

# Investment Management Practice

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Luxembourg alternative investment funds: strategic legal analysis  
of the most popular fund structures



# Luxembourg alternative investment funds: strategic legal analysis of the most popular fund structures<sup>1</sup>

|  | Reserved Alternative Investment Fund (RAIF)  |   | Alternative investment fund with an authorized alternative investment fund manager (AIF-A)  | Alternative investment fund with a registered alternative investment fund manager (AIF-R)   |
|--|--|---|---|---|
|  | Risk-diversified option (SIF-like RAIF) <sup>2</sup>   | Risk-capital option (SICAR-like RAIF)                                   |   |   |
| STRUCTURE                                  |  |   |   |   |
| Fund regulatory regime and applicable laws | RAIFs shall comply with the standard RAIF regime and comply in particular with the following Luxembourg laws: <ul style="list-style-type: none"><li>• Companies Law;</li><li>• RAIF Law; and</li><li>• AIFM Law (compliance ensured through the AIFM).</li></ul>   |   | AIF-As do not fall in scope of any particular fund regime and shall comply in specific with the following Luxembourg laws: <ul style="list-style-type: none"><li>• Companies Law; and</li><li>• AIFM Law (compliance ensured through the AIFM).</li></ul>   | AIF-Rs do not fall in scope of any particular fund regime and shall comply in specific with the following Luxembourg laws: <ul style="list-style-type: none"><li>• Companies Law; and</li><li>• AIFM Law to a limited extent (compliance ensured through the AIFM).</li></ul>   |
| Legal forms                                | <ul style="list-style-type: none"><li>• public limited liability company (<i>société anonyme</i>);</li><li>• partnership limited by shares (<i>société en commandite par actions</i>);</li><li>• private limited liability company (<i>société à responsabilité limitée</i>);</li><li>• cooperative company organised as a public limited company (<i>société coopérative organisée comme une société anonyme</i>);</li><li>• common limited partnership (<i>société en commandite simple</i>);</li><li>• special limited partnership (<i>société en commandite spéciale</i>); and</li><li>• common contractual form (<i>fonds commun de placement</i>).</li></ul> <p>Generally, for flexibility, marketing and tax purposes, most RAIFs are organized under the form of SCS, SCSp or SCA.</p> |   | <ul style="list-style-type: none"><li>• public limited liability company (<i>société anonyme</i>);</li><li>• partnership limited by shares (<i>société en commandite par actions</i>);</li><li>• private limited liability company (<i>société à responsabilité limitée</i>);</li><li>• cooperative company organised as a public limited company (<i>société coopérative organisée comme une société anonyme</i>);</li><li>• common limited partnership (<i>société en commandite simple</i>); and</li><li>• special limited partnership (<i>société en commandite spéciale</i>).</li></ul> <p>While any of the above legal forms could be chosen, for flexibility, marketing and tax purposes, most AIF-As are organized under the form of SCS or SCSp.</p> | <ul style="list-style-type: none"><li>• public limited liability company (<i>société anonyme</i>);</li><li>• partnership limited by shares (<i>société en commandite par actions</i>);</li><li>• private limited liability company (<i>société à responsabilité limitée</i>);</li><li>• cooperative company organised as a public limited company (<i>société coopérative organisée comme une société anonyme</i>);</li><li>• common limited partnership (<i>société en commandite simple</i>); and</li><li>• special limited partnership (<i>société en commandite spéciale</i>).</li></ul> <p>While any of the above legal forms could be chosen, for flexibility, marketing and tax purposes, most AIF-Rs are organized under the form of SCS or SCSp.</p> |
| Organisational form                        | <ul style="list-style-type: none"><li>• SICAV</li><li>• SICAF</li><li>• FCP</li></ul>  | <ul style="list-style-type: none"><li>• SICAV</li><li>• SICAF</li></ul> | N/A.  | N/A.  |

<sup>1</sup> Disclaimer: the following brochure does not constitute legal advice and is merely intended to raise awareness about alternative investment funds. AKD shall not incur liability of any kind should this document be used as a basis for responding to legal questions.

<sup>2</sup> Capitalized terms and acronyms not otherwise defined herein shall have the meaning ascribed to them in the Glossary at the end of this document.

|   | Reserved Alternative Investment Fund (RAIF)  |                                       | Alternative investment fund with an authorized alternative investment fund manager (AIF-A)   | Alternative investment fund with a registered alternative investment fund manager (AIF-R)   |
|---|--|---------------------------------------|--|---|
|   | Risk-diversified option (SIF-like RAIF)  | Risk-capital option (SICAR-like RAIF) |  |   |
| STRUCTURE   |  |                                       |  |   |
| <b>Umbrella structure</b><br>(allows a fund to have within one and the same legal entity several sub-funds which are economically segregated) | Yes, optional.   |                                       | No.  | No.   |
| <b>Supervision by the financial regulator (CSSF)</b>  | No prior approval and no direct supervision by the regulator at the RAIF level. The supervision occurs at the level of the AIFM and other regulated service providers. |                                       | No prior approval and no direct supervision by the regulator at the fund level. The supervision occurs at the level of the AIFM and other regulated service providers. | No prior approval and no direct supervision by the regulator at the fund level. At the level of the AIFM, the supervision is light due to a mere registration and reporting requirements instead of full authorization. |
| <b>Cross-sub-fund investments</b><br>(sub-funds may invest in other sub-funds of the same umbrella structure)                                 | Yes, optional.   |                                       | N/A.   | N/A.  |
| <b>Multiple classes of shares/units/interests</b>   | Yes.   | Yes.                                  | Yes.   | Yes.  |

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|                      | Risk-diversified option (SIF-like RAIF)   | Risk-capital option (SICAR-like RAIF) |  |   |
| STRUCTURE            |   |                                       |  |   |
| Capital requirements | <p>The capital of RAIFs may be fixed or variable and expressed in euros or foreign currency equivalent.</p> <p>There is a requirement for a minimum subscribed capital of EUR 1,250,000 (including share premium) which must be reached within 24 months of establishment.</p> <p>Depending on the legal form of the RAIFs, there could be a minimum capital required at establishment: EUR 12,000 for private limited liability company (<i>société à responsabilité limitée</i>) and of EUR 30,000 for a partnership limited by shares (<i>société en commandite par actions</i>) or a public limited liability company (<i>société anonyme</i>).</p> <p>Shares must be paid up to 5%. It should be noted that the incorporation of a fund in a corporate form is usually not tax efficient, hence unusual. However, there is no minimum capital requirement for a common limited partnership (<i>société en commandite simple</i>) or a special limited partnership (<i>société en commandite spéciale</i>).</p> <p>Regarding the payment, contribution in kind, cash and/or sweat equity are allowed.</p> |                                       | <p>The capital of the fund may be fixed or variable and expressed in euros or foreign currency equivalent.</p> <p>There is a requirement for a minimum subscribed capital of EUR 1,250,000 (including share premium) which must be reached within 24 months of establishment.</p> <p>Depending on the legal form of the fund, there could be a minimum capital required at establishment: EUR 12,000 for private limited liability company (<i>société à responsabilité limitée</i>) and of EUR 30,000 for a partnership limited by shares (<i>société en commandite par actions</i>) or a public limited liability company (<i>société anonyme</i>).</p> <p>Shares must be paid up to 25% for a partnership limited by shares (<i>société en commandite par actions</i>) and for a public limited liability company (<i>société anonyme</i>) and 100% for a private limited liability company (<i>société à responsabilité limitée</i>).</p> <p>While in theory any corporate legal form could be chosen, for flexibility, marketing and tax purposes, most AIF-As are organized under the form of SCS or SCSp, in which case no minimum capital or payment requirements apply. The partners' contributions could be in principle as low as EUR 1 and may be made in cash or in kind.</p> <p>Regarding the payment, contribution in kind, cash and/or sweat equity are allowed.</p> | <p>Depending on the legal form of the fund, there could be a minimum capital required at establishment: EUR 12,000 for private limited liability company (<i>société à responsabilité limitée</i>) and of EUR 30,000 for partnerships limited by shares (<i>société en commandite par actions</i>) and for public limited liability company (<i>société anonyme</i>).</p> <p>Shares must be paid up to 25% for partnerships limited by shares (<i>société en commandite par actions</i>) and for public limited liability company (<i>société anonyme</i>) and 100% for a private limited liability company (<i>société à responsabilité limitée</i>).</p> <p>While in theory any corporate legal form could be chosen, for flexibility, marketing and tax purposes, most AIF-Rs are organized under the form of SCS or SCSp, in which case no minimum capital or payment requirements apply. The partners' contributions could be in principle as low as EUR 1 and may be made in cash or in kind.</p> <p>Regarding the payment, contribution in kind, cash and/or sweat equity are allowed.</p> |

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|                      | Risk-diversified option (SIF-like RAIF)  | Risk-capital option (SICAR-like RAIF) |  |  |
| STRUCTURE            |  |                                       |  |  |
| NAV calculation      | <p>For open-ended (possibility for investors to withdraw from the fund before liquidation) RAIFs and AIF-As the NAV calculation should occur at each issuance, subscription, redemption or cancellation of shares, units or interests, and for closed-ended (no possibility to withdraw from the fund before liquidation) RAIF and AIF-As as set forth in the constitutive documents. For both types of funds, the NAV calculation shall occur at least once a year.</p> <p>The valuation is done at the fair market value or according to methodology set out in the fund's constitutive documents.</p> |                                       |  | <p>For AIF-Rs also a distinction could be made between open-ended structure, for which the NAV should be calculated at each issue, subscription, redemption or cancellation of shares, units or interests, and closed-ended structure, for which the rules are provided by the constitutive documents.</p> <p>The valuation is done at the fair market value or according to methodology set out in the fund's constitutive documents.</p> |
| Profit distribution  | RAIFs do not restrict this and hence the fund may pay interim, annual or discretionary distributions, which are subject to terms and conditions as set forth in the constitutive documents of the fund, provided that the minimum capital requirements are met.  |                                       | AIF-As do not restrict this and hence the fund may pay interim, annual or discretionary distributions, which are subject to terms and conditions as set forth in the constitutive documents of the fund.   | AIF-Rs do not restrict this and hence the fund may pay interim, annual or discretionary distributions, which are subject to terms and conditions as set forth in the constitutive documents of the fund.   |
| Points of attraction | <ul style="list-style-type: none"><li>fast establishment and reduced time-to-market;</li><li>flexible corporate and operating rules;</li><li>no CSSF approval or supervision;</li><li>umbrella structure possible;</li><li>well-known brand;</li><li>compatibility with fund regimes and corporate forms in other strong fund jurisdictions (e.g. US, UK, Germany, Switzerland);</li><li>tax neutrality;</li><li>AIFMD marketing passport available; and</li><li>investors' protection ensured by the full application of the AIFMD.</li></ul>   |                                       | <ul style="list-style-type: none"><li>fast establishment and reduced time-to-market;</li><li>flexible corporate and operating rules;</li><li>no CSSF approval;</li><li>well-known structure;</li><li>compatibility with fund regimes and corporate forms in other strong fund jurisdictions (e.g. US, UK, Germany, Switzerland);</li><li>tax neutrality;</li><li>AIFMD marketing passport available; and</li><li>investors' protection ensured by the full application of the AIFMD.</li></ul> | <ul style="list-style-type: none"><li>fast establishment;</li><li>flexible corporate and operating rules;</li><li>no CSSF approval;</li><li>out of scope of AIFMD; and</li><li>costs for establishment and annual maintenance.</li></ul>   |

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|                                       | Risk-diversified option (SIF-like RAIF)  | Risk-capital option (SICAR-like RAIF) |  |  |
| INVESTORS                             |  |                                       |  |  |
| Eligible investors                    | Well informed investors, i.e.: <ul style="list-style-type: none"><li>• Institutional investors;</li><li>• Professional investors, i.e. investors considered to be professional clients or who may on request be treated as professional clients within the meaning of Annex II to Directive 2014/65/EC (MiFID II); and</li><li>• Any other investors adhering to the well-informed investor status and either (i) investing at least EUR 100,000 or (ii) benefiting from a certificate issued by a credit institution, investment firm, management company or AIFM or any other entity listed in the law, which confirms that the investor has the necessary expertise, experience and knowledge to assess the risk linked to an investment in the fund.</li></ul> |                                       | There is no formal restriction on the eligibility of investors. Due to marketing restrictions, the market trend is to accept only professional investors.  | There is no formal restriction on the eligibility of investors. Due to private placement restrictions, the market trend is to accept only professional or sophisticated investors.                             |
| Subscription and redemption           | Subscription and redemption conditions may be determined in the fund's constitutive documents, subject to certain conditions set forth inter alia in Companies Law, the RAIF Law and AIFM Law.   |                                       | Subscription and redemption conditions may be determined in the fund's constitutive documents subject to certain conditions set forth inter alia in Companies Law and/or implemented due to the AIFMD. | Subscription and redemption conditions may be determined in the fund's constitutive documents, subject to certain conditions set forth inter alia in the Companies Law.  |
| FUND MANAGEMENT AND SERVICE PROVIDERS |  |                                       |  |  |
| Management and operation              | The Funds are managed in accordance with their constitutive documents. The management body (e.g. the managing GP) may, and in cases it does not have the required license must, delegate certain functions to third-party service providers, such as an authorized AIFM or administration agent.   |                                       |  | Due to reduced application of the AIFMD to the AIF-R, the registered AIFM will undertake the majority of the fund management related functions. It may nevertheless delegate certain administrative functions. |
| Requirements to the management body   | There are no specific regulatory and approval requirements for the board members. Standard corporate law and substance rules apply.  |                                       | There are no specific regulatory and approval requirements for the board members. Standard corporate law and substance rules apply.  | There are no specific regulatory and approval requirements for the board members. Standard corporate law and substance rules apply.  |

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| FUND MANAGEMENT AND SERVICE PROVIDERS                        |   |                                       |   |  |
| Third-party services providers to be appointed in Luxembourg | <ul style="list-style-type: none"><li>External authorized AIFM;</li><li>Central administration / domiciliation agent;</li><li>Depositary;</li><li>Auditor (<i>réviseur d'entreprises agréé</i>); and</li><li>AML/CFT compliance officer (<i>responsable du Contrôle du Respect des Obligations</i>).</li></ul>  |                                       | <ul style="list-style-type: none"><li>Authorized AIFM;</li><li>Central administration / domiciliation agent;</li><li>Depositary;</li><li>Auditor (<i>réviseur d'entreprises agréé</i>); and</li><li>AML/CFT compliance officer (<i>responsable du Contrôle du Respect des Obligations</i>).</li></ul> | <ul style="list-style-type: none"><li>Central administration / domiciliation agent;</li><li>Auditor (<i>réviseur d'entreprises agréé</i>) for the AML/CFT external report; and</li><li>AML/CFT compliance officer (<i>responsable du Contrôle du Respect des Obligations</i>).</li></ul>   |
| Ownership in the general partner                             | No restrictions on the shareholding structure, eligibility or residency.  |                                       |   |  |
| MARKETING  |   |                                       |   |  |
| Marketing and distribution of the fund                       | <ul style="list-style-type: none"><li>RAIFs and AIF-As benefit from the AIFMD marketing passport allowing an EU based AIFM to market AIFs under its management to professional investors across the EU. The AIFMD marketing passport essentially simplifies the marketing process and leverages from regulators collaboration within EU;</li><li>RAIFs and AIF-As may also be pre-marketed (i.e. prospective investors are provided with information on investment strategies or investment ideas by an AIFM in order to test their interest in an AIF or a compartment which is not yet established, or which is established, but not yet notified for marketing, and which in each case does not amount to an offer or placement to the potential investor to invest in the units or shares of that AIF or compartment). Once started with the pre-marketing, the AIFM will make an informal notification to the regulator within max. two weeks from the pre-marketing starting date;</li><li>RAIFs and AIF-As may also be placed in accordance with the national private placement regimes (NPPR) available in the jurisdiction where prospective investors should be targeted. The applicable rules differ depending on the country, and hence careful analysis of applicable legal framework should be made before a RAIF or AIF-A is offered in a given country.</li></ul> |                                       |   | AIF-Rs do not have access to the AIFMD marketing passport. However, AIF-Rs may place their interest / units / shares in accordance with the national private placement regimes available in the jurisdiction where prospective investors should be targeted. The applicable rules differ depending on the country, and hence a careful analysis of applicable legal framework should be made before a AIF-R is offered in a given country. |
| PRIIPS KID   | This document will only be required in case the Fund offers its interests / shares / units to investors who do not qualify as professional clients within the meaning of Annex II of MiFID II.  |                                       |   |  |

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|                                      | Risk-diversified option (SIF-like RAIF)   | Risk-capital option (SICAR-like RAIF)  |  |  |
| INVESTMENT STRATEGY                  |   |  |  |  |
| Eligible assets                      | <p>There is no restriction on the eligibility of the assets of SIF-like RAIFs. For instance, SIF-like RAIFs may invest in the following types of assets (not exhaustive):</p> <ul style="list-style-type: none"><li>• Private Equity;</li><li>• Venture Capital;</li><li>• Real Estate;</li><li>• Debt;</li><li>• Infrastructure;</li><li>• Listed securities; and</li><li>• Other funds.</li></ul> | <p>SICAR-like RAIFs are only allowed to invest in assets qualifying as risk capital which is characterised by the concurrent gathering of the two elements:</p> <ul style="list-style-type: none"><li>• an increased level of risk linked to the contemplated investments; and</li><li>• an intention to develop the target entities.</li></ul> <p>Typically, start-up companies and opportunistic real estate assets would qualify as risk capital.</p> | <p>There is no restriction on the eligibility of the assets of AIF-As. For instance, AIF-As may invest in the following assets (not exhaustive):</p> <ul style="list-style-type: none"><li>• Private Equity;</li><li>• Venture capital;</li><li>• Real Estate;</li><li>• Debt;</li><li>• Infrastructure;</li><li>• Listed securities; and</li><li>• Other funds.</li></ul>   | <p>There is no restriction on the eligible assets of AIF-Rs. For instance, AIF-Rs may invest in the following assets (not exhaustive):</p> <ul style="list-style-type: none"><li>• Private Equity;</li><li>• Venture capital;</li><li>• Real Estate;</li><li>• Debt;</li><li>• Infrastructure;</li><li>• Listed securities; and</li><li>• Other funds.</li></ul> |
| Diversification rules                | <p>In principle, a SIF-like RAIF shall not invest more than 30% of its assets in securities of the same issuer / single asset.</p>  | <p>There is no risk diversification requirement for a SICAR-like RAIFs.</p>  | <p>There is no risk diversification requirement for AIF-As.</p>  | <p>There is no risk diversification requirement for AIF-Rs.</p>  |
| DOCUMENTS, DISCLOSURES AND REPORTING |   |  |  |  |
| Fund documentation                   | <p>The fund documentation of RAIFs comprises an offering document providing essential legal, marketing and commercial information (also known as a private placement memorandum), a limited partnership agreement / articles of association / management regulations and a model subscription agreement. Further documents may be added, e.g. side letters, marketing documents, etc.</p>           |  | <p>Even if AIF-As are not required to issue an offering document, they need to ensure that the required disclosures of information to investors are made in accordance with article 23 of the AIFMD. This may be made by establishing an offering document or be disclosed in the limited partnership agreement, articles of association of the AIF, subscription agreement or a separate disclosure document.</p> | <p>AIF-Rs are not required to issue an offering document, but they typically follow the route of AIF-As and provide the investors with the specific disclosure documents.</p>  |



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| DOCUMENTS, DISCLOSURES AND REPORTING |  |                                       |   |   |
| Financial statements                 | Notwithstanding the corporate law requirements re. financial statements and annual accounts, a RAIF must prepare an annual report which must at least contain the following:<br><br>a) a balance-sheet or a statement of assets and liabilities;<br>b) an income and expenditure account for the financial year;<br>c) a report on the activities of the financial year;<br>d) any material changes in the information referred to in article 21 of the AIFM Law (article 23 of the AIFMD) during the financial year to which the report refers;<br>e) the total amount of remuneration for the financial year, split into fixed and variable remuneration, paid by the AIFM to its staff, and number of beneficiaries, and, where relevant, carried interest paid by the RAIF;<br>f) any significant information enabling investors to make an internal judgement on the development of the activities and of the results of the RAIF;<br>g) the aggregate amount of remuneration broken down by senior management and members of staff of the AIFM whose actions have a material impact on the risk profile of the AIF.<br><br>The accounting information given in the annual report must be prepared in accordance with the accounting standards of Luxembourg and with the accounting rules provided in the RAIF's constitutive documents.<br><br>The accounting information given in the annual report must be audited by an independent auditor (réviseur d'entreprises agréé). Moreover, the auditor must confirm that the RAIF has complied with the risk capital investment policy in case of SICAR-like RAIF.<br><br>The annual report must be made available to investors within 6 months following the end of the year.<br><br>Typically, additional disclosures are made due to investors requests. |                                       | Notwithstanding the corporate law requirements to financial statements, AIF-As must prepare an annual report which must at least contain the following:<br><br>a) a balance-sheet or a statement of assets and liabilities;<br>b) an income and expenditure account for the financial year;<br>c) a report on the activities of the financial year;<br>d) any material changes in the information referred to in article 21 of the AIFM Law (article 23 of the AIFMD) during the financial year to which the report refers;<br>e) the total amount of remuneration for the financial year, split into fixed and variable remuneration, paid by the AIFM to its staff, and number of beneficiaries, and, where relevant, carried interest paid by the AIF-A;<br>f) the aggregate amount of remuneration broken down by senior management and members of staff of the AIFM whose actions have a material impact on the risk profile of the AIF.<br><br>The accounting information given in the annual report must be prepared in accordance with the accounting standards of the home Member State of the AIF or in accordance with the accounting standards of the third country where the AIF is established and with the accounting rules provided in the AIF management regulations or instruments of incorporation.<br><br>The accounting information given in the annual report must be audited by an independent auditor (réviseur d'entreprises agréé).<br><br>The annual report must be made available to investors within 6 months following the end of the year.<br><br>Typically, additional disclosure requirements apply due to investors requests. | Notwithstanding the corporate law requirements to financial statements, AIF-Rs typically follow the route of AIF-As, providing the investors with audited annual accounts and other additional disclosures due to investors requests. |
|                                      |  |                                       |   |   |

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| DOCUMENTS, DISCLOSURES AND REPORTING |   |   |  |  |
| Filing and registration requirements | A RAIF must be registered with the RCS at its incorporation / establishment which shall be confirmed by the notary, as well as with the RBE to declare its ultimate beneficial owners.<br>A RAIF must also be registered on the RAIF list kept by the RCS.<br>Other filing requirements apply and are typically handled by the appointed administration agent.  |   | An AIF-A must be registered with the RCS at its incorporation / establishment, as well as with the RBE to declare its ultimate beneficial owners.<br><br>Other filing requirements apply and are typically handled by the appointed administration agent.  | An AIF-R must be registered with the RCS at its incorporation / establishment, as well as with the RBE to declare its ultimate beneficial owners.<br><br>In case of partnership limited by shares ( <i>société en commandite par actions</i> ), common limited partnership ( <i>société en commandite simple</i> ), special limited partnership ( <i>société en commandite spéciale</i> ) where the general partner has the investment management function, it must be registered with the CSSF in accordance with the provisions of the AIFM Law.<br><br>Other filing requirements apply and are typically handled by the appointed administration agent. |
| ESG related disclosures              | The Funds would need to disclose their qualification under the EU Sustainable Finance Disclosure Regulation (SFDR) and choose between Article 6 (no ESG focus), Article 8 (environmental or social characteristics are promoted) or Article 9 (sustainable investment is the objective) SFDR.   |   |  |  |
| TAX                                  |   |   |  |  |
| Tax treatment                        | <ul style="list-style-type: none"><li>No taxes on capital gains, profits or income;</li><li>No net wealth tax;</li><li>Only subject to an annual subscription tax of 0.01% payable quarterly on the net asset value;</li><li>No withholding tax on distributions, whether in the form of dividends or interest payments or other, paid by SIF-like RAIFs;</li><li>No Luxembourg tax on the profits of liquidation earned by and repatriated to non-resident investors;</li><li>No stamp duty or other tax upon issuance of SIF-like RAIFs' shares/interests; and</li><li>Access to double taxation treaties (to be verified on a case-by-case basis).</li></ul> | <ul style="list-style-type: none"><li>Fully taxable but exemption on (i) the return derived from securities, whether in the form of interest income, dividends or capital gains and on (ii) income arising from funds awaiting to be invested by SICAR-like RAIFs (transit funds);</li><li>Minimum net wealth tax (if a tax opaque legal form is chosen);</li><li>No subscription tax;</li><li>No withholding tax on distributions, whether in the form of dividends or interest payments or other, paid by SICAR-like RAIFs to investors;</li><li>No Luxembourg tax on capital gains realized by non-resident investors upon the sale (liquidation) of SICAR-like RAIFs' shares/units; and</li><li>Access to double taxation treaties (in principle) for reduced withholding tax rates on source country income.</li></ul> | If a tax transparent legal form is chosen (applies to the most cases): <ul style="list-style-type: none"><li>No taxes on capital gains, profits or income;</li><li>No net wealth tax;</li><li>No annual subscription tax</li><li>No withholding tax on distributions, whether in the form of dividends or interest payments or other, paid by the tax transparent vehicle;</li><li>No Luxembourg tax on the profits of liquidation earned by and repatriated to non-resident investors;</li><li>No stamp duty or other tax upon issuance of the shares/interests of a tax transparent vehicle; and</li><li>Generally no access to double taxation treaties (to be verified on a case-by-case basis).</li></ul> |  |

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|------------------------|---|---------------------------------------|--|--|
|                        | Risk-diversified option (SIF-like RAIF)   | Risk-capital option (SICAR-like RAIF) |  |  |
| TAX                    |   |                                       |  |  |
| Substance requirements | <p>The Luxembourg law provides that the central administration shall be in Luxembourg. There is no restriction regarding the nationality, place of residence of the manager of the fund (i.e. individuals domiciled in other countries may be members of the board of managers of the fund), however, the following requirements shall be met:</p> <ul style="list-style-type: none"><li>• a majority of managers or directors of the fund (or general partners of the funds in case of an SCA/SCS/SCSp) must be based in Luxembourg. Often, the Luxembourg based managers are provided by Luxembourg service providers;</li><li>• depositary must be based in Luxembourg;</li><li>• administration agent and domiciliation agent must be based in Luxembourg;</li><li>• authorized AIFM must be based in European Union (but it is in most of the cases based in Luxembourg);</li><li>• auditor (<i>réviseur d'entreprises agréé</i>) must be based in Luxembourg;</li><li>• AML/CFT compliance officer (<i>responsable du Contrôle du Respect des Obligations</i>) must be based in Luxembourg.</li></ul> |                                       | <p>The Luxembourg law provides that the central administration shall be in Luxembourg. There is no restriction regarding the nationality, place of residence of the manager of the fund (i.e. individuals domiciled in other countries may be members of the board of managers of the fund), however, the following requirements shall be met:</p> <ul style="list-style-type: none"><li>• a majority of managers of the fund (or general partner of the fund in case of an SCS/SCSp) must be based in Luxembourg. Usually, the Luxembourg based managers are provided by Luxembourg service providers;</li><li>• depositary must be based in Luxembourg;</li><li>• administration agent and domiciliation agent must be based in Luxembourg;</li><li>• authorized AIFM based in European Union (but it is in most of the cases must be based in Luxembourg);</li><li>• auditor (<i>réviseur d'entreprises agréé</i>) must be based in Luxembourg;</li><li>• AML/CFT compliance officer (<i>responsable du Contrôle du Respect des Obligations</i>) must be based in Luxembourg.</li></ul> | <p>The Luxembourg law provides that the central administration shall be in Luxembourg. There is no restriction regarding the nationality, place of residence of the manager of the fund (i.e. individuals domiciled in other countries may be members of the board of managers of the fund), however, there are some requirements to meet:</p> <ul style="list-style-type: none"><li>• a majority of managers of the fund (or general partner of the fund in case of an SCS/SCSp) must be based in Luxembourg. Usually, the Luxembourg based managers are provided by Luxembourg service providers;</li><li>• administration agent and domiciliation agent must be based in Luxembourg;</li><li>• auditor (<i>réviseur d'entreprises agréé</i>) must be based in Luxembourg;</li><li>• AML/CFT compliance officer (<i>responsable du Contrôle du Respect des Obligations</i>) must be based in Luxembourg.</li></ul> |

# Glossary

|                        |   |
|------------------------|---|
| <b>AIF-A</b>           | Alternative investment fund with an authorized alternative investment fund manager  |
| <b>AIF-R</b>           | Alternative investment fund with a registered alternative investment fund manager   |
| <b>AIF</b>             | Alternative investment fund   |
| <b>AIFM</b>            | Alternative investment fund manager   |
| <b>AIFM Law</b>        | Law of 12 July 2013 on alternative investment fund managers, as amended   |
| <b>AIFMD</b>           | Directive 2011/61/EU of the European Parliament and of the EU Council of 8 June 2011 on Alternative Investment Fund Managers, as amended  |
| <b>AML/CFT</b>         | Anti-Money Laundering (AML) and Counter Terrorist Financing (CTF)   |
| <b>Companies Law</b>   | Law of 10 August 1915 on commercial companies, as amended   |
| <b>CSSF</b>            | Luxembourg supervisory authority for financial services ( <i>Commission de Surveillance du Secteur Financier</i> )  |
| <b>ESG</b>             | Environmental, social, and governance   |
| <b>EU</b>              | European Union and should include for the purpose of all AIFMD related statements the EEA   |
| <b>EUR</b>             | Means the euro, the single currency of the member states of the Economic and Monetary Union   |
| <b>FCP</b>             | Common fund ( <i>fonds commun de placement</i> )  |
| <b>NAV</b>             | Means the net asset value of the fund, as determined in accordance with the constitutive documents of the fund  |
| <b>PRIIPs</b>          | Packaged retail and insurance-based investment products as described in the regulation (EU) No 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products |
| <b>RAIF</b>            | Reserved alternative investment fund  |
| <b>RAIF Law</b>        | Law of 23 July 2016 on reserved alternative investment funds, as amended  |
| <b>RBE</b>             | Luxembourg Register of Beneficial Owners ( <i>Registre des Bénéficiaires Effectifs</i> )  |
| <b>RCS</b>             | Luxembourg Trade and Companies Register ( <i>Registre de Commerce et des Sociétés</i> )   |
| <b>SICAF</b>           | Investment company with fixed capital ( <i>société d'investissement à capital fixe</i> )  |
| <b>SICAR</b>           | Investment company in risk capital, subject to Law of 15 June 2004 relating to the Investment company in risk capital, as amended   |
| <b>SICAR-like RAIF</b> | Reserved alternative investment funds investing in risk capital   |
| <b>SICAV</b>           | Investment company with variable capital ( <i>société d'investissement à capital variable</i> )   |
| <b>SIF</b>             | Specialised investment funds, subject to the law of 13 February 2007 relating to specialised investment funds, as amended   |
| <b>SIF-like RAIF</b>   | Reserved alternative investment funds investing by spreading the risk   |



# Foreword

Headed by Jevgeniy Nesch, our Investment Management department is composed of a diverse team of international and multilingual lawyers all united by their dedication to excellence. With our experience and deep understanding of the investment fund sector we will drive you through the full lifecycle of an investment fund, your daily activity as a fund manager or a professional of the financial sector and the portfolio allocation as an investor by delivering bespoke solutions at every stage.

Our team comprises highly skilled professionals with varying levels of expertise, and excellent educational and industry backgrounds. We provide comprehensive commercial, clear and pragmatic advice on the latest trends in the investment fund industry.

Our client portfolio includes fund managers and fund initiators, regulated service providers “topping-up” their licences or entities seeking authorisation, institutional investors from various regions, including Europe, North America, Middle East and Asia, to whom we offer tailored solutions for fund management, fund services and investment portfolio expansion.

We work closely together with our colleagues in such areas as tax, corporate, banking & finance and litigation, ensuring the full-scale business-oriented approach based on extensive knowledge of, inter alia, in-house operations and foreign legal systems.

With a focus on cost and time efficiency, we strive to deliver superior services while fostering close cooperation with our clients and supporting their business growth objectives.



**Jevgeniy Nesch**

Partner

[jnesch@akd.lu](mailto:jnesch@akd.lu)

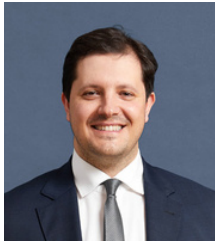
+352 26 75 82 324



Jevgeniy (Jev) is a partner in the Luxembourg office of AKD and heads the Investment Management practice. He has extensive experience in alternative fund formation and investment management, including advising on fund establishment and through the full lifecycle of an investment fund with a particular focus on private equity, venture capital, real estate, infrastructure, renewables, and debt funds strategies. Jev's clients are, in particular, large US, UK, German and Swiss fund sponsors (GPs) setting up or managing traditional and alternative fund structures together with respective carried interest vehicles as well as institutional and professional investors (LPs) seeking to expand their investment portfolios through Luxembourg funds.

Among other matters, Jev assists clients in diverse fund-related transactions, providing regulatory, legal, and strategic advice on aspects relating to Luxembourg fund structures including regulated and unregulated structures. Jev has a strong focus on English and German speaking jurisdictions.

# Dedicated Investment Management Task Force



**Jevgeniy Nesch**  
Partner  
Investment  
Management



**Virginie Gonella**  
Counsel  
Investment  
Management



**Césira Leclercq**  
Associate  
Investment  
Management



**Marie-Aimé Cochet**  
Associate  
Investment  
Management



**Ayzo van Eysinga**  
Partner  
Tax Structuring



**Rutger Zaal**  
Partner  
Tax Structuring



**Sanja Vasic**  
Senior Associate  
Tax Structuring



**Maria-Clara Vassil**  
Associate  
Tax Structuring



**Cédric Bless**  
Partner  
Corporate -  
Transactions



**Imède El Moudden**  
Senior Associate  
Corporate -  
Transactions



**Arnaud Barchman  
Wuytiers van Vliet**  
Partner  
Fund Financing



**Nicolas Bonora**  
Partner  
Fund Financing



**Iordanis Arvanitidis**  
Associate  
Fund Financing



**Jasper Verhoog**  
Partner  
Regulatory



**Eléonore  
Desbrugères**  
Associate  
Regulatory



**Stéphane de Watazzi**  
Senior Associate  
Fund Litigation

