HALSEY GROUP Sàrl

PROFESSIONAL SERVICES FOR COMPANIES

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RAIF

The "reserved alternative investment funds (RAIF)", governed by the very recent law of July 23, 2016, add a new powerful tool to the already rich offer of funds regimes Luxembourg offers to Fund managers and investors.

This new regime allows fund promoters and alternative investment fund managers to set up a new category of AIF mirroring the already successful tax and legal regimes of the Specialised Investment Funds (SIF) and Investment Companies in Risk Capital (SICAR), except that the RAIF shall not be subject to the prior authorisation and direct supervision by the Commission de Surveillance du Secteur Financier (CSSF).

General features

The RAIF optional regime applies to Luxembourg AIFs (managed by an authorised AIFM) which invest in accordance with the risk-spreading principle (except for RAIFs investing exclusively in risk capital) whose securities or partnership interests are reserved to well-informed investors (please refer to the developments relating to SIFs here below) and whose constitutive documents provide that they are subject to the provisions of the RAIF law.

RAIFs may adopt the contractual form of a common investment fund (FCP), without legal personality, a special limited partnership (S.C.Sp.), a partnership form without legal personality), or a limited partnership (S.C.S.), or a partnership limited by shares (S.C.A.), a cooperative in the form of a public limited company (S.COOP.S.A.), a limited company (S.à r.l.) or public limited company (S.A.) governed by Luxembourg law.

The RAIF Law expressly allows the creation of undertakings with multiple compartments (umbrella structures) so as to allow the grouping of different investment strategies or to meet the demands of different investors, within one single legal structure.

The RAIFs may opt for a variable capital structure. The risk spreading requirements are those applicable to SIFs except if the RAIF elects to invest in qualifying risk capital investments only (like for SICARs).

The minimum capitalisation of a RAIF is EUR 1,250,000 that must be reached within 12 months following the date of creation of the RAIF. In case of corporate RAIF, the reference point for this minimum amount is the sum of the subscribed share capital plus any share premiums or the value of the amount constituting partnership interests.

A sub-fund of an umbrella RAIF can invest in one or more other compartments of the same RAIF (cross-compartment investment).

At least 5% of each share (except for SCS and SCSp, for which there is no such minimum) must be paid up at subscription. A SIF may opt for a variable or fixed share capital, and may be structured as an open- ended or closed- end fund.

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Regulatory environment

As opposed to the SIFs and SICARs, the RAIFs are not subject to the prior authorisation of the CSSF or to its continuous prudential supervision (otherwise than, indirectly, via the AIFM).

The assets of a RAIF must be entrusted to a depositary for safe-keeping which must be a Luxembourg credit institution or investment firm within the meaning of the amended law dated 5 April 1993 on the financial sector.

The annual accounts of a RAIF must be audited by a Luxembourg regulated independent auditor (réviseur d'entreprises agréé).

RAIFs qualify as alternative investments funds (AIFs) under the Directive 2011/61/EU of June 8, 2011 (the AIFM Directive).

The RAIF, being managed by an EU authorised AIFM, benefits 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.

Tax aspects

General tax regime

RAIFS are exempt for Luxembourg income tax and wealth tax (except in case of application of the optional regime as described below) and no taxes are levied in Luxembourg on income derived from capital gains.

Further, distributions made by the RAIFs are not subject to any withholding tax and are not taxable for non-resident taxpayers.

Registration duty

RAIFs incorporated as investment companies are subject to a registration duty of EUR 75 upon incorporation and/or amendment of the articles of association.

RAIFs constituted as common funds are not subject to registration duty.

Subscription tax

RAIFs are subject to an annual subscription tax of 0.01% payable quarterly based on the net asset value on the last day of the relevant quarter.

A subscription tax exemption applies where there is investment in other Luxembourg UCIs, SIFs and RAIFs subject to subscription tax, investment in institutional cash UCIs, pension fund pooling vehicles, microfinance funds, exchange traded funds, and (under certain conditions) investments in LuxFlag labelled institutions.
No Luxembourg tax is payable on realised or unrealised capital appreciation of the assets of the RAIFs.

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Optional tax regime

An alternative tax regime is applicable for RAIFs created under the form of a limited company indicating in their articles of association that their corporate purpose is limited to the investment in risk capital (same regime as the one applicable to SICARs). The risk capital investment means the direct or indirect provision of funds to entities for their launch, development or their listing.

The RAIFs auditor will have to certify each year that during the relevant accounting year, the RAIF has complied with the risk capital investment policy (report to be transmitted to the direct tax authorities).

RAIFs which opted for the application of the optional alternative tax regime are subject to corporate income tax in Luxembourg at a current global rate of 27.08% (which comprises corporate income tax (CIT), solidarity tax and the municipal business tax (MBT) for Luxembourg-city (to be reduced to 26.01% as from January 1, 2018)). However, as for SICARs under the 2004 SICAR Law, any income derived from securities (as well as income deriving from the sale, contribution, exchange or liquidation thereof) are tax exempt.

VAT

Management services (provision of portfolio management services, investment advisory services and certain administrative services) provided to a RAIF are VAT exempt. RAIFs are considered as VAT taxable persons with – in principle – no right to an input-tax deduction as they are active in VAT exempt activities only (it being understood that in the case of an FCP the management company is the VAT taxable person).

Accounting aspects

RAIFs must publish accounts annually. RAIFs report under Luxembourg GAAP and may use IFRS. Accounts must be reviewed by an independent auditor.

The RAIF Law provides a very flexible regime in terms of valuation of assets, frequency of NAV calculation and price of shares /units issued or redeemed.

The minimum frequency of NAV calculation is annual in line with the requirement to prepare annual accounts.

As for SIFs, the valuation of assets shall be based on fair-market value unless the documents constituting the RAIF provide otherwise. This allows RAIFs holding specific investments to select a more appropriate valuation methodology, for example the "International Private Equity and Venture Capital Valuation Guidelines" or the valuation rules of the "Royal Institution of Chartered Surveyors" for Real Estate investments.

RAIFs are exempt from any obligation to prepare consolidated accounts.

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Services offers by Halsey Group

Established for more than 20 years, regulated by the Commission de Surveillance du Secteur Financier, we are independent and wholly owned by our management. We offer a personalised and objective approach to your specific needs.

HALSEY offers its clients an extensive range of high quality services in connection with Luxembourg financial companies both at the time of incorporation and throughout the life of the company:

- Company formation
- Administrative and accounting
- Corporate secretarial
- Fund administration
- Tax compliance
- Management of companies
- Assistance in setting-up own offices & management of client staff

The objective of this fact sheet is to provide the reader with a general view of relevant aspects relating to the RAIF. No action shall be taken without prior consultation with Halsey Group, as this document alone cannot cover all aspects relating to the incorporation and administration of the RAIF. Finally, please note that this document is provided for information purposes only and should not be understood as legal or fiscal advice.