

Circular 17/2016 of the Chamber of Notaries

concerning reserved alternative investment funds



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Luxembourg, 2 August 2016

To the Notaries of the Grand Duchy of Luxembourg

Circular No. 17/2016

Concerning reserved alternative investment funds (RAIF)

Dear colleagues,

The law of 23 July 2016 on reserved alternative investment funds (RAIF) was adopted and published in *Mémorial* A No. 140 of 28 July 2016.

The Grand Ducal regulation setting out the terms of publication in the RESA was adopted on 1 August 2016 and published in *Mémorial* A No. 49 of 1 August 2016.

These new types of fund, which are not subject to CSSF authorisation, may take the following legal forms:

- fonds commun de placement (FCP)
- société d'investissement à capital variable (SICAV)
- any other legal form provided for under Luxembourg law. This includes, but is not limited to, the various forms of company under the law of 10 August 1915 on commercial companies, as amended.

Article 34 on the procedure for creating a RAIF stipulates:

“(1) The constitution of any reserved alternative investment fund shall be recorded in a notarial deed within 5 working days of its constitution.

(2) Within 15 working days of the ascertainment of their constitution by notarial deed, a notice regarding the constitution of the reserved alternative investment funds, with an indication of the AIFM which manages them pursuant to Article 4, shall be deposited with the register of commerce and companies in order to be published in the Recueil électronique des sociétés et associations, in accordance with the provisions of Title I, Chapter Vbis of the amended law of 19 December 2002 relating to the register of commerce and companies and the accounting and annual accounts of undertakings.

(3) Reserved alternative investment funds must be inscribed on a list held by the register of commerce and companies.

(4) This inscription must be made within 20 working days following the recording of the constitution of the reserved alternative investment fund by notarial deed.

The modalities of maintaining the aforementioned list and the information to be published in the Recueil électronique des sociétés et associations, in accordance with the provisions of

Title I, Chapter Vbis of the amended law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings are laid down by Grand Ducal Regulation.”

This article brings with it two new obligations for notaries:

1.) The creation of a RAIF must be recorded in a notarial deed within 5 working days of its occurrence.

As the terms of the law are of general application, this obligation applies irrespective of the form of the articles of association (notarised, i.e. *authentique*, or merely a private written agreement signed by the parties, i.e. *sous seing privé*).

In addition, the comments accompanying the law state that: “this text carries no implication that the constituting document, such as the partnership agreement of a limited partnership (*société en commandite simple* or SCS) or special limited partnership (*société en commandite spéciale* or SCSp) must take the form of a notarial deed or have been notarised. It is sufficient, following the signature of the constituting agreement by the parties, for the appointed manager to attest before a notary that the RAIF has been created (....)”

The Chamber of Notaries is of the opinion that the text of the record should mention not only the creation of the fund by means of filing a signed original/ certified copy of the constituting document with the notary, but also:

- the name of the fund,
- the date the fund was created,
- information identifying the management company of the fund (the registration number, if registered in the Luxembourg trade and companies register (RCS) or another register, the name, the legal form, the address of the registered office, etc.)
- the name of the constituting party(ies)
- the name, address and RCS number of the manager(s)
- the registered office
- the share capital of the RAIF
- the number of shares, the nominal value of the shares, the subscription and issue price of the shares, the method of payment,
- etc.

A certified copy of the constituting document should be attached to the deed recording the creation.

The Chamber of Notaries is of the opinion that, before signing the deed recording the creation, the notary should perform a genuine review of the form and substance of any privately signed constituting document (*acte sous seing privé*) with respect, in particular, to the identities of the parties, to the compliance of the document with the law in force (contributions, share capital, registered office, manager, etc.), to the capacity of all the signatory(ies) and to compliance with the law on the fight against money laundering and terrorist financing.

If the RAIF is created in the form of a commercial company (SA, S.à.r.l., SCA, etc.), the notary will also have to perform all of the necessary checks with a view to providing the notarial deed of

constitution. The attestation and the creation must be proven by two different notarial deeds (Article 34). In most cases, these two deeds will have been signed on the same day, by the same notary. If such was not the case, and the deed serving as the record of creation was either signed on a different day or prepared by a different notary, a new review must be performed by the notary in charge of the record of creation, as even minor changes may have been made.

Ideally, these two deeds will have been made, if not one after the other, then at least by the same notary.

2.) Within 15 working days of the deed recording the creation, the notice of the creation of the RAIF must be filed with the RCS for publication in the RESA.

Within 20 working days of the issue of a notarial deed recording the creation of the RAIF, it must be registered on the list kept by the trade and companies register.

The notarial deed recording the creation of the fund should therefore be filed as quickly as possible in order to ensure compliance with these obligations.

3.) The Chamber of Notaries is of the opinion that, for a notarial deed recording the creation of a RAIF, the notary should be entitled to collect a fee of EUR 1,250 (the same which applies to the constitution of a SICAV) in accordance with unofficial notarial rates.

The Chamber of Notaries refers you to the text of the law and regulation to gain a thorough understanding of the new legislation applicable to these funds.