

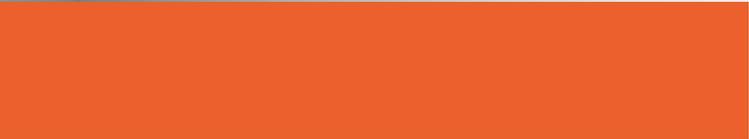


ENGELWOOD



RESERVED ALTERNATIVE INVESTMENT FUND

A new opportunity for the fund industry in Luxembourg



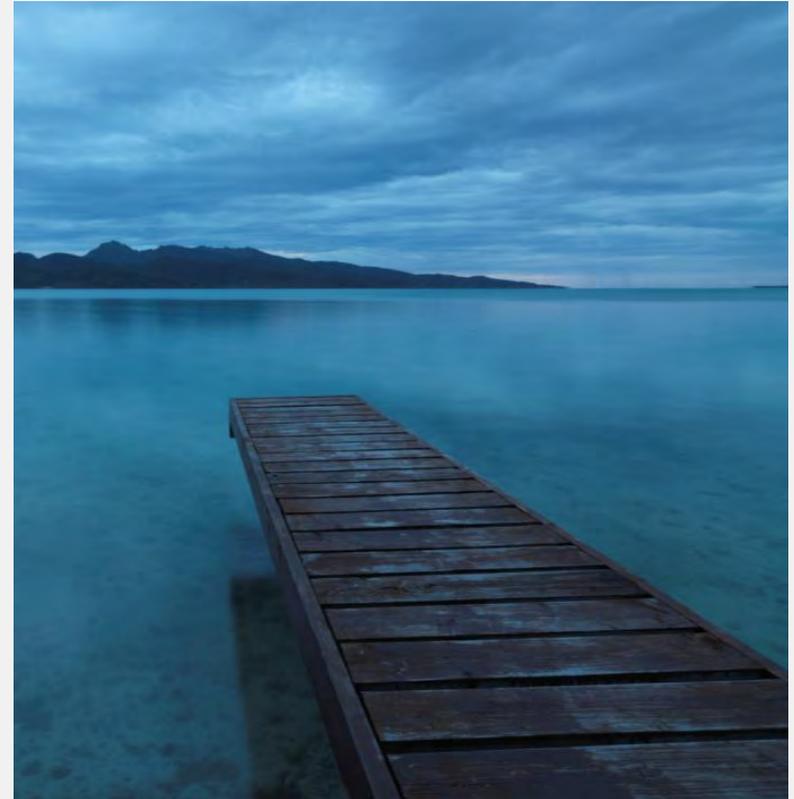


The Luxembourg Parliament approved on 14 July 2016 the updated draft of law relating to the reserved alternative investment fund (“RAIF”).

SIF OR SICAR REGIME APPLICABLE TO RAIF

The RAIF will make a difference on the Luxembourg financial scene as the RAIF will mirror the regimes applicable to the specialized investment funds (“SIF”) or the investment companies in risk capital (“SICAR”) in terms of characteristics and flexibility without being required to seek prior authorization by the Luxembourg supervisory authority, the *Commission de surveillance du secteur financier* (the “CSSF”), and being subject to supervision and oversight by the latter authority. Therefore, the RAIF will be launched without any prior regulatory approval and no authorization will be required in the event of changes to the constitutional documents during the life of the RAIF.

Main advantage: the timeframe for launching a RAIF will be significantly reduced.



1. APPOINTMENT OF AN EXTERNAL AUTHORIZED AIFM

As a consequence of the absence of supervision by the CSSF, the RAIF will only be reserved for the funds appointing a duly authorized alternative investment fund manager (“**AIFM**”), regardless of the fact that the AIFM is established in Luxembourg or in another EU Member State. If the AIFM is established in Luxembourg, **the CSSF will ensure an indirect supervision of the RAIF** through the supervision operated on the AIFM which will ensure that the RAIF complies with the AIFMD requirements.

2. NO DIRECT SUPERVISION BY THE CSSF

There is no need for CSSF prior approval for the launch, termination or in the event of changes to the constitutional documents, offering documents during the life of the RAIF.

3. THE RAIF REGIME IS OPTIONAL

The constitutive documents must provide that the fund is subject to the RAIF regime.



4. ELIGIBLE INVESTORS

Because the RAIF is managed by an authorized AIFM, it will have the benefit of the European passport and will be marketed to professional investors throughout the EU. Indeed, only well-informed investors will be allowed to invest into RAIFs. The three categories of well-informed investors, including professional investors, are clearly identified in the Bill.

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1. ELIGIBLE ASSETS

The RAIF can invest in any type of assets and follow any type of investment strategy.

2. RISK-SPREADING PRINCIPLE

If the RAIF regime mirrors the SIF regime, the portfolio of the RAIF must be managed under the principle of risk spreading.

If the RAIF regime mirrors the SICAR regime, no risk spreading requirement will apply.

The Bill does not provide for any details regarding the minimum level of requirements. However, reference should be made to the guidelines provided by the CSSF circular 07/309 on risk spreading in the context of SIFs.





3. LEGAL FORMS

A RAIF can be established either under the contractual form as *fonds commun de placement* (FCP) or the corporate form as an investment company.

- **Fonds commun de placement** : The FCP is a coproprietorship of assets managed by a management company governed by Chapter 15 or Chapter 16 of the law of 17 December 2010 on undertakings for collective investment.
- **Investment Company** : An investment company can be created either with variable capital as a *société d'investissement à capital variable* (SICAV) or with fixed capital as a *société d'investissement à capital fixe* (SICAF).

A RAIF created as an investment company can adopt the following corporate forms:

- Public limited company - *Société anonyme*;
 - Partnership limited by shares - *Société en commandite par actions*;
 - Common limited partnership - *Société en commandite simple*;
 - Special limited partnership - *Société en commandite spéciale*;
 - Private limited company - *Société à responsabilité limitée*.
- **Special limited partnership ("SLP")**: The SLP was introduced by the law of 12 July 2013 on alternative investment fund managers and became more attractive as the law governing the SLP grants a high level of flexibility and contractual freedom when structuring the partnership agreement. See our dedicated flyer on our website.



4. SERVICE PROVIDERS

➤ Appointment of an AIFM

The RAIF must appoint an external AIFM responsible for managing the RAIF.

➤ Appointment of a depositary

The RAIF must appoint a depositary which will be in charge of safe-keeping the RAIF's assets.

The depositary must be a Luxembourg based credit institution or investment firm within the meaning of the Law of 5 April 1993 on the financial sector, as amended.

➤ Central Administration

The central administration must be located in Luxembourg. However, it is not required to have employees or premises in Luxembourg. The RAIF will appoint a central administration located in Luxembourg which will perform all the duties of domiciliary, administrative, transfer and registrar agent



➤ Auditor

The annual accounts must be audited by an approved statutory auditor (*réviseur d'entreprises agréé*) which have proven adequate professional experience.

➤ Substance

Customized offices packages and substance solutions could be considered (case by case review).



5. AVAILABILITY OF THE UMBRELLA STRUCTURE

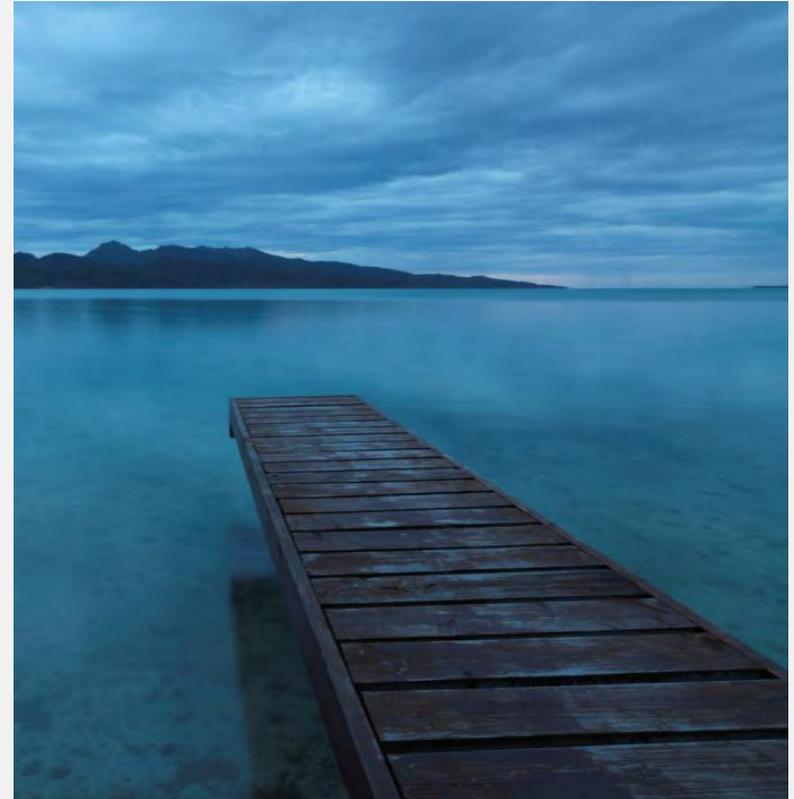
Under the RAIF regime, the umbrella structure will be available to the RAIFs, allowing them to launch new sub-funds from time to time. The Bill also provides that each sub-fund must be linked to a specific portfolio of investments that must be segregated from the investment portfolios of the other sub-funds.

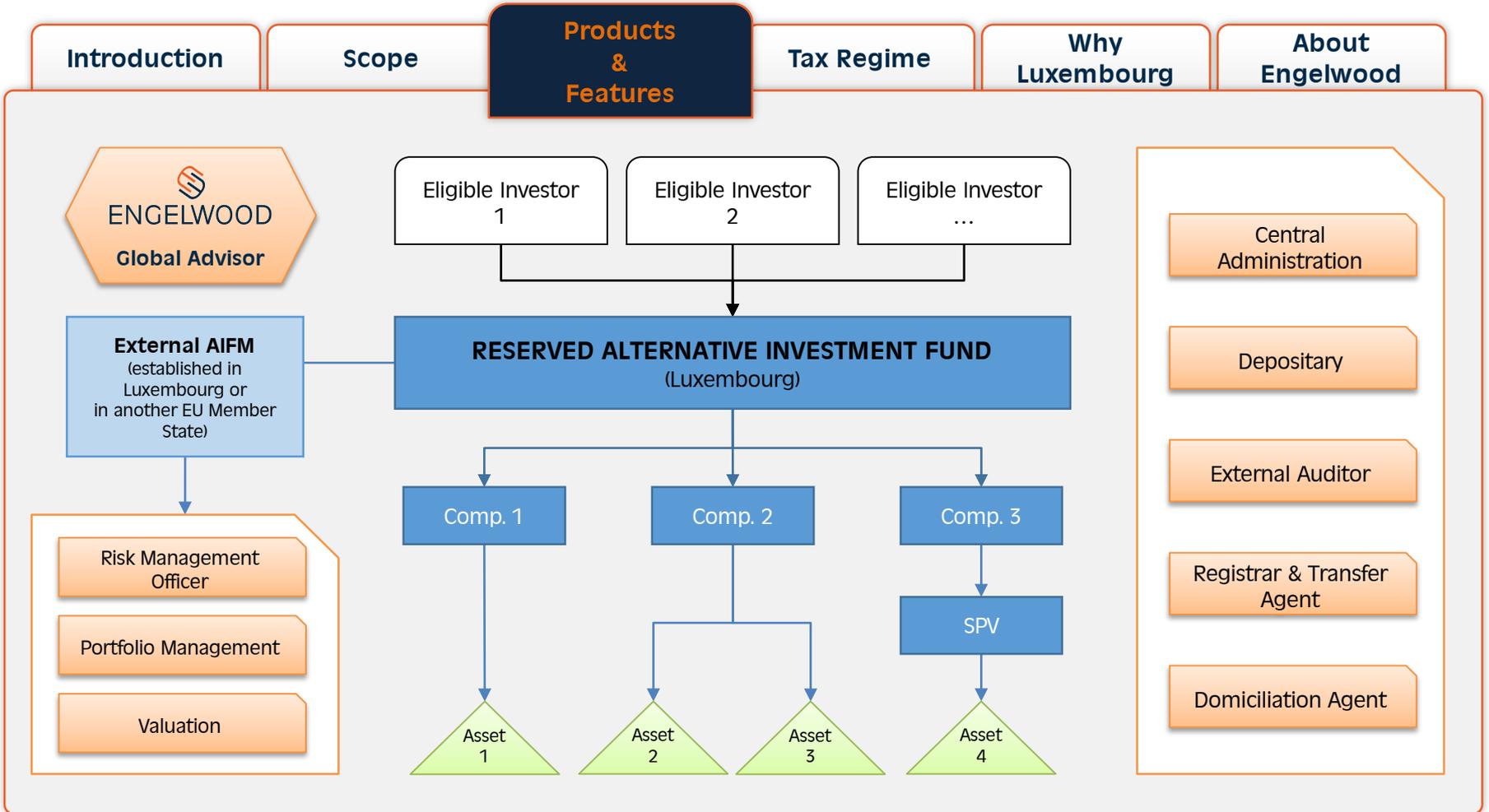
6. VALUATION OF ASSETS

As the RAIF can invest in any type of assets and follow any type of investment strategy, it is also subject to flexible valuation rules.

Unless otherwise provided for in the constitutive documents, the assets of a RAIF must be valued at fair value. The assets must be valued at least once a year.

The valuation function must be performed by the AIFM or by an external valuation expert (delegation), acting under the responsibility of the AIFM.







7. DISCLOSURE AND REPORTING REQUIREMENTS

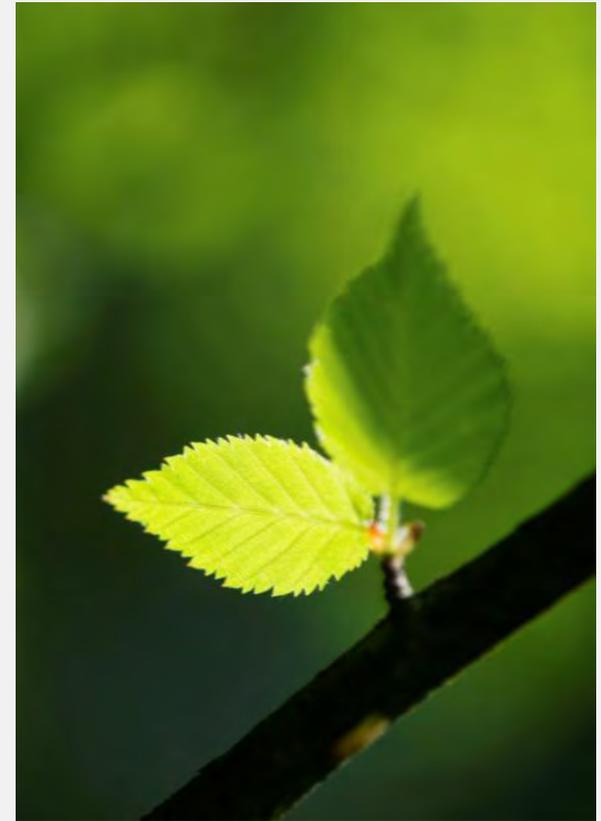
- The Bill does not impose specific information requirements in the offering document.
- The elements of the offering document must be updated in case of issuance of new securities to investors.
- The offering documents must specify clearly on its cover page that the RAIF is not subject to CSSF approval and supervision.
- The AIFM must provide the information required by Article 23 of the AIFMD to investors. However, these information must not be automatically inserted in the offering document.
- The Bill contains an appendix which describes the information to be included in the audited annual report which must be published by the RAIF within 6 months from the end of the period to which the report refers.
- Under the AIFMD, the RAIF is required to disclose additional information in its annual report (total amount of remuneration paid to the staff, number of beneficiaries...)





8. MARKETING

- RAIFs will benefit from a European passport allowing EU-AIFMs to market RAIFs' shares to professional investors throughout the EU. The EU Commission may decide to extend the passport to non-EU AIFMs later.
- The marketing of RAIFs to well-informed investors which do not qualify as professional investors requires compliance with the local placement rules of the country where the RAIF is marketed.
- Closed-ended RAIFs or RAIFs not investing in accordance with the risk-spreading principle may be subject to the provisions of the law of 10 July 2005 on prospectuses for securities if they intend to realize a public offering or admission to trading of their shares.





1. GENERAL TAX REGIME

The RAIF will be subject to a dual tax regime depending on whether the fund is set up as SIF or a SICAR.

In a nutshell, under the general tax regime which replicates the tax regime applicable to SIFs, the RAIF will be subject to an annual subscription tax (*taxe d'abonnement*) levied on their net assets of 0.01% and will be exempt from corporate income or other taxes in Luxembourg.

2. OPTIONAL TAX REGIME

RAIFs which invest in risk capital will be entitled to opt for a tax regime which mirrors the tax regime applicable to SICARs.

3. INVESTORS TAXATION

Distributions made by RAIF to investors are not subject to withholding tax.



4. VAT

Management services such as portfolio management services and investment advisory services are exempt from VAT. However, depositary bank services can benefit from a reduced VAT rate.

5. INTERNATIONAL LAW APPROACH

RAIF established as investment companies (SICAV OR SICAF) may benefit from double tax treaties.

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“Luxembourg is the second largest investment fund centre in the world after the United States, the premier captive reinsurance market in the European Union and the premier private banking centre in the Eurozone. The financial sector is the largest contributor to the Luxembourg economy. From its origins as a Euroloan centre, the city subsequently developed as a private banking centre and then, from the 1980s, as a leading domicile for investment funds. The success of the financial centre is founded on the social and political stability of the Grand Duchy and on a modern legal and regulatory framework that is continuously updated, inspired by regular consultation between the government, the legislator and the private sector. Thus, over the years, specific regulatory frameworks have been created for alternative investment funds, venture capital investment funds, international pension funds, specialised investment funds, captive reinsurance companies, covered bond issuing banks, securitisation vehicles and family wealth management companies. This legal framework, combined with Luxembourg’s openness to the world, has attracted banks, insurance companies, investment fund promoters and specialist service providers from all over the world. The Luxembourg financial centre is characterised by a strong culture of investor protection and rigorous anti money-laundering policies. Its specialist teams are multilingual and multicultural, with a long tradition of financial expertise and extensive knowledge of the needs of an international clientele.”

Source: www.luxembourgforfinance.lu



Our mission is built up around the **One Stop Shop concept**: a global player which is staying client focused from the inside out, providing tailored solutions with high level of expertise.

Our experienced team is dealing with:

- ✓ complex and common investment policies in the **alternative investment fund industry**,
- ✓ a challenging **corporate industry**,
- ✓ diversified **private client** requirements, and
- ✓ a new **financing sources** environment

in close relationship (fast and proactive) with our clients and in accordance with an increasing **regulated environment**.

More information about our solutions & services available on our website: www.engelwood.lu



- ✓ A **specialized team** coming from the alternative investment fund and corporate industry with more than 20 years expertise in Europe.
- ✓ A truly **independent financial and corporate services provider** able to leverage on the existing expertise by providing a fully integrated solution.
- ✓ Our own offices and dedicated partners network are offering to deal with **cross border solutions** in several jurisdictions.



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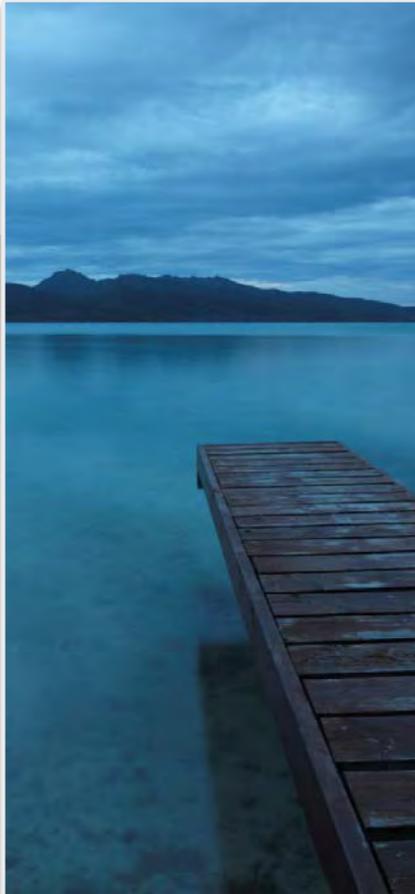


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LINKS



C.S.S.F. (Commission de Surveillance du Secteur Financier)

www.cssf.lu

Ordre des Experts-Comptables (Luxembourg)

www.oec.lu

Institut Luxembourgeois des Administrateurs

www.ila.lu

Luxembourg for Finance

www.luxembourgforfinance.lu

LPEA (Luxembourg Private Equity & Venture Capital Association)

www.lpea.lu

EVCA (European Private Equity & Venture Capital Association)

www.evca.eu

ALFI (Association of the Luxembourg Fund Industry)

www.alfi.lu



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