The International Comparative Legal Guide to:

**Alternative Investment Funds 2018**

6th Edition

A practical cross-border insight into Alternative Investment Funds work

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1 Regulatory Framework

1.1 What legislation governs the establishment and operation of Alternative Investment Funds?

In Luxembourg, an Alternative Investment Fund (“AIF”) within the meaning of the law of 12 July 2013 relating to managers of alternative investment funds (the “AIFM Law” and an “AIFM”), will usually take the form of: (i) a fund authorised under Part II of the Luxembourg law of 17 December 2010 on undertakings for collective investment, as amended (“Part II Fund” and “2010 Law”, respectively); (ii) a specialised investment fund (“SIF”) under the law of 13 February 2007 relating to specialised investment funds, as amended (the “SIF Law”); (iii) a “SICAR” (société d’investissement à capital risque), being an investment company in risk capital, subject to the Luxembourg law of 15 June 2004 on companies investing in risk capital, as amended (the “SICAR Law”); or (iv) a reserved alternative investment fund (“RAIF”) under the law of 23 July 2016 on reserved alternative investment funds (the “RAIF Law”) and together with the SIF Law, the 2010 Law and the SICAR Law the “Product Laws” and each a “Product Law”, and Part II Funds, SIF and SICAR together “Regulated Funds”). An AIF may also be set up as a non-Product Law structure (typically referred to as SOPARFI (société de participations financières), subject to the law of 10 August 1915 on commercial companies as amended (a “Corporate AIF” and the “1915 Law”, respectively) and may opt between the range of available corporate structures.

Part II Funds, SIF and SICAR are regulated by the Luxembourg financial supervisory authority (Commission de Surveillance du Secteur Financier – “CSSF”).

The implementation of European Directive 2011/61/EU of the European Parliament in relation to the supervision of managers of alternative investment funds (“AIFMD”) has changed the regulatory environment for managers of AIFs and for AIFs. Luxembourg was one of the first EU Member States to successfully transpose the AIFMD into national law. All AIFs established in Luxembourg must be managed by an AIFM, responsible for ensuring compliance with the AIFM Law. The AIFM will be subject to either the simplified registration regime or the full-scope authorisation regime, depending on (i) the assets under management, and (ii) whether the AIFM will market the shares on a cross-border basis to investors located outside Luxembourg. Moreover, the AIFM can be (a) an externally appointed entity, or (b) where the legal form of the AIF permits internal management, the AIF itself.

Securitisation vehicles, which are governed by the Luxembourg law of 22 March 2004 on securitisation vehicles, as amended, should normally be out of the scope of the AIFM Law unless given its features it would fall within its scope.

1.2 Are managers or advisers to Alternative Investment Funds required to be licensed, authorised or regulated by a regulatory body?

All Luxembourg entities that manage AIFs (based in Luxembourg, in another EU country or outside the European Union) are subject to the AIFM Law and, must be (i) regulated and supervised by, or (ii) at least registered with, the CSSF. Investment managers managing the portfolio of an AIF may be located abroad.

For Regulated Funds, the appointment of a manager is subject to CSSF approval. If unknown to the CSSF but supervised by a recognised financial supervisory authority, the CSSF will proceed to a due diligence on available information. If the manager is unregulated, the CSSF will carry out a due diligence on its expertise, track record, financial standing and reputation.

Luxembourg based advisers to AIFs (or their AIFM) are (i) either regulated by the CSSF and must be licensed pursuant to the law of 5 April 1993 on the financial sector, as amended (the “1993 Law”), subject to exemptions, or (ii) may be subject to the law of 2 September 2011 regulating the access to the professions of craftsman, merchant, industrial as well as certain liberal professions, as amended (the “2011 Law”) and submit an application for a business licence as economic advisor (conseiller économique) to the Minister of Economy, subject to exemptions. (Also please refer to question 1.8 for foreign advisors.)

1.3 Are Alternative Investment Funds themselves required to be licensed, authorised or regulated by a regulatory body?

Regulated Funds are subject to prior CSSF authorisation and ongoing supervision.

1.4 Does the regulatory regime distinguish between open-ended and closed-ended Alternative Investment Funds (or otherwise differentiate between different types of funds or strategies (e.g. private equity v hedge)) and, if so, how?

Luxembourg AIFs subject to a Product Law can be open or closed-ended and such information must be disclosed in the offering document.
Only SICAR are subject to strategy limitation (exclusive investment in risk capital within the meaning of Circular CSSF 06/241 of 05 April 2006 relating to the concept of risk capital under the SICAR Law (“Circular 06/241”).

The 2010 Law, the SIF Law and the RAIF Law provide for two different fund types: (i) contractual vehicles without legal personality (fonds commun de placement – “FCP”); or (ii) investment company, (a) with variable capital (société d’investissement à capital variable – “SICAV”), or (b) with fixed capital (société d’investissement à capital fixe – “SICAF”).

There is also a distinction between funds subject to a Product Law or to the 1915 Law only, and between regulated and non-regulated funds.

**1.5 What does the authorisation process involve and how long does the process typically take?**

For Regulated Funds notably, the following draft documents and information must be submitted to the CSSF: articles of incorporation/ LPA; offering document; service provider agreements; information on initiator; advisor; CSSF questionnaires; and director documents. On average the procedure takes three to four months.

For an authorised AIFM, the application must contain i.a.: CSSF questionnaire (CSSF website); draft articles of incorporation; information concerning shareholders (qualifying holdings); governing bodies; senior managers; drafts of policies and procedures; service provider agreements; and draft constitutional documents of the AIF to be managed.

The CSSF has three months from the date of acknowledging receipt of the file to complete its examination process, during which the clock may be stopped where additional information is requested. Once approved, the AIFM is entered on the CSSF’s Official List of AIFMs, tantamount to formal authorisation.

**1.6 Are there local residence or other local qualification requirements?**

Registered office and central administration of the AIF/AIFM must be located in Luxembourg to qualify as a Luxembourg-based AIF/ AIFM. The depositary must be located in Luxembourg, the AIFM must have at least two Luxembourg resident conducting officers. A number of local resident directors is advisable.

If not internally managed, a Luxembourg AIF’s appointed external AIFM is entrusted with portfolio and risk management, and potentially administration and marketing. An AIF established in the form of an FCP must appoint an external AIFM, in the absence of own legal personality.

For AIFs set up under a Product Law, the following service providers are required:

- **Depositary:** Luxembourg credit institution or PSF licensed under the 1993 Law, responsible for the safekeeping and supervision of the assets of the AIF.
- **Paying Agent:** a Paying Agent will be required in Luxembourg and in each country where the AIF is distributed (typically via the depositary (and its network)).
- **Administration/Domiciliation/Registrar and Transfer Agent:** either performed by the authorised AIFM (or regulated management company), potential sub-delegation to third party (credit institution or professional of the financial sector (“PSF”)) or direct appointment by AIF.
- **Auditor:** audit of financial statements by Luxembourg independent approved statutory auditor with appropriate professional experience.

**1.8 What rules apply to foreign managers or advisers wishing to manage, advise, or otherwise operate funds domiciled in your jurisdiction?**

For foreign advisors, there is no regulation requirement, provided that the CSSF views it favourably when an advisor opts into regulation where possible.

For foreign managers, evidence of supervision is required, or failing due diligence by CSSF (see question 1.2).

**1.9 What co-operation or information sharing agreements have been entered into with other governments or regulators?**

The CSSF has signed:


MoUs with a number of supervisory authorities of the financial sector, laying down the principles and terms relating to cooperation between authorities on issues relating to prudential supervision. The list of signatories is available on the CSSF website [http://www.cssf.lu/en/eu-international/subnav/col3/memoranda-of-understanding/](http://www.cssf.lu/en/eu-international/subnav/col3/memoranda-of-understanding/).

Pursuant to the AIFM Law and further to ESMA’s approval of cooperation arrangements between EU securities regulators and their global counterparts, as of February 2015, the cooperation agreements with 44 non-EU authorities. ESMA has published a list of the AIFMD MoUs signed between EU regulators (including the CSSF) [http://www.cssf.lu/fileadmin/files/AIFM/ESMA_34_32_418_AIFMD_MoU.pdf](http://www.cssf.lu/fileadmin/files/AIFM/ESMA_34_32_418_AIFMD_MoU.pdf). In addition, the CSSF is a member of the European System of Financial Supervision (“ESFS”), created with effect from 1 January 2011, and participates in each of the following entities comprising the ESFS:

- the European Banking Authority (“EBA”);
- the European Securities and Markets Authority (“ESMA”); and
- the European Insurance and Occupational Pensions Authority (“EIOPA”).

Their purpose is to contribute to establishing common regulatory and supervisory standards and practices and ensuring that the Member States’ supervisory authorities apply a single set of harmonised rules and consistent supervisory practices.

In addition to the above, Luxembourg currently has around 77 double taxation treaties (“DTTs”) in force. The 46 DTTs entered into between Luxembourg and a third country include the provisions of Article 26 §5 on exchange of information of the Organisation for Economic Co-operation and Development (“OECD”) Model Tax Convention on Income and on Capital, so that an effective exchange of information in tax matters is ensured.

Luxembourg signed the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters (the “Convention”) on 29 May 2013, ratified in Luxembourg by the Law dated 26 May 2014 and entered into force on 1 November 2014.
2 Fund Structures

2.1 What are the principal legal structures used for Alternative Investment Funds?

Stand-alone structures and umbrella funds with one or several compartments are feasible under the Product Laws as well as several forms of investment vehicles (notably FCP, SICAV, SICAF) (see question 1.4 above).

Investment companies may be set up as: public limited liability company (société anonyme – “SA”); private limited company (société à responsabilité limitée – “SARL”); partnership limited by shares (société en commandite par actions – “SCA”); corporate limited partnership (société en commandite simple – “SCS”); or special limited partnership (société en commandite spéciale – “SCSp”). The SCSp has no legal personality and mirrors the Anglo-Saxon limited partnership. It is a very flexible corporate structure and a success story with over 2,000 SCPs launched since 2013. The limited partnership structures are the most used structures.

2.2 Please describe the limited liability of investors.

Liability of the limited partner/ordinary investor is generally limited to the amount committed/paid in to the fund. General partners’ liability is unlimited but manageable if set up as a corporate entity.

2.3 What are the principal legal structures used for managers and advisers of Alternative Investment Funds?

The principal legal structures used for investment managers and advisers in Luxembourg are the SA and the SARL, subject to the 1915 Law, the AIFM Law and/or the 2011 Law.

2.4 Are there any limits on the manager’s ability to restrict redemptions in open-ended funds or transfers in open-ended or closed-ended funds?

No legal provisions limit a manager’s ability to restrict redemptions. It is, however, market practice to provide for rules for occasional suspension of the net asset value (“NAV”) calculation and hence of the subscription, conversion and redemption, in certain prescribed and disclosed circumstances (e.g. a breakdown of communication devices/political instability/emergency). Suspensions must be communicated to investors by the AIFM in an appropriate manner. There is no distinction between open- and closed-ended AIFs in this regard.

Transfer of shares/units by investors to another investor are usually not restricted, except in commitment-based AIFs or in case of investor eligibility requirements (e.g. well-informed investors).

In corporate AIFs (other than SCS and SCSp), redemption at the request of investors is not possible.

2.5 Are there any legislative restrictions on transfers of investors’ interests in Alternative Investment Funds?

There are no legislative restrictions on transfers other than those resulting from the well-informed investor requirement (see question 3.6) in the SIF, SICAR and RAIF environment. (Also refer to question 2.4.)

2.6 Are there any other limitations on a manager’s ability to manage its funds (e.g. diversification requirements, asset stripping rules)?

AIFs subject to the 2010, SIF and RAIF Law are subject to risk diversification provisions. SICARs are limited as regards their investments (see questions 2.4 and 4.1). All AIFs managed by authorised AIFMs are subject to asset stripping rules.

3 Marketing

3.1 What legislation governs the production and offering of marketing materials?

Post-authorisation marketing of AIFs is governed by the Product Laws, the AIFM Law, CSSF circulars and/or CSSF regulations.

3.2 What are the key content requirements for marketing materials, whether due to legal requirements or customary practice?

The offering document of any AIF must include the information necessary for investors to be able to make an informed judgment of the proposed investment, in particular, of the risks attached thereto. Further content include: NAV computation; costs; expenses; subscription; redemption; conversion mechanisms; and AIFM Law requirements.

3.3 Do the marketing or legal documents need to be registered with or approved by the local regulator?

Core fund documents of regulated AIFs must be CSSF approved (offering document, articles of incorporation, etc.). Presentations, flyers, similar short-form marketing documentation need not be approved.

3.4 What restrictions are there on marketing Alternative Investment Funds?

SIFs, SICARs and RAIFs are reserved for well-informed investors only (see question 3.6). No restrictions apply to Part II Funds and Corporate AIFs, which may be offered to retail investors, unless there is specific legal prohibition.

AIFs subject to the 2010 Law, SIF, SICAR or RAIF Law are automatically authorised for marketing in Luxembourg. The marketing of Luxembourg non-regulated AIFs is limited to professional investors.

The AIFM Law contains detailed provisions applicable to marketing/distributing of units/shares of Luxembourg AIFs or non-Luxembourg AIFs by Luxembourg AIFMs and non-Luxembourg AIFMs in Luxembourg and abroad, respectively. Only authorised AIFMs benefit from the marketing passport, in order to market EU AIFs in Luxembourg, the AIFMs established in another Member State must be authorised under the AIFMD.

“Marketing”, under Luxembourg regulatory rules, means a direct or indirect offering or placement, at the initiative of the AIFM or on behalf of the AIFM of units/shares of an AIF it manages, to or with investors domiciled or with a registered office in the EU. Hence, any active marketing activities are covered by the term. Reverse solicitation, i.e. placement of AIF units/shares at the initiative of an investor, is not “marketing” and does not trigger AIFMD requirements.
3.5 Can Alternative Investment Funds be marketed to retail investors?

Only Part II Funds can be marketed to retail investors in Luxembourg (see above). Marketing of non-regulated EU AIFs is limited to professional investors.

EU AIFMs authorised in another EU Member State can market units/shares of EU AIFs they manage to retail investors in Luxembourg, provided (i) the EU AIF is subject to permanent supervision, and (ii) the EU AIF is furthermore subject in its home Member State to regulations offering a level of protection for investors, as well as to a prudential supervision considered by the CSSF as equivalent to that provided for in Luxembourg legislation.

The 2010 Law imposes additional conditions on the marketing of non-Luxembourg AIFs, including the appointment of a Luxembourg paying agent and prior authorisation by the CSSF.

3.6 What qualification requirements must be carried out in relation to prospective investors?

Investment in a SIF, SICAR or RAIF is reserved to “well-informed investors”, i.e.: (i) institutional; (ii) professional; or (iii) other investors who confirm in writing that they adhere to the status of “well-informed” investors and who either: (a) invest a minimum of EUR 125,000; or (b) have been assessed by a credit institution, an investment firm or a management company which certifies the investors’ ability to understand the risks associated with investing in the product.

3.7 Are there additional restrictions on marketing to public bodies such as government pension funds?

Luxembourg laws do not provide any specific restrictions.

3.8 Are there any restrictions on the use of intermediaries to assist in the fundraising process?

Luxembourg or foreign intermediaries may act as distributors, provided the latter are authorised by competent authorities to act as distributors of a Luxembourg AIF.

The use of nominees who act as intermediaries between investors and the AIF is possible.

3.9 Are there any restrictions on the participation in Alternative Investment Funds by particular types of investors, such as financial institutions (whether as sponsors or investors)?

Luxembourg law does not provide for any specific restrictions.

4 Investments

4.1 Are there any restrictions on the types of activities that can be performed by Alternative Investment Funds?

SICARs are restricted to direct and/or indirect investment in securities that represent risk capital, i.e. mainly high-risk investments made in view of their launch, development or listing on the stock exchange in various forms.

4.2 Are there any limitations on the types of investments that can be included in an Alternative Investment Fund’s portfolio whether for diversification reasons or otherwise?

Luxembourg AIFs are not restricted in terms of types of investments (except the SICARs – see above).

Diversification requirements apply to:
- SIFs and RAIFs (maximum 30% of their net assets or commitments in the same type of security issued by the same issuer); and
- Part II Funds (maximum exposure 20% of net assets).

4.3 Are there any restrictions on borrowing by the Alternative Investment Fund?

Luxembourg laws do not provide for any restrictions. However, AIFs must mention the level of borrowing and leverage in the offering document.

5 Disclosure of Information

5.1 What public disclosure must the Alternative Investment Fund or its manager make?

AIFs subject to Product Laws are required to produce and make available to investors an annual report. Part II Funds must publish an unaudited semi-annual report.

If mentioned in the documentation, the AIFM must publish the net asset value (or make it available to investors). Any other publication must be made in compliance with the offering document.

Luxembourg AIFMs are subject to transparency requirements towards investors and the CSSF, pursuant to the AIFM Law (e.g. information on conflicts of interest, liquidity risk, leverage, and remuneration policy).

5.2 What are the reporting requirements in relation to Alternative Investment Funds or their managers?

AIFs must communicate their annual reports to the CSSF and are subject to reporting requirements. AIFMs are subject to requirements towards the CSSF, notably on principal instruments, markets, exposures and concentrations in which they trade on behalf of the AIFs managed, details on the assets of the AIFs, including risk profiles, liquidity arrangements, overall level of leverage per AIF and acquisition by AIF of important holdings in non-listed companies.

The CSSF may require further information on an ad hoc basis if it is considered necessary to ensure the effective monitoring of systemic risk.

5.3 Is the use of side letters restricted?

The use is not restricted but subject to disclosure to investors via the AIF’s rules or incorporation documents to ensure fair treatment.
6 Taxation

6.1 What is the tax treatment of the principal forms of Alternative Investment Funds identified in question 2.1?

1. Part II Funds
   a) Subscription tax
      - annual subscription tax of 0.05%, calculated and payable quarterly on aggregate net assets valued on the last day of each quarter. The value of units representing assets held by an undertaking in other Part II Funds, having already paid the subscription tax, is exempt therefrom; and
      - reduced rate of 0.01% applies to undertakings the exclusive object of which is (i) the collective investment in money-market instruments, and (ii) the placing of deposits with credit institutions.

   b) Registration tax
      - upon their incorporation and upon any further corporate events (amendment of articles of incorporation or transfer of seat): fixed registration duty of EUR 75 (regardless of the number of compartments); and
      - none for Part II Funds organised as FCPs (since FCPs are contractual agreements without legal personality).

   c) Direct taxes
      Part II Funds are exempt from any Luxembourg income, withholding, capital gains or net wealth taxes.

   d) Value-added tax ("VAT")
      Pursuant to Circular no 723 of 29 December 2006, the Luxembourg tax authorities have expressly recognised that all investment funds are VAT-taxable persons (in the case of an FCP the management company is the VAT-taxable person). Consequently, Luxembourg VAT will be applicable under the reverse charge mechanism whereby a Luxembourg-based fund (or, in case of an FCP, the management company) receives services from suppliers located in other EU Member States.
      A VAT exemption (article 44 (1) (d) of the Luxembourg VAT law) is available to portfolio management services, investment advisory services and certain administrative services, while mere technical services, supervision and control services supplied by a depositary are not exempt services. The VAT exemption on administrative and management services is also available to outsourced services, provided that these services, strictly recharged, form a distinct whole and are essential functions to the exempt management services, thus leaving isolated technical supplies outside of the VAT exemption scope.
      Given the breadth of exemptions available, investment funds and their management companies will, in most cases, derive an almost 100% exempt turnover. For that reason, Circular no 723 denies them the possibility to deduct the input VAT they might have borne on non-exempt services.

2. SIFs and RAIFs
   a) Subscription tax
      SIFs and RAIFs (other than RAIFs investing exclusively in risk capital – see below): annual subscription tax of 0.01%, calculated and payable quarterly on their aggregate net asset value at the end of the relevant quarter. Exemptions available to certain institutional cash funds, pension pooling funds and microfinance funds as well as funds investing in other funds already subject to the subscription tax.

   b) Registration tax
      Incorporated SIFs and RAIFs are subject to a non-recurring registration duty of EUR 75 at the time of their incorporation and at the time of any other corporate event (e.g. amendments of articles).

   c) Direct taxes
      Luxembourg SIFs and RAIFs (other than risk capital RAIFs – see below) are exempt from Luxembourg direct taxes. Risk capital RAIFs may opt for a special tax regime similar to the SICARs. Hence RAIFs investing exclusively in risk capital, opting for this special tax regime, are fully subject to corporate income tax and municipal business tax but benefit from an exemption on any income from transferable securities, their transfer, contribution or liquidation, and are exempt from net wealth tax (except for the minimum net wealth tax of in principle EUR 4,815).

   d) VAT
      Regarding VAT, please refer to developments for Part II Funds.

6.2 What is the tax treatment of the principal forms of investment manager / adviser identified in question 2.3?

Investment management companies established in Luxembourg are subject to Luxembourg corporate income tax, municipal business tax and net wealth tax at standard rates. Their taxable base may, however, be reduced by various deductions. Fund management services supplied in Luxembourg are in principle exempt from VAT (see VAT rules in the context of Part II Funds).

Private portfolio managers and investment advisers are professionals and fall under the rules of individual taxation for independent activities.

A withholding tax of 20% is levied on the gross amount of the director fees, creditable against the director’s Luxembourg tax. Such withholding tax should be final for a non-resident director provided that the director fees do not exceed EUR 100,000 per year and constitute the only Luxembourg professional source income. It should be noted that with application from 1 January 2017, individuals who supply directorship services for consideration have the status of taxable persons for VAT purposes. However, such services might fall under the VAT exemption subject to certain conditions. Hence, a Luxembourg-resident independent director might be obliged to register for Luxembourg VAT and to file VAT returns reporting their supplies of directorship services.

The AIFM Law allows, under certain conditions (like the tax residency of the employee or the full return of committed capital to investors prior to payment to employees), the taxation of carried interest realised by certain employees of the AIF or the AIFM as “speculative income”, with an applicable tax rate of 25% of the average tax rate applicable to the adjusted income, i.e. a marginal income tax rate of 11.44% (including the employment fund contribution) as from 2017. The AIFM Law defines “carried interest” as a share in the profits of the AIF accrued to the AIFM as compensation for the management of the AIF and excluding any share in the profits of the AIF accrued to the AIFM as a return on any investment by the AIFM into the AIF.

The minimum corporate tax introduced for certain holding companies as of 1 January 2011 (further amended as of 1 January 2013) has been replaced by a minimum net wealth tax as of 1 January 2016, which may apply to management and advisory companies in certain circumstances. Depending on the assets of the management

b) Registration tax
Incorporated SIFs and RAIFs are subject to a non-recurring registration duty of EUR 75 at the time of their incorporation and at the time of any other corporate event (e.g. amendments of articles).

c) Direct taxes
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The minimum corporate tax introduced for certain holding companies as of 1 January 2011 (further amended as of 1 January 2013) has been replaced by a minimum net wealth tax as of 1 January 2016, which may apply to management and advisory companies in certain circumstances. Depending on the assets of the management
6.3 Are there any establishment or transfer taxes levied in connection with an investor’s participation in an Alternative Investment Fund or the transfer of the investor’s interest?

There are none.

6.4 What is the tax treatment of (a) resident, (b) non-resident, and (c) pension fund investors in Alternative Investment Funds?

No withholding tax is levied on distributions made by a regulated Luxembourg AIF to resident, non-resident or pension fund investors. Distributions made by an unregulated Luxembourg AIF to resident, non-resident or pension fund investors should be subject to a 15% withholding tax on the gross amount of dividends (unless availability of reduced rate or exemption under a DDT or the participation exemption regime).

Income distributed by the Luxembourg AIF should be taxed in the country of residence of the non-resident or pension fund investor. Capital gains realised by non-residents may only be taxed in Luxembourg (i) in case of unregulated AIFs, (ii) where no DDT is available, and (iii) under certain specific circumstances.

Luxembourg-resident individual or corporate investors have to declare their income in their annual tax return. Dividends distributed by and capital gains realised on a regulated AIF should be subject to corporate taxation at the level of the Luxembourg corporate investor, whereas such dividends and capital gains from an unregulated AIF may benefit from the participation exemption regime at the level of the Luxembourg corporate investor, under certain conditions.

Dividends distributed by an AIF to a resident individual investor are subject to the progressive tax rates depending on the investor’s annual income and matrimonial situation, the marginal income tax rate being 45.78% (including the employment fund contribution). Capital gains arising from the sale of AIF shares or units, other than speculative gains (realised within six months after acquisition), are exempt from taxation in the hands of a Luxembourg-resident individual investor, except if the investor holds more than 10% of the capital of the SICAV or SICAF, the 10% threshold being determined on the umbrella fund.

AIFs set up as FCPs are tax-transparent for direct tax purposes and directly receiving the corresponding income and capital gains.

6.5 Is it necessary or advisable to obtain a tax ruling from the tax or regulatory authorities prior to establishing an Alternative Investment Fund?

There is no requirement to obtain a tax ruling in Luxembourg prior to establishing an AIF. However, depending on complexity of the structure (e.g. the use of specific financial instruments or nonstandard structuring), it might be advisable to secure the structure with the Luxembourg tax authorities through a tax ruling. The tax ruling procedure is subject to an administrative fee ranging from EUR 3,000 to 10,000 depending on the complexity of the case.

6.6 What steps have been or are being taken to implement the US Foreign Account and Tax Compliance Act 2010 (FATCA) and other similar information reporting regimes such as the Common Reporting Standard?

Luxembourg and the USA signed the Intergovernmental Agreement Model 1 on 28 March 2014, amended by an exchange of notes signed on 31 March 2015 and 1 April 2015, ratified by the law of 24 July 2015. The first reporting obligations concerned the 2014 calendar year, which the Foreign Financial Institutions had to meet by 31 August 2015. The reporting for the 2015 calendar year and all following calendar years needs to be realised before 30 June of each following year.

As per the Common Reporting Standards (“CRS”), Luxembourg signed the OECD Multilateral Convention on Mutual Administrative Assistance in Tax Matters, which provides a legal basis for the automatic exchange of tax information and which was approved by the law of 26 May 2014. Luxembourg is part of the 53 “early adopters” of the OECD’s Common Reporting Standards. The reporting for the 2017 calendar year and all following calendar years needs to be realised before 30 June of each following year.

The CRS have been implemented at EU level by Directive 2014/107/ EU, transposed by the law of 18 December 2015. The reporting starting from the 2016 calendar year needs to be realised before 30 June of each following year.

6.7 What steps are being taken to implement the OECD’s Action Plan on Base Erosion and Profit-Shifting (BEPS), in particular Actions 6 and 7, insofar as they affect Alternative Investment Funds’ operations?

Luxembourg is actively implementing all of the OECD’s BEPS Action Plans through various domestic measures.


BEPS Action Plans 3 and 4 on CFCs and interest deductions are subject to an EU anti-tax avoidance directive adopted in July 2016, to be transposed by 31 December 2018.

BEPS Action Plan 5 on harmful tax practices led to the repeal of the previous IP Box regime in Luxembourg on 1 July 2016. A bill of law introducing a new IP Box regime was submitted to the Parliament on 4 August 2017. As of today the bill of law has not been approved.

With regard to (i) BEPS Action Plan 6 on treaty abuse, Luxembourg introduced a general anti-abuse rule when it transposed Directive 2015/121 amending the EU Parent-Subsidiary Directive, and (ii) BEPS Action Plan 7 on the prevention of artificial avoidance of permanent establishment status and BEPS Action Plan 14 on dispute resolution, Luxembourg implemented the new standards by signing the OECD’s multilateral instrument, which should enter into force three months after five countries have ratified, accepted and approved it.

BEPS Action Plans 8 to 10 on transfer pricing and Action Plan 13 on transfer pricing documentation and country-by-country reporting have been implemented through the amendment of Luxembourg transfer pricing regulation (in particular, by determining clearly the arm’s length remuneration between related parties) as from 1 January 2017 and through the non-public country-by-country reporting obligations applicable as from the financial year 2016.
6.10 Are there any meaningful tax changes anticipated in the coming 12 months?

The Council of the European Union on 13 March 2018 reached political agreement on a Council Directive introducing mandatory disclosure rules for intermediaries such as lawyers, accountants and tax advisers. Intermediaries must report potentially aggressive cross-border tax planning arrangements and arrangements designed to circumvent reporting requirements like CRS and ultimate beneficial ownership reporting. EU Member States’ tax authorities will exchange the information automatically within the EU through a centralised database.

The Council Directive must be transposed by 31 December 2019 and apply as from 1 July 2020. However, it will have retroactive effect, which means that starting in summer 2018, intermediaries and their clients should already monitor all tax advice provided with a cross-border dimension and all advice concerning reporting requirements to ensure that a future obligation to report can be properly fulfilled.

7 Reforms

7.1 What reforms (if any) are proposed?

No major reforms are currently proposed to impact directly AIFMs in 2018.

Acknowledgment

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