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Newsflash

Reserved alternative investment fund (RAIF)

Luxembourg legal arsenal now counts a new leading-edge tool that is accessible to market stakeholders: the RAIF. Bill 6929 was adopted on 14 July 2016 and the law will enter into force within three days following its publication in the Official Gazette. Ongoing enthusiasm for this new structure emerged as the RAIF, in addition to the attraction of novelty, allows for a high degree of flexibility and simplicity in its setting up.

Novelty

Luxembourg strives to be at the forefront of legal innovation to adapt its industry to the constantly evolving legal framework. The implementation of the RAIF again illustrates this almost Darwinian notion of evolution in the business environment. The RAIF presents an innovative solution that is fit for any asset class and strategy and more particularly appealing for private equity/real estate, loan originations and tangible assets. The RAIF may also appropriately embody the required investment vehicle for global trades such as financing for aircraft, shipping or reinsurance of medical facilities.

Flexibility

Largely modelled on the specialised investment fund (SIF), the RAIF may benefit from interesting operational advantages, provided a proper legal packaging allows it. Amongst others, the RAIF may notably (i) be set up with an umbrella structure; (ii) which sub-funds may cross-invest without application of corporate law requirements; (iii) be exempted from risk diversification requirements if adopting an investment policy alike the investment company in risk capital (SICAR); and (iv) benefit from the so-called AIFM passport (management/distribution).

Simplicity

The RAIF is not subject to any ex ante or ex post approval and/or supervision by the Luxembourg regulatory authority. Although unregulated, the RAIF offers a multiple layers of investor protection through the requirement to appoint: (i) an external authorised AIFM located in any EU Member State or, shortly, in a third country in accordance with the AIFM directive and ensuring compliance with the AIFM law; (ii) a Luxembourg established depositary bank acting independently, honestly, fairly, professionally and in the best interest of investors; and (iii) an independent auditor auditing its financial statements on a yearly basis and certifying compliance with applicable law.

Attractiveness

The RAIF's tax treatment by default is SIF alike (a 0.01% p.a. subscription tax and no withholding tax on distributions) with the possibility to benefit, alternatively, from the SICAR tax regime when dedicated exclusively to investments in risk capital. Under both regimes, there should be no Luxembourg VAT on management, performance and/or investment advisory fees paid in consideration for the management of the RAIF. It is worthwhile mentioning that in terms of structuring, the RAIF may be set up as a tax transparent vehicle (such as the special limited partnership) and should, depending upon its legal form, be eligible for the "check the box" tax treatment as a partnership for US tax purposes.

The RAIF is a valuable tool to the existing Luxembourg range of fund products and a strong value option to the offshore segregated portfolio companies or other non-regulated offshore or onshore vehicles. Tailored solutions recommended by legal advisers having a deep knowledge of both the fund industry and the legal implications and requirements will need be developed in collaboration with you to ensure that each new RAIF fully benefits from all of the possible advantages offered. Therefore, we will be more than happy to make you benefit from our expertise and discuss with you the new opportunities that the RAIF may offer as well as to review, as the case may be, your existing structuring and contractual arrangements in place.

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