

Luxembourg Reserved Alternative Investment Funds

Bill of law n°6929 (Bill 6929) relating to so-called "Reserved Alternative Investment Funds" (RAIFs)

The purpose of Bill 6929, which has been deposited with the Luxembourg Parliament on 14 December 2015, is to allow the creation and structuring of a new type of Luxembourg investment vehicle that will be restricted to alternative investment funds (AIFs) subject to the full AIFMD requirements and that are managed by an authorised external alternative investment fund manager (AIFM), which can be located either in Luxembourg, in another EU Member State, or in a third country once the AIFMD passport is available for third countries.

For the avoidance of doubt, the RAIF regime will thus not be available to: (i) AIFs using the benefit of an exemption or derogation under the AIFMD, such as the so called *de minimis* or group exemption, and (ii) internally-managed AIFs. The sole possibility for a RAIF not to be obliged to appoint an external AIFM is when the RAIF is managed (i) by a supranational institution (such as ECB, EIB, EIF) or by another similar international institution acting in the public interest, or (ii) by the Central Bank of Luxembourg or another national central bank.

The new RAIF vehicle will combine the characteristics and structuring flexibilities of Luxembourg regulated specialised investment funds (SIFs) and investment companies in risk capital (SICARs) qualifying as AIFs managed by an authorised AIFM, except that RAIFs will be non-regulated investment funds. Thus, in contrast to a SIF-AIF or SICAR-AIF, the RAIF will not be subject to prior authorisation by the CSSF before it can be launched and carry out its activities, nor to ongoing prudential supervision by the CSSF. However, an indirect supervision of the RAIF will nevertheless be ensured by the competent supervisory authority of its authorised AIFM, which shall in particular ensure that the relevant RAIF complies with the so-called "AIFMD product rules" applicable to it, including, among others, the appointment of the RAIF's depositary and independent auditor, the content of the RAIF's annual report and the valuation of the RAIF's assets.

Other than that, the new RAIF vehicle will have the same characteristics as a SIF/SICAR-AIF, including the following:

- RAIFs will be reserved to well-informed investors, which means institutional investors, professional investors as well as any other sophisticated retail or private investors that invest a minimum of EUR 125,000 in the RAIF and fulfil some other conditions.
- RAIFs may be set up in the contractual form (FCP) or corporate form (SICAV/SICAF) in which case all corporate forms currently available to SIF/SICAR-AIFs will also be available for RAIFs. These corporate forms are the limited liability company (SA), the private limited liability company (Sàrl), the corporate partnership limited by shares SCA, the common or special limited partnership (SCS/SCSp) and the cooperative company set up as a public limited liability company (SCSA).
- RAIFs may be organised as umbrella funds, whereby the entire RAIF consists of one or more compartments or sub-funds, or as or stand-alone funds, in each case with multiple classes of shares/units or not. The umbrella form possibility and its terms should be expressly provided for by the constitutive documents of the RAIF. In addition, its offering document must describe each compartment's specific investment policy.
- As regards umbrella RAIFs, Bill 6929 also 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. Moreover, a compartment of a RAIF may also, subject to certain conditions, "cross-invest" in another compartment of the same RAIF without the RAIF, when constituted in corporate form, being subject to the requirements of the Law of 10 August 1915 on commercial companies with respect to the subscription, the acquisition and/or the holding by a company of its own shares.
- RAIFs will not be subject to any particular legal investment and borrowing rules or restrictions, which

will allow for significant flexibility with regard to the assets in which RAIFs may invest, enabling RAIFs to be set-up investing in any kind of asset and pursuing any kind of investment strategy. Like SIF-AIFs, RAIFs will, in principle, remain subject to the principle of risk diversification unless the RAIF restricts its investment policy in its constitutive documents to investments in risk capital only in which case it will not be obliged, like a SICAR-AIF, to comply with principle of risk diversification.

- RAIFs will need to appoint a depositary – that can be a credit institution, a MiFID investment firm, or a professional depositary of assets other than financial instruments – having its registered office in Luxembourg or being established in Luxembourg if its registered office is in another state.
- The accounting information given in the annual report of RAIFs must be audited by an independent statutory auditor ("*réviseur d'entreprise agréé*").
- RAIFs are, in principle, subject to annual subscription tax (*taxe d'abonnement*) at a rate of 0.01%. However, as it is the case for some SIF-AIFs, Bill 6929 exempts some RAIFs from the subscription tax (e.g. institutional

money market RAIFs meeting certain criteria, RAIFs set up as a pension pool vehicle for a group and microfinance RAIFs). In the case a RAIF restricts its investment policy in its constitutive documents to investments in risk capital only, it will be subject to the same tax regime that currently applies to SICARs.

For the avoidance of doubt, as they are AIFs managed by an external authorised AIFM, RAIFs will benefit from the AIFMD passport under certain conditions to be marketed to professional investors (and retail investors if permitted by the relevant Member States) in the EU.

It is worth mentioning that, according to Bill 6929, any RAIF will have to be registered on a RAIF-list (List) to be kept by the Luxembourg Register of Commerce and Companies. The List features and the information to be published in the *Mémorial* in relation to the RAIF will follow by Grand Ducal Decree.

Although the full legislative process is still to be completed, it is anticipated that Bill 6929 will be passed into law by mid-2016. This means that the new RAIF regime should be available over the course of 2016.

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