

ashurst

Fund Finance Know your Borrower (Luxembourg)

BEHIND THE ACRONYMS

October 2021



Introduction

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We are considering making a subscription facility available to our client, a Luxembourg fund called XYZ Private Market SCSp SICAV-RAIF – Sub-fund 1. What does “SCSp SICAV-RAIF” stand for please?

A

A RAIF is an unregulated fund vehicle. It can be structured as an FCP or a SICAV with multiple compartments. It will usually take the form of an S.A., a S.à r.l. or a SCSp. Unlike a SIF, a RAIF is not authorised by the CSSF. It cannot be structured as a non-AIF and must be managed by an external AIFM.

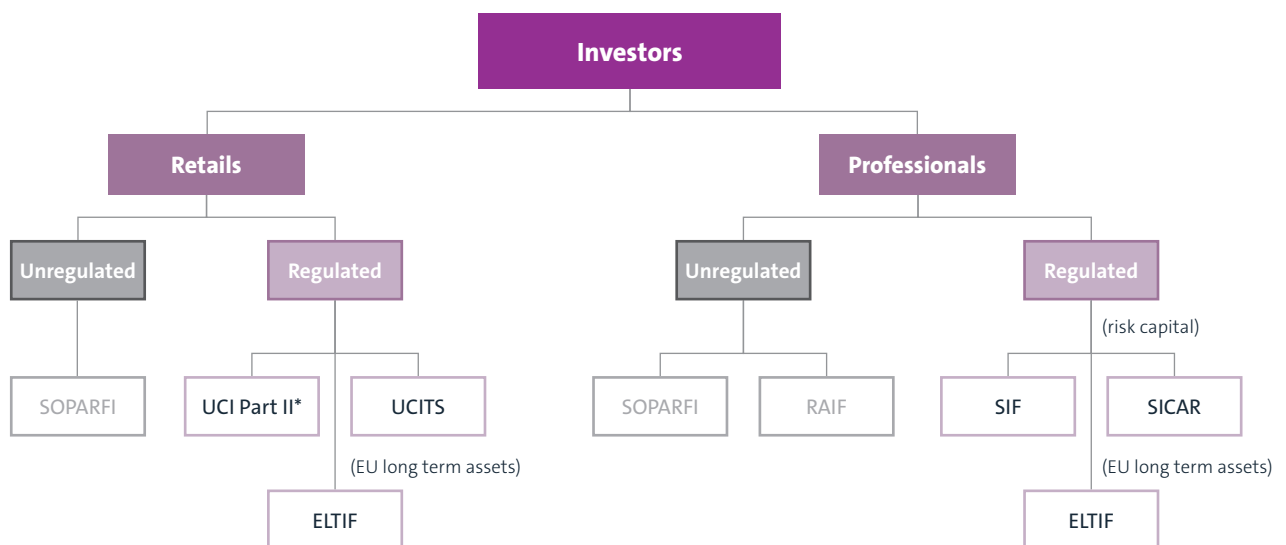
1

What were the factors determining the choice of structure?

Luxembourg offers a wide range of investment vehicles which combine separate legal forms (corporate or contractual forms), tax qualifications (transparent or opaque) and regulatory regimes (regulated or unregulated) depending on the targeted investors, the investment strategy and the marketing strategy of the proposed fund.

While legally correct, is this answer **really helpful?**

Let’s take a step back.
With whom are we dealing?



* But restricted in other EU countries to professional investor only

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Overview of the fund vehicles

Decoding fund names

It is easy to be overwhelmed by the number of acronyms associated with investment fund vehicles available in Luxembourg. To help you navigate the “alphabet soup” of acronyms, some of the key terms are defined below.

Corporate forms	SA	public limited liability company (managed by a board of directors)
	SARL	private limited liability company (managed by a board of managers)
	SCA	partnership limited by shares (managed by a general partner)
	SCS	common limited partnership (managed by a general partner)
	SCSp	special limited partnership (managed by a general partner)
Legal form	SICAV	investment company with variable capital (similar to an open-ended fund. The share capital of a SICAV is equal to its total NAV, making the subscription and redemption procedures easier)
	SICAF	investment company with fixed capital (similar to a closed-ended fund)
	FCP	common fund (co-ownership of assets managed by a management company. Due to its contractual form, an FCP is not subject to company law requirements)
Fund vehicles	AIF	alternative investment fund (generic term), i.e. vehicle which raises 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 which does not require authorisation
	SOPARFI	<i>Société de Participations Financières</i> (unregulated commercial company – the most common vehicle dedicated to holding and financing activities in Luxembourg)
	RAIF	Reserved Alternative Investment Fund (unregulated AIF managed by an authorised AIFM)
	Part II UCI	undertakings for collective investment (regulated fund that can be sold to retail investors subject to certain conditions)
	SICAR	Risk Capital Investment Company (regulated venture capital fund – limited to the direct or indirect contribution of funds to entities in view of their launch, development or listing on a stock exchange)
	SIF	Specialised Investment Fund (regulated multipurpose vehicle for alternative investments)
	UCITS	Undertakings for the collective investment in transferable securities (regulated retail funds)

Main features

An (non-exhaustive) overview of the various types of regulated and unregulated Luxembourg alternative fund vehicles can be found here.

	UNREGULATED VEHICLES		REGULATED VEHICLES		
	SOPARFI	AIF			
		RAIF	SICAR	SIF	Part II UCI
Most frequently used corporate forms	SA SARL SCA SCS SCSp	SA SARL SCA SCS SCSp FCP	SA SARL SCA SCS SCSp	SA SARL SCA SCS SCSp FCP	SA SARL SCA SCS SCSp FCP
Authorisation and supervision by the CSSF	No (or indirect supervision if an AIFM is appointed)	No (indirect supervision through the authorised AIFM)	Yes	Yes	Yes
Eligible investors	Unrestricted	Restricted to well-informed investors	Restricted to well-informed investors	Restricted to well-informed investors	Unrestricted
Eligible assets	Unrestricted	Unrestricted	Restricted to investments in risk capital	Unrestricted	Unrestricted
Umbrella structure	No	Yes	Yes	Yes	Yes
Fixed/Variable capital	No	Yes	Yes	Yes	Yes
Net asset value calculation frequency	Not required	At least once a year	Not required on a regular basis	At least once a year	At least once a month
Financial reports	<ul style="list-style-type: none"> Annual accounts to be approved within 6 months of the end of the period to which they relate (audited annual accounts may be required if certain thresholds are met) Not required for SCSp 	<ul style="list-style-type: none"> Audited annual report within 6 months of the end of the period to which it relates Where several compartments have been created, each will have to be separately referred to and detailed in the audited annual report of the RAIF 	<ul style="list-style-type: none"> Audited annual report within 6 months of the end of the period to which it relates Where several compartments have been created, each will have to be separately referred to and detailed in the audited annual report of the SICAR 	<ul style="list-style-type: none"> Audited annual report within 6 months of the end of the period to which it relates Where several compartments have been created, each will have to be separately referred to and detailed in the audited annual report of the SIF 	<ul style="list-style-type: none"> Audited annual report within 6 months of the end of the period to which it relates + unaudited half-yearly report Where several compartments have been created, each will have to be separately referred to and detailed in the audited annual report of the Part II UCI

	UNREGULATED VEHICLES		REGULATED VEHICLES		
	AIF		SICAR	SIF	Part II UCI
	SOPARFI	RAIF			
AIFM requirements	Yes, if set up as an AIF (internal AIFM if the legal form permits internal management or external authorised AIFM or registered AIFM)	Yes (external authorised AIFM required)	Yes (internal AIFM if the legal form permits internal management or external (authorised or registered) AIFM)	Yes (internal AIFM if the legal form permits internal management or external (authorised or registered) AIFM)	Yes (internal AIFM if the legal form permits internal management or external (authorised or registered) AIFM)
Required service providers	<ul style="list-style-type: none"> Statutory auditor (commissaire aux comptes) required for SA, SAS and SCA Independent auditor (réviseur d'entreprises agréé) required if certain thresholds are met 	<ul style="list-style-type: none"> Luxembourg depositary or Luxembourg branch of a depositary registered in the EU Central administration, registrar and transfer agency services provider based in Luxembourg Independent auditor 	<ul style="list-style-type: none"> Luxembourg depositary or Luxembourg branch of a depositary registered in the EU Central administration, registrar and transfer agency services provider based in Luxembourg Independent auditor 	<ul style="list-style-type: none"> Luxembourg depositary or Luxembourg branch of a depositary registered in the EU Central administration, registrar and transfer agency services provider based in Luxembourg Independent auditor 	<ul style="list-style-type: none"> Luxembourg depositary or Luxembourg branch of a depositary registered in the EU Central administration, registrar and transfer agency services provider based in Luxembourg Independent auditor

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Umbrella structure – who is my borrower?

Luxembourg law provides for the possibility for regulated investment funds and RAIFs to have ring-fenced compartments/sub-funds. Each compartment shall be treated as a separate entity. The rights/claims of investors/creditors relating to a specific compartment will be limited to the assets of such compartment.

As a result, if several compartments are set up within one fund, a loan taken by one compartment does not in principle trigger cross-obligations towards any other compartment of the same umbrella fund. Both the facility agreement and the security documents are then entered into on a limited recourse basis. In our example, only Sub-fund 1 of XYZ Private Market SCSp SICAV-RAIF will be the borrower.



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Are there any issues with AIFs taking on indebtedness, or granting security/guarantees, in respect of both their own obligations and supporting the obligations of parallel vehicles?

Depending on the type of investment vehicle involved, certain regulatory restrictions on borrowing (e.g. bridge/warehousing loans only) or on the ability to grant security or guarantees may apply.

Restrictions on borrowing

Generally, Luxembourg law does not impose specific restrictions on a fund's ability to borrow.

However, a UCITS may only borrow the equivalent of (i) in the case of an investment company, not more than 10 per cent of its net assets or, in case of a common investment fund (Fonds commun de placement – FCP), not more than 10 per cent of the value of the fund, provided in each case that the borrowing is on a temporary basis; and (ii) not more than 10 per cent of its net assets in the case of an investment company, provided that the borrowing is to make possible the acquisition of immovable property essential for the direct pursuit of its business.

Subject to exemptions, a Part II UCI may borrow the equivalent of up to 25 per cent of its assets.

Restrictions on the granting of security/guarantees

Except for UCITS and securitisation vehicles (SV), Luxembourg law does not impose specific restrictions on a fund's ability to grant security/guarantees.

UCITS are prohibited from acting as a guarantor on behalf of third parties.

SV may only grant security interests over their assets or guarantees in order to secure the obligations they have assumed in view of the securitisation or in favour of their investors (and not creditors). Security interests, guarantees and other similar arrangements created in violation of this restriction are void by operation of law.



Conclusion

Based on the above, we are now in a position to answer our initial question:

XYZ Private Market SCSp SICAV-RAIF – Sub-fund 1 is:

- ✓ **A segregated sub-fund of the umbrella fund XYZ Private Market SCSp SICAV-RAIF**

XYZ Private Market SCSp SICAV-RAIF is:

- ✓ **A reserved alternative investment fund, i.e. an unregulated entity (or indirectly regulated through its AIFM) reserved for professional investors;**
- ✓ **Established as an investment company with variable capital (open-ended); and**
- ✓ **In the form of a special limited partnership, i.e. transparent from both a corporate and fiscal perspective and represented by its general partner and/or AIFM (depending on the terms of the fund documents).**

Key Contacts

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