016:** Entry into force three days after publication in the official gazette.

3. Reference text(s)

The text was published in the Official Journal of Luxembourg in July 2016.

Links: https://www.cssf.lu/wp-content/uploads/L_230716_RAIF_eng.pdf

jean-pierre.gomez@sgss.socgen.com