

Welcome clarity on the FCP-RAIF regime

News - 17/10/2019

The law of 16 July 2019 (the New Law) implementing in the Grand-Duchy of Luxembourg the Regulations on EuVECA, EuSEF, MMF, ELTIF and EU Securitisation, and amending the law of 23 July 2016 on Reserved Alternative Investment Funds (the RAIF Law), provided the opportunity for the legislator to further increase the attractiveness of RAIFs established under the form of common funds (FCP) by bringing specific legal uncertainties to an end.

Article 8 of the RAIF Law, as initially drafted and strictly construed, had the effect that only Luxembourg management companies governed by chapter 16 of the law of 17 December 2010 on undertakings for collective investment, as amended (the UCI Law) were allowed to act as management companies of FCP-RAIFs. The result, somewhat incongruously, was that Luxembourg UCITS management companies governed by chapter 15 of the UCI Law, which were able to manage an FCP subject to product laws, like an FCP-SIF, were not permitted to act as management company of an FCP-RAIF, even when holding an additional AIFM authorisation enabling them to act as external AIFM of the same FCP-RAIF.

Since there was no sound rationale to banning UCITS management companies from managing an FCP-RAIF, the New Law clarified that FCPs can be managed by Luxembourg management companies governed by chapter 15, 16 and 18 of the UCI Law.

Driven by a pragmatic approach aiming to accommodate the needs of market players, the New Law also clarified that FCP-RAIF can be converted into SICAV-RAIF and vice versa.

The New Law entered into force on 22 July 2019.

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