

Luxembourg Update: Important Clarification for RAIFs for RR and RC Appointments

The Luxembourg indirect tax authorities (the "ITA") have published a FAQ¹ in relation to persons involved in AML / CFT for a Luxembourg reserved alternative investment fund ("RAIF") supervised by the ITA² for AML / CFT purposes (the "FAQ").

It clarifies that RAIFs are legally required to appoint two individuals responsible for AML / CFT:

- a "*responsable du respect des obligations*" ("RR"); and
- a "*responsable du contrôle du respect des obligations*" ("RC").

Background

On 25 November 2019, Luxembourg's financial regulator, the Commission de Surveillance du Secteur Financier ("CSSF"), published a similar FAQ³ in relation to Luxembourg funds and investment fund managers supervised by the CSSF for AML / CFT purposes. However, as RAIFs are not supervised by the CSSF, they did not fall within the scope of the FAQ.

Considering RAIFs have a number of similarities with funds supervised by the CSSF and in light of the findings of the national risk assessment in respect of the collective investment sector, the ITA has taken the opportunity to confirm that RAIFs are legally required to appoint both an RR and RC.

The ITA's authority stems from the law of 25 March 2020⁴, which amended the law of 12 November 2004⁵ on the fight against money laundering and terrorist financing (the "AML Law"). Under the AML Law, it is one of the supervisory authorities responsible for ensuring certain professionals, such as RAIFs, comply with their AML / CFT obligations.

Summary

The FAQ contains two questions and relevant responses:

- (a) Question 1 clarifies that RAIFs are legally required to appoint two different persons responsible for AML / CFT (a requirement which stems from Article 4(1) of the AML Law):
 - (i) One person from among the members of its management body or the management body itself (e.g. board of managers), i.e. RR; and
 - (ii) One person at the appropriate hierarchical level, i.e. RC. The RC of a RAIF may either be a member of the management body or a third party delegate.
- (b) Question 2 clarifies the criteria for appointment to the role of RR and RC.

¹ RR_RC Identification Form

² Luxembourg Registration Duties, Estates and VAT Authority (*Administration de l'enregistrement, des domaines et de la TVA - AED*)

³ FAQ CSSF - Persons involved in AML/CFT

⁴ Law of 25 March 2020 establishing a central electronic data retrieval system related to payment

⁵ Law of 12 November 2004 on the fight against money laundering and terrorist financing

UPDATE

The ITA imposes the same principles and conditions as imposed by the CSSF but clarifies further the RC's role and designates the RC as the ITA's primary contact.

A dedicated RAIF RC-RR identification form (together with explanatory notes) is available on the ITA's website⁶ and the completed form must be submitted to AED.finvehicles@en.etat.lu.

The FAQ only applies to RAIFs; it does not apply to unregulated funds. However, unregulated funds that are not subject to a product law remain subject to, and must comply with, their obligations under the AML Law.

For further information, please liaise with one of the person listed below or your usual Maples Group contact.

Luxembourg

Johan Terblanche

+352 28 55 12 44

johan.terblanche@maples.com

Michelle Barry

+352 28 55 12 47

michelle.barry@maples.com

Nelly Zhang

+352 28 55 12 68

nelly.zhang@maples.com

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⁶ [Questionnaire véhicules financiers non régulés](#)