# Deloitte.



#### **Reserved Alternative Investment Funds (RAIF)**

The missing link December 2018

The ultimate tool to achieve alternative investment industry needs

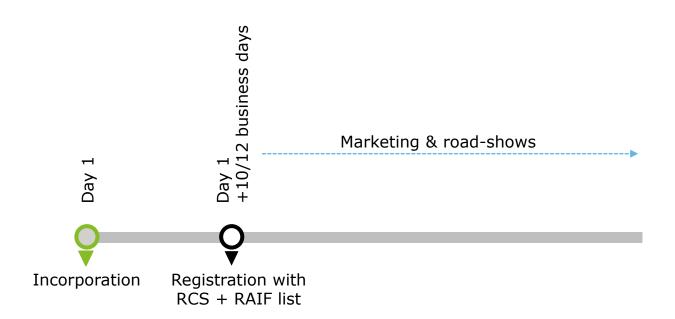
Why a new vehicle?

- Overlapping regulatory framework at product/manager level
- Reduction in the time to market
- Significant costs incurred
- SCS/SCSp/Soparfi regime does not allow segregation of risks and variable capital



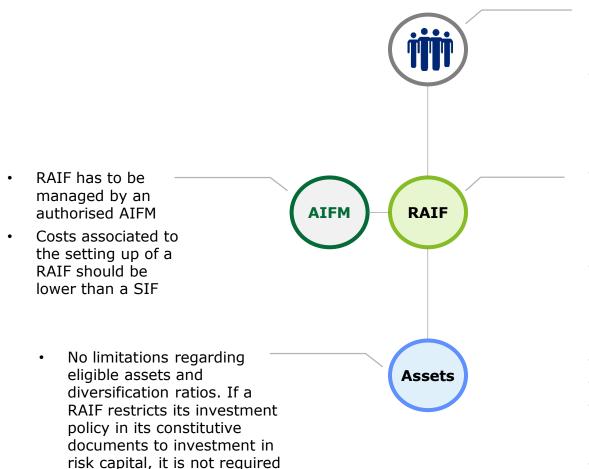
- Following strong lobbying from industry specialists to create a more **flexible mechanism** that is based on all currently available regimes, on 13 July 2016 the Luxembourg Parliament voted on a new law for the purpose of creating a **new type of alternative investment fund** in Luxembourg, the RAIF
- The law offers a mechanism "directly inspired" by the currently available fund regime

As from now on, projects can be launched...



- The vehicle will be an AIF that is not subject to the CSSF supervision, hence less time is required for setting-up
- The RAIF has to be managed by an authorised AIFM located in Lux/EU/3<sup>rd</sup> country (where AIFMD passport available)

Minimal rules should apply while benefiting from the AIFM status



- Targeted at institutional, professional or sophisticated investors - same eligible investors as a SIF
- Information disclosure to investors and annual report to be in line with AIFM rules, hence RAIF has to be included in reporting

Unregulated - not subject to the CSSF prior approval and/or supervision, however, as the AIFM is regulated the RAIF will be indirectly regulated

- It could be set up as a mutual fund (FCP), a SICAV (SA, SCA, SCS. SCSp, Sàrl ScoSA) or under a legal regime that is neither a FCP nor a SICAV
- Possibility to create sub-funds
- Fixed or variable capital
- Central Administration and Depositary Function should be established in Luxembourg
- RAIF will need to appoint an independent auditor

to operate under the

principles of risk spreading

# RAIF Points of attention

Even though the RAIF is not regulated, supporting documentation is required (subscription agreement, set-up documentation, depository agreement, etc.)

Role of the auditor in the structure and at the level of the RAIF is key/central

Distribution and marketing can be organized similarly to any other EU regulated investment vehicles

CSSF Circulars as reference and best practice

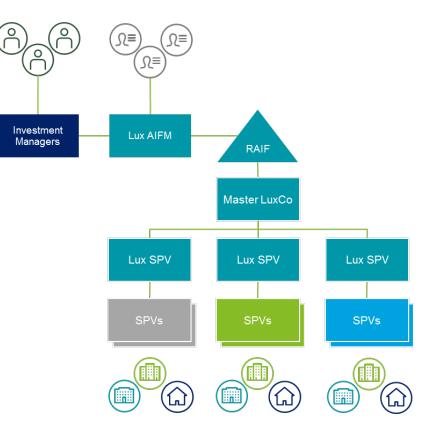
# A tax neutral fund vehicle relying on the existing SIF or SICAR regimes

SIF regime	<ul> <li>By default:</li> <li>Full CIT/MBT/NWT exemption or full tax transparency for FIAR FCP/SCS/SCSp</li> <li>No WHT on any distributions</li> <li>1bps subscription tax is applicable (with exemptions available similarly to SIFs)</li> <li>No tax on speculative capital gains for investors</li> </ul>
SICAR regime	<ul> <li>Alternatively, when investing in risk capital assets:</li> <li>Subject to CIT/MBT but any income from transferable securities and income from temporary investments (&lt;12 months) is exempt; or alternatively full tax transparency for RAIFs set-up as partnerships</li> <li>No subscription tax</li> <li>No WHT on any distributions</li> <li>No tax on speculative capital gains for investors</li> </ul>
VAT	No Luxembourg VAT on fees paid in consideration for the management of the AIF whether the RAIF is applying the SIF or the SICAR tax regime

# What is the right business model to operate going forward? A new tax environment requiring a change in the approach

- Tax residency is a critical element in determining the right to rely on certain tax benefits (treaty benefits or EU Directives):
  - Tax residency should be understood in accordance with international tax law principles (OECD), EU concepts (e.g. Principal Purpose Test) or ECJ case laws and foreign jurisdictions tax principles (e.g. GAAR, domestic case laws, etc.).
  - The final BEPS reports dated 5 October 2015 aimed at fighting certain tax optimization/avoidance strategies – made some precise recommendations re. the design of domestic rules to prevent treaty abuse.
  - The EU tightened its tax framework and followed some of the BEPS recommendations:
    - Amendment of EU Parent-Subsidiary Directive to introduce so-called GAAR (January 2015)
    - Directive on Common Reporting Standard (December 2014)
    - Directive on the exchange of information on crossborder ATA/APA (December 2015)
    - Directive on Country-by-Country reporting (May 2016)
    - ▶ Anti Avoidance Tax EU Directive (July 2016)
- A consolidated model whereby the AIF (pooling investors) and the SPVs (pooling all the investments) are in the same jurisdiction with a certain minimum level of substance/activities should allow to reduce the risk of challenges from a BEPS/foreign tax perspective and make the structure appear more robust.
- The RAIF vehicle could be one solution that fits into a wider strategy of sustainability of your fund structure. Expectation is that this new business model should meet the Principal Purpose Test, recommended by the EU in respect of action 6 and 15 of BEPS.

Example of a consolidated model (simplified chart)



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