CHEVALIER & SCIALES
LUXEMBOURG LAW FIRM

Investment Management

Quarterly Newsletter

Q2 2022

April to June

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INVESTMENT FUNDS

'Direct engagement with the partners. Specialised in setting up investment funds in Luxembourg.'

'The team provides impressive responsiveness and an outstanding expertise in relation to investment fund matters.'

'The team is friendly, (not arrogant at all) and very open to work for new business opportunity, especially in the world of crypto/blockchain.'

'It is a human scale firm where you are not considered as a small client.'

'Olivier Sciales has the ability to translate "law-speak" into clear common language.'

BANKING, FINANCE & CAPITAL MARKETS

'Although the firm is undoubtedly best known for its investment funds expertise, Chevalier & Sciales also handles capital markets and securitisation work. Rémi Chevalier is the main contact.'

'Well-positioned to handle alternative funds, whether first-time managers or historical players, the firm advises on time-to-market vehicles with a high demand for RAIFs and SCSps. Concerning asset classes, Chevalier & Sciales practice covers a diversity of assets, such as PE and real estate and is increasingly active in relation to crypto, hedge and debt funds.'

'Chevalier & Sciales Litigation practice with values of certain litigations exceeding a billion US dollars, has successfully created a strong and reputable presence in the Luxembourg courts as well as abroad. Combining creative litigation strategies with business practicality, the boutique consistently resolves high-stake disputes for private entities, companies, and investors in sectors such as investment funds and private banking.'

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Investment management - Quarterly Update //

MANDATORY REPORTING FOR THE REAL ESTATE INCOME LEVY FOR LUXEMBOURG RAIFS, SIFS AND PART II UCIS

Following the introduction of a real estate income levy as of January 1, 2021, a reporting obligation applies to all reserved alternative investment funds (RAIFs), specialised investment funds (SIFs) and alternative investment funds (AIFs) that have legal personality (see below).

The real estate levy applies to the funds of these types that receive or realise income from real estate (immovable property as defined by the Civil Code) located in Luxembourg. The levy is an exemption from the tax provisions set out in the SIF law of February 13, 2007, the investment fund law of December 17, 2010, in particular Part II funds, and the RAIF law of July 23, 2016.

The *Prélèvement immobilier* circular from the director of the Direct Taxation Authority (PRE_IMM n°1) was published on January 20, 2022, informing investment vehicles about the levy and the related reporting obligation. The authority is in charge of supervision, assessment and collection of the levy.

Which investment funds are covered by the real estate levy?

The investment funds covered by the levy are those with a legal personality distinct from that of their partners (SA, SCA or Sàrl), covered by Luxembourg's legislation on Part II funds, SIFs and RAIFs, except for those constituted as a common limited partnership (SCS). Funds in the form of an SCS, SCSp or FCP are outside the scope of the levy.

What is the scope of the levy?

The levy applies to income from real estate located in Luxembourg, as defined below, received or earned by one of these investment vehicles, including when the income is received or realised indirectly by a fund through an FCP or transparent entity in which the investment vehicle holds shares or a stake in the course of the calendar year.

In addition, the receipt or realisation of income by a FCP or a transparent entity is also assessed directly and indirectly, as the income may be received directly or indirectly through one or more tax-transparent entities or FCPs.

What does income from real estate in Luxembourg mean?

Income from real estate is defined as income from the rental of real estate located in Luxembourg, any capital gain resulting from

the sale of a property in Luxembourg, or income from the disposal of shares.

What are the reporting and payment obligations?

The rate of the real estate levy is 20%. Investment funds subject to the levy must declare all income from real estate subject to the real estate levy, received or realised during the calendar year, to the interest income withholding tax office by May 31 of the following year. Thus reporting on income for 2021 must be made by May 31, 2022 at the latest and the levy paid by June 10, with no possibility of deduction or offsetting.

What does the notification obligation contain?

RAIFs, SIFs and Part II AIFs with legal personality (except for those constituted as SCS) have an obligation to report to the interest income withholding tax office for the years 2020 and 2021. They must report whether or not, during any time in 2020 or 2021, they owned real estate in Luxembourg, either directly or indirectly, through one or more tax-transparent entities or FCPs. The reporting obligation applies to funds even if they did not invest directly or indirectly in real estate.

The reporting obligation also apply to funds with a legal personality separate from that of their partners and covered by Luxembourg's Part II fund, SIF or RAIF legislation (except for SCSs) that changed their form during 2020 or 2021 to a fiscally transparent entity or to an FCP while they held at least one property in Luxembourg, either directly or indirectly through fiscally transparent entities or FCPs.

What is the penalty for non-compliance with the information obligation?

A fund that falls within the scope of the reporting obligation but fails to comply may be fined a flat-rate penalty of €10,000.

The Direct Taxation Authority's Circular PRE_IMM n°1 (in French) can be found at: https://impotsdirects.public.lu/dam-assets/fr/legislation/legi22/2022-01-20-PRE-IMM-1-du-2012022.pdf

NEW CSSF FAQ ON AML/CFT RC REPORTS FOR LUXEMBOURG INVESTMENT FUNDS AND MANAGERS

The CSSF published on March 18, 2022 a new frequently-asked questions document on the completion and transmission of the AML/CFT compliance officer's summary report, as defined in articles 42 (6) and 42 (7) of the amended CSSF Regulation 12-02 of December 14, 2012 on measures to curb money laundering and financing of terrorism.

Who is required to prepare and submit the report?

The compliance officer (in French, responsable du contrôle) of Luxembourg AIFMs, Luxembourg-domiciled investment funds that have appointed a foreign AIFM and self-managed funds are required to prepare the report and present it to the entity's management board, and submit it to the CSSF. The report must be dated and signed by the compliance officer (RC). It must be prepared even if the inquiries and due diligence carried out by the RC revealed no shortcomings.

When and how should the report be submitted?

The AML/CFT RC report must be submitted within five months following the end of the entity's financial year either via e-file or Sofie for entities subject to CSSF Circular 19/708, or via the edesk module for registered AIFMs.

What should the report contain?

The AML/CFT report should be a consistent and accurate description of the work performed by the RC and of related findings.

For entities subject to CSSF Circular 18/698, the report must at least:

- Results of the identification and assessment of money laundering and financing of terrorism risks and measures taken to mitigate them, as well as the AIFM's risk level tolerance.
- Results of due diligence conducted on clients, fund initiators, portfolio managers to whom management is delegated and investment advisers, including ongoing due diligence.
- Results of enhanced due diligence conducted on intermediaries acting on behalf of their clients in accordance with the provisions of article 3 of CSSF Regulation 12-02, including ongoing due diligence.
- Results of enhanced due diligence on individuals identified as politically exposed persons in according to article 3-2(4)(d) of the amended law of November 12, 2004 on money laundering and financing of terrorism.
- Results of due diligence conducted on

fund assets, including ongoing due diligence.

- Monitoring any positions blocked due to AML/CFT concerns in the registers of fund unit-holders and/or intermediaries involved in the marketing of funds.
- Periodic review of all business relationships according to their risk level.
- In cases of delegation of tasks relating to professional obligations to third parties, results of monitoring carried out on the compliance of services provided by the third parties, not only with legal and regulatory provisions but also the contractual provisions; and where relevant, reasons why the fund manager has chosen new third parties during the year.
- Statistical history concerning transactions identified as suspicious that inform the number of suspicious transaction cases reported to the Financial Intelligence Unit by the fund manager, as well as the total volume of funds involved.
- Statistical history concerning transactions reported due to financial sanctions relating to financing of terrorism and those relating to implementation of United Nations Security Council resolutions and acts adopted by the European Union as well as the volume of funds involved.
- The number of identified breaches of AML/CFT professional obligations, even if the number is zero.
- The number of AML/CFT actions carried out notably as a result of Circular CSSF 18/698, from the work of the RC, the internal audit, external audit or CSSF's inspections., with a description of the main actions, and the deadline for their implementation, under article 7(2) of the Grand-Ducal Regulation of February 1, 2010 and article 42(5) of CSSF regulation 12-02. If the number is zero, this must be clearly stated.

The report must be accompanied by documentation on the identification, assessment and mitigation of money laundering and financing of terrorism risks.

For entities not subject to CSSF Circular 18/698, the AML/CFT RC report should cover at least cover the following:

- Overall residual money laundering and financing of terrorism risk assessment, including risk appetite, identified risks and mitigation measures put in place, emerging risks and their severity in terms of impact.
- Results of AML/CFT due diligence on investors.
- Results of AML/CFT due diligence on high-risk clients such as politically exposed persons, if any.
- Results of AML/CFT due diligence on fund initiators, including group initiators.
- Results of AML/CFT due diligence on investment advisors, if any.
- Results of AML/CFT due diligence on distributors, if any.
- Results of AML/CFT due diligence on delegates and service providers such as registrars and transfer agents or external portfolio managers, if any.
- Results of AML/CFT due diligence on cross-border intermediaries, if any.
- Results of AML/CFT due diligence on assets.

- Results of AML/CFT due diligence on blocked accounts, if any.
- Results of targeted financial sanctions screening.
- Outcome of verification by the RC that all appropriate staff have been trained on AML/CFT issues.
- List of co-operation with Luxembourg authorities on AML/CFT issues.
- Dedicated money laundering and financing of terrorism shortcomings section, including remediation plan, if any.

What is the RC's liability in the event of failure to submit the report?

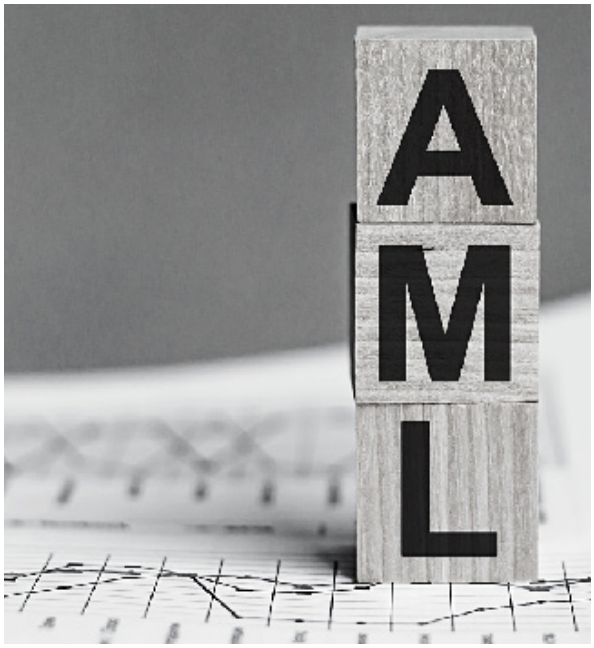
A professional who fails to provide the AML/CFT report may be subject to sanctions as detailed in article 8-4 of the amended AML law of November 12, 2004.

If a recently appointed RC identifies that the outgoing RC failed to file the annual AML/CFT report, the CSSF expects the incoming RC to ensure that the report is submitted. Additionally, if the new RC finds that the exiting RC has performed no AML/CFT due diligence, the CSSF expects the entity's board to submit a letter to explain the situation and the oversight performed by the board or compliance manager (RR) on the work of the outgoing RC.

What about entities being dissolved and placed in non-judicial liquidation?

Entities being dissolved and placed in non-judicial liquidation must submit the AML/CFT report to the CSSF until the effective start date of liquidation. AML/CFT reports are no longer required after the start of liquidation. However, since money laundering and financing of terrorism risks remain present during the liquidation, the liquidator is responsible for the entity's AML/CFT controls, notably regarding co-operation with the authorities.

The CSSF's FAQ can be found at: https://www.cssf.lu/wp-content/uploads/FAQ_RC_Report.pdf



SECURITY TOKENS NOW ADMITTED ON LUXEMBOURG EXCHANGE'S SECURITIES OFFICIAL LIST

What are security tokens?

The Luxembourg Stock Exchange defines security tokens as "financial instruments that are issued and exist on a distributed ledger, allowing for a fully digital issuance and servicing process. Financial instruments issued as security tokens offer investors similar investment characteristics to financial instruments issued in a more conventional way".

Issuance of financial instruments using distributed ledger technology – popularly known as blockchain – is intended to make transactions more secure and resilient. It offers the potential to improve efficiency and transparency in capital markets significantly as a growing number of market participants adopt the technology (see our article on the CSSF's white paper on risks and opportunities of blockchain at https://www.cs-avocats.lu/investment_management/cssf-publishes-white-paper-on-risks-and-opportunities-of-blockchain-technology/).

What is the benefit of registering a security token on the official list?

Registering a security token on the exchange's Securities Official List provides issuers with enhanced visibility. The security tokens and investors benefit from the dissemination of indicative prices and guaranteed access to the token's information notice.

What kind of security tokens can be admitted?

Only crypto-assets qualifying as debt financial instruments can be admitted on the official list for the time being. Security tokens cannot be traded on the regulated Bourse de Luxembourg market nor on the exchange-regulated Euro MTF market.

What conditions apply to the admission of security tokens on the official list?

Security tokens that qualify as debt instruments must be priced in fiat currency and offers must be limited to qualified investors as defined by the EU's Prospectus Regulation of June 14, 2017 and/or issued in wholesale denominations (i.e. €100,000). Only experienced issuers or applicants with a proven track record can use the new service. All security tokens must respect the Securities Official List rulebook and the exchange's guidelines for the registration of blockchain instruments on the Securities Official List.

What information should be disclosed when issuing distributed ledger technology securities?

The information notice should contain the following additional information:

- The processes.
- The distributed ledger technology used.
- Confirmation that a contingency procedure exists in the event of a failure in the distributed ledger technology that allows identification of securities holders, as well as a responsibility and liability statement.
- Reasoned confirmation that the financial instruments qualify as bonds or other debt securities issued by a company, a state or its regional or local authorities, or by an international public body, under the governing law of the instruments.
- Description of the parties involved in issuance, recording, safekeeping, transfer and verification of the financial instruments.
- Description of the payment process if such process encompasses the transfer of settlement tokens.
- Description of the risk factors linked specifically to the financial instruments, the settlement process and the underlying technology.
- Environmental considerations regarding the technology used.

What information on environmental considerations should be disclosed by the issuers of security tokens?

As a minimum, the information notice should state distributed ledger technology used, the consensus mechanism used by this blockchain, and how it is used, whether it provides specific environmental benefits or disadvantages, and/or reasons why this may not need to be considered. This information will be examined by LuxSE.

What are the next steps?

The exchange plans to adapt and improve its services to meet the needs of customers and the emergence of new technological opportunities. For example, the guidelines already cover the use of central bank money in tokenised forms as settlement tokens, although this is not yet available for the time being.

AED GUIDE ON THE AML/CFT PROFESSIONAL OBLIGATIONS FOR RAIFS

In order to prevent and raise awareness among reserved alternative investment funds ("RAIFs") which are all subject to the law on the fight against money laundering and terrorist financing of 12 November 2004, as amended from time to time (the "AML/CFT law"), the Administration de l'enregistrement, des domaines et de la TVA ("AED"), in its capacity as supervisory and control authority, has just published a guide, in order to better assist RAIFs in the implementation of their AML/CFT professional obligations (the "Guide"). The Guide has an indicative nature describing the minimum requirements for RAIFs. The purpose of the Guide is first and foremost to raise awareness among FIARs of the risks of money laundering and terrorist financing, but also to provide guidance to RAIFs to avoid transactions linked to risk of money laundering and terrorist financing, which could result in liability.

Access to the Guide (in French): https://pfi.public.lu/content/dam/pfi/pdf/blanchiment/prevention-et-sensibilation/guides/pour-en-savoir-plus/guide-version-2022-fonds-dinvestissement-alternatif-reserve.pdf

Should you need our assistance in respect of AML_CFT requirements for RAIF including RR and RC requirements, please contact our investment management team.

CSSF CIRCULAR 22/811 ON UCI ADMINISTRATORS

On May 16, 2022, the CSSF issued a new circular 22/811 regarding the authorisation and organisation of entities acting as UCI administrator (the "**Circular**") replacing Chapter D of Circular IML 91/75. The Circular clarifies the activity of UCI administrators by specifying the principles of sound governance, the CSSF requirements on internal organisation, and good practices applicable to them.

What are the activities covered by the Circular?

The UCI administration activity may be split into three main functions:

(i) The registrar function

The registrar function encompasses all tasks necessary to maintain the UCI's unit-/shareholder register. The reception and execution of orders relating to units/shares subscriptions, redemptions, and income distribution (including the liquidation proceeds) are part of the registrar function.

(ii) The NAV calculation and accounting function

The NAV calculation and accounting function covers legal and fund management accounting services, valuation, and pricing (including tax returns).

(iii) The client communication function.

The client communication function is comprised of the production and delivery of the confidential documents intended for investors.

To whom does the Circular apply?

The Circular applies to all entities carrying out the activity, or part of the activity, of UCI administration as listed above.

It should be noted that the following UCIs (undertaking for collective investment) and IFMs (investment fund managers) are eligible to act as UCI administrator :

- Management companies incorporated under Luxembourg law and subject to Chapter 15 of the Law of 17 December 2010 relating to undertakings for collective investment, as amended (the 2010 Law);

- Management companies incorporated under Luxembourg law and subject to Chapter 16 of the 2010 Law;

- Alternative investment fund managers authorised under Chapter 2 of the Law of 12 July 2013 on alternative investment fund managers, as amended (the 2013 Law);

- Foreign IFMs pursuing the activity of UCI administrator for UCIs established in Luxembourg;

- Regulated Luxembourg UCIs, for themselves but not to other UCIs.

Luxembourg reserved alternative investment funds (RAIFs) and non-regulated alternative investment funds (AIFs) are not within the scope of the Circular if they have internalised the UCI administration unless they use an external UCI administrator which is subject to the Circular.

The UCI administration activity may further also be performed by the following external service providers established under the Law of 5 April 1993 on the financial sector, as amended (the 1993 Law):

- Credit institutions authorised under Part I, Chapter 1 of the 1993 Law;

- Luxembourg branches of credit institutions governed by foreign laws and authorised under Part I, Chapter 3 of the 1993 Law;

- Registrar agents authorised under Part I, Chapter 2 of the 1993 Law;

- Client communication agents authorised under Part I, Chapter 2 of the 1993 Law, but only for the client communication function as described in section 2.2.5 of the Circular; and

- Administrative agents authorised under Part I, Chapter 2 of the 1993 Law, only for the NAV calculation and accounting function and

client communication function as described, respectively, in sections 2.2.4 and 2.2.5 of the Circular.

Before acting as an administrator for a given UCI, the preceding entities and service providers must assess whether the carrying out this activity by them is permitted, taking into account applicable legal provisions.

What are the requirements in terms of organisation?

The UCI administrator must have an adequate internal organisation (including an adequate and appropriate environment of control) and sufficient resources (e.g. human resources, technical infrastructure and IT means). The UCI administrator must act independently and be functionally and hierarchically separated from the depositary. Its name shall be disclosed in the offering documents of any UCI for which the UCI administrator acts in such capacity.

The UCI administrator's premises must be of sufficient size, adequate and secure. Access must be restricted to its staff and approved persons such as clients or visitors. To that effect, physical documents and records must be kept secure to warrant data confidentiality and protection. It is the responsibility of the UCI administrator to keep and safeguard physical records for the UCIs it services.

The data necessary to keep adequate records of the UCI's activity and encompassing the core UCI documentation shall be retained on a medium that allows for the storage of information in a way for it to be accessible for future reference by the UCI, the IFM when applicable, the statutory auditor of the UCI and the CSSF or any other national competent authority of the UCI. The UCI administrator must keep all accounting and other documents that constitute the core UCI documentation and are necessary to properly perform its obligations. The documents mentioned above of the UCI may be kept electronically by the UCI administrator. A UCI administrator must establish, implement and maintain systems and procedures that are adequate to safeguard the security (confidentiality, integrity and availability) of information, taking into account the nature of the information in question.

The UCI administrator must be organised so as to minimise potential or actual conflicts of interest. Where such conflicts of interest cannot be avoided, they must be disclosed to the management body of the UCI, its IFM, when applicable, and where appropriate and relevant, to investors in order to prevent them from adversely affecting the interests of those parties.

The UCI administrator may delegate to third parties (i.e. delegates) the performance of one or more of its UCI administration tasks (but is shall not create additional or increased risks for the UCIs, in particular legal or operational risks or be detrimental to it notably in terms of quality and/or costs). The delegation of tasks must be detailed in a dedicated written contract. The delegation of tasks does not relieve the UCI administrator of its responsibilities. In particular, with respect to the delegation in the area of

the NAV calculation and accounting function, any final NAV, respectively its publication, must be controlled and validated by the UCI administrator.

A written contract must be concluded between the UCI administrator and the UCI and/or the IFM, when applicable. The agreement must clearly state each party's roles, responsibilities, rights and obligations. Such contract must not prevent the UCI or its IFM, when applicable, from giving instructions at all times to the entity to which UCI administration functions have been delegated or from withdrawing the mandate with immediate effect when this is in the best interest of investors. The UCI administrator must grant a right of access for the UCI and, when applicable, the IFM, the statutory auditor of the UCI, the liquidator, the CSSF or any other national competent authority of a UCI, where applicable, to the documents and data relating to its administration upon simple request. Moreover, the UCI administrator must allow the UCI or its IFM, when applicable, to conduct on-site visits at a frequency and under the terms to be laid down in the contract for exercising its due diligence and ongoing monitoring activities. The UCI administrator must communicate proactively the information, documents and data necessary to perform its duties to the UCI or its IFM, when applicable.

When does the Circular come into force?

The Circular entered into force with immediate effect on May 16, 2022. However, the requirement of authorisation set in section 2.2.1 of the Circular does not apply to entities already acting as UCI administrator at the date of entry in force of the Circular.

Additionally, a grandfathering period until June 30, 2023 has been granted to entities already acting as UCI administrators at the date of entry in force of the Circular to comply with the remaining provisions of the Circular. Starting from June 30, 2023, the UCI administrators must also file their annual reporting regarding their business activities and resources at the latest five months after their financial year-end.

The Circular is available by clicking on the following link: https://www.cssf.lu/wp-content/uploads/cssf22_811eng.pdf

NEW REPORTING OBLIGATIONS FOR RAIFS AND UNREGULATED AIFS - UPDATE OF THE CRS FAQ BY THE LUXEMBOURG TAX ADMINISTRATION

Key takeaway

RAIFs and unregulated AIFs (e.g. SCSp and SCS) are now considered reportable financial institutions since they can no longer benefit from the exempt CIV status. They must file a (nil) report by 30 June 2022 to avoid penalties.

Introduction

On 4 April 2022, the Luxembourg direct tax administration ("ACD") updated its frequently asked questions ("FAQ") on the common reporting standard ("CRS"). Such FAQ now includes two new questions, providing a list of Investment Entities (I) and a clarification relating to the scope of the exempt Collective Investment Vehicle ("exempt CIV") status (II). They are important, in particular, for reserved alternative investment funds ("RAIFs") and unregulated alternative investment funds ("AIFs"). As a reminder, CRS is an automatic exchange of information relating to financial accounts in tax matters with the Member States of the European Union and the other partner jurisdictions of Luxembourg as implemented by the amended law of 18 December 2015 relating to the automatic exchange of information in tax matters ("CRS Law"). The CRS Law requires Reporting Financial Institutions ("RFIs") to declare some information in relation to certain accounts and the holders of such accounts. The RFIs are defined as all financial institutions which are not non-reporting financial institutions ("NRFIs"). One element of the definition of the

NRFIs is the exempt CIV status. Therefore, such exempt CIVs do not have to report to the ACD concerning CRS matters. The updated FAQ narrows the scope of the exempt CIV status, which was interpreted as including RAIFs and other unregulated AIFs until now.

Please find below the two Q&A of the ACD in the updated FAQ on CRS.

I) A non-exhaustive list of Investment Entities (Q 2.3)

Except in special circumstances, the following entities are, in principle, considered Investment Entities:

- any undertaking for collective investment subject to Part I or II of the amended law of 17 December 2010 relating to undertakings for collective investment;
- any specialized investment fund subject to the amended law of 13 February 2007 relating to specialized investment funds;
- any venture capital company governed by the amended law of 15 June 2004 relating to venture capital companies (SICAR);
- any securitisation undertaking subject to the authorisation and supervision of the Commission de Surveillance du Secteur Financier (the "CSSF") in accordance with the amended law of 22 March 2004 relating to securitisation;
- any RAIF falling within the scope of the amended law of 23 July 2016 relating to reserved alternative investment funds;
- any AIF whose management falls within the scope of the amended law of 12 July 2013 relating to alternative investment fund managers;
- any pension fund governed by the amended law of 13 July 2005 relating to institutions for occupational retirement provision in the form of SEPCAV and ASSEP;
- any pension fund governed by the amended Grand-Ducal Regulation of 31 August 2000 implementing Article 26, paragraph 3, of the amended law of 6 December 1991 on the insurance sector and relating to pension funds subject to the prudential supervision of the Commissariat aux assurances;
- any management company subject to part IV of the amended law of 17 December 2010 relating to undertakings for collective investment;
- any manager of alternative investment funds governed by the amended law of 12 July 2013 relating to managers of alternative investment funds; and
- any investment firm governed by the amended law of 5 April 1993 relating to the financial sector which carries out any of the following activities: (i) execution of orders on behalf of clients, (ii) portfolio management.

II) Unregulated entities such as RAIFs and other unregulated AIFs and the exempt CIV status (Q 2.4)

The ACD indicates in the FAQ that unregulated entities can no longer benefit from the exempt CIV status, as only entities directly supervised by the CSSF may opt for this status if the other applicable conditions are fulfilled. As a result of the answers mentioned above, the RAIFs and the unregulated AIFs should now submit every year a nil report to the ACD if there

is no CRS reportable account. Indeed, RAIFs and unregulated AIFs may not qualify as NRFI anymore. Therefore, RAIFs and unregulated AIFs qualifying as RFI must respect the reporting and due diligence CRS obligations. They should review their CRS qualifications and applicable CRS reporting obligations.

Based on the fact that neither the CRS law nor the ACD refer to the legal form of the entities, the same reasoning applies to unregulated AIFs under the form of a common limited partnership (société en commandite simple – SCS) or a special limited partnership (société en commandite spéciale - SCSp). RAIFs and unregulated AIFs should, in principle, have no CRS reportable accounts. If so, a nil report should be filed by 30 June 2022 for the two fiscal years 2020 and 2021 in order to avoid any penalties.

There are two types of penalties:

- a Luxembourg RFI omitting to comply with due diligence rules or to introduce procedures in view of reporting is liable to a penalty up to EUR 250,000; and

- a Luxembourg RFI omitting to file the required report or if it files a late, incomplete or inaccurate report, it may be liable to a penalty of 0,5% of the amounts that should have been reported, with a minimum of EUR 1,500.

GLOSSARY OF TERMS

AIF: Alternative Investment Fund as defined by article 1 (39) of the AIFM Law, namely collective investment undertakings, including investment compartments thereof, which (a) raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and (b) do not require authorization pursuant to article 5 of Directive 2009/65/EC (i.e. UCITS).

AIFMD: Directive 2011/61/EU on alternative investment fund managers.

AIFMD registration regime: An AIFM that wishes to make use of the registration regime must have assets under management of less than EUR 100 million, or EUR 500 million if it manages only funds closed for at least 5 years not using leverage.

AIFM: A legal person whose regular business is managing one or more AIFs.

AIFM Law: Luxembourg law of 12 July 2013 on alternative investment fund managers (transposing the AIFM directive into Luxembourg law).

AIFM Law threshold: the thresholds provided for in article 3 (2) of the AIFM Law.

CSSF: The Luxembourg Supervisory Authority of the Financial Sector *(Commission de Surveillance du Secteur Financier)*.

CLO: Collateralised Loan Obligation.

Company Law: The Luxembourg law of 10th August 1915 on commercial companies, as amended from time to time.

FCP: Common fund *(fonds commun de placement)*.

Part II UCI: Undertaking for collective investment established under Part II of the Luxembourg law of 17 December 2010.

RAIF: Reserved alternative investment fund *(fonds d'investissement alternatif réservé)*.

S.A.: Public limited liability company *(société anonyme)*.

S.à r.l.: Private limited liability company *(société à responsabilité limitée)*.

SAS: Simplified stock company *(société par actions simplifiée)*.

S.C.A.: Corporate partnership limited by shares *(société en commandite par actions)*.

SCoSA: Cooperative company organised as a public limited company *(société cooperative organisée comme une société anonyme)*.

SCS: Common limited partnership *(société en commandite simple)*.

SCSp : Special limited partnership *(société en commandite spéciale)*.

SICAF: Investment company with fixed capital *(société d'investissement à capital fixe)*.

SICAR: Investment company in risk capital *(société d'investissement en capital à risqué)*.

SICAV: Investment company with variable capital *(société d'investissement à capital variable)*.

SIF: Specialised investment fund *(fonds d'investissement spécialisé)*.

SPF: Private wealth management company *(société de gestion de patrimoine familial)*.

UCITS : Undertakings for collective investments in transferable securities.

Well-informed investors: A well-informed investor is an institutional investor, a professional investor or any other investor who has stated in writing that s/he adheres to the status of well-informed investor and invests a minimum of 125,000 Euro in the SIF/SICAR/RAIF, as applicable, or has been subject of an assessment made by a credit institution, by an investment firm or by a management company certifying his/her expertise, his/her experience and his/her knowledge to adequately appraise an investment in the SIF/SICAR/RAIF, as applicable.

HOW CAN WE ASSIST YOU?

Our team:

- Supports clients in finding appropriate investment vehicles to meet their requirements and goals from a marketing, regulatory and legal perspective.
- Introduces clients to service providers that meet their requirements, including custodian banks, AIFMs, fund administrators, registrars and transfer agents, auditors, paying agents and listing agents.
- Assists with the establishment of UCITS and alternative investments funds such as SIFs, RAIFs, SICARs, special limited partnerships (SCSp and common limited partnerships (SCS) as well as securitisation companies and securitisation funds including drafting of PPMs, assistance with incorporation of the fund, the general partner, carried interest vehicles, the co-investment vehicles and SPVs and regulatory filing with the CSSF.
- Assists with the migration of offshore funds to Luxembourg.
- Provides corporate support services throughout a fund's lifetime, including amendment of fund documents, restructuring, and launch or closure of sub-funds or share classes.
- Assists with changes of service provider.
- Assists with the clearing and the listing of shares, units, notes and bonds on the Luxembourg Stock Exchange's regulated or EURO MTF markets.
- Supports registration of the fund in other jurisdictions, in co-operation with local service providers.
- Advises on AIFMD-related issues.
- Advises fund promoters on domestic private placement rules for marketing their funds in Luxembourg.
- Keeps clients up to date with legal and regulatory developments.

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CHEVALIER & SCIALES
LUXEMBOURG LAW FIRM

Chevalier & Sciales is a Luxembourg law firm established 16 years ago with specialist expertise in investment management, corporate transactions, banking and finance as well as high-level litigation and dispute resolutions. Our dynamic litigation and transaction teams have an international reputation for bringing together excellence and intellectual rigour with a practical and business-minded approach in serving our clients.

Our aim is to offer a one-stop shop service to our clients and to provide tailoired solutions to meet their needs, responsively and cost-effectively. Our practice areas are structured to ensure a comprehensive understanding of our clients business and markets. We work with recognised tax experts and other service providers to provide you with the assistances and services you require through every aspect of your transactions and business.

Chevalier & Sciales is recommended and listed in the area of investment funds, litigation and dispute resolution and banking and finance.

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