Flash News

Luxembourg- New investment vehicle for well-informed investors: the RAIF

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Historically, all investments structures in Luxembourg ("UCIs") have been subject to product regulation and to CSSF's prior authorisation and supervision. Funds sponsors wishing to launch an "unregulated" investment structure were choosing a company structure rather than a fund structure.

AIFMD has introduced the concept of "unregulated" AIFs, benefitting from a European marketing passport, through the passport of its authorised AIFM. This passport was available to either regulated AIFs (SIF, SICAR, Part 2) or unregulated structures (commercial company) managed by an authorised AIFM.

Certain sponsors have nevertheless expressed the wish for an unregulated fund structure offering the features of an investment fund without requiring prior authorisation from the CSSF (hence speeding the launch process).

What's new?

On 14 December 2015, bill 6929 (the "Bill") was submitted to the Luxembourg's Chamber of Deputies for adoption of the Reserved Alternative Investment Fund ("RAIF").

Once adopted, the Bill should amend the following set of laws:

- the law of 16 October 1934 on wealth tax,
- the law of 1 December 1936 on income tax law and municipal business tax,
- the law of 4 December 1967 on income tax, and
- the law of 17 December 2010 relating to undertakings for collective investment.

The RAIF regime is largely based on the SIF and the SICAR regimes, the main difference being that the RAIF is not subject to the CSSF's authorisation and supervision.

The main characteristics of the RAIF once the Bill will be voted by the Parliament should be as follows:

- **Regulatory supervision:** the RAIF will not be subject to any authorisation or direct supervision from the CSSF. The RAIF shall benefit from an exemption from CSSF's authorisation for its set-up and for the supervision regarding ongoing amendments to offering documents during the life of the fund. It is only "indirectly" supervised through its AIFM;

- **Target investors:** the RAIF should be dedicated to well-informed investors as defined in the SIF and the SICAR laws;

- **Management of the RAIF:** since the RAIF shall qualify as an AIF, it shall be managed **only** by an **authorised** AIFM. Hence, the RAIF's manager will be able to have its registered office in one of the EU member states and not be obliged to be based in Luxembourg;

- **Passporting:** being managed by an authorised AIFM, the RAIF will also benefit from **all EU AIFM's passporting advantages**; consequently, the unit and interests of the RAIF shall be distributed by way of the marketing passport across Europe to professional investors only;

- **Legal form:** the RAIF may opt for a variable capital structure and may be created following various different legal forms (corporate partnership and contractual legal forms) available.

- **Tax regime:** RAIFs are normally subject to a 0.01% subscription tax (levied on the Net Asset Value of the fund - with some exemptions available) and are not subject to any other Luxembourg taxes (e.g Corporate Income and Municipal Business taxes). Distributions made out of RAIFs are free of withholding tax in Luxembourg and capital gains realised by non-resident investors should not be taxed in Luxembourg.
  By exception, RAIF that invests exclusively into risk capital related securities may opt for a tax regime similar to the tax regime of a SICAR (i.e. taxable for Corporate Income and Municipal Business taxes, but with a wide exemption for income related to risk capital securities). RAIFs are also exempt from Net Wealth Tax, except for the part representing the minimum Net Wealth Tax when the fund invests exclusively into risk capital related securities. The combination of these 2 different tax regimes should not be possible within a same legal entity having different compartments.

- **Other RAIF features should also comprise:**
  - no limitation as regards to eligible assets or investment policies;
  - risk diversification requirements principles. However the RAIF would not be required to apply the principle of risk spreading if it restricts its investment policy in its constitutive documents to investments in capital risk investments;
  - multiple compartments and multiple classes;
  - flexible subscription, redemption and distribution features;
  - requirements to have the annual accounts audited by an authorised auditor ("Réviseur d'Entreprises Agréé").

These considerations should be reviewed once the final text is voted.

What's next?

The Bill has to be adopted by the Luxembourg's Parliament.

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