The Reserved Alternative Investment Funds

The Luxembourg Revolution in the Alternative Investment Fund landscape

by Sonia Bellamine

A new addition to the funds toolkit: a Luxembourg fund regime with the taxation benefits of a SIF but without the need for CSSF supervision.**Summary** The Luxembourg Government has approved a bill of law proposing a new fund regime: the reserved alternative investment fund (fonds d'investissement alternatifs réservés, FIAR or RAIF).

The bill was approved on 27 November 2015 and will be published on the parliamentary website shortly. The law is expected to be adopted by the Luxembourg parliament next year and to be in force by the end of Q2 2016.The reserved alternative investment fund (RAIF) regime would combine features of the well-established SIF (specialised investment fund) and SICAR (risk capital Investment Company) regimes. It is proposed that a RAIF could be established in partnership or corporate form (including compartmentalized structures), but would not generally be subject to Luxembourg corporation tax.In addition a RAIF would not be subject to approval or supervision by the Luxembourg financial regulator, Commission de Surveillance de Secteur Financier (CSSF) but would instead fall within the EU's AIFM Directive, in common with other European fund structures. Accordingly the RAIF regime is expected to allow for tax efficient corporate fund structures in Luxembourg which may be brought to market quickly and efficiently.**Structuring flexibility** RAIFs will benefit from the structuring flexibility available to other Luxembourg investment funds, and so may be established in corporate, partnership or contractual forms. They may use a variable capital structure and multiple compartments with legally segregated assets and liabilities.**Tax and risk spreading** It is expected that RAIFs will be subject to a tax regime similar to SIFs and pay only a 0.01 per cent subscription tax (taxe d'abonnement), provided they comply with the portfolio diversification requirements that apply to SIFs. The diversification requirements are easily met by most investment funds. Alternatively a RAIF that does not meet the investment diversification requirements (for example where it invests into a single asset) may be established provided it only invests into "risk capital". However, in that case, it is expected that the RAIF would be fully taxable in Luxembourg in a similar way to a SICAR. The VAT exemption on AIF management services should also be available.**No supervision** Unlike the existing SIF regime, the CSSF will not need to approve or supervise RAIFs or their constitutional or marketing documentation. Instead RAIFs will fall within the scope of the EU's AIFM Directive and so, in common with other European fund structures, a RAIF would need to appoint an alternative investment fund manager (AIFM), which may be located in Luxembourg or abroad. The AIFM will be responsible for ensuring that the operation and marketing of the RAIF complies with AIFM Directive.**Marketing** RAIFs will be open to professional, institutional and well informed investors (which are deemed to include any investor investing at least €125,000 into the RAIF). RAIFs will qualify as AIFs under Luxembourg law and so will be eligible to be marketed under the AIFM Directive passport regime.