

AED's updated AML/CFT Guide on obligations for RAIF

Insights - 31/05/2023

Luxembourg's Registration Duties, Estates and VAT Authority has issued an updated version of its Guide on professional obligations with regard to the fight against money laundering and terrorist financing for reserved alternative investment funds.

| Key highlights

1. The Guide clarifies the Registration, Duties, Estates and VAT Authority's (*Administration de l'Enregistrement, des Domaines et de la TVA* – the **AED**) expectations on the checks to be performed by a reserved alternative investment fund (**RAIF**) in the context of international financial sanctions (**IFS**) lists
2. The Guide clarifies the AED's expectations on the initial and ongoing due diligence process undertaken by a RAIF
3. The Guide clarifies the AED's expectations on the compatibility of functions between the person responsible for compliance with professional obligations, in regards to anti-money laundering (**AML**) and the countering of terrorist financing (**CFT**) (*le Responsable du respect des obligations en matière de lutte contre le blanchiment de capitaux et le financement du terrorisme (LBC/FT)* (the **RR**), and the AML/CFT compliance officer (the *Responsable du contrôle du respect des obligations en matière de LBC/FT*) (the **RC**)

| Background

Luxembourg investment funds are subject to compliance with the AML/CFT obligations under article 2-1 (8) of the AML/CFT Law^[1].

The AED is the supervisory authority of entities (including RAIFs) that are not subject to the supervision of another authority foreseen by the AML/CFT Law. The AED's updated Guide offers

further clarity for RAIF in meeting their obligations in AML/CFT matters) [2]. The Guide is of an indicative nature and describes the expectations of the AED in terms of AML/CFT obligations for RAIFs, with certain particularities further detailed below.

1. Obligations for RAIFs to consult IFS lists in the context of due diligence

The Guide clarifies the AED's expectations in relation to the requirements imposed by the AML/CFT Law and the additional requirements for a RAIF related to IFS introduced by the law of 19 December 2020 on the implementation of restrictive measures in financial matters (the **IFS Law**).

Within the framework of investor due diligence and adequate internal management, a RAIF must put in place, notably in terms of IFS screening, appropriate internal control procedures and measures to carry out all the necessary due diligence for the purposes of identifying and verifying the identity of the investor/representative and/or beneficial owner(s) on the basis of documents, data or information from reliable and independent sources.

A RAIF must verify, in line with the AML/CFT Law, the identity of the investor/representative and/or beneficial owner(s) against the natural persons and legal persons listed on IFS lists prior to entering into any business relationship or before carrying out any transaction. A RAIF must be able to demonstrate that it has performed these necessary checks. The AED expects RAIFs to keep consultable records of the checks performed against IFS lists.

When a RAIF becomes aware that an investor, representative, and/or beneficial owner(s) is or has been placed on an IFS lists, RAIF will need to apply enhanced due diligence requirements in accordance with article 3-2 of the AML/CFT Law. In addition, in such circumstances, a RAIF must also:

- notify the Ministry of Finance at the following address: sanctions@fi.etat.lu
- refrain from executing any transaction (i.e. no transaction can be accepted). The RAIF must immediately “freeze” the assets of the investor/beneficial owner

2. Clarifications on the AML/CFT due diligence process undertaken by the RAIF

Before classifying an investor into a risk category (for example. low, medium or high), a RAIF must consider all relevant risk factors. Risk indicators that lead to qualifying an investor as high-risk shall be identified and documented in the internal procedures.

The process of determining the risk profile of an investor is an ongoing process throughout the

existence of the business relationship and will take place, in particular, at the following points in time:

- a. when accepting the investor
- b. whenever an event justifies a review. The Guide clarifies that an amendment of the IFS lists constitutes a triggering event
- c. on a regular basis, depending on the risk. The Guide provides guidance on the periodicity of the review of a low-risk investor which can take place less frequently (for example, every two years) than for high-risk investors (every six months)

The Guide specifies that RAIFs must ensure that all risk information identified and communication by the international authorities on IFS matters should be incorporated in its own AML/CFT due diligence process.

3. The compatibility of functions between the RR and the RC

AML/CFT Law requires the appointment of both a RR and a RC for every RAIF.

The AED recalls that in terms of RR appointment, the RR can be the board of directors or any other governing body, depending on the legal structure of the RAIF (the **Board**), acting as the collegial body. Alternatively, the Board may appoint only one of its members as RR. If the Board acting collegially is the RR then one of the members of the Board may be appointed as the RC.

However, if the Board appoints only one of its members as RR, that same person cannot also be appointed as RC.

[1] Article 2-1 (8) of the law of 12 November 2004 on the fight against money laundering and terrorist financing (the AML/CFT) transposing Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 amending Council Directive 91/308/EEC on prevention of the use of the financial system for the purpose of money laundering, as amended (the **AML/CFT Law**)

[2] Guide des obligations professionnelles en matière de lutte contre le blanchiment et contre le financement du terrorisme – Pour le produit fonds d'investissement réservé ("FIAR"), Mars 2023, [guide-version-mars-2023-fonds-dinvestissement-alternatif-rserv.pdf \(public.lu\)](#)

About Ogier

Ogier is a professional services firm with the knowledge and expertise to handle the most

demanding and complex transactions and provide expert, efficient and cost-effective services to all our clients. We regularly win awards for the quality of our client service, our work and our people.

Disclaimer

This client briefing has been prepared for clients and professional associates of Ogier. The information and expressions of opinion which it contains are not intended to be a comprehensive study or to provide legal advice and should not be treated as a substitute for specific advice concerning individual situations.

Regulatory information can be found under [Legal Notice](#)

Meet the Author



[Anne-Gaëlle Delabye](#)

Partner

[Luxembourg Legal Services](#)

E: anne-gaëlle.delabye@ogier.com

T: [+352 2712 2039](tel:+35227122039)

Key Contacts



[Philippe Burgener](#)

Consultant

[Luxembourg Legal Services](#)

E: philippe.burgener@ogier.com

T: [+352 2712 2050](tel:+35227122050)



Arthur Mendegris

Associate

Luxembourg Legal Services

E: arthur.mendegris@ogier.com

T: [+352 2712 2098](tel:+35227122098)

Related Services

Regulatory

Related Sectors

Funds Hub