

HOW TO SET UP

A RAIF (RESERVED ALTERNATIVE INVESTMENT FUND)

DESCRIPTION

The Reserved Alternative Investment Fund (RAIF) is an investment fund that can invest in all types of assets. It qualifies as alternative investment fund (AIF) and is not itself subject to CSSF product approval. RAIFs must appoint an authorised external Alternative Investment Fund Manager (AIFM) and if the AIFM is domiciled in the EU, RAIFs market their shares, units or partnership interests via a specific passport to well-informed investors across the EU.

ELIGIBLE INVESTORS

Investment in a RAIF is limited to “well-informed” investors that are able to adequately assess the risks associated with an investment in such a vehicle. These are defined as institutional investors, professional investors and investors who have confirmed in writing that they adhere to the “well-informed” investor status, and who either invest a minimum of EUR 125,000 in the RAIF or have been assessed by a credit institution, investment firm or management company which certifies the investor’s expertise, experience and knowledge in adequately appraising an investment in the RAIF.

LEGAL FRAMEWORK

RAIFs are subject to the Luxembourg Law of 23 July 2016 (the RAIF Law).

Moreover, the Luxembourg law of 12 July 2013 on Alternative Investment Fund Managers (AIFM Law) applies.

RAIFs investing in short-term assets and having distinct or cumulative objectives offering returns in line with money market rates or preserving the value of the investment must further comply with the requirements of Regulation (EU) 2017/1131 on money market funds.

There are a number of additional rules that have to be observed at national and/or EU level (e.g. concerning AML, MiFID, market abuse, derivatives, securities financing transactions, shareholders rights).

LEGAL FORM

The RAIF may be constituted as:

- an open or closed ended common contractual fund (*fonds commun de placement* – FCP). The FCP has no legal personality and must be managed by a management company.

- an open or closed ended investment company with variable capital (*société d’investissement à capital variable* – SICAV), or fixed capital (*société d’investissement à capital fixe* – SICAF). The creation of such a corporate entity requires the drafting of instruments of incorporation.

The FCP or SICAV/F may be set up as a single fund or as an umbrella structure with an unlimited number of compartments. The fund and compartments respectively may have an unlimited number of share-/unit classes, depending on the needs of the investors to whom the fund is distributed.

CAPITAL BASE

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 its authorisation. At least 5% of the capital needs to be paid up at subscription.

CREATION AND INDIRECT SUPERVISION

The RAIF is itself not subject to approval by the *Commission de Surveillance du Secteur Financier* (CSSF). However, as the RAIF must be managed by an authorised external AIFM, the CSSF is informed about the RAIFs activities via its manager which is subject to regular reporting requirements.

RAIFs are established by notarial certification. It is sufficient to certify that the AIFM confirms the fund’s creation, and that this information is published in the official gazette *Mémorial*. The fund’s constitutional documents do not have to be certified by a notary.

RAIFs are entered in a list held by the Luxembourg Trade and Companies Register.

The offering document must indicate on its front page that the fund is not subject to supervision in Luxembourg.

DISCLOSURE REQUIREMENTS AND FINANCIAL REPORTS

A RAIF must prepare a prospectus or offering document, a PRIIP Key Information Document (KID) if retail investors can make investments, and an annual report. There is no obligation to prepare a semi-annual report.

APPOINTMENT OF AN AIFM

RAIFs are required to appoint an authorised external AIFM, which means that they cannot be internally-managed. The AIFM can be established in Luxembourg, in another EU Member State or in a third country. If the RAIF is managed by a management company, it can be appointed as AIFM.

RAIFs benefit from a passport allowing AIFMs to market the RAIF's shares, units or partnership interests to professional investors within the EU through a regulator-to-regulator notification regime.

A UCITS management company may apply for authorisation as AIFM in order to manage both UCITS and AIFs.

SERVICE PROVIDERS

A common fund must be managed by a management company, whereas a SICAV/F may either be self-managed or designate a management company. If applicable, the management company of an FCP must draw up the management regulations for the common fund. Self-managed SICAV/Fs may only manage assets of their own portfolio and may not manage assets on behalf of a third party.

The central administration of a RAIF must be in Luxembourg.

A RAIF must appoint a Luxembourg depositary which is among other things responsible for the safekeeping of assets.

The eligible depositaries are Luxembourg established credit institutions, but also Luxembourg established investment firms fulfilling certain requirements laid down by the Law of 5 April 1993 on the financial sector, as amended. It is also possible to collaborate with a professional depositary of assets other than financial instruments.

The annual report must be audited by an authorised independent auditor with appropriate professional experience.

Typical other service providers of a RAIF are lawyers, portfolio managers (investment advisers), administrators/registrars/transfer agents/domiciliation agents, distributors/nominees, market makers, paying agents.

Useful information sources

www.cssf.lu

Commission de Surveillance du Secteur Financier
(Luxembourg financial supervisory authority)