Luxembourg regime for reserved alternative investment funds ("RAIFs")

July 2016

CLIFFORD
CHANCE

Contents

1. General Overview 3
2. Investment Policy and Restrictions 5
3. Structural and Legal Aspects 5
4. Other Main Structuring Features 8
5. Management and Service Providers 10
6. Transparency Requirements 12
7. Setting-up of RAIF and Inscription on RAIF List 13
8. Marketing of RAIFs 14
9. Taxation 14

Online resources

Please visit regularly our dedicated **Brexit topic guide** to keep up to date with the most recent developments relating to the outcome of the 23 June referendum in the UK.

Follow **Clifford Chance Luxembourg** on **Linkedin** to stay up to date with the legal industry in Luxembourg.

The legislation on reserved alternative investment funds ("**RAIFs**") was adopted by the Luxembourg Parliament on 14 July 2016 (the "**RAIF Law**").

The purpose of the RAIF Law is to introduce a new type of Luxembourg investment vehicle that is reserved to Luxembourg alternative investment funds ("**AIFs**") managed by an authorised external alternative investment fund manager ("**AIFM**") within the meaning of Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers (the "**AIFMD**").

To a large extent, the RAIF vehicle offers similar structuring flexibilities as Luxembourg specialised investment funds ("**SIFs**"). However, in contrast to SIFs, RAIFs are not subject to supervision of the Luxembourg supervisory authority of the financial sector (the "**CSSF**").

The RAIF Law will be effective after its publication in the Luxembourg official gazette (*Mémorial*), which is expected to occur in the next few weeks.

1. General Overview

1.1 Legal Framework

RAIFs are Luxembourg AIFs governed by the RAIF Law[i].

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 (the "**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. These AIFMD Product Rules include, among others, specific AIFMD requirements in terms of:

- appointment of the RAIF's depositary
- appointment of the RAIF's approved statutory auditor
- minimum content of the RAIF's annual report
- valuation of the RAIF's assets
- investment and leverage rules regarding certain types of assets.

However, in exchange for complying with the conditions laid down in the AIFMD and provided that their AIFM is fully licensed, RAIFs may benefit from the AIFMD passport under certain conditions in order to be marketed to professional investors (and retail investors, if permitted by the relevant Member States) in the European Union ("**EU**").

Apart from the RAIF regime, the Luxembourg law of 17 December 2010 on undertakings for collective investment as amended (the "**UCI Law**"), the Luxembourg law of 13 February 2007 on specialised investment funds as amended (the "**SIF Law**") and the Luxembourg law of 15 June 2004 on the investment company in risk capital as amended (the "**SICAR Law**") provide alternative legislations for structuring regulated investment funds in Luxembourg. There are also other types of Luxembourg non-regulated vehicles, which may be used to structure investment funds in accordance with the Company Law. These alternative regimes for regulated and non-regulated investment funds are not discussed in this brochure, but a comparative summary table of these other investment vehicles is attached as Appendix 1.

1.2 No Authorisation and Supervision

The RAIF is not a supervised entity; consequently, it will not be subject to prior authorisation by the CSSF before it can be launched and carry out its activities. Similarly, prior regulatory approval of the CSSF will not be required to amend the RAIF's constitutive documents or offering memorandum or to launch new sub-funds during the lifetime of the RAIF.

However, the RAIF will be indirectly supervised by the competent supervisory authorities of its authorised AIFM under the AIFMD, which shall, in particular, ensure that the RAIF complies with the AIFMD Product Rules applicable to it.

1.3 Appointment of an External Authorised AIFM

The RAIF regime is restricted to Luxembourg AIFs that are managed by an authorised external AIFM (subject to the full AIFMD requirements), which can be established in Luxembourg, in another EU Member State or in a non-member country once the AIFMD passport is made available for third countries.

For the avoidance of doubt, the RAIF regime will thus not be made available to:

- Luxembourg AIFs using the benefit of an exemption or derogation under the AIFMD, such as the so-called "*de minimis*" or "group exemption"
- internally-managed AIFs.

The sole exemption to the obligation for RAIFs to appoint an external AIFM is for RAIFs that are exempted under Article 2.3(c) or (d) of the AIFMD because they are managed either:

- by a supranational institution (such as the ECB, EIB or EIF) or by another similar international institution acting in the public interest or
- by the Central Bank of Luxembourg or another national central bank.

1.4 Eligible Investors

According to the RAIF Law, RAIFs are restricted to "well-informed investors", i.e. institutional investors, professional investors as well as any other sophisticated retail or private investor that:

- has declared in writing its status as a well-informed investor and:
  - invests a minimum of EUR 125,000 in the RAIF or
  - has obtained an assessment from a credit institution, a MiFID investment firm, a UCITS management company or an authorised AIFM certifying its expertise, its experience and its knowledge in appraising in an appropriate manner an investment in the RAIF.

The RAIF Law provides that RAIFs must adopt the necessary means to ensure compliance with the eligibility requirements set forth above, implying that RAIFs are responsible for ensuring that their investors are, and remain, "well-informed investors".

The RAIF Law does not contain any definition of the concepts of institutional investor and professional investor.

According to market practice, however, the concept of "institutional investors" usually refers to entities managing important assets such as, for example, banks and other professionals of the financial sector, undertakings for collective investment, insurance and reinsurance companies, social security institutions and pension funds, etc.

The concept of "professional investors" is inspired by MiFID[ii] and generally used to refer to those investors who are deemed to have the experience, knowledge and expertise to make their own investment decisions and properly assess the risks they incur. Traditionally, this includes, without limitation, credit institutions, investment firms, other authorised or regulated financial institutions and other institutional investors.

For the sake of completeness, the above investor eligibility requirements do not apply to the directors and other persons involved in the management of RAIFs. These persons are considered *ipso jure* as eligible investors.

1.5 Optional Regime

Luxembourg AIFs shall only be considered as RAIFs if their exclusive object is the collective investment of their funds in assets in accordance with the principle of risk spreading – unless they are subject to the special tax regime provided for by the RAIF Law, in which case risk diversification is not required (see Section 9.2 below) – and to provide investors with the benefit of the result of the management of their assets. The concept of "management" means an activity comprising at least the service of portfolio management. This aims at expressly excluding from the scope of the definition of RAIFs passive investment vehicles, the activity of which is limited to the holding of participations.

Moreover, RAIFs are AIFs whose constitutive documents (i.e. the articles of incorporation, limited partnership agreement or management regulations, as the case may be) expressly provide that they are subject to the provisions of the RAIF Law. As a consequence, a Luxembourg AIF managed by an authorised AIFM and restricted to one or several well-informed investors will not automatically be governed by the RAIF regime, but could, for instance, be established as an unregulated company subject to the provisions of the Company Law only, unless it expressly chooses to be subject to the RAIF Law in its constitutive documents.

2. Investment Policy and Restrictions

2.1 Eligible Assets

The RAIF Law does not provide for any particular investment restrictions, which allows for significant flexibility with regard to the assets in which RAIFs may invest, enabling such funds to be set up for investment in any kind of asset and to pursue any kind of investment strategy.

Accordingly, the RAIF vehicle can be used for the setting-up of funds investing in, *inter alia*, 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.

2.2 Risk Diversification Principle

RAIFs are subject to the principle of risk diversification, unless they restrict their investment policy in their constitutive documents to investments in risk capital only and opt for the special tax regime provided for by the RAIF Law (see Section 9.2 below).

Although the RAIF Law does not elaborate on the concept of risk diversification, the parliamentary documents relating to the RAIF Law indicate that the risk spreading rules laid down by the CSSF in its circular letter 07/309 relating to risk spreading in the context of SIFs ("**Circular 07/309**") should be referred to by RAIFs to interpret the concept of risk diversification[iii].

Based on Circular 07/309, the risk diversification principle should thus be considered as complied with by RAIFs if the following investment restrictions are met:

- A RAIF (or any of its compartments) will not invest more than 30% of its assets or commitments to subscribe for securities issued by the same issuer[iv]. Such restriction shall, however, not apply to:
  - investments in securities issued or guaranteed by a Member State of the Organisation for the Economic Co-operation and Development ("**OECD**") or by their regional or local authorities or by EU, regional or worldwide supranational institutions and organisations
  - investments in target undertakings for collective investments, which are subject to risk diversification requirements at least comparable to those applicable to SIFs.
- Short sales may not, in principle, result in the RAIF holding a short position on securities issued by the same issuer, which represent more than 30% of its assets.
- With regard to financial derivative instruments, the RAIF must ensure a risk diversification comparable to the above by means of an appropriate diversification at the level of the derivatives' underlying assets. With the same objective, the counterparty risk in over-the-counter operations must, as the case may be, be limited in respect of the quality and qualification of the relevant counterparty.

By way of reference to Circular 07/309, RAIFs should also be able to benefit from a "start-up period" during which they may depart from the above risk diversification rules. The length of such a start-up period will vary depending on the types of assets under management (e.g., it is usually four years for real estate SIFs) and will have to be disclosed in the offering document of the RAIF.

As regards infrastructure RAIFs, it may be reasonable to refer also to the technical guidelines issued in May 2015 by the Association of the Luxembourg Fund Industry ("**ALFI**") regarding Luxembourg infrastructure investment vehicles. In these guidelines, ALFI states that the CSSF allows less stringent risk-diversification requirements for SIFs investing in infrastructure assets, which are considered as appropriately diversified if they hold at least two investments, with no single investment representing more than 75% of their total assets. Such relaxed risk-diversification rule could, in principle, also be taken into account when structuring a RAIF investing in infrastructure assets.

3. Structural and Legal Aspects

3.1 Legal Form

RAIFs may be organised in the following legal forms: FCP, SICAV or SICAF (as defined below).

For the avoidance of doubt, RAIFs which restrict their investment policy in their constitutive documents to investments in risk capital only and opt for the special tax regime provided for by the RAIF Law (see Section 9.2 below) must always be a company (*société*) and can never be organised under the contractual form of an FCP.

3.1.1 RAIFs of the contractual type (the "FCP-RAIF")

A *fonds commun de placement* ("**FCP**") is a mutual fund established by contract. It is not a corporate entity but an undivided co-ownership of assets, which is managed by a management company (*société de gestion*) located in Luxembourg. Such management company is a corporate entity which has a legal personality and which is the legal management body of the FCP.

The FCP-RAIF will be managed by either:

- a management company subject to and authorised under Article 125-1 (the "**125-1 ManCo**") of the UCI Law, which management company is licensed by the CSSF as a so-called "Chapter 16 Management Company" but not as an authorised AIFM, and must therefore appoint another entity, which is duly authorised as AIFM in Luxembourg or in another EU Member State, to act as the external AIFM for the FCP-RAIF or
- a management company subject to and authorised under Article 125-2 of the UCI Law (the "**125-2 ManCo**"), which management company is licensed by the CSSF both as a Chapter 16 Management Company and as an authorised external AIFM, and may thus decide to either:
  - act as both the management company and authorised external AIFM of the FCP-RAIF or
  - act only as the management company of the FCP-RAIF and appoint another entity, which is duly authorised as AIFM in Luxembourg or in another EU Member State, to act as the external AIFM for the FCP-RAIF.

The main difference between 125-1 and 125-2 ManCos relates to the type of their licences and, consequently, the scope of their permitted functions and activities, their level of human and technical resources, their minimum capital and own fund requirements, their shareholding and corporate governance structure as well as the possible passporting of services applicable to the management company concerned.

According to the RAIF Law, the management company (regardless of its type) acts in its own name, but has to indicate that it is acting on behalf of the relevant FCP-RAIF. It manages the FCP-RAIF in accordance with the management regulations and the offering document and in the exclusive interest of the unitholders. The management company of an FCP-RAIF must be approved by the CSSF and is created with a minimum paid-in capital of EUR 125,000. For 125-2 ManCos (i.e. those which are also licensed as AIFMs), additional capitalisation and own funds are required depending on the amount of assets under management.

The FCP-RAIF's net assets must amount to at least EUR 1,250,000. This minimum must be reached within a period of 12 months from the entry into force of the management regulations of the FCP-RAIF. FCP-RAIFs are not liable for the obligations of the management company or the unitholders.

Investors in FCP-RAIFs receive, as a counterpart of their investment, units (*parts*) of the FCP-RAIF, which may be issued in registered, bearer or dematerialised form and represent one or more portions of the FCP-RAIF. In accordance with the RAIF Law, the units of the FCP-RAIFs can be fully paid-in or partially paid-in and the unitholders are, in principle, liable only up to the amount contributed or committed (as the case may be) by them. Unlike shares of SICAVs and SICAFs (as defined below), units of FCP-RAIFs do not grant the right to vote at any unitholders' meetings (unless expressly provided for in the management regulations of the FCP-RAIF). Hence, in principle, the investors will not have any direct influence on the management of the FCP-RAIF.

3.1.2 RAIFs of the corporate type (the "SICAV-RAIF" and the "SICAF-RAIF")

There are two kinds of corporate-type RAIFs:

- the investment company with variable capital (*société d'investissement à capital variable* or "**SICAV**"), the capital of which is at all times equal to the total net asset value of the SICAV and, as a result, is increased or decreased automatically, among other things, by new subscriptions or redemptions
- the investment company with fixed capital (*société d'investissement à capital fixe* or "**SICAF**"). As a consequence, the approval of the general meeting of shareholders or a notarial deed (depending, however, on the corporate form of the SICAF-RAIF) will be required each time changes to the company's capital occur.

A SICAV-RAIF may be established as a public limited liability company (*société anonyme* or "**SA**"), a private limited liability company (*société à responsabilité limitée* or "**Sàrl**"), 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**").

All these corporate forms are also available to the SICAF-RAIF as the RAIF Law does not prohibit any particular corporate form for a SICAF-RAIF.

In practice, the SA offers the advantages of limited liability of its shareholders[v] and free transferability of its shares[vi]. However, the SCA may be seen as attractive to protect the initiator of the company against potential removal by the shareholders. The SCS and SCSp, which are very similar to the Anglo-Saxon limited partnership, can be considered as appropriate to the extent that they are both characterised by a high degree of contractual freedom offering a large flexibility to the partners to determine in the limited partnership agreement their respective voting, economic and informative rights, as well as the rules for the governance of the SCS or the SCSp. The main element differentiating the SCS from the SCSp is that the SCS is vested with legal personality, whereas the SCSp is not. However, both the SCS and the SCSp benefit from the same favourable tax transparency regime for Luxembourg tax purposes.

Depending on the legal form chosen and the terms of the constitutive documents, the SICAV/SICAF-RAIF will be managed by a board of directors/managers, by one or more general partner(s) or by third party manager(s) each presumed to have full management powers. The RAIF Law does not provide for the appointment of a management company by a SICAV/SICAF-RAIF; though, of course, it is not prohibited for a SICAV/SICAF-RAIF to designate a management company. This could, theoretically, be either a 125-1 or a 125-2 ManCo.

The SICAV/SICAF-RAIF's minimum subscribed share capital, increased by the share premium or the value of the amount constituting partnership interests, must be EUR 1,250,000, which must be reached within a period of 12 months from the incorporation of the SICAV/SICAF-RAIF. On the incorporation of the SICAV/SICAF-RAIF, however, an initial capital must be paid, the amount of which depends on the corporate form chosen.

An investor subscribing for shares/units/partnership interests in a SICAV/SICAF-RAIF becomes a shareholder/partner of the investment company and can participate in and vote at general meetings of shareholders/partners in accordance with the terms and conditions of the company's constitutive documents, subject to the specific requirements imposed by applicable laws. Therefore, shareholders/partners of a SICAV/SICAF-RAIF can decide on a variety of matters, including the appointment or revocation of the members of the board of directors or managers, the approval of the annual accounts and the liquidation of the SICAV/SICAF-RAIF.

The capital of a Luxembourg SICAV/SICAF-RAIF is represented by registered, bearer or dematerialised shares/units/partnership interests (to the extent permitted by the Company Law), which may be fully paid-in or partially paid-in subject to a minimum of 5% paid-in at the time of issue of the share/unit (depending on the legal form of the company). Contrary to the SICAF-RAIF, the shares/units/partnership interests of the SICAV-RAIF are issued without mention of nominal value. Moreover, the SICAV-RAIF, regardless its corporate form, is not obliged to create a legal reserve. This will also be the case for a SICAF-RAIF incorporated as an SCS or SCSp.

Notwithstanding the above, the RAIF Law does not contain any provision enumerating or limiting the categories of shares/units/partnership interests and other securities that a SICAV/SICAF-RAIF is authorised to issue. As a consequence, a SICAV/SICAF-RAIF can issue shares/units/partnership interests, bonds, founder shares (*parts bénéficiaires*) and any other securities within the limits set forth by the Company Law.

3.1.3 RAIFs incorporated in a legal form other than FCP or SICAV/SICAF

In theory, RAIFs may be established in a legal form other than that of a SICAV/SICAF or an FCP. They may be established in any corporate form, but also in the form of an association or foundation as well as under fiduciary contract, provided, however, that the exclusive object of such RAIFs is the collective investment of their funds in assets in order to spread investment risks (unless for RAIFs opting for the special tax regime provided for by the RAIF Law that are not subject to risk diversification requirements (see Section 9.2 below)) .

3.2 Umbrella Form and Multiple Class Structure

A RAIF may be organised 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.

This possibility and its terms must be expressly provided for by the constitutive documents of the umbrella RAIF and reflected in its offering document (which must also describe each compartment's specific investment policy).

3.2.1 Ring-fencing

The RAIF Law provides for the so-called "ring-fencing" principle according to which each compartment corresponds to a separate part of the assets and liabilities of the RAIF. This implies, *inter alia*, the following consequences (unless otherwise provided in the constitutive documents):

- the rights of investors and creditors relating to a particular compartment or raised by the incorporation, the operation or the liquidation of a compartment are limited to the assets of such compartment
- the assets of a compartment are exclusively available to satisfy the rights of the investors relating to such compartment and the rights of the creditors whose claim arose in relation to the incorporation, the operation or the liquidation of such compartment
- for the purpose of relations between investors, each compartment will be deemed to be a separate entity.

Moreover, each compartment of a RAIF may be liquidated separately and the liquidation of a compartment shall not involve the liquidation of another compartment. Only the liquidation of the last remaining compartment of the RAIF involves the liquidation of the RAIF as a whole.

3.2.2 Cross-sub-fund investments

Pursuant to the RAIF Law, a compartment of a RAIF may also, subject to the conditions provided for in the offering document, "cross-invest" in one or more other compartments of the same RAIF without the RAIF, when constituted in corporate form, being subject to the requirements of the Company Law with respect to the subscription, the acquisition and/or the holding by a company of its own shares. The conditions for such cross-investments are set forth as follows:

- the target compartment does not, in turn, invest in the compartment invested in this target compartment
- voting rights, if any, attached to the relevant securities or partnership interests are suspended for as long as they are held by the compartment concerned and without prejudice to the appropriate processing in the accounts and the periodic reports
- in any event, for as long as these securities or partnership interests are held by the RAIF, their value will not be taken into consideration for the calculation of the net assets of the RAIF for the purposes of verifying the minimum threshold of the net assets imposed by the RAIF Law.

3.2.3 Multiple classes of shares/units/partnership interests

As an alternative or in addition to the umbrella structure, it is possible to create various classes of shares, units or partnership interests in a RAIF or even within one of the compartments of a RAIF established in umbrella form. Such classes of shares/units/partnership interests may differ, *inter alia*, in their fee structure, distribution policy, hedging policy, reference currency and type of target investors.

4. Other Main Structuring Features

4.1 Contribution of Funds to the RAIF

Any RAIF (regardless of its legal or corporate form) can be established by contribution in cash or in kind, or by a combination of both. It is also possible for the partners of a RAIF incorporated as an SCS or SCSp to make industry contributions (e.g. know-how and/or services contributions) to the RAIF. According to the RAIF Law, any contribution other than in cash made to RAIFs must be valued in a report established by an approved statutory auditor qualifying as a "*réviseur d'entreprises agréé"* and drawn up in accordance with the requirements of Article 26-1 of the Company Law, the costs of such report being generally borne by the contributing shareholder/unitholder/partner.

Depending upon tax considerations, funds can also be contributed to the RAIF in the form of debt (loans or bonds). Which contribution (equity or debt) is chosen will mainly be determined on the basis of tax considerations affecting the investors.

Generally, the funding of the RAIF will depend on the following criteria: variable capital or fixed capital of the RAIF, the kinds of shares/units/partnership interests or other securities that will be issued, the structure of capital calls and closings.

4.2 Issue and Redemption of Shares/Units/Partnership Interests

The RAIF Law does not contain any precise rules relating to the issue and redemption of shares/units/partnership interests of a SICAV/SICAF-RAIF and an FCP-RAIF, which

shall be carried out in accordance with the rules set forth in the articles of incorporation (or limited partnership agreement) in the case of a SICAV/SICAF-RAIF or the management regulations in the case of an FCP-RAIF.

As a consequence, the issue and redemption prices of shares/units/partnership interests of a SICAV/SICAF-RAIF or an FCP-RAIF do not need to be based on the net asset value, but can be a predetermined fixed price or can comprise a portion of par value and issue premium (if applicable) or the value of the contribution of the shares/units/partnership interests.

In addition, contributions by shareholders/ unitholders/partners may be made according to the needs of the RAIF, and, in particular, in view of its investments. Such contributions may be organised, among other things, by means of successive subscriptions of new fully paid-in shares/units/partnership interests through subscription commitments in different tranches or by means of subscriptions of partly paid-in shares/units/partnership interests, the remaining balance of the issue price being payable by the shareholders/unitholders/partners pursuant to one or several capital calls.

In the case of RAIFs incorporated as SCS or SCSp, the participation of the partners in the SCS and the SCSp may also be organised by way of capital accounts, which may allow more flexibility in accommodating the requirements or constraints of individual investors.

A RAIF may be closed-ended, meaning that it does not redeem its shares/units/partnership interests upon request of its investors, or open-ended, in which case its shares/units/partnership interests are repurchased directly or indirectly from the RAIF's assets at the request of its investors.

4.3 Dividend Policy

The RAIF Law does not contain any restrictions on the distribution of dividends to the extent that the subscribed share capital of a SICAV-RAIF, increased by the share premium, or the net assets of an FCP-RAIF are not, or following such a distribution would not become, lower than the minimum required by law, i.e. EUR 1,250,000. Thus, unless otherwise stipulated in the articles of incorporation/limited partnership agreement, distributions in a SICAV-RAIF may be made from the SICAV-RAIF's current income (interest, dividends, and other investment revenues) and capital gains which can be distributed even when not realised.

In a SICAF-RAIF, however, distributions and other repayment to shareholders may, in principle, only be financed by means of distributable reserves and may not affect certain accounting ratios between assets and shareholders' equity. The SICAF-RAIF, unless it is incorporated as an SCS or SCSp, is further subject to particular conditions and formalities imposed by the Company Law in case of payment of interim dividends.

4.4 Valuation of Assets and Calculation of NAV

Except as otherwise provided for by the RAIF's constitutive documents, the assets of a RAIF shall be valued at fair value. Such value must be determined in accordance with the rules set forth in the constitutive documents of the RAIF and the applicable provisions of the AIFMD and AIFM Law.

According to the AIFMD and AIFM Law, the valuation of assets and the net asset value calculation must take place at least once a year. However, if the RAIF is an open-ended AIF, these valuations and calculations must also be carried out at a frequency which is both appropriate to the assets held by the RAIF and its issuance and redemption frequency. If the RAIF is a closed-ended AIF, such valuations and calculations must also be carried out in the event of each increase or decrease of the capital.

For the avoidance of doubt, the use of an external valuer is not required by the AIFMD and AIFM Law, which provides that an independent valuation of the assets of an AIF will be carried out by either:

- the AIFM itself, provided that the valuation task is functionally independent from the portfolio management and the remuneration policy and other measures ensure that conflicts of interests are mitigated and that undue influence upon the employees is prevented or
- an external valuer, being a legal or natural person subject to mandatory professional registration and independent from the RAIF, the AIFM and any other persons with close links to the RAIF or the AIFM.

5. Management and Service Providers

5.1 Promoter

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

5.2 Management Body

As indicated in Sections 3.1.1 and 3.1.2, 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.

5.3 External AIFM

Apart from the exception mentioned in Section 1.3, 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.

It is worth mentioning that the external AIFM must be authorised and licensed to manage funds pursuing investment strategies such as the ones pursued by the relevant RAIF. For instance, in Luxembourg the AIFM licence granted by the CSSF may be limited to managing funds pursuing certain investment strategies only, such as real estate, infrastructure or private equity strategies. Moreover, if the AIFM is established in another EU Member State than Luxembourg, it must have passported its management services in Luxemburg in accordance with Article 33 of the AIFMD before it may start managing the relevant RAIF on a cross-border basis.

In case of voluntary withdrawal of the external AIFM or of its removal by the RAIF or in case the external AIFM is no longer authorised by its competent supervisory authority or has been declared bankrupt, the directors or managers of the RAIF – or of its management company – shall take all necessary steps for replacing such AIFM within a maximum period of two months. If no replacement external AIFM fulfilling the conditions laid down in the RAIF Law is appointed within this period, the directors or managers of the RAIF – or of its management company – shall request, within a period of one month following the expiration of such two-month period, the District Court of Luxembourg to pronounce the dissolution and liquidation of the RAIF.

5.4 Investment Manager

The external AIFM may delegate (and allow the sub-delegation of) part of its portfolio management or risk management functions to third party service providers with the requisite resources and expertise.

As a general principle, the external AIFM must remain in charge of some of its basic functions, i.e. it must not delegate so many of its functions that it is no longer considered, in substance, as the AIFM or it is reduced to a so-called "letter-box entity".

In addition to the letter-box entity test, any delegation of its functions by the external AIFM will be subject to prior notification to its competent supervisory authorities, appropriate disclosure to investors and subject to compliance with the specific conditions of the AIFMD and AIFM Law. In particular, where the delegation relates to portfolio management or risk management, it may only be made to undertakings which are authorised or registered for the purpose of asset management and subject to supervision or, where that condition cannot be met, with the prior approval of the external AIFM's competent supervisory authorities. If the delegation is given to a third-country undertaking, in addition to the above conditions, there must be a co-operation agreement in place between the competent supervisory authorities of the external AIFM and the ones of that undertaking.

5.5 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 of a RAIF must be a credit institution or an investment firm within the meaning of the amended law of 5 April 1993 on the financial sector (the "**Financial Sector Law**"), which investment firm is also subject to specific capital and own funds requirements and other conditions laid down in the AIFMD and AIFM Law.

In addition to these two types of depositary, another category of professional of the financial sector, namely the

professional depositary of assets other than financial instruments within the meaning of the Financial Sector Law, can act as depositary of any RAIF which:

- is closed-ended for a period of five years from the date of its initial investments
- does generally not invest in assets to be held in custody or generally seeks to acquire the control over the issuers or non-listed companies (e.g. mainly private equity and real estate RAIFs).

The depositary must be sufficiently experienced in that it must already be acting as depositary of other Luxembourg UCIS, SIFs or SICARs. This requirement, however, does not apply to depositaries qualifying as professional depositaries of assets other than financial instruments under the Financial Sector Law.

The depositary of RAIFs will have to comply with the following specific duties imposed by the AIFMD and AIFM Law:

- safekeeping duties, where a distinction is made between:
  - the custody duties relating to financial instruments of the relevant RAIF that can be held in custody by the depositary and
  - the verification duties over the ownership rights of the relevant RAIF relating to the other types of assets (such as real estate, infrastructure or commodities)
- monitoring duties over the assets and transactions of the relevant RAIF
- cash monitoring duties, implying the obligation for the depositary to ensure that the relevant RAIF's cash inflows and outflows are properly monitored.

The liability regime of the depositary will also be the one provided for by the AIFMD and AIFM Law. In brief, the depositary of a RAIF shall always be liable towards the RAIF or its investors for losses due to its negligence or intentional failure to perform its obligations. However, in case of loss of financial instruments held in custody, the depositary will be subject to stricter liability without fault, being required to provide replacement assets (of identical type or corresponding amount) without undue delay. However, the depositary shall not be liable if it can evidence that the loss is due to external events beyond its reasonable control, the consequences of which would have been unavoidable despite all reasonable efforts to the contrary. This means that a careful selection process and thorough monitoring of sub-custodians should not enable a depositary to discharge itself of liability (e.g. a depositary could not point to a sub-custodian's "internal" situations, such as fraud by employees etc.). However, in some limited cases, limitation and/or discharge of the depositary liability are possible in relation to the delegation of custody tasks of financial instruments, provided that the depositary has complied with all prescribed obligations under the AIFM Law and there is an objective reason for the delegation of the custody tasks.

In case of voluntary withdrawal of the depositary or its removal by the RAIF or in case the depositary no longer fulfils the conditions laid down in the RAIF Law or has been declared bankrupt, the directors or managers of the RAIF – or of its management company – shall take all necessary steps for replacing such depositary within a maximum period of two months. If no replacement depositary fulfilling the conditions laid down in the RAIF Law is appointed within this period, the directors or managers of the RAIF – or of its management company – shall request, within a period of one month following the expiration of such two-month period, the District Court of Luxembourg to pronounce the dissolution and liquidation of the RAIF.

5.6 Central Administration

The central administration (i.e. head office) of a Luxembourg-based RAIF and the registered office of a SICAV/SICAF-RAIF or of the management company of an FCP-RAIF must be located in Luxembourg.

The meaning of the central administration in Luxembourg includes accounting and administrative functions and implies, *inter alia*, that the offering document, the register of shares/units/partnership interests as well as accounting and any other documents intended for the investors are kept in Luxembourg and that the calculation of the net asset value of the shares/units/partnership interests as well as the issue and redemption of the shares/units/partnership interests must be effected in Luxembourg or initiated from Luxembourg. Moreover, the correspondence sent by the RAIF to its unitholders, shareholders or partners must be sent from Luxembourg. In addition to the above, the central administration is also responsible for ensuring compliance with the rules relating to anti-money laundering (AML).

In principle, the RAIF or its external AIFM (if it is a Luxembourg AIFM) could themselves perform the central administrative duties as listed above. Alternatively, they can also appoint one or several administrative agent(s) in the Grand Duchy of Luxembourg, which will be in charge of the day-to-day bookkeeping operations of the RAIF, as well as

the calculation of the RAIF's net asset value and any other administrative duties. Such administrative agent(s) may be the depositary of the RAIF or another company of the group to which the depositary belongs. It is not, however, prohibited to appoint any other administrative agent established in the Grand Duchy of Luxembourg, such as a management company or a professional of the financial sector, as long as such agent is itself licensed by the CSSF to offer central administration services to RAIFs.

5.7 Statutory Auditor

The accounting information contained in the annual report of a RAIF must be audited by an approved statutory auditor (*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/SICAF-RAIF) and remunerated by the RAIF.

The approved statutory auditor must possess appropriate professional experience in that it is already acting as approved statutory auditor of Luxembourg UCIs, SIFs or SICARs.

6. Transparency Requirements

6.1 Offering Document

RAIFs must establish an offering document that will include the information necessary for investors to be able to make an informed judgement of the investment proposed to them, and, in particular, of the risks attached thereto. Although the RAIF Law does not contain any specific annex with respect to the minimum content of this offering document, it will, in principle, include all the information prescribed by the AIFMD and AIFM Law that must be communicated to investors before they invest in AIFs. However, such information could also be made available to investors by any other means[vii].

The RAIF Law requires that the offering document includes a clear and prominent statement on its cover page to draw the attention of investors to the fact that the RAIF is not subject to the supervision of any Luxembourg supervisory authority. For the avoidance of doubt, the offering document will not be visa-stamped by the CSSF.

Ongoing updates of the offering document are not required; but the RAIF Law provides that the essential elements of the offering document must be kept up-to-date when additional securities or partnership interests are issued to new investors.

In case of an umbrella RAIF, the RAIF Law provides that it is possible to issue separate offering documents per compartment. In that case, each separate offering document must indicate that the RAIF is established as an umbrella fund which may comprise other compartments.

6.2 Financial Statements

The SICAV/SICAF-RAIF and, in the case of an FCP-RAIF, the management company must produce an annual report for each financial year, which must be published within six months of the period to which it refers. The production of semi-annual reports is not required for RAIFs.

The annual report of RAIFs must include, *inter alia*, the following elements:

- a balance sheet or a statement of assets and liabilities
- a detailed income and expenditure account for the financial year
- a report on the activities of the past financial year
- any significant information which will enable investors to make an informed judgement on the development of the activities and the results of the RAIF, including, without limitation, the following information prescribed by the AIFMD and AIFM Law:
  - the total amount of remuneration for the financial year, split into fixed and variable remuneration, paid by the external AIFM to its staff
  - the number of beneficiaries and, where relevant, the carried interest paid by the RAIF as well as the aggregate amount of remuneration broken down by senior management and members of staff of the external AIFM whose actions have a material impact on the risk profile for the RAIF.

Except for RAIFs that restrict their investment policy in their constitutive documents to investments in risk capital only and opt for the special tax regime provided for by the RAIF Law (see Section 9.2 below), the annual report shall be drafted in accordance with the Annex to the RAIF Law.

RAIFs as well as their subsidiaries are exempt from the obligation to consolidate companies held for investment purposes.

In case of an umbrella RAIF, the RAIF Law provides that it is possible to issue separate annual reports per sub-fund. In that case, each separate annual report will include, in addition to the financial information relating to the relevant

sub-fund, the aggregate financial information relating to the other sub-funds of the umbrella RAIF.

7. Setting-up of RAIF and Inscription on RAIF List

7.1 Procedure for setting-up of a RAIF

The procedure for the setting-up of a RAIF depends on its contractual or corporate form.

7.1.1 FCP-RAIF

An FCP-RAIF is established by a contract represented by the FCP-RAIF's management regulations, which are, in principle, established under private deed. However, the RAIF Law requires that the fact that the FCP-RAIF has been established is itself recorded by notarial deed within a deadline of 5 days from the establishment of the RAIF. A notice thereof must be filed, together with an indication of the name of the external AIFM, with the Luxembourg Register of Trade and Companies ("**RCS**") within a deadline of 15 days from date on which the notary has attested the establishment of the RAIF and thereafter published on the electronic platform of central publication, the *Recueil Electronique des Sociétés et Associations* ("**RESA**").

The RAIF Law sets forth the basic provisions that must be included in the management regulations (e.g. the investment policy, distribution policy, procedure for issue and repurchase of units, etc.). The RAIF Law also provides for the possibility to have separate management regulations per sub-fund of an umbrella RAIF.

The provisions of the management regulations are considered to be accepted by the unitholders on the basis of the mere fact that they have acquired units of the FCP-RAIF.

The management company of an FCP-RAIF (be it a 125-1 or 125-2 ManCo) must be approved by the CSSF. It is generally created by notarial deed in the form of a public limited liability company (*société anonyme*) or a private limited liability company (*société à responsabilité limitée*) with a minimum paid-in capital of EUR 125,000. The articles of incorporation of the management company are filed with the RCS and are published on RESA.

In case the management company of the FCP-RAIF is a 125-2 ManCo (i.e. being also licensed as an AIFM by the CSSF), that management company will have to dispose of sufficient own funds calculated with reference to assets under management and operating expenses of the previous financial year. According to the AIFM Law, this amount of own funds shall be equal to the higher of the following two amounts:

- the quarter of the AIFM's overhead costs
- where the value of the portfolios of the AIFs managed by the AIFM exceeds EUR 250 million, the AIFM must provide an additional amount of own funds equal to 0.02% of the amount by which the value of those portfolios exceeds such EUR 250 million threshold, provided that the AIFM's initial capital and the additional amount of own funds must not exceed EUR 10 million. The additional amount of own funds may be reduced by 50% if such amount is covered by a bank or insurance guarantee.

Furthermore, a 125-2 ManCo must, in its capacity as an AIFM, either have additional own funds or hold a professional indemnity insurance in order to cover potential professional liability risks resulting from the negligent performance of its functions.

7.1.2 SICAV/SICAF-RAIF

As indicated in Section 3.1.2, a SICAV/SICAF-RAIF may be established as an SA, Sàrl, SCA, SCSA, SCS or SCSp.

Depending on the legal form chosen, the SICAV/SICAF-RAIF will be incorporated either by notarial deed (in the case of an SA, Sàrl or SCA) or by private deed (in the case of an SCSA, SCS or SCSp). Such incorporation can be made by means of proxies given by the founding shareholders/partners to their legal counsel or any other person in order to represent them at the incorporation in Luxembourg. As is the case for FCP-RAIFs, the RAIF Law requires that the fact that a SICAV/SICAF-RAIF has been established under private deed (in the case of an SCSA, SCS or SCSp) is itself recorded by notarial deed within a deadline of 5 days from the establishment of the RAIF. A mention that the SICAV/SICAF-RAIF has been incorporated must be filed, together with an indication of the name of the external AIFM, with the RCS within a deadline of 15 days from the notarial deed attesting the establishment of the SICAV/SICAF-RAIF and published on RESA.

Independent from the specific minimum capital requirements imposed by the RAIF Law (i.e. EUR 1,250,000 to be reached within a period of 12 months from the incorporation of the SICAV/SICAF-RAIF), an initial capital must be paid on the incorporation of the

SICAV/SICAF-RAIF, the amount of which will vary depending on the corporate form chosen.

7.2 Admission to the Official List

The RAIF Law provides that a RAIF will be registered on a list of RAIFs kept by the RCS (the "**List**") within 20 days from the date on which the notary has attested the constitution of the RAIF.

The List features and the information to be published on RESA in relation to the establishment of a RAIF (as indicated in Section 7.1) will follow by Grand Ducal Decree.

8. Marketing of RAIFs

8.1 Marketing to Professional Investors within the meaning of the AIFMD

As a reminder, the AIFMD allows authorised AIFMs to benefit from a "passport" to provide management services to AIFs on a cross-border basis and to market these AIFs to professional investors[viii] in the EU[ix] on the basis of a single authorisation and through a regulator-to-regulator procedure.

For the time being, RAIFs can only be managed by a Luxembourg or EU authorised external AIFM which may benefit from a passport allowing cross-border management and marketing of the RAIF's shares/units/partnership interests to professional investors across the EU, subject to compliance with the full AIFMD regime and a straightforward notification procedure between competent supervisory authorities.

In the future, the EU Commission may decide, subject to ESMA's positive opinion on the functioning of the AIFMD marketing passport, to extend the AIFMD passport to non-EU AIFMs, which could then be authorised to manage and market RAIFs throughout the EU, subject to compliance with the full AIFMD regime.

8.2 Marketing to Other Well-Informed Investors

The marketing of a RAIF's shares/units/partnership interests to well-informed investors that do not qualify as professional investors within the meaning of the AIFMD will continue to be possible under the national private placement regime of each country where such marketing is done.

8.3 Marketing of Closed-Ended RAIFs

In case of an offer to the public (as opposed to private placement) of a closed-ended RAIF in the EU, it will be necessary to consider, and apply as appropriate, the marketing requirements under the so-called "Prospectus Directive"[x] in addition to the AIFMD marketing rules, unless the RAIFs may benefit from an exemption from the Prospectus Directive.

9. Taxation

Please note that we have not gone into detail on the taxation of RAIFs, but can provide more information on taxation issues in due course.

The main characteristics of the tax treatment of RAIFs are the following:

9.1 General Tax Regime

9.1.1 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).

9.1.2 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.

9.1.3 Double taxation treaties

In principle, RAIFs may benefit from some double taxation treaties depending on their legal form (to be checked on a case-by-case basis).

9.1.4 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.

9.2 Optional Special Tax Regime for RAIFs investing in Risk Capital

RAIFs of the corporate form (i.e. not those established as FCPs) may opt for the special optional tax regime provided for by the RAIF Law 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).

The main characteristics of the special tax treatment of RAIFs that opt for the optional tax regime of the RAIF Law (which is in fact similar to the tax regime currently applicable to SICARs) will be the following:

- these RAIFs are exempt from Luxembourg annual subscription tax
- these RAIFs are exempt from Luxembourg net wealth tax, except for a minimum net wealth tax applicable to all Luxembourg companies as from 1 January 2016
- no stamp or other tax will be payable in Luxembourg on the issue of shares/units in these RAIFs
- these RAIFs are subject to income tax in Luxembourg, but any income arising from the securities held by these RAIFs, as well as any income arising from the sale, contribution or liquidation of the securities held by these RAIFs, does not constitute taxable income
- the income arising from funds held pending their investment in risk capital does not constitute taxable income for a period of 12 months immediately preceding the investment of the said funds in risk capital and where it can be established that the funds have been effectively invested in risk capital
- these RAIFs may benefit from certain double taxation treaties and other international tax agreements, unless otherwise decided by the tax authorities of the countries concerned
- the management services performed by a Luxembourg management company for a RAIF should be exempt from value added tax
- RAIFs incorporated as an SCS/SCSp are treated as a tax transparent entity for Luxembourg tax purposes and consequently are not subject to corporate income tax (*impôt sur le revenu des collectivités*) and municipal business tax (*impôt commercial communal*).

For the avoidance of doubt, in case of an umbrella RAIF, it is only the entire RAIF that may opt for the special tax regime provided for by the RAIF Law. In other words, it is not possible for some compartments of the same RAIF to be subject to the general tax regime and for other compartments of the same RAIF to be subject to the optional special tax regime.

As regards the concept of "risk capital", the RAIF Law provides that it means direct or indirect contribution of assets to entities in view of their launching, development or listing. Moreover, the parliamentary documents relating to the RAIF Law indicate that this concept should be assessed by reference to the guidelines provided for by CSSF Circular 06/241 of 5 April 2006 in relation to the notion of risk capital within the meaning of the SICAR Law ("**Circular 06/241**"). To ensure compliance with the requirement to invest in risk capital only, the RAIF Law provides that the auditor of RAIFs opting for the special tax regime will have to draw up a report at the endof each financial year to certify that, during the relevant accounting period, the relevant RAIF has effectively invested its assets in risk capital only, and this auditor report will be communicated to the Luxembourg direct tax administration (*Administration des Contributions Directes*).

Contacts

Joëlle Hauser
Partner

T: +352 48 50 50 1
E: joelle.hauser
@cliffordchance.com

Paul Van den Abeele
Partner

T: +352 48 50 50 1
E: paul.vandenabeele
@cliffordchance.com

Caroline Migeot
Counsel

T: +352 48 50 50 1
E: caroline.migeot
@cliffordchance.com

[i] In this brochure, all references to the "RAIF Law" refer to the law on reserved alternative investment funds as contained in Luxembourg Bill of Law 6929 in its version adopted by the Luxembourg Parliament on 14 July 2016 (available on the website of the Luxembourg Parliament).
[ii] Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC (as it will be amended and repealed by MiFID2 and MiFIR with effect from 3 January 2018).
[iii] Parl. Doc. N°6929, Ch. Députés, ord. sess. 2015-2016, Comments on the articles.
[iv] In the case where the issuer is an umbrella UCI with several compartments, each compartment will be considered as a distinct issuer for the purpose of calculating this 30% single issuer limit, provided, however, that the segregation of liabilities among the compartments of such umbrella UCI is ensured vis-à-vis third parties (i.e. ring-fencing principle).
[v] According to Article 23 of the Company Law, the liability of a shareholder in an SA is, in principle, limited to its capital contribution to the SA. Nevertheless, in special circumstances a shareholder may be held liable in excess of its capital contribution, both inside and outside insolvency proceedings, such as, in particular, in situations where the relevant shareholder has acted as *de facto* director of the SA.
[vi] Company Law, Article 43. However, under certain strict conditions and limits established by case law, an SA can impose statutory and contractual clauses restricting the transferability of its shares (such as authorisation and pre-emption clauses), provided, however, that their shares remain negotiable.
[vii] Parl. Doc. N°6929, Ch. Députés, ord. sess. 2015-2016, Comments on the articles.
[viii] The concept of "professional investors" under the AIFMD refers to any investor that is considered as, or may be treated as, a professional client under Annex II of the MiFID, which includes: (i) entities which are regulated or authorised to operate in financial markets (credit institutions, investment firms, pension funds, etc.); (ii) large undertakings, governments, central banks, international institutions; and (iii) investors who may elect to be treated as professional investors on request, provided that they comply with certain conditions and criteria set out in the MiFID.
[ix] Please note that the AIFMD assimilates Iceland, Norway and Liechtenstein (which are contracting parties to the agreement creating the European Economic Area (EEA)) to the Member States of the EU, within the limits of the EEA agreement and related acts.
[x] Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading (as amended).

APPENDIX 1
LUXEMBOURG INVESTMENT VEHICLES TOOLBOX

	UCITS	Part II UCI	SIF	SICAR	RAIF	Unregulated Company
Legal Regime	Part I of UCI Law	Part II of UCI Law	SIF Law	SICAR Law	RAIF Law	Company Law
Full Scope AIFMD	No	Yes, unless *de minimis* exemption under AIFMD	Yes, unless specific exemption under AIFMD	Yes, unless specific exemption under AIFMD	Yes	Yes, if qualification as AIF and no benefit from any specific exemption
CSSF Supervision	Yes	Yes	Yes	Yes	No	No
Legal Forms	FCP SICAV (SA) SICAF (SA, SCA)	FCP SICAV (SA) SICAF (SA, SCA)	FCP SICAV/SICAF (SA, SCA, Sàrl, SCSA, SCS, SCSp)	~~FCP~~ SA, SCA, Sàrl, SCSA, SCS, SCSp (fixed or variable capital)	FCP (unless for RAIFs opting for special tax regime) SICAV/SICAF (SA, SCA, Sàrl, SCSA, SCS, SCSp)	~~FCP~~ SA, SCA, Sàrl, SCSA, SCS, SCSp (fixed capital only)
Multiple Sub-Funds	Yes	Yes	Yes	Yes	Yes	No
Cross-Sub-Fund Investments	Yes	Yes	Yes	No	Yes	No
Multiple Share Classes	Yes	Yes	Yes	Yes	Yes	Yes

	UCITS	Part II UCI	SIF	SICAR	RAIF	Unregulated Company
Eligible Investors	Unrestricted	Unrestricted	Well-Informed	Well-Informed	Well-Informed	Unrestricted
Eligible Assets	Restricted	Unrestricted[1]	Unrestricted[2]	Risk capital only	Unrestricted, unless for RAIFs opting for special tax regime (investment in risk capital only)	Unrestricted
Risk Diversification	Yes	Yes	Yes	No	Yes, unless for RAIFs opting for special tax regime (no risk diversification)	No
EU Marketing Passport	UCITS passport for public distribution in the EU	If full scope AIF: AIFMD passport for marketing to professional investors in the EU				

[1] Bill of law 6936, which was deposited with the Luxembourg Parliament on 18 January 2016 but is not yet adopted, proposes amending the UCI Law so as to allow the CSSF to determine, by means of a regulation, the types of assets into which Part II UCIs can invest.

[2] Bill of law 6936 also envisages amending the SIF Law by giving authority to the CSSF to determine, also by means of a regulation, the types of assets into which SIFs accessible to investors other than professional investors within the meaning of MiFID can invest. By contrast, the legal regime of SIFs, which restrict their securities to professional investors within the meaning of MiFID, will remain unchanged and these SIFs could continue to invest in any kind of assets, including atypical assets.

CLIFFORD

CHANCE

Clifford Chance, 10 boulevard G.D. Charlotte, B.P. 1147, L-1011 Luxembourg, Grand-Duché de Luxembourg

www.cliffordchance.com