Luxembourg Reserved Alternative Investment Fund or RAIF.

A Practical guide.

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Hogan Lovells

With the implementation of the alternative investment fund managers directive (**AIFMD**), the Luxembourg specialised investment fund (**SIF**) regime, although one of the most flexible European regulated regimes, was felt burdensome as it imposes a double-layer of supervision on the SIF itself and the AIFM. Further, the fund industry expressed a strong desire for a shortened time-to-market of Luxembourg regulated alternative investment funds (**AIF**).

The consequence of this has been the creation of the reserved alternative investment fund (**RAIF**) on 23 July 2016 (**RAIF Law**). A Bill has been tabled very recently to amend the RAIF Law and aims at taking into account some practical aspects and flexibilities that are desired by the fund industry.

This guide sets out the salient features of RAIFs. For any additional questions on RAIFs, the persons mentioned at the end of this note can be contacted.

1. REGULATORY REQUIREMENTS.

Contrary to a SIF which is subject to prior approval by and under the permanent supervision of the Luxembourg supervisory authority (**CSSF**), a RAIF is not required to be approved or supervised by the CSSF.

However, each RAIF has to appoint a fully licensed external AIFM.

As a consequence, a RAIF needs to comply with certain requirements imposed by AIFMD e.g., providing for risk management and conflicts of interest policies, complying with requirements in relation to the valuation of assets or the delegation of certain tasks, the audit of annual accounts by an approved statutory auditor and complying with transparency requirements.

In addition, the assets of a RAIF need to be entrusted to a Luxembourg based depositary which, depending on the nature of the RAIF's assets, has either safe-keeping or supervisory duties.

2. RESTRICTIVE CIRCLE OF INVESTORS.

A RAIF is reserved to well-informed investors in the sense of the RAIF Law. These include institutional and professional investors as well as investors who invest at least €125,000 in a RAIF. Under certain conditions, investors investing less than this amount can be considered as well-informed.

3. AN ALMOST UNLIMITED RANGE OF ELIGIBLE ASSET.

The RAIF regime has been designed to cater for all imaginable asset classes stretching from straight forward stocks and bonds, over real estate, non-directional and non-correlated assets and private equity (direct and indirect) to innovative special asset type funds like art funds as well as wine funds.

Islamic sponsors show a growing interest in Luxembourg for the launch of Sharia compliant investment funds, too.

4. RISK DIVERSIFICATION.

A RAIF has by definition the aim of spreading investment risk. The RAIF law does however not contain any quantitative limits.

In the comments on the draft RAIF law, it is said that RAIFs can inspire themselves from CSSF Circular 07/309 (dealing with SIFs) for guidance on appropriate risk diversification. In such Circular, the CSSF states that a SIF does not invest more than 30% of its assets or commitments in securities of the same nature issued by the same issuer.

It is fair to say that a RAIF investing in accordance with Circular 07/309 complies with the risk diversification requirement of the RAIF Law. We however also take the view that, under certain circumstances, it can be derogated from the principles of such Circular.

5. RAIF INVESTING IN RISK CAPITAL.

RAIFs which exclusively invest in assets representing "risk capital" (as defined in the RAIF law) do not have to spread their investment risk.

Furthermore, such RAIFs are subject to a specific taxation regime.

6. STRUCTURAL FREEDOM.

6.1 Available Forms

A RAIF can take the non-corporate form of a *fonds commun de placement* (FCP) as well as a vast array of corporate forms, amongst which the most popular is the public limited liability company (*société anonyme*). In such case, the RAIF will take the form of a *société d'investissement à capital variable* (SICAV).

Recently, Luxembourg introduced a new special limited partnership regime, the *société en commandite spéciale* (or SCSp), which has no legal personality of its own. Modelled on the English LP and based on contractual freedom, it offers the highest possible level of flexibility.

6.2 Umbrella Structure

The RAIF Law offers the possibility to create, within the same investment vehicle, different segregated compartments each with its own specific investment policy and without cross contamination.

Under certain conditions, one compartment can invest in another compartment of the same RAIF.

In addition to dedicated sub-funds, different classes of shares can be created in order to serve different investors' needs.

7. MINIMUM CAPITAL, REDEMPTIONS AND DISTRIBUTIONS.

A RAIF has to reach a minimum capital (or a minimum value of the amount constituting partnership interests) of €1,250,000 (or its currency equivalent) within one year of its incorporation.

A RAIF can be set up both as closed-ended or open-ended with a corresponding redemption policy.

Distributions, regardless of the legal form chosen, can be freely structured and performed, subject to the legally required minimum capital of €1,250,000.

8. FAVOURABLE TAX FEATURES.

A RAIF is only subject to an annual subscription tax (*taxe d'abonnement*) at a rate of 0,01% on its total net assets. In certain cases, even this tax is not due e.g., microfinance or pension pooling funds.

A RAIF is exempt from taxes on income and capital gains it receives and is not subject to Luxembourg income and wealth taxes.

Management services are rendered VAT free to a RAIF.

For any further information, feel free to contact either one of the below.

Pierre Reuter

Managing Partner, Luxembourg
T +352 26 4 26 201
pierre.reuter@hoganlovells.com

Simon Recher

Senior Associate, Luxembourg
T +352 26 4 26 222
simon.recher@hoganlovells.com

Mathilde Soetens

Associate, Luxembourg
T +352 26 4 26 223
mathilde.soetens@hoganlovells.com

Alicante
Amsterdam
Baltimore
Beijing
Birmingham
Boston
Brussels
Budapest*
Colorado Springs
Denver
Dubai
Dublin
Dusseldorf
Frankfurt
Hamburg
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San Francisco
São Paulo
Shanghai
Shanghai FTZ*
Silicon Valley
Singapore
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