



How to raise capital in Europe ...and beyond

**Luxembourg: the high-speed way
to launch your investment vehicle!**

**Including the
new Reserved
Alternative
Investment Fund
(RAIF)**

kpmg.lu



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Doing nothing is not an option

If you want to continue to raise capital in Europe, doing nothing is not an option. Many still believe that ‘reverse solicitation’ or passive marketing (whereby the manager claims that is the investor who initiated the transaction) is a reliable strategic option to access EU investors that it is not in scope of the Alternative Investment Fund Managers Directive (AIFMD). However individual European regulators have diverging interpretations of the terms “marketing” and “reverse solicitation”, and accepting EU investors under this strategy could lead to being accused by a regulator or an investor of being in breach of European law. It is also foreseen that national private placement regimes (NPPRs) could end by 2018 which would mean that the country-by-country strategy presented above would not apply.

Historically, non-European Union (EU) alternative investment fund managers (AIFMs) marketed their alternative investment funds (AIFs) to European investors by using national private placement regimes (NPPRs) in European countries where permitted. The introduction of the Alternative Investment Fund Managers Directive 2011/61/EU (AIFMD) and transposition of the directive into national law in all 28 member states of the EU* has impacted the way alternative investment fund managers are marketing their AIFs in the European Union. The directive also impacts non-EU alternative investment fund managers who wish to raise capital in the EU by using their non-EU alternative funds. Non-EU alternative investment fund managers have 3 possible routes to continue to market their AIFs in the EU:



The NPPR: a country-by-country strategy

Until at least 2018, individual EU countries can continue to maintain their national rules. However, managers will need to comply with registration rules and the transparency requirements of the AIFMD (i.e. annual reporting, pre-sale disclosure, regulatory reporting and major holdings and control requirements). As NPPR are not regulated at the EU level, there is a wide range of diverging country-by-country regulations, with some jurisdictions taking a more liberal approach than others.

In the short term, this option might nevertheless be most suitable for alternative investment fund managers that have no, or only a limited physical presence in Europe and seek to gain access to only a few EU member states.

* Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden and United Kingdom.



Partner with existing alternative investment fund managers in the EU

Depending on the strategy that alternative investment fund managers have for marketing their AIFs in Europe, complying with NPPR in each individual country may be costly and time consuming. As an alternative, they can contract with a European Alternative Investment Fund Manager, who is in possession of a European marketing passport. European AIFMs that fully comply with the legal requirements of the AIFMD benefit from the right to easily distribute their funds to institutional investors in all EU countries.

The major advantage for alternative investment fund managers without a presence in the European Union is that they have a local partner, who takes care of compliance with the European law. This makes distributing investment products across the EU very easy as it only involves one registration and reporting process compared to multiple registration and reporting processes under NPPR.

In the medium term run, this option might be the most suitable for alternative investment fund managers not domiciled in Europe seeking to gain access to multiple or even all EU countries without having to comply with the full set of legal requirements. Particularly, they may wish to benefit from the European distribution passport of their partners.



Set-up of an alternative investment fund manager (AIFM)

Depending on the current and prospected scope of activities of the non-European alternative investment fund managers in the EU, setting up a permanent presence in a European fund domicile could be the most suitable option. Some EU countries provide a vast network of service providers, human resources and even a more favourable legal environment that facilitates the domiciliation of a management company in Europe.

Under this option, the manager's headquarters outside of Europe could retain the overall influence for the group as a whole. The new company in Europe would be created to fully comply with the AIFMD, and could also gain access to the European marketing passport and management passport. While the marketing passport gives easy access to EU countries, the management passport allows so-called authorized alternative investment fund managers to additionally benefit from the diversity of fund vehicles across the EU all under one roof. In the long run this option might be the most suitable for managers not yet domiciled in Europe but seeking to build up a permanent presence.

Why Luxembourg?

Luxembourg is a founding member of the European Union, and is home to a number of EU institutions including the European Investment Bank and the European Investment Fund. The country's strategic location at the heart of Europe and its traditional openness towards cross-border integration have established it as a major international financial centre.

Luxembourg is a politically stable country with very little public debt. Its economy has performed strongly over a long-term period, and growth in Luxembourg is consistently above the EU average. The AAA rating demonstrates the global financial community's confidence in the stability of the country, alongside its competitiveness.

Its social stability and culture of consensus, not to mention its internationality, make it a great place to work and do business. And the high quality of living, as well as its local charms and romances, make it an enticing place to live.

With more than €3.5 trillion¹ in net assets under management, Luxembourg is the largest investment vehicle centre in Europe and the second largest in the world after the United States. It is the largest global distribution centre for investment vehicles, with its vehicles offered in more than 70 countries² worldwide.

Luxembourg's 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.

Luxembourg's investment vehicles have a dominant share in both the retail and the institutional marketplace in Europe, and are the vehicle of choice in many parts of Asia, Latin America, and the Middle East. Luxembourg is also one of the leading financial centres for alternative asset classes with a wide range of investment vehicles suitable for all kinds of investment policies.

Over time, Luxembourg has developed a wide range of regulated investment vehicles for both traditional and alternative strategies:

- ▶ UCITS (Part I), which are subject to part I of the law of 17 December 2010 on undertakings for collective investment, as amended (the 2010 law); they comply with the UCITS Directive.
- ▶ UCI (Part II), which are subject to part II of the 2010 law (non-UCITS retail funds).
- ▶ SIF (specialized investment funds), which are subject to the law of 13 February 2007 on specialised investment funds, as amended (the 2007 law); they are reserved for well-informed investors.
- ▶ SICAR (sociétés d'investissement en capital à risque), which are subject to the law of 15 June 2004 on the SICAR, as amended (the 2004 law); they focus on risk capital investments.

¹ Source: Commission de Surveillance du Secteur Financier - CSSF

² Source: Luxembourg for finance

Luxembourg at a glance



Rating

AAA

Standard & Poor's
Moody's
Fitch

AuM: €3 543 bn*

**No 1 fund centre
in Europe**

Public Finances



Sovereign debt:
21.40%

Maastricht criteria: < 60%



Budget deficit/Surplus:
-1.6%

Maastricht criteria: > -3%



Inhabitants:
563.000



> 170
different nationalities



Ranks 8th worldwide
for the level of
English proficiency**

Macro-Economic Data 2015



Real growth of GDP:
3.6%



Employment growth rate:
2.8%



Unemployment rate:
6.7%

* as at 31.12.2015

** EF English Proficiency Index 2015

Source: Statec 31.12.2015

As of 31 December 2015, Luxembourg was home to over 4,100 regulated investment vehicles with approximately 15,000 compartments.

These investment vehicles are subject to the ongoing supervision of the Luxembourg supervisory authority (the Commission de Surveillance du Secteur Financier, CSSF).

With the introduction of the Alternative Investment Fund Managers Directive, the European regulatory focus has shifted from a product supervision perspective towards the supervision of the fund manager. This change in focus was seen in Luxembourg as an opportunity to add only supervised investment vehicles to the already widely successful range of regulated investment vehicles.

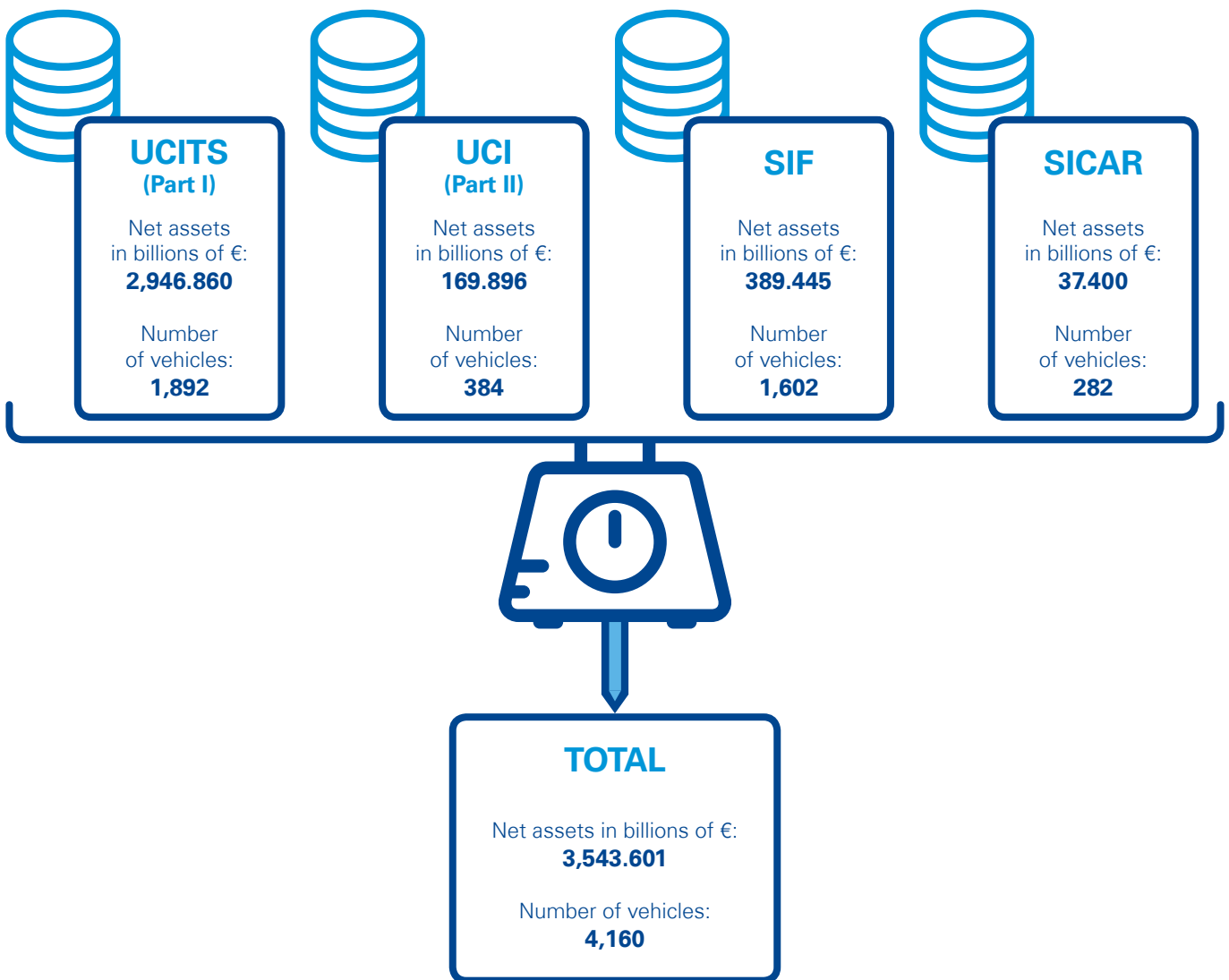
With the transposition of the AIFMD into national law, Luxembourg introduced the highly successful Luxembourg limited partnership regime (Société en commandite simple, "SCSp"/Société en commandite

spéciale, "SCSp"). But the limited partnership may not be the most suitable investment vehicle in all circumstances, therefore Luxembourg introduced in July 2016, the only supervised investment vehicle called the Reserved Alternative Investment Fund (RAIF), which is not regulated but supervised via the AIFM. In order to benefit from the RAIF regime, the RAIF must appoint an authorised Alternative Investment Fund Manager (AIFM).

The RAIF regime should further improve the attractiveness of Luxembourg as a domicile for the establishment of Alternative Investment Funds (AIFs) by further extending the range of vehicles available.

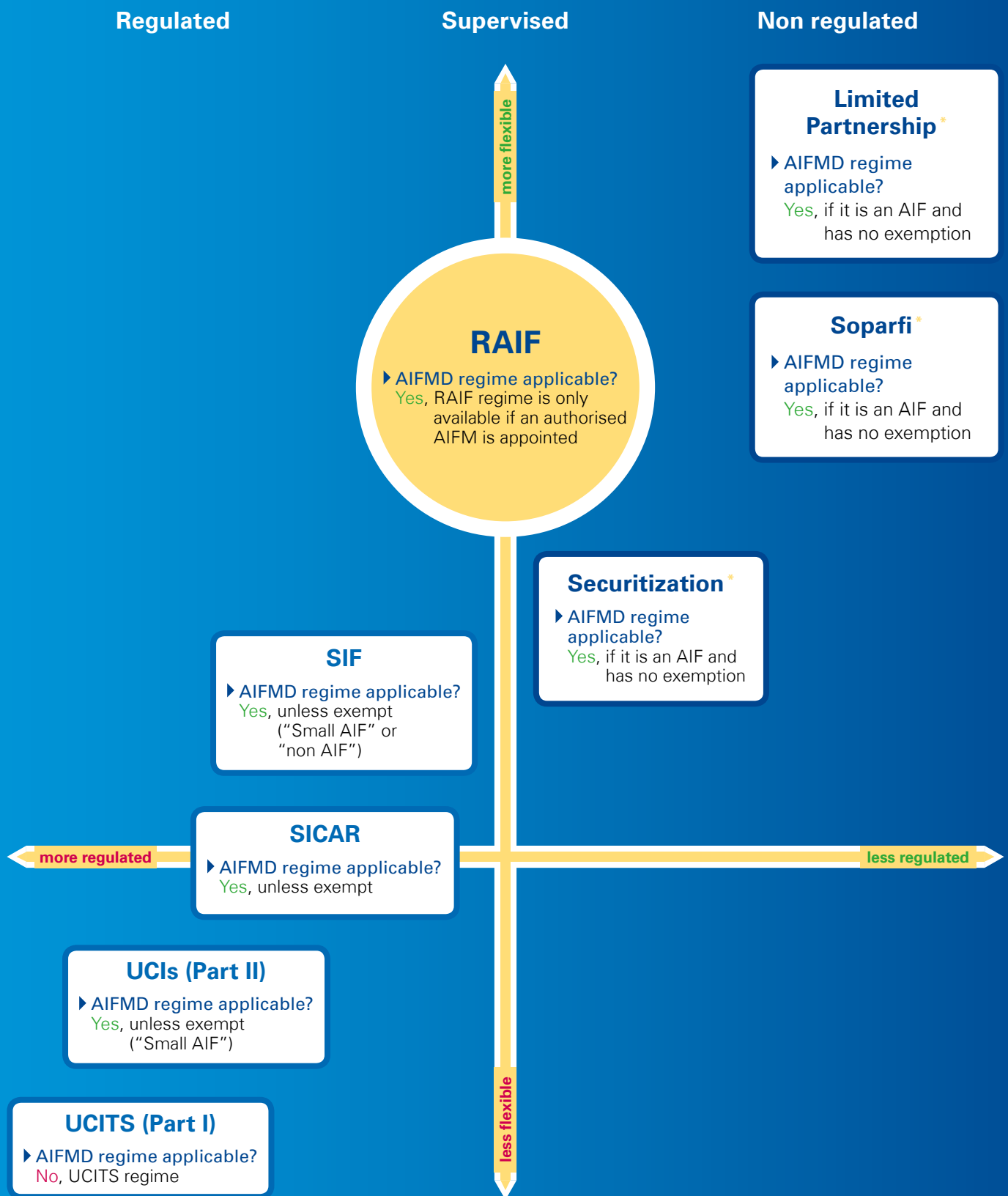
The RAIF has already attracted a great deal of interest from fund managers, and it is likely to become the vehicle of choice for certain AIFMs and categories of sophisticated investors.

Luxembourg regulated investment fund vehicles in figures:



Source: Commission de Surveillance du Secteur Financier - CSSF 31.12.2015

Overview of Luxembourg's investment vehicles



* If managed by an authorized AIFM, these vehicles are supervised like the RAIF.

For further information, please refer to our brochure "Luxembourg investment vehicles":



The Reserved Alternative Investment Fund (RAIF)

Why choose the RAIF?

The RAIF will have strong market appeal to investors looking for a fund...



...with the Made in Luxembourg fund quality label,



...that can be established quickly,



...with a high level of investor protection and transparency – the AIFMD quality seal (depository, administration,...),



...without a dual layer of regulation of the Manager (AIFM) and the fund (RAIFs are not subject to CSSF approval),



...with a high level of structuring flexibility, and with a similar look and feel to the SIF and SICAR,



...with access to a passport, i.e. able to be sold to professional investors across the EU,

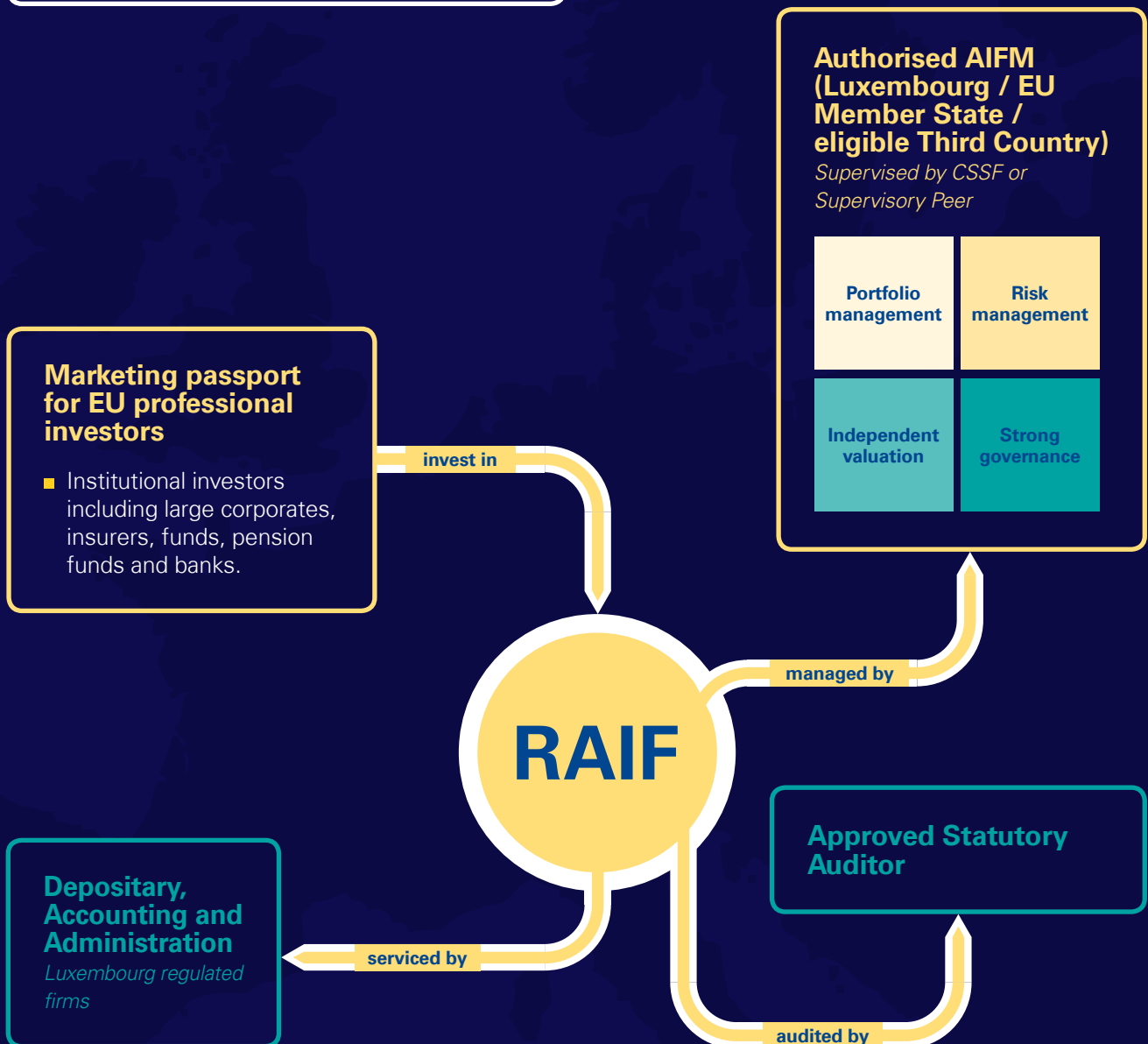


...with support – service providers, lawyers, auditors – already established and operational.

Target investors

- Institutional / professional / sophisticated retail (minimum investment: € 125,000).
- The RAIF will have access to a passport enabling it to be sold to professional investors across the EU.
- Investor marketing materials (the Prospectus or Placement Memorandum) will need to meet AIFMD disclosure standards.

RAIF stakeholders



Investment strategy

The RAIF was intentionally designed with flexibility in mind, and as such it can accommodate all asset classes and investment strategies. No risk diversification limits are defined, but the risk-spreading principle does need to be respected. In order to ensure compliance therewith, a RAIF would, for example, be free to apply the diversification limits defined for SIFs. No risk diversification rules apply if a RAIF invests solely in risk capital.

RAIF

Eligible assets



■ Transferables securities

Listed shares, others.



■ Private equity

Investment in participations, in private equity deals, financing, direct lending.



■ Hedge funds

Equity-hedge, event-driven, macro, relative value, fund of funds, emerging markets.



■ Real estate

Direct investment in real estate in direct or via subsidiaries, direct lending to promoters, construction, promotion, residential or commercial properties.



■ Arts or others collectibles

Sculptures, paintings, coins, antiques, wines, diamonds, jewellery, musical instruments, cars...



■ Currency and precious metals

U.S. Dollar, gold, silver, platinum, iridium, palladium.



■ Derivative

Managed future, option, trading, swap, others.



■ Renewable energy

Investment in project, infrastructure, solar panel, wind farms...



■ Others

Debt issuance

■ Loans and mortgages

■ Bond issuance

■ Subordinated and convertible bonds

■ Hybrid debt instruments

- ▶ Convertible Private Equity Certificates (CPEC)
- ▶ Private Equity Certificates (PEC)
- ▶ Profit Participative Bonds
- ▶ Warrants
- ▶ Tracker Certificates
- ▶ Equity loans
- ▶ any other debt instruments

Target investors

The RAIF's target clientele are well informed investors which are defined as institutional investors, professional investors and other investors. Other investors are typically sophisticated retail investors or private investors who will need to confirm in writing that they adhere to the status of well-informed investor and either invest a minimum of €125,000 or benefit from an assessment from a credit institution or a UCITS management company or an authorised AIFM certifying their expertise, experience and knowledge concerning the investments in the RAIF.

Product and share class features

RAIFs offer a great deal of flexibility in this area. For instance, they can be set up either as stand-alone funds or as umbrella funds with segregated liability between compartments. This latter possibility is especially handy compared to, for example, an unregulated limited partnership, which cannot set up compartments. These compartments are furthermore permitted to invest in one or more compartments of the same RAIF. In terms of share classes, RAIFs permit some with different characteristics, e.g. different distribution policy, currency exposure, fees, and others.

RAIFs need a minimum capital of €1,250,000, which must be reached within 12 months.

Legal forms

RAIFs come in a variety of legal forms. The law refers to the contractual fund (Fonds commun de placement, "FCP") and the investment company (Société d'investissement à capital variable, "SICAV") but does not limit the legal forms e.g. an investment company with fixed capital (Société d'investissement à capital fixe, "SICAF") is also available. A RAIF set up as an investment company can adopt one of the following corporate forms: public limited company (Société anonyme, "S.A."), a private limited company (Société à responsabilité limitée, "S.à r.l."), a partnership limited by shares (Société en commandite par actions, "S.C.A."), a common limited partnership (Société en commandite simple, "SCS") or a special limited partnership (Société en commandite spéciale, "SCSp").

Set up

A RAIF can be set up by notarial deed or by private deed, whereas in the latter case it needs to be attested by a notary. The investment company and contractual fund are governed by their respective articles of incorporation/limited partnership agreement for a SICAV and management regulations for a FCP. Authorisation from Luxembourg's financial regulator, the CSSF, is not needed to set up a RAIF which improves the time to market significantly.

Appointment of an AIFM

A RAIF must be externally managed by an authorised AIFM which must be established in Luxembourg or in another EU Member State. The AIFM can delegate either portfolio management or risk management to a third party in accordance with the provisions of the AIFMD.

Investor reporting

As with any product that falls under the scope of the AIFMD, the RAIF's annual financial statements and investor disclosures must meet AIFMD disclosure requirements. They will furthermore be audited by an approved statutory auditor (Réviseur d'entreprises agréé), and the accounting standards to be followed are, generally, Luxembourg GAAP or IFRS.

Distribution

Through its authorised AIFM, the RAIF benefits from the EU passport allowing the AIFM to distribute the shares, units or partnership interests to professional investors (as defined in the AIFMD) within the EU. The distribution of the RAIF to well-informed investors which do not qualify as professional investors will require compliance with the local rules.

The main investor marketing materials (Prospectus/ Placement memorandum) will need to meet AIFMD disclosure standards.

Tax treatment

RAIFs benefit from the same tax treatment as the SIF, i.e. they are only subject to an annual subscription tax of 0.01% of total net assets. Exemptions are available for certain money market funds, for funds dedicated to pension fund investors, and for microfinance funds.

A RAIF can be set up either as a tax transparent vehicle or as a taxable entity with access to treaty benefits from Luxembourg's double tax treaties (where available).

RAIFs that invest in a portfolio of risk capital

Such a RAIF benefits from the same tax regime as the SICAR (investments in risk-bearing capital) and is not be subject to subscription tax. It is exempt from tax on income and capital gain derived from transferable securities connected to investments in risk-bearing capital, as well as from tax on income from cash held for the purpose of a future investment (for up to one year). The remaining income is subject to the ordinary income tax of 29.22% (rate valid in the city of Luxembourg in 2016). Such RAIFs also benefit from Luxembourg's double tax treaty network if they are set up as a corporation.

Annually an approved statutory auditor has to issue a report to the Tax Administration certifying that the RAIF has invested in a portfolio of risk capital during the financial year.

RAIFs that do not invest in a portfolio of risk capital

Such a RAIF still qualifies for an income tax exemption. If such a RAIF is set up as FCP then it does not have access to Luxembourg's double tax treaties (with the exception of Ireland). If the RAIF is set-up as a SICAV or SICAF then it has access to some double tax treaties.

Conversion to RAIF

Only existing AIFs that are set up under company law will have the option to convert to a RAIF (subject to shareholder approval). SIFs, SICARs and UCIs (Part II) funds may not convert to a RAIF.

If required, a RAIF will have the possibility to convert into a regulated vehicle.

The RAIF in practice: Case studies

You will find hereafter some practical examples of how a RAIF can be used in structuring an investment project.

Each case study will focus on different aspects:

**Type of
investors**



**Type of
asset class**



Closed/Open ended



**Single/Multiple
compartment(s)**



**Origin of
the fund promoter**



1. Asset manager from US investing in European venture capital projects
2. Asset manager from Dubai investing in listed securities & Sharia-compliant investments
3. Asset manager from Japan investing in structured notes
4. Asset manager from China investing in wind farm projects
5. Asset manager from Germany investing in real estate, infrastructure & debt projects
6. Asset manager from Australia investing in infrastructure

1. US asset manager investing in European venture capital projects

by Philippe Neefs



Institutional / Private



Venture Capital



Closed ended



Single compartment



USA

A US asset manager identifying investment opportunities in venture capital growth equity, and lower middle-market buyouts has been offered a sizable venture capital opportunity in Europe. As the venture capital project seems to be very up-and-coming and has an immediate need of money, the time for collecting and pooling cash for the new Fund is key to win the bid.

Constraints

As venture capital firm, they heard of and would like to use a Luxembourg SICAR as investment vehicle, the Luxembourg tailored made vehicle for private equity and venture capital investments. However, as timing is crucial, a time consuming and costly authorization process from the Luxembourg (or an European) financial supervisory authority is not an option. However, as the RAIF regime is based on the Luxembourg SIF and SICAR regimes and replicating many of the features of the SIF and SICAR (with one of the main differences that it is not subject to any authorization or ongoing supervision by the Luxembourg CSSF), a Luxembourg RAIF opting for a tax regime similar to the tax regime of a SICAR is the preferred choice for the asset manager, for which no authorization from Luxembourg's financial regulator is needed.

Why a RAIF in Luxembourg?

The RAIF ranks amongst the most flexible investment funds in Europe. The fund managers have inter alia the options of using an own (existing) regulated EU Management Company (if available) or to make use of a third-party regulated management company in the event they have no presence in Europe.

In case there is no own EU Management company, 3rd party provider management companies can be used by fund managers for a quick and effective launch and allow to meet the substance requirements as stipulated by the AIFMD without the costs and expenditure of time of establishing a presence in the EU. If a fund manager chooses to use a third-party management company, it may be possible to launch the fund within a few days and to market to professional investors in the various EU Member States under the passport regime.

The asset manager uses the partnership limited by shares form ("Société en commandite par Actions", "SCA") for its RAIF. This corporate form provides for most of the advantages of familiar and well-known LP structures and at the same time enjoys the tax status of a Luxembourg incorporated company, that should offer access to Luxembourg's double tax treaties, EU Directives and the Luxembourg participation exemption regime.

A corporate RAIF that invests exclusively into risk capital securities may opt for a tax regime similar to the Luxembourg SICAR tax regime, i.e. would in principle be fully taxable for Luxembourg corporate income tax and municipal business tax, however, income and capital gains from investments in transferable securities connected to investments in risk-bearing capital, should be tax exempt.

Such a RAIF benefits from the same tax regime as the SICAR and would not be subject to subscription tax. The remaining income is subject to the ordinary income tax of 29.22%. Such RAIFs also benefit from Luxembourg's double tax treaty network if they are set up as a corporation. The distributions of a RAIF to its investors are free of Luxembourg withholding tax and capital gains realized by non-Luxembourg investors from investments into a RAIF are not subject to tax in Luxembourg.

The entity may be set up as an umbrella structure with multiple compartments.

Where there alternatives?

Due to the time constraints and the flexibility offered by the RAIF it would be hard to find equivalent European venture capital investment vehicles offering the EU passport under the AIFMD quality seal.

Small funds (below the thresholds laid down in the AIFMD) or joint ventures that are not alternative investment funds, and which do not need to be authorized could for instance use a Luxembourg common or special limited partnership.



2. Asset manager from Dubai investing in listed securities & Sharia-compliant investments

by Lutfije Aktan



Institutional / Private



**Listed securities /
Sharia compliant
investments**



Open ended



**Multiple
compartments**



Dubai

An asset manager in Dubai (DIFC) has a number of open-ended liquid investment funds, including Sharia-compliant funds domiciled in the Cayman Islands.

In his strategy of expanding his assets under management, he is considering raising capital from Europe.

Constraints

The asset manager's main constraints are that he and his investors are used to Cayman-domiciled funds and are unfamiliar with AIFMD-compliant funds.

Currently, his Cayman funds are not eligible for distribution in Europe. He is also concerned about retaining flexibility and rapidity, and would naturally prefer to keep existing structures and track records rather than launch new funds from scratch.

Why a RAIF in Luxembourg?

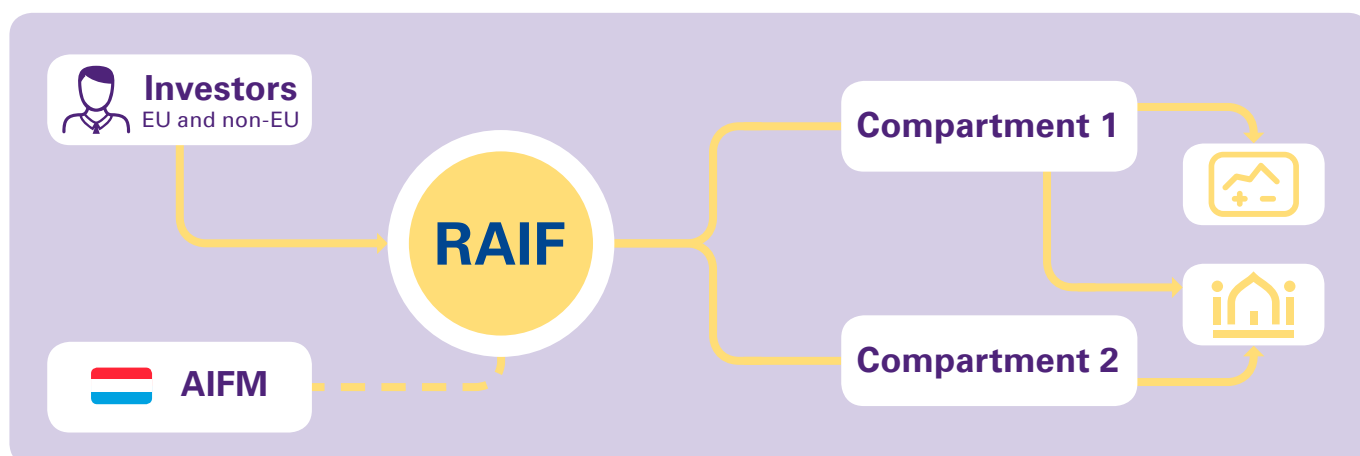
Luxembourg is recognised as the leading European domicile for Islamic investment funds, with promoters keen to harness Luxembourg's expertise in the cross-border distribution of these products. The CSSF has signed co operation agreements, so called Memoranda of Understanding (MoUs) with a number of supervisory authorities with a strong background in Islamic finance, including the Dubai Financial Services Authority.

If Luxembourg is the place, then the RAIF is the fund vehicle: it features a quick time-to-market, access to an EU passport, the AIFMD quality seal ensuring a high level of investor protection (appointment of a depositary bank, regulation of the AIFM, audit, etc.), and a favourable tax regime (with an annual subscription tax of 0.01% of NAV).

Our asset manager can also transfer his funds from the Cayman Islands to Luxembourg without many hindrances. Using re-domiciliation, which in principle does not create any taxable events for his investors, he can hold onto his funds' track records since there is continuity in the existing structure. In addition, he has the possibility to keep segregated compartments within the same umbrella structure. He will need to appoint an AIFM, but it may be a third-party one to start with.

Were there alternatives?

The RAIF does not replace other investment products, which have their own pros and cons. In particular, RAIFs are not suitable for retail investors, for whom UCITS products may be more appropriate. Another option for our asset manager would be to "rent a compartment" from an existing UCITS (to reach retail investors) or an existing AIF (to reach well-informed investors) and transfer his Cayman funds' assets into these structures.



3. Asset manager from Japan investing in structure notes

by Victor Chan Yin



Institutional / Private



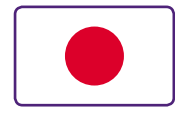
Structure notes



Open ended



Single compartment



Japan

An asset manager in Osaka wishes to invest in structured notes exposed to derivative products. He has a number of Japanese investors but is interested in raising capital in Europe as well – however, he has poor experience in this region.

Constraints

The main constraint is merely a lack of familiarity with the Luxembourg domicile: Japanese investors are historically more accepting of Cayman- and Bermuda-domiciled alternative funds, compared to AIFMD-compliant funds. However, there is no fundamental issue of taxation or regulation that prevents Japanese investors endorsing any domicile, onshore or offshore.

However, this is being gradually overcome through interaction between key players in Luxembourg and Japanese asset managers and investors. Additionally, more and more insights tailored to the specific context and needs of Japanese asset managers and investors are being produced.

Why a RAIF in Luxembourg?

A renowned brand for funds, Luxembourg has a UCITS track record for operating regulated funds and it is a growing hub for alternative funds, private equity funds, and real estate funds.

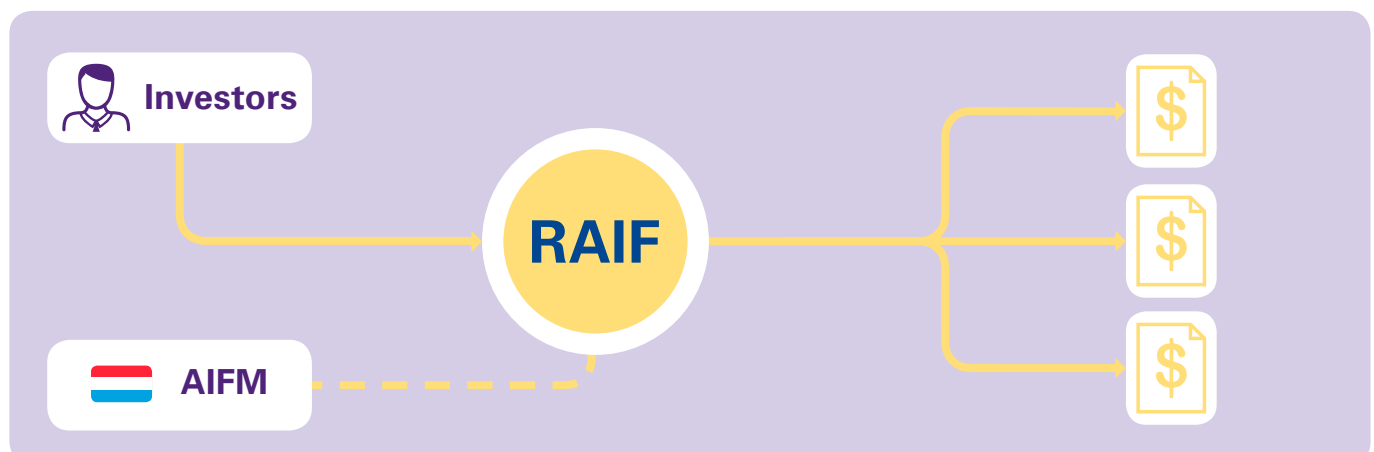
For alternative investments as structured notes exposed to derivative products, the new investment vehicle, the RAIF, is a natural choice for our asset manager, with a quick time-to-market, access to an EU passport, the AIFMD quality seal, and a favourable tax regime (with an annual subscription tax of 0.01% of NAV).

Furthermore, Luxembourg is the leading pan-European and global distribution platform. It benefits from a stable and trusted jurisdiction and boasts a AAA credit rating, alongside an excellent public and cultural infrastructure. These benefits, coupled with a favourable tax environment and a “pragmatic” legal and supervisory framework, make Luxembourg an ideal country for Japanese investors to invest in Europe or even globally.

Furthermore, Japan has a long-standing presence in Luxembourg. The Japanese asset manager has five Japanese administrators/custodians present in the Grand Duchy who can help meet his needs.

Were there alternatives?

Indeed, the RAIF does not replace other investment products which have their own pros and cons. UCITS, SIF, and SICAR remain attractive products and could also be matched to the risk appetites of Japanese investors.



4. Asset manager from China investing in wind farm projects

by Victor Chan Yin



Institutional



Wind parks



Closed ended



Single compartment



China

A Chinese asset manager based in Shenzhen has identified interesting wind farm projects in Sweden and Germany. After the usual due diligence and valuation procedures, she decides to pounce on these opportunities.

Constraints

A Chinese investment fund would be ideal for collecting cash, if there were Chinese investors only. However, there is also an interest from European institutional investors. Furthermore, the asset manager does not have overseas experience.

Why a RAIF in Luxembourg?

Without overseas experience, the asset manager wants a fund structure with minimal administrative headache and a quick timeline to implementation. The RAIF, which is unique to Luxembourg, is a natural choice: it's free from regulator's authorisation and it permits the use of a third-party management company. It's a matter of weeks (not months) before everything is negotiated and set up.

(It's worth noting that, as additional perks, the RAIF benefits from Luxembourg's vast double tax treaty network as long as it's incorporated as a SICAV or SICAF, as well as from a withholding tax exemption on distributions – so it is a tax-efficient way to structure the deal).

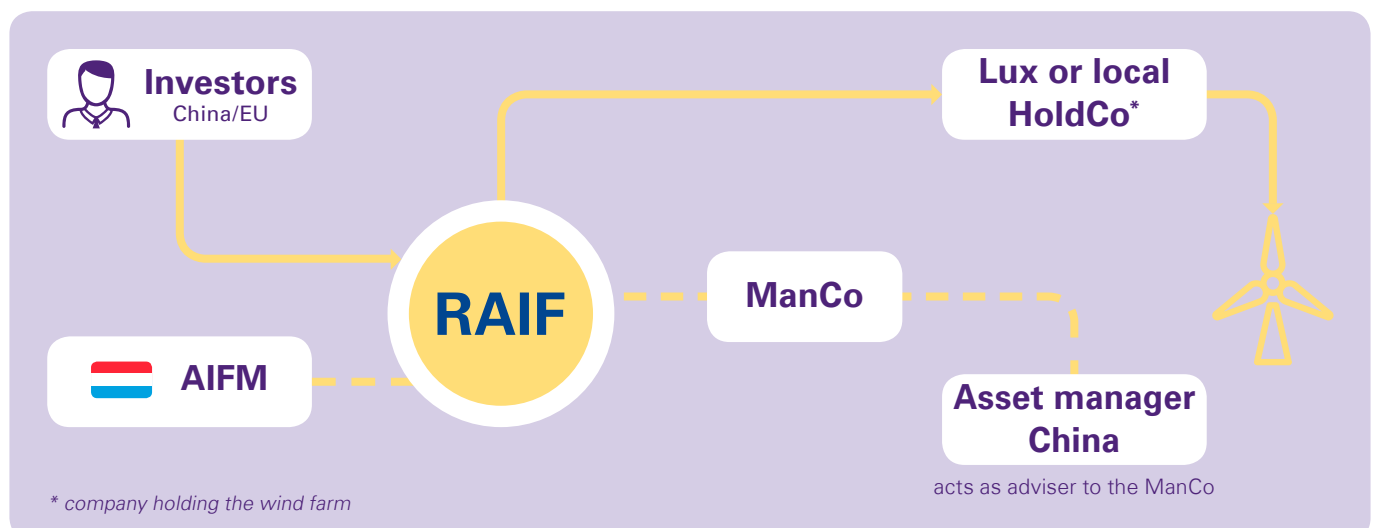
As Luxembourg is a large international finance hub, it is another plus for the asset manager that the European headquarters of several major Chinese banks are located there.

Ultimately the asset manager is pleased with the RAIF's speed and flexibility, which have allowed her not to waste any time following these investment opportunities after she identified them, including investors from both China and Europe.

Were there alternatives?

Indeed there were: the asset manager could have used a SIF (Luxembourg Specialised Investment Fund), which would have enjoyed the same tax efficiency as the RAIF. However, SIFs are subject to the supervision of the CSSF, so approval and set-up would likely have taken up more time to set-up.

She could also have gone for a Soparfi, if there had only been one investor and/or one investment (project). This would have been a direct investment from a Chinese fund, which may have allowed certain advantages as well.



5. Asset manager from Germany investing in real estate, infrastructure & debt projects

by Pierre Kreemer



Institutional



**Real estate /
Infrastructure / Debt**



Closed ended



Single compartment



Germany

A German asset manager has raised capital for their German investors with the intention of investing in German real estate, infrastructure, and debt projects. The projects should be ring-fenced, and could be structured via regulated or unregulated funds. Her preferred investment structures aim to repatriate regular income to investors by mitigating cash traps and tax leakage, and to anticipate the realisation of higher capital gains and a return to the investors upon exit (e.g. for development projects). Even though she has previously used Luxembourg fund vehicles, she is not familiar with Luxembourg's newest fund vehicle, the RAIF.

Constraints

The asset manager knows that all Luxembourg fund vehicles need to have sufficient substance and activities in Luxembourg, and must comply with all of Luxembourg's documentation and filing requirements.

Why a RAIF in Luxembourg?

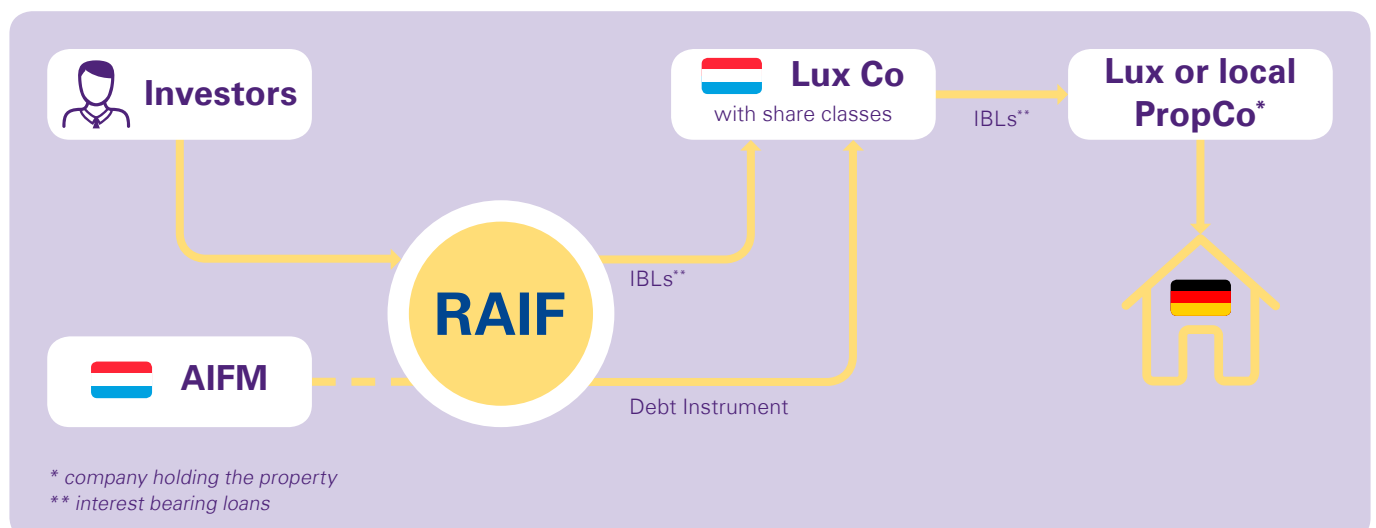
The asset manager knows that Luxembourg is Europe's leading investment fund domicile and number two worldwide. She has found its legal, accounting, regulatory,

and tax frameworks to be investor-friendly, stable, and flexible. She is furthermore comfortable knowing that regulatory and tax aspects like AIFMD, VAT, transfer pricing, and FATCA can be dealt with in a practical manner by the experienced specialists that the Grand Duchy is known for.

With the RAIF, she finds that she is able to set up a fund very quickly in response to investment opportunities that she wants to pursue. As it does not need CSSF approval, her RAIF is set up in a matter of weeks. She is able to easily involve investors from Germany and elsewhere in Europe. Plus, since she already has a management company that is AIFMD-compliant, she can avoid double regulation since the RAIF is unregulated.

Were there alternatives?

Depending on the needs of her investors, the asset manager could have structured her Luxembourg fund vehicle in various legal forms (SA/SCA/SARL/SCS/SCSp), and as either regulated (FCP, SICAV) or unregulated. For institutional investors, regulated funds are often preferred, for instance in the legal form of an SCS/SCSp or as FCP.



6. Asset manager from Australia investing in infrastructure

by Antoine Badot



Institutional



Infrastructure



Closed ended



Single compartment



Australia

An Australian fund manager knows Luxembourg mostly by reputation. He has heard that it's traditionally been a top-tier jurisdiction for establishing an infrastructure fund platform. He has also recently seen a rise in interest in Luxembourg as a portal to the European investor market, offering better marketability to major institutional investors. He hasn't been particularly interested in this market yet, as he has had success investing in Australian and North American markets. Plus, he has the vague impression that Europe is bogged down by regulators and red tape, and perhaps language barriers.

Constraints

Seeking new returns, the fund manager is looking into the European market, hoping to find that his conceptions are in fact misconceptions. He's worried about the ability of the fund vehicle to serve a stable and regular return on its investments over a long period, and thus about being able to ring-fence the assets. (The ring-fencing of assets, in other words preventing a case where a poorly performing asset pollutes the returns on a well-performing asset, can basically not be achieved in a company that is limited by shares [SA, SCA, Sàrl] and that is not a supervised entity [SICAV, SICAF, etc.]).

Simultaneously, he knows that he should be in a position to market a newly established fund within a predictable timeframe, and this is where he thinks that regulators will surely get in the way.

Why a RAIF in Luxembourg?

When the asset manager hits on the RAIF, he gains some optimism. He sees that RAIFs are not subject to approval or ongoing regulation by the regulator, which helps assure him about the time-to-market predictability. He furthermore discovers that even though the RAIF is not supervised, it still allows assets to be ring-fenced, which essentially means it's the best of both worlds.

He is momentarily dismayed by the stipulation that the RAIF needs a management company that is AIFMD-compliant, since he has no such ManCo on speed dial.

But after poking around Luxembourg's financial sector a little bit, he finds that its fund market structure is very well developed and that many third-party AIFMs based and fully licensed in the Grand Duchy can take care of this management. The more he reads, the more he sees that Luxembourg has uniquely set itself up exactly for people like him – people who need not only to cross their own borders, but all the other borders within Europe.

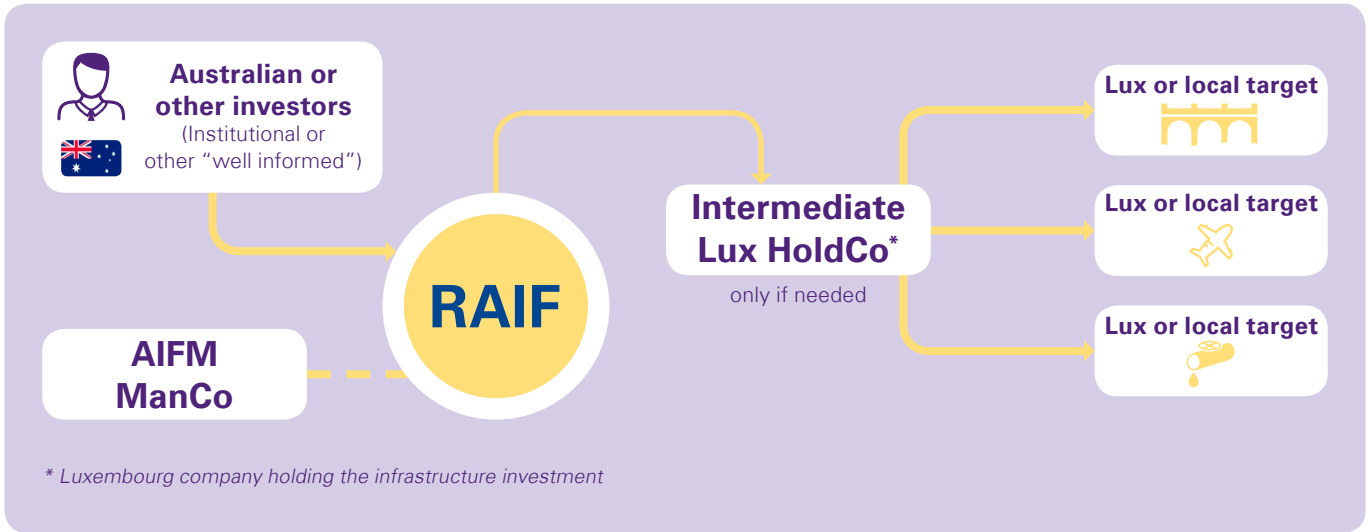
From a tax perspective, the income and net wealth tax neutrality is a key factor too. Indeed, the RAIF is only subject to a 0.01% annual subscription tax computed on its net asset value, except in certain cases where the subscription tax is not due, and it has access to a number of double tax treaties that Luxembourg enjoys.

Finally, though he won't admit it to himself, he is comforted by the fact that all the materials he's found have been available in English, and that every person he has spoken to in Luxembourg has had no problem communicating in English.

Where there alternatives?

Indeed, smaller funds or joint ventures that are not alternative investment funds, and which do not need to be supervised or regulated through their manager, could also consider other flexible Luxembourg investment platforms like special or common limited partnerships.

The Luxembourg limited partnership was modernised in 2013 to become even more flexible and tax efficient. It can be implemented either on a standalone basis or combined with a fully taxable Luxembourg opaque entity, depending on the commercial, legal, and tax constraints imposed by the investors and or the investment targets.





For more information on alternative investment vehicles, do not hesitate to contact our specialist team who would be pleased to help you:

- ▶ understand the new fund offering and evaluate its impact on your business,
- ▶ assess compliance with the regulatory provisions by examining your existing structure, identifying any gaps, and developing a roadmap,
- ▶ provide assistance in independent valuation services,
- ▶ implement any necessary operational requirements such as AIFMD reporting and audit of the RAIF,
- ▶ providing assistance in the re-design, formalisation, and adaption of remuneration policies.

Contact

We would be interested to hear from you. Please get in touch with one of our professionals or specialist groups.

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