

RCSL Circular 16/02

concerning reserved alternative investment funds



Please note that this is a non-official translation drawn up by Arendt & Medernach for information purposes only. In case of discrepancies between the French and the English texts, the French text, as published by the Luxembourg Trade and Companies Register (RCSL) shall prevail.

Luxembourg, 3 August 2016

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The purpose of this circular is to provide certain clarifications with respect to the procedure to be followed with the trade and companies register (*registre de commerce et des sociétés*, hereinafter the “RCS”) following the entry into force of the law of 23 July 2016 on reserved alternative investment funds.

For the purposes of this circular, the following definitions apply:

The **Law**: the law of 23 July 2016 on reserved alternative investment funds.

The **Grand Ducal Regulation (GDR)**: the Grand Ducal regulation of 23 January 2003 implementing the law of 19 December 2002 on the trade and companies register and the accounting as well as annual accounts of companies, as amended, most recently by the Grand Ducal regulation of 1 August 2016.¹

1) Registration of reserved alternative investment funds

As a rule, reserved alternative investment funds (shortened to “RAIF”) are to be registered in the RCS under the legal form chosen for their creation, and in the corresponding section.

Those RAIFs which are governed by Chapter 4 of the Law and which do not take any of the legal forms listed under Article 1 of the law of 19 December 2002 on the trade and companies register and the accounting as well as annual accounts of companies, as amended, must apply to be registered under the new section L specially reserved for this purpose.

At the time of their application for registration under this new section, RAIFs must submit the information indicated in Article 11 of the GDR, i.e.:

1. the name of the fund;
2. the date the fund was created;
3. for the management company of the fund:
 - if it is a legal entity that is not registered in the trade and companies register in Luxembourg, the name of the company, its legal form, the exact address of its registered office and its registration number in the relevant trade and companies register, if the country where the legal entity is based requires such a number, as well as the name of the register, as the case may be; or
 - if it is a legal entity that is registered in the trade and companies register in

¹ Published in *Mémorial A* No. 149 of 1 August 2016, p. 2543.

Luxembourg, only the registration number.

2) Publication of a notice of the creation of a RAIF

In accordance with Article 34(1) and (2) of the Law, a notice of the creation of a RAIF must be filed with the RCS so that it can be published in the *Receuil électronique des sociétés et associations* (RESA). This obligation applies to all RAIFs, no matter their legal form. Specifically, a notarial deed recording the creation of the RAIF and stating the identity of the manager of the RAIF must be added to the RAIF's file with the RCS so that it can be published in the RESA.

The RCS website has a specific filing section for this purpose, under *Dépôt de la mention de la constitution d'un FIAR* ("Filing a notice of the creation of a RAIF").

3) Entry of a RAIF on the list referred to in Article 34(3) of the Law

All RAIFs, no matter their legal form, must apply to be entered on a list kept by the manager of the RCS pursuant to Article 34(3) of the Law.

Under Article 11*bis* of the GDR, the request for entry must be made in paper form by registered letter to the manager of the RCS.

This letter must contain the following information:

- the name and address of the reserved alternative investment fund;
- the name of the management company;
- the date of the notarial deed recording the creation of the fund.

The notes provided by the trade and companies register (*registre de commerce et des sociétés*, hereinafter the "RCS"):

- are of a general nature and do not target the particular situation of any natural person or legal entity;
- are informative and explanatory in nature;
- are intended to answer some of the questions users of the RCS may have;
- are of no legal value and do not engage the RCS' liability in any way;
- may not be complete, exhaustive, accurate or up to date;
- do not constitute a professional opinion or legal advice;
- only reflect the views of the RCS with respect to certain questions, subject to any interpretation as may be given by the courts.