



Luxembourg
Investment Vehicles

RAIF

2017

MILAN | ROME | LUXEMBOURG | LONDON | LUGANO | DUBLIN | SINGAPORE | DUBAI



*We are what we repeatedly do.
Excellence, then, is not an act, but a habit.
-Will Durant-*

On a preliminary basis and for the sake of clarity, the details shared, are of a general nature and shall not be intended as a fully comprehensive tax/legal advice but rather as a preliminary overview. Although we attempt to provide you with precise and timely updates, there can be no guarantee that the information shared is accurate as of the date it is received or it will continue to be accurate in the future. If you wish to have a more specific advice on the same or on different matters, LEXTRAY is at your disposal, to provide you with any advice you may require in connection with the above.



> THE LUXEMBOURG ENVIRONMENT

Luxembourg is the world's second largest investment funds domicile, and is the prime location for the pan-European and global distribution of investment funds under the UCITS brand. Initially designed as a global retail funds hub under the sole UCITS brand, Luxembourg has gradually opened up to the alternative asset classes, offering personalised structuring solutions through specialized investment vehicles.

Structuring flexibility, investor protection and tax efficiency are the crucial elements that have *inter alia* helped to convince the investors, to shift their operations and investments to Luxembourg.

In addition to such a fund-friendly environment, the constant work of the legislator to promote Luxembourg as a fully-regulated on shore location (see its stringent anti money-laundering regulation) has greatly contributed to its business appeal.

> RAIF: THE VEHICLE IN A NUTSHELL

The purpose of this *brochure* is to provide you with a bird's eyes view of the legal framework, investment policies as well as reporting and taxation particularities of the Reserved Alternative Investment Fund ("RAIF").

We hope that you find it useful and that it meets your expectations.

RAIF qualifies as an alternative investment funds ("AIF") managed by an external alternative investment fund manager ("AIFM") within the meaning of Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers ("AIFMD").

This vehicle, offers similar structuring flexibilities as Luxembourg regulated specialized investment funds ("SIFs"). However, in contrast to SIFs, RAIFs are not subject to supervision of the Luxembourg Supervisory Authority of the financial sector ("*Commission de Surveillance du Secteur Financier*" or "CSSF"). This permits the achievement of a significantly enhanced time-to-market for new fund launches.

> LEGAL FRAMEWORK

The RAIF was introduced and is governed by the Luxembourg Law of 23 July 2016 on reserved alternative investment funds (entered into force on 1 August 2016) ("**RAIF Law**").

In addition, RAIFs adopting a corporate form are, unless it is derogated therefrom by the RAIF Law, subject to the general provisions of the Luxembourg law of 10 August 1915 relating to commercial companies, as amended ("**Company Law**").

Moreover, as they qualify as AIFs managed by a duly authorised AIFM subject to the full AIFMD requirements, RAIFs will be subject to the so-called "AIFMD Product Rules" applicable to them.

> AUTHORISATION AND SUPERVISION

The RAIF is not subject to prior authorisation by the CSSF before it can be launched and carry out its activities. Consequently, RAIF does not fall under the direct ongoing supervision of the CSSF.

> STRUCTURAL AND LEGAL ASPECT

1. LEGAL FORMS

RAIFs can be of contractual type or of corporate type. The RAIF of contractual type is organized in the form of a *fonds commun de placement* (“FCP”) so as mutual fund established by contract (not a corporate entity) managed by a management company (*société de gestion*) located in Luxembourg.

The RAIF of corporate type is organized in the form of an investment company with variable capital (*société d’investissement à capital variable* or “SICAV”), or of an investment company with fixed capital (*Société d’Investissement à Capital Fixe* or “SICAF”). A SICAV/SICAR RAIF may be established as a public limited liability company (*société anonyme* or “SA”), a private limited liability company (*société à responsabilité limitée* or “Sà rl”), a corporate partnership limited by shares (*société en commandite par actions* or “SCA”), a common limited partnership (*société en commandite simple* or “SCS”), a special limited partnership (*société en commandite spéciale* or “SCSp”) or a cooperative company set up as a public limited liability company (*société coopérative organisée sous forme de société anonyme* or “SCSA”).

2. UMBRELLA STRUCTURE

A RAIF may be organized as an umbrella fund, consisting of one or more compartments, or sub-funds, which may differ in, *inter alia*, their investment policy, redemption policy, dividend policy, fee structure, reference currency, appointed investment manager/adviser and/or type of target investors.

3. CAPITAL REQUIREMENT AND OTHER ASPECTS

The net assets of a RAIF may not be less than EUR 1,250,000. This minimum must be reached within a period of twelve months following the entry into force of the management regulations of the common fund (if RAIF of contractual type) or of the incorporation (if RAIF of corporate type). Only 5% of the capital needs to be paid up on subscription. Unless otherwise provided for, the assets of a RAIF must be valued at fair value.

> ELIGIBLE INVESTORS

Investment in a RAIF is reserved to “well-informed investors”.

This term comprises (i) institutional investors, (ii) professional investors as well as any (iii) other investor that:

- A. has declared in writing its status as a well-informed investor and
 - a. invests a minimum of EUR 125,000 in the RAIF; or
 - b. has obtained an assessment by a credit institution, an investment firm or a management company which has certified the investors’ ability to understand the risks associated with investing in the RAIF.

> ELIGIBLE ASSETS AND RISK DIVERSIFICATION REQUIREMENTS

There is no restriction in terms of eligible assets so in other words can invest *inter alia* in transferable securities, money market and financial derivative instruments, but also in real estate, infrastructure, micro-finance, private equity, venture capital as well as more atypical assets such as wine, diamonds, insurance contracts, economic rights of football players, artworks, etc.

RAIFs are subject to the principle of risk-spreading. However, if the RAIF’s constitutional documents provide for exclusive investments in risk capital and opt for the SICAR tax regime provided for by the RAIF Law, the principle of risk spreading won’t apply.

> MANAGEMENT AND SERVICE PROVIDERS

1. PROMOTER

Pursuant to the RAIF Law, the creation of a RAIF does not require a promoter.

2. MANAGEMENT BODY

As indicated above, the management body of the RAIF depends on the legal form chosen and on the terms of the constitutive documents of the relevant RAIF. There is no provision in Luxembourg law imposing any condition of nationality or residence on the directors or managers of the management bodies of RAIFs. However, from a foreign tax law perspective, it may be recommended that the management body holds regular meetings in Luxembourg to ensure that the RAIF has appropriate tax substance within the jurisdiction.

3. EXTERNAL AIFM

RAIFs must be managed by an authorised external AIFM appointed by the management body of the RAIF and which can be established in Luxembourg, in another EU Member State or also in a third country once the AIFMD passport becomes available for third countries.

4. CENTRAL ADMINISTRATION

Administrative functions may be undertaken by the external AIFM, although these functions are generally entrusted to a specialized Luxembourg service provider (a central administration agent). The central administration agent may be appointed by the external AIFM (subject to the AIFMD delegation rules) or by the RAIF's management body direct

(i.e. without flowing through the external AIFM).

5. INVESTMENT MANAGER

The external AIFM may delegate part of its portfolio management or risk management functions to third party service providers with the requisite resources and expertise but as a general principle, the external AIFM must remain in charge of some of its basic functions.

6. DEPOSITARY

The custody of the assets of any RAIF must be entrusted to a depositary having its registered office in Luxembourg or being established in Luxembourg if its registered office is in another Member State of the EU. The depositary must be a credit institution or an investment firm within the meaning of the amended Law of 5 April 1993 on the financial sector. An investment firm shall only be eligible as depositary to the extent that this investment firm also fulfills the conditions provided in Article 19, paragraph 3 of the amended Law of 12 July 2013 relating to alternative investment fund managers.

7. EXTERNAL AUDITOR

The accounting information contained in the annual report of a RAIF must be audited by an external auditor which has received the due approval of the CSSF (réviseur d'entreprise agréé), which is appointed by the RAIF (i.e. by the management company of the FCP-RAIF or by the general meeting of shareholders/partners of the SICAV/SICAFRAIF) and remunerated by the RAIF.

> TAXATION

1. GENERAL TAX REGIME

1.1 Annual subscription tax

RAIFs are, in principle, subject to annual subscription tax (taxe d'abonnement) at a rate of 0.01%. This annual subscription tax is payable quarterly on the basis of the total net assets of the RAIF valued at the end of each calendar quarter.

However, the RAIF Law exempts some RAIFs from the subscription tax under certain conditions (e.g. RAIFs investing in other funds already submitted to the subscription tax, money market RAIFs, RAIFs set up as a pension pool vehicle for a group and microfinance RAIFs).

1.2 Luxembourg taxes on wealth, capital gains and income

RAIFs are exempt from Luxembourg net wealth tax. Furthermore, no Luxembourg taxes are levied on capital gains realised or income received by RAIFs as they are not subject to corporate income tax.

No registration duties or other transfer taxes are payable in Luxembourg on the issue of shares/units by the RAIF.

1.3 VAT

The management services performed by a Luxembourg management company for a RAIF should be exempt from value added tax. This exemption covers management services, investment advisory services and certain administrative services.

1.4 Taxation of the investors in a RAIF

Distributions made by a RAIF to investors as well as any payment of proceeds made upon the redemption of RAIF units, shares or partnership interest are not subject to Luxembourg withholding tax. Non Luxembourg-resident investors in a RAIF (namely those investors who are not acting via a Luxembourg permanent establishment) will not be taxed in Luxembourg on any income or capital gains they derive from their units, shares or partnership interest in a RAIF.

2. OPTIONAL ALTERNATIVE TAX REGIME

RAIFs of the corporate form (i.e. not those established as FCPs) may opt for the special optional tax regime (which mirrors the tax regime applicable to SICARs) if their constitutive documents expressly provide that their exclusive object is the investment in risk capital only and that they are subject to the provisions of Article 48 of the RAIF Law (which sets out the optional tax regime).

3. DOUBLE TAXATION AGREEMENTS (DTA's) AND PARENT SUBSIDIARY EU DIRECTIVE

RAIF in Luxembourg cannot generically benefit from Luxembourg's double taxation agreements (“DTA's”) and from parent-subsidiary EU Directive (“EU P-S Directive”), unless it adopts the special optional tax regime (which, as said, basically is the one applicable to SICARs).

Nevertheless, it must be pointed out that, in this last case latter case, RAIF might profit from the tax benefits deriving from the DTA's or the EU P-S Directive in word, if the SICAR's regime is legally interpreted as acceptable by the concerned countries.

Should the RAIF (adopting the SICAR regime) lose the benefit deriving from the DTA's and the EU P-S Directive, the obstacle could be overcome by inserting in the control chain a simple Luxembourg SOPARFI (SA, Holding) that would benefit by default.

Presentation of the Firm



LEXTRAY is committed to providing the highest quality legal and tax services. Our team is at your service in 6 different languages (English, French, Italian, German, Spanish and Arabic), directly active in 7 jurisdictions (Luxembourg, Italy, Switzerland, UK, Ireland, Singapore and Dubai) and indirectly through our associates in the Netherlands, Spain, USA, Argentina and Brazil, to provide you with the finest tailor-made work products and solution.

Our widespread territorial coverage allows us to remain in constant contact with you, 24h24 and 7/7, guaranteeing a first-rate standard and rapid execution as well as a clear, practical and up-to the minute advice. Considering the fast moving and aggressive business environment we nowadays facing, we are committed to a relentless professional skill update and are outmost attentive to tuning to the clients' wishes and adapting to new laws and regulations.

EMPHASIS ON OUR INVESTMENT VEHICLES PRACTICE AREA

Our Luxembourg team has a robust expertise in all areas of Luxembourg investment vehicles law.

This includes among others:

- (i) support in finding the ideal investment vehicle to meet your requirements and your goals from a governance, regulatory and tax perspective;
- (ii) support in setting up the vehicle;
- (iii) tax structuring support;
- (iv) providing ongoing corporate support service throughout the lifetime of the vehicle;
- (v) keeping you updated on the new regulatory developments.



CONTACT

We would love to hear from you.

Don't hesitate to get in touch with one of our professionals or dedicated departments.

info@lextray.lu

Lextray Corporate and Tax S.à r.l.

2, Boulevard de la Foire | L - 1528 Luxembourg

Tel. + 352 27 85 74 1 | Fax + 352 27 85 74 70

Lextray Legal S.à r.l.

5, Rue Aldringen | L - 1118 Luxembourg

Tel. +352 26 20 2912 | Fax +352 26 20 1926

Talk to us about your concerns and find out more by visiting us at www.lextray.com