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The notion of Well-Informed Investors under the RAIF Law[1]

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Introduction

"Reserved Alternative Investment Funds" or "**RAIFs**" are reserved to only a certain category of investors. Indeed, only undertakings for collective investment under part I and II of the law 17 December 2010 (the "**Public Funds**") may raise capital from the "public" which notion includes any investor from retail to institutional/professional.

"**Well-Informed Investors**" are the only investors allowed to subscribe and own Shares[2]. Well-Informed Investors may be divided and sub-divided as follows:

a. investors who are per se well-informed such as:
   a.i. "**Institutional Investors**";
   a.ii. "***Per Se* Professional Investors**"; and
   a.iii. individuals involved in the management of the RAIF;

b. investors having to somehow "prove" their well-informed status such as:
   b.i. "Opt-In Professional Investors"; and
   b.ii. "Other Well-Informed Investors" who in addition of confirming their adherence to the status of Well-Informed Investors:
      • invest at least EUR 125,000 in the RAIF; or
      • receive an assessment confirming that they are Well-Informed Investors.

This article will examine in details these different categories of Well-Informed Investors and attempt to answer other related questions.

I. Investors Who Are Per Se Well-Informed

(1) What is an "Institutional Investor"?

The RAIF Law[3] is mute on the definition of "Institutional Investor" and the other fund related laws – such as the SIF Law[4] upon which the RAIF Law is largely based – uses the same concept without elaborating on this notion.

Some indications can however be found in the "UCITS III law" parliamentary documents which referred to the 1991 Law[5] and provided some clarifications on the concept of "Institutional Investors". Institutional Investors are referred to as companies and organisations "managing moneys and large amounts" (gérant des fonds et des valeurs importantes) and shall notably include "professionals of the financial sector" (professionels du secteur financier).

The Commission de Surveillance du Secteur Financier (the "**CSSF**") in its 1999 annual report also provided further guidance on the interpretation of the concept of "Institutional Investor" in the context of the 1991 Law. According to the CSSF (which switched from a restrictive to a more liberal approach as stated therein), it is not necessary that a client for which a credit institution will act is itself an Institutional Investor for the investment to be considered as having been made by an Institutional Investor. The CSSF further commented that : (i) the moneys invested for the client should be on the basis of a "discretionary management agreement" entered into with the relevant Luxembourg or foreign financial institution subscribing in the fund, and (ii) the end-client cannot have a recourse right (droit de revendication) vis-à-vis the fund (which right should only belong to the financial institution vis-à-vis the fund).

Although the comment made by the CSSF was in the context of the 1991 Law, we believe that this position can also be applied to RAIFs. The consequence of that interpretation is that (regulated) financial institutions may invest in a RAIF (i) in their own name and own account, or (ii) in their own name but for the benefit of retail clients having entered into a discretionary management agreement with them and provided that such clients do not have any recourse right against the RAIF.

In its 1999 annual report, the CSSF did not specify any minimum amount to be invested pursuant to such discretionary management agreement and we understand that the characterisation of an Institutional Investor in this context merely depends on the fact that (i) the financial institution/professional of the financial sector invests in its own name and behalf, or (ii) the financial institution/professional of the financial sector investing in its own name but for the benefit of its clients does so on the basis of a discretionary management agreement concluded between such institution and its client.

Discretionary management agreements versus nominee arrangements

For a subscription in the RAIF with retail client moneys to be viewed as a subscription made by an "Institutional Investor", all moneys invested by that institution acting in its name but on behalf of one or more retail clients be done on the basis of written discretionary management agreements concluded

prior to the investment of the relevant moneys into the RAIF.

For the avoidance of doubt, the subscribing institution should in particular be careful not to subscribe as a mere nominee. In an investment fund context, a nominee is an intermediary which is interposed between a fund and an end-investor and where the end-investor retains in principle the ability to invest directly into the fund upon his/her request. Our view is that a mere nominee type of arrangement whereby a financial institution would subscribe for Shares is insufficient to qualify as an Institutional Investor and therefore each retail client behind the investment made by the financial institution into the RAIF should qualify either as an *Opt-In* Professional Investor or as an Other Well-Informed Investor.

Non-recourse

It is also recommended to ensure that the end-investor – whose money has been invested pursuant to a discretionary management agreement – has no recourse against the RAIF in which the financial institution invests.

This could be further clarified in the discretionary management agreement itself (although probably implied by the nature of such an agreement) along with the fact that the relevant subscription documents and shareholder register should refer to the financial institution as the legal owner of the Shares (*i.e.* acting in its own name but pursuant to one or more discretionary management agreements).

(2) What is a "Per Se Professional Investor"?

The RAIF Law is also mute on the notion of "Professional Investor". This being said this concept is heavily used under the AIFMD[6] and the AIFM Law[7] because the marketing passport that an authorised AIFM receives allows it to market the Shares throughout the EEA to Professional Investors which could be used for the purpose of understanding this concept.

"Professional Investors" are both "*Per Se* Professional Investors" and "*Opt-In* Professional Investors":

A "Per Se Professional Investor" is any investor which may fall within one of the following four (4) main categories:

- *Entities having to be authorised or regulated to operate on financial markets*, such as credit institutions, investment firms, other authorised or regulated financial institutions, insurance undertakings and reinsurance undertakings, UCIs and their management companies, pension funds and management companies of such funds, commodity and commodity derivatives dealers, and other institutional investors;
- *Large undertakings* meeting two of the following size requirements on a company basis: (i) a total balance sheet of at least EUR 20 million; (ii) a net turnover of at least EUR 40 million; (iii) equity of at least EUR 2 million;
- *Public sector bodies* namely national and regional governments, public bodies that manage public debt, Central Banks, international and supranational institutions such as the World Bank, the IMF, the ECB, the EIB and other similar international organisations; and
- *Other institutional investors whose main activity is to invest in financial instruments*, including entities dedicated to the securitisation of assets or other financing transactions.

(3) Who are "directors and other individuals who intervene in the management of the RAIFs"?

The exemption introduced by the RAIF Law with respect to "*directors and other individuals who intervene in the management of the RAIFs*" is justified by the fact that these individuals should per se have the relevant "*expertise, experience and knowledge in adequately apprising an investment in the RAIF*" because they are involved in its management. The exemption means that these individuals do not need to meet the capital investment or assessment requirement requested of the Other Well-Informed Investors[8] category.

This category of investors includes namely the RAIF's Management[9], the AIFM's staff, the individuals employed by the investment advisor/manager appointed by the AIFM and involved with the investment advice given/management made in relation to the RAIF, and any other consultants involved with the RAIF's management.

II. Investors Having To Somehow "Prove" Their Well-Informed Status

(1) What is an "Opt-In Professional Investor"?

An "Opt-In Professional Investor" is any investor that is not a "Per Se Professional Investor" that wants and is able to opt-in in order to be treated as a "Professional Investor" provided (i) the criteria, and (ii) the procedure requirements laid out below are met:

Criteria

A credit institution or investment firm must conduct an adequate assessment of the expertise, experience and knowledge of the investor concerned, to reasonably ensure, in light of the nature of the transactions envisaged, that the investor is capable of making his own

investment decisions and of understanding the risks involved.

In the course of the above assessment, as a minimum, two (2) of the following criteria should be satisfied:

- the investor has carried out transactions, in significant size, on the relevant market at an average frequency of ten (10) per quarter over the previous four (4) quarters;
- the size of the investor's financial instrument portfolio, defined as including cash deposits and financial instruments, exceeds EUR 500,000;
- the investor works or has worked in the financial sector for at least one (1) year in a professional position, which requires knowledge of the transactions or services envisaged.

Please note that:

- the fitness test applied to managers and directors of Entities[10] licensed under European Directives in the financial field could be regarded as an example of the assessment of expertise and knowledge; and
- in the case of small Entities, the person subject to the assessment should be the person authorised to carry out transactions on behalf of the Entity.

Procedure

If the credit institution or investment firm having conducted the assessment of the prospective investor is of the view that at least two (2) of the abovementioned criteria are met, then the following procedure must be followed:

- the investor must state in writing to the credit institution or investment firm that it wishes to be treated as a Professional Investor, either generally or in respect of a particular investment transaction, or type of transaction or product;
- the credit institution or investment firm must give to the investor a clear written warning of the protections and investor compensation rights it may lose; and
- the investor must state in writing, in a separate document from the contract, that it is aware of the consequences of losing such protections.

(2) What is an "Other Well-Informed Investor"?

An Other Well-Informed Investor is the fifth category of investors that can invest in a RAIF alongside Institutional Investors, *Per Se* and *Opt-In* Professional Investors, and managers/advisers of the RAIF. This category is subdivided into two types of Other Well-Informed Investors.

It is a category of investors sitting between the pure retail investors (as referred to under the AIFMD) and the *Opt-In* Professional Investors. Those investors are allowed from a Luxembourg standpoint to invest in such a structure because they are supposed to understand the risks involved. That understanding is proven either by investing a minimum of EUR 125,000 in the RAIF or by receiving an assessment from an authorised Entity in accordance with the RAIF Law.

In practice, Institutional/Professional Investors rarely invest in the same compartment as Other Well-Informed Investors. Fund promoters will rather separate them in two different compartments co-investing in the same assets.

Below is a selection of practical questions often raised in relation to Other Well-Informed Investors:

a) In case of split ownership of Shares (*i.e.* co-owners and/or bare owner and usufruct) by an Other Well-Informed Investor, must all affected investors qualify as Well-Informed Investors?

Yes. Should it not be or no longer be the case (*e.g.* in case of death of the owner of the Shares and the heir(s) would become owner(s) of the Shares without being themselves Well-Informed Investors) the RAIF will have to apply a compulsory redemption of those Shares. In practice, this should be made clear to investors in the issuing document and/or the subscription agreement.

This being said, and in order to avoid such difficulty and potential consequences, such type of investors could invest in the RAIF through a credit institution with which they have entered into a "discretionary management agreement" (please see above for further information on the matter).

b) Which kind of Well-Informed Investors need to confirm their adherence to the status of Well-Informed Investors?

Only the Other Well-Informed Investors, *i.e.* not the Institutional Investors or the Professional Investors (whether *Per Se* or *Opt-In*). Such adherence is most often embedded in the subscription agreement entered into between the AIFM managing the RAIF and the investor.

c) Which kind of Well-Informed Investors must invest at least EUR 125,000?

Only the Other Well-Informed Investors not having received an assessment confirming that they are Well-Informed Investors.

d) Does the investment of EUR 125,000 apply on a compartment per compartment basis or at the level of the umbrella?

Just like for SIFs and SICARs, the RAIF Law only requires Other Well-Informed Investors to invest the minimum amount of EUR 125,000 at the level of the umbrella which means that this minimum amount may be split between one or more compartments of the same RAIF.

e) Must investors invest in EUR?

No, at least not from a RAIF Law standpoint. This being said Other Well-Informed Investors having to make a minimum investment of EUR 125,000 in the RAIF must commit the equivalent amount in the relevant currency.

f) Is an Other Well-Informed Investor – not having received an assessment – required to invest/commit additional funds if its initial investment value drops below EUR 125,000?

No. The RAIF Law requirement applicable to this type of Other Well-Informed Investor does not require such investor to add additional moneys in order to remain invested in the RAIF.

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g) In open-ended RAIFs, can an Other Well-Informed Investor – not having received an assessment – redeem part of his/her Shares insomuch that the remaining stake in the RAIF is lower than EUR 125,000?

No. The RAIF would have to treat the partial redemption request as a redemption request in full. In practice, this consequence should be made clear to investors in the issuing document and/or the subscription agreement.

h) Quid of the interaction of other laws and regulations allowing for a lower threshold of investment?

For instance, if an ELTIF was to take the form of a RAIF, the minimum investment by an Other Well-Informed Investor would remain EUR 125,000 unless (i) such investor obtains the relevant assessment in conformity with Article 2(1)b)(ii) of the RAIF Law in which case the relevant minimum amount (if applicable) provided under the ELTIF Regulation would apply, or (ii) such investor would invest through a credit institution with which he/she entered into a "discretionary management agreement" (please see above for further information on the matter).

The same goes for EuVECA and EuSEF, etc structures.

i) Which kind of Other Well-Informed Investors must be subject to an assessment according to the RAIF Law prior to investing in a RAIF?

Only Other Well-Informed Investors not having invested/committed to invest a minimum of EUR 125,000 in the RAIF.

j) What should the assessment cover for those types of Other Well-Informed Investors?

The RAIF Law and other related laws are mute on the details of the assessment to be performed. Furthermore, the CSSF has not taken any official position with respect to SIFs and SICARs in relation to what assessments should cover.

The RAIF Law only mentions that the assessing undertaking should evaluate the Other Well-Informed Investor's "expertise, experience and knowledge in adequately apprising an investment in the RAIF".

AIFMD/MiFID standard for Opt-In Professional Investors

This being said, the AIFMD/MiFID give some guidance with respect to Opt-In Professional Investors in order to verify that in fine retail investors wanting to be treated as Professional Investors may actually do so. The AIFMD/MiFID require that the assessing undertaking makes an adequate assessment of the retail investor's expertise, experience and knowledge to reasonably ensure, in light of the nature of the transactions envisaged, that the investor is capable of making his own investment decisions and understanding the risks involved.

As discussed above, two (2) main hurdles need to be overcome in order for a retail investor to be treated as an Opt-In Professional Investor: the investor must go through a fitness test (*i.e.* meet 2 out of 3 background criteria) and follow a specific procedure.

RAIF standard for Other Well-Informed Investors requesting an assessment

Bearing in mind that Other Well-Informed Investors are a category of retail investors somewhere between Opt-In Professional Investors and pure retail investors, assessing undertakings could set somewhat lower requirements compared to those provided under the AIFMD/MiFID for Opt-In Profession Investors (and yet high enough not to include just any retail investor).

Such standards for the RAIF fitness test should verify for instance the potential investor's:

- *financial situation*, including his yearly disposable income (*i.e.* the investor's yearly income after tax minus the investor's yearly expenses) and net wealth (*i.e.* the investor's investable liquid and illiquid assets as well as other assets, reduced by the investor's liabilities);
- *investment objective*, including the investor's risk tolerance, ability to bear financial loss and investment time horizon; and
- *experience and knowledge about various products* including the assets in which the RAIF invests. In this respect, it would be good practice for the investor to be in a position to declare in writing during the assessment that he meets two or more of the background requirements:
  - that he has – via previous relevant experience with trading and/or handling assets falling in a similar category as to those in which the RAIF (or the relevant compartment(s) thereof) invests (the "**Assets**") – attained the necessary knowledge and understanding of the essential elements linked to investments in such Assets; and/or
  - that he is – or has within the last 10 years been – employed in a position where he handles, trades or otherwise works in connection with the Assets and has thereby attained the required knowledge and understanding; and/or
  - that he has received an education and/or has experience which gives him the required knowledge and understanding of investments in such Assets; and/or
  - that he has reviewed in details together with the assessing undertaking (i) the investment policy of the RAIF (or the relevant compartment(s) thereof) as contained in the RAIF's issuing document, (ii) the risk factors as described in the issuing document, as well as (iii) any other relevant elements linked to an investment in the RAIF (or the relevant compartment(s) thereof) and indirectly in the Assets, and has had the time and opportunity to ask the assessing undertaking any additional questions and received answers thereto to its full and complete satisfaction.

k) Should the assessment be made compartment per compartment and can it cover future compartments of the RAIF?

As abovementioned, the RAIF Law gives a lot of flexibility to assessing undertakings in appraising one's background and certifying that a retail investor meets the fitness test and can therefore be considered as an Other Well-Informed Investor.

In this respect, an assessment could for instance be delivered (i) in relation to the whole RAIF structure (*i.e.* the umbrella RAIF) or for one compartment only, (ii) for present and/or for future compartments being launched under the RAIF, provided that the expertise, experience and knowledge of the relevant investor is adequate for all relevant present and future compartments under the umbrella RAIF. An argument strengthening this position is that even MiFID provides that the assessing undertaking must receive a written statement from the investor that he wishes to be treated as a Professional Investor, "*either generally or in respect of a particular investment transaction, or type of transaction or product*". The assessing undertaking will therefore want to receive a similar statement from the investor being ready to invest in some similar products to be launched under the RAIF.

Should an assessment undertaken in the past be insufficient to certify that the same investor can be considered as an Other Well-Informed Investor, the assessing undertaking will want to carry out a new assessment and properly assess whether or not said investor can also be treated as an Other Well-Informed Investor in relation to this new product being launched under the umbrella RAIF.

l) When the investor is an Entity (other than an Institutional/Professional Inves-

tor) investing less than EUR 125,000 who should be assessed as being an Other Well-Informed Investor?

In practice, most Entities investing less than EUR 125,000 are wholly-owned subsidiaries of only one or two investors. In this case, the CSSF's position for SIFs – which can be applied to RAIFs – is that the beneficial owner(s) should be the one assessed as Well-Informed Investor(s) and not the board or general partner of the Entity.

m) What kind of Entities can deliver an assessment to Other Well-Informed Investors investing potentially less than EUR 125,000?

Four types of undertakings may validly deliver such assessments, namely:

credit institutions

A 'credit institution' means an EEA-based licensed undertaking, the business of which is to take deposits or other repayable funds from the public and to grant credits for its own account.

investment firms

An 'investment firm' means an EEA-based MiFID licensed legal person whose regular occupation or business is the provision of one or more investment services to third parties and/or the performance of one or more investment activities on a professional basis.

management companies

A 'management company' means an EEA-based UCITS compliant management company, the regular business of which is the management of UCITS in the form of common funds or of investment companies (*i.e.* collective portfolio management of UCITS).

authorised AIFMs

An 'authorised AIFM' means an EEA-based licensed AIFM managing one or more AIFs.

n) Can the initiator/manager of a RAIF (be it a credit institution, investment firm, management company or AIFM) deliver assessments to Other Well-Informed Investors investing in the RAIF?

Yes, provided that the conflicts of interest procedure set-up at the level of the AIFM (and of the relevant undertaking) covers this aspect, and that the processes put in place are complied with (and amended/updated as needed).

o) Can the depositary bank of the RAIF (in the case where the depositary bank is a credit institution) deliver assessments to investors investing in the RAIF where it acts as depositary?

Yes, provided that the conflict of interest procedure set-up at the level of the depositary bank and the AIFM covers this aspect, and that the processes put in place are complied with (and amended/updated as needed).

What are critical elements for issuing assessments?

With respect to Other Well-Informed Investors one should bear in mind that both the investor and the Entity delivering the assessment have a responsibility vis-à-vis the RAIF in which an investment is made.

First of all, the RAIF Law requires that all Other Well-Informed Investors (*i.e.* those investing at least a minimum of EUR 125,000 in the RAIF and those obtaining the relevant assessment) adhere to the status of Well-Informed Investor in order to invest in the RAIF. This means in substance that the investor has to undertake that he understands and accepts that the RAIF in which he invests is definitely not a retail fund and that it is not supervised by the CSSF. Because of this reduced investor protection the investor has to be conscious and willing to bear a greater risk to lose part or all of his investment in the RAIF compared to an investment in a Public Fund. Appropriate wording in relation thereto should be inserted in bold in the subscription agreement so as to adequately draw the attention of the subscriber and protect the RAIF against any future claim from a displeased investor stating that it could not be seen as an Other Well-Informed Investor and should not have been accepted by the RAIF.

On the other hand, because the undertaking delivering the assessment has to certify the adequacy of the investment into the RAIF (or in one or more compartments thereof) for a particular investor, such Entity will want to develop a reasonable procedure allowing it to make such judgement call. Those procedures should follow the "reasonable professional active in the field" concept *i.e.* that other professionals active in the field would also have considered such individual as an Other Well-Informed Investor with respect to this particular investment. Hindsight cannot be taken into consideration in order to use this concept.

As both parties (*i.e.* the investor himself and the Entity delivering the assessment) share the responsibility in appraising such adequacy vis-à-vis the investment in the RAIF, one or both could be held liable if the investor has been wrongly categorised. Most RAIF issuing documents and subscription agreements contain clauses whereby the RAIF is not only able to exclude such investors but also impose penalties against them.

q) Could an Entity request to see the actual assessment procedures and/or completed assessment forms?

As RAIFs must designate an AIFM and appoint an auditor, the financial supervisory authority of the AIFM, the Luxembourg tax authorities and/or the RAIF's auditor could require AIFMs to provide them with the procedures put in place in this respect as well as the actual assessments carried out on the relevant Other Well-Informed Investors to ensure compliance with the RAIF Law.

III. Other Questions Related to the Status of Well-Informed Investor

(1) What processes must be put in place by the AIFM to ensure that only Well-Informed Investors invest in the RAIF?

While the AIFM managing the RAIF will most often have such functions delegated to a central administration agent, the AIFM remains liable for the processes put in place. Such processes involve a priori and a posteriori checks.

The a priori verifications performed by the central administration agent are based mainly on the information filled in by the subscriber in the subscription agreement and appendices thereto. In case of doubt, additional information should be requested to and obtained from the subscriber. Should a doubt persist, the subscription should be rejected. RAIF issuing documents most often contain warnings in this respect including the potential application of a penalty.

The a posteriori checks may need to be performed namely when the subscriber entered into the RAIF through a nomine arrangement. This is especially relevant in case of inheritance events or donations/indirect transfers. Nominee arrangements should not be viewed the same way as discretionary portfolio managements (for more information on the subject please see the answer under question (1) above). Indeed, should the discretionary portfolio manager be an Institutional Investor it will suffice to have the relevant statement be inserted into the subscription agreement.

RAIFs should reserve the right to request at any time additional information on the ultimate beneficial owner of the Shares issued especially in case of audits.

(2) What about the requirement to only accept Well-Informed Investors in a RAIF and stock exchanges' requirement regarding the free transferability of Shares?

Just like for SIFs where the CSSF had accepted that SIFs perform an a posteriori check soon after the transfer of Shares on the status of Well-Informed Investor of a transferee, shares of a RAIF may too be listed and still comply with the Well-Informed Investor requirement as long as the same level of diligence as for a listed SIF is put in place for the listed RAIF.

(3) What about RAIFs issuing dematerialised Securities?

Even though to our knowledge such possibility has not yet been used in practice, the RAIF Law provides for the possibility for a RAIF to issue dematerialised Shares. In this respect, the AIFM will need to ensure that the RAIF's constitutive documents put the AIFM in a position to verify from time to time that Shares in the RAIF are held only by Well-Informed Investors. Those verifications will be performed most of the time a posteriori.

Pursuant to Article 17 of the Dematerialised Securities Law the AIFM may, at the RAIF's (or the relevant compartment thereof) expense and for the purpose of identifying the holders for own account of dematerialised Shares, request the settlement organisation or the central account keeper the name or the denomination, the nationality, the date of birth or the date of incorporation and the address of said holders in its books which immediately confers or may confer in the future voting rights in the RAIF's general meetings as well as the number of dematerialised Shares held by each one of them and, where applicable, the limits the dematerialised Shares may be subject to.

The settlement organisation or the central account keeper must then provide the AIFM with the identification data that it has on the securities account holders in its books and the number of dematerialised Shares held by each one of them. The same information on securities account holders for own account must be gathered by the RAIF throughout the securities account holders or other persons, whether from Luxembourg or abroad, who have a securities account in a settlement organisation or a central account keeper credited with the relevant dematerialised Shares.

The RAIF (or the relevant compartment) may request the persons indicated on the lists given to it to confirm that they have the relevant dematerialised Shares for own account.

When a person who holds a securities account with a central account keeper or a settlement organisation or a person who holds a securities account with an account keeper or a foreign account keeper does not communicate the information requested by the AIFM in accordance with this procedure which should be inserted in the RAIF's constitutive documents within two (2) months as from the request or if he communicated incomplete or erroneous information relating to his capacity or the quantity of dematerialised Shares held by him, the AIFM may suspend until settlement the voting rights up to the amount of the portion of dematerialised Share for which the information requested was not received.

Furthermore, if it appears that the securities account holder is not a Well-Informed Investor the AIFM should exclude such investor from the RAIF and may apply any penalty provided under the RAIF's issuing documents against such investor.

(4) What are some of the potential consequences of a non-Well-Informed Investor being invested in a RAIF?

Potential consequences for the RAIF

From a tax standpoint, the RAIF could potentially lose its status as a RAIF and hence the tax benefits granted under the RAIF Law especially if the RAIF/AIFM has been negligent or even fraudulent in the acceptance of non-Well-Informed Investors.

Potential consequences for a non-Well-Informed Investor

Should the RAIF reasonably believe that an investor does not qualify as a Well-Informed Investor, the Shares of such investor should be compulsorily redeemed or transferred without any delay in accordance with the procedures laid out in the issuing document. Issuing documents most often provide that Shares thus compulsorily redeemed/transferred will be redeemed/transferred at a (sometimes sharp) discount. Payments/considerations for the redeemed/transferred Shares could be delayed for instance up until the liquidation of the RAIF or the relevant compartment thereof. This is especially true for closed-ended RAIFs. Such potential sanctions – as well as any other – should be clearly spelled out in the issuing document. Issuing documents also often provide for a clause whereby the list of potential sanctions contained therein is not limitative. It is also market practice to draw the attention of subscribers about these potential consequences in the subscription agreement.

Conclusion

RAIF promoters – depending namely on the target size of the RAIF and its strategy – will focus more on one type of Well-Informed Investors over another: namely (i) large promoters generally tend to focus on Institutional and Professional Investors; whereas (ii) promoters having more niche strategies or first/second time funders will most likely raise money from high net worth individuals and/or family offices. As shown in this article, the range of investors allowed to invest in RAIFs is wide and the RAIF Law gives the flexibility to accept these investors despite the fact that not all of them may qualify as Professional Investors pursuant to the AIFM Law.

Notes

1 The views expressed in this article reflect some of the author's experience to date on the subject matter. As the Luxembourg fund market continues to develop – namely in relation to RAIFs – these views may and will most likely continue to evolve in one way or another. This articles should in no wise be construed as legal advice rendered by the author or by NautaDutilh Avocats Luxembourg S.à r.l., nor should it be interpreted as reflecting the views of NautaDutilh Avocats Luxembourg S.à r.l.

2 means the shares, units or partnership interests (as the case may be) issued by the RAIF (in relation to the relevant compartment in case of an umbrella RAIF).

3 means the law of 23 July 2016 relating to reserved alternative investment funds, as amended.

4 means the law of 13 February 2007 relating to specialised investment funds, as amended.

5 means the law of 19 July 1991 on institutional undertakings for collective investments which was repealed by the SIF Law.

6 means Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010.

7 means the law of 12 July 2013 relating to alternative investment fund managers, as amended.

8 means the members of the RAIF's board, the members of the board of the RAIF's general partner, or the members of the board of the RAIF's the management company, as the case may be.

9 means the members of the RAIF's board, the members of the board of the RAIF's general partner, or the members of the board of the RAIF's the management company, as the case may be.

10 means any corporation, company, trust, partnership, or other legal entity, with the exception of individuals.

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