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Alternative Investment Funds

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1 Regulatory Framework

1.1 What legislation governs the establishment and operation of Alternative Investment Funds?

Two categories of legislation that are relevant for Luxembourg-based alternative investment funds ("**AIFs**") should be distinguished. The first category covers the managers of AIFs and consists principally in the law dated 12 July 2013 ("**AIFM Law**"), which transposes the Alternative Investment Fund Managers Directive 2011/61/EU ("**AIFMD**") into Luxembourg law.

The second category relates to the AIFs themselves, and due to the fact that Luxembourg AIFs existed a long time before the AIFMD was conceived, there are several laws covering specific types of AIFs:

- AIFs established pursuant to part II ("**Part II Fund**") of the law dated 17 December 2010 on undertakings for collective investment ("**Law of 2010**");
- specialised investment funds ("**SIFs**") pursuant to the law dated 13 February 2007 ("**SIF Law**");
- investment companies in risk capital ("**SICARs**") subject to the law dated 15 June 2004 ("**SICAR Law**");
- reserved alternative investment funds ("**RAIFs**") pursuant to the law dated 23 July 2016 ("**RAIF Law**"); and
- AIFs that are not established under any specific investment funds law and therefore only subject to the law dated 10 August 1915 on commercial companies ("**Law of 1915**").

Another specific type of AIF that can be established in Luxembourg is a European Long-Term Investment Fund ("**ELTIF**") subject to Regulation (EU) 2015/760, which was recently amended by Regulation (EU) 2023/606 of 15 March 2023 ("**ELTIF Regulation**").

In addition, the establishment and operation of AIFs is governed by a significant number of supranational rules (such as EU regulations) and guidelines (such as ESMA guidelines), but also local administrative regulations such as Circulars issued by the Luxembourg regulator, the *Commission de Surveillance du Secteur Financier* ("**CSSF**").

While, in principle, any AIF established in Luxembourg must be managed by an alternative investment funds manager ("**AIFM**") and is therefore at least indirectly impacted by the AIFM Law, there exist investment funds that invest in alternative asset classes but are not considered as an AIF as they benefit from an exemption set out in the AIFMD (e.g., funds with a single investor). Such funds are only subject to one of the abovementioned product laws.

1.2 Are managers or advisers to Alternative Investment Funds required to be licensed, authorised or regulated by a regulatory body?

Any AIF must appoint an AIFM, and this rule applies to all AIFs that qualify as such pursuant to the AIFM Law, irrespective of the different laws set out under question 1.1 to which they are subject. In principle, AIFMs have to comply with all rules of the AIFM Law, and must be licensed and supervised by a regulatory body. Such an AIFM does not have to be located in Luxembourg: the passport regime introduced by the AIFMD also allows an AIFM to be appointed to a Luxembourg AIF that is located in another EU Member State.

The AIFM Law, however, allows for an exemption in case of Luxembourg domiciled AIFMs with smaller assets under management. These are only subject to a simple registration with the CSSF and a duty to report the size of their assets under management. Such exemption for these so-called "registered AIFMs" is available if they manage AIFs with less than EUR 100 million (if using leverage) or less than EUR 500 million (AIFs that are closed-ended for at least five years and do not use leverage). This exemption is not available for RAIFs, which must always be managed by a fully licensed AIFM.

Entities that provide only investment advice to a Luxembourg AIF (as opposed to taking the investment decisions) and which are located in Luxembourg are subject to the law dated 5 April 1993 on the financial sector. In principle, they must apply for a licence to provide such services and are supervised by the CSSF. However, exemptions exist for entities that only provide services to a limited number of AIFs. Advisors that are not located in Luxembourg and do not provide services in Luxembourg are not subject to these requirements, and none of the specific investment fund laws requires such entities to be under regulatory supervision.

1.3 Are Alternative Investment Funds themselves required to be licensed, authorised or regulated by a regulatory body?

Part II Funds, SIFs, SICARs and ELTIFs must be authorised by the CSSF before they start operating. RAIFs and AIFs that are established pursuant to the Law of 1915 are not subject to any prior authorisation and are not directly supervised by the CSSF.

1.4 Does the regulatory regime distinguish between open-ended and closed-ended Alternative Investment Funds (or otherwise differentiate between different types of funds or strategies (e.g. private equity *vs* hedge)) and, if so, how?

All Luxembourg AIFs can be structured as an open-ended or closed-ended fund.

There are currently no rules relating to specific asset classes, and Luxembourg AIFs can therefore invest into any type of assets and pursue any type of strategy: plain vanilla stocks and bonds; private equity; venture capital; real estate; infrastructure; hedge; or the fast-growing segment of private debt including loan origination and syndication. Within one umbrella structure, several of these strategies can even be pursued within different dedicated and segregated compartments (see below question 2.1). However, in respect to loan-originating AIFs, the new Directive (EU) 2024/927 of 13 March 2024 amending Directives 2011/61/EU and 2009/65/EC ("**AIFMD II**") is already anticipated to be transposed into Luxembourg law. The AIFMD II requires the Luxembourg regulator to introduce stricter rules for AIFs with a loan origination strategy (see more under question 7.2 below).

The only current exception to such rule is the SICAR. It is limited to investments in risk capital as such term is defined in CSSF Circular 06/241, and is mainly used in the venture capital space.

At the level of an AIFM, however, the CSSF indeed grants licences based on the asset class of the AIFs that are intended to be managed.

1.5 What does the authorisation process involve for managers and, if applicable, Alternative Investment Funds, and how long does the process typically take?

The approval process for a fully licensed AIFM is complex, and should at least include the following documents:

- draft articles of incorporation;
- draft agreements with the main service providers;
- documentation of the proposed members of the board of the AIFM and its senior management;
- draft internal policies relating, among others, to conflicts of interest, liquidity management, risk management, AML/KYC, remuneration rules, etc.;
- information on the shareholding structure;
- information and documents in relation to the AIF(s) to be managed;
- various CSSF questionnaires; and
- business plan including capital requirements and structure chart.

Regarding AIFs, only Part II Funds, SIFs, SICARs and ELTIFs require the conducting of an approval process with the CSSF. The relevant filing must be made in writing, and for new AIFs and AIFMs (as opposed to existing AIF or AIFMs), it is mandatory to use the regulator's electronic platform "eDesk" for such purpose.

The main documents to be filed with the CSSF are the following:

- draft articles of incorporation, limited partnership agreement or management regulations (as the case may be);
- draft offering document;
- draft agreements with the main service providers;
- engagement letter of an independent auditor;
- documentation of the proposed members of the board of the AIF or its general partner (as the case may be);
- various CSSF questionnaires (concerning the investment policy, KYC information, etc.); and
- business plan and structure chart.

The CSSF can (and frequently does) request additional information and documents in relation to any approval procedure.

In terms of timing, on average six to nine months should be expected for the procedure with respect to an AIFM and four to five months between the filing and the approval of an AIF. Any licence extension for an AIFM or amendment of an AIF's documentation, however, are usually significantly less time consuming.

Once approved, the AIFM and the AIF will be entered onto an official list kept by the CSSF and which can be consulted on the regulator's website.

For each approval process, fees have to be paid to the CSSF. Their amount is set out in a Grand Ducal Regulation of 23 December 2022, and are split into a one-off fee and an annual fee.

1.6 Are there local residence or other local qualification or substance requirements for managers and/or Alternative Investment Funds?

The registered office and the central administration of any AIF or AIFM must be established in Luxembourg in order to qualify as a Luxembourg-based entity.

In terms of residency of the members of the managing body of any AIF or AIFM, there are no specific rules that require any of them to reside in or around Luxembourg. It is, however, recommended for the majority to be local in order to avoid foreign tax administrations challenging the nationality of the relevant entity.

In addition, the CSSF expects that, in principle, the staff of an AIFM that runs the day-to-day business (the so-called "conducting officers") has to reside in or around Luxembourg. With the transposition of the AIFMD II, this expectation will be formalised and introduced into the AIFM Law.

1.7 What service providers are required?

An AIF must at least appoint the following service providers:

- registered or authorised AIFM;
- management company (in case of an AIF established in the form of a *fonds commun de placement* ("**FCP**"));
- depositary and paying agent;
- central administration agent (typically includes registrar and transfer agent and domiciliation agent); and
- auditor.

In case of an AIF with a registered AIFM (see question 1.2), a depositary is not required and thresholds apply in respect to the necessity of a statutory auditor.

1.8 What rules apply to foreign managers or advisers wishing to manage, advise, or otherwise operate funds domiciled in your jurisdiction?

AIFMs established in the EEA may be appointed as AIFMs of Luxembourg AIFs, provided that they are authorised in their

home jurisdiction as such. Similarly, portfolio managers located in the EEA can manage Luxembourg AIFs as delegates of the AIFM by using their MiFID passport.

For third-country managers, there are a number of conditions in order to manage Luxembourg AIFs: (i) it has to be authorised in its home jurisdiction; (ii) it must be subject to the supervision of a regulatory authority; (iii) there must be a cooperation between the CSSF and such regulator ensured by a Memorandum of Understanding ("**MoU**"); and (iv) the supervisory regime needs to be considered as equivalent to the EU regime. For the AIFs under its supervision, the CSSF verifies these conditions as part of the approval process.

For investment advisors, please refer to question 1.2.

1.9 What relevant co-operation or information sharing agreements have been entered into with other governments or regulators?

Concerning AIFMs, and with the approval of the European Securities and Markets Authority ("**ESMA**"), the CSSF has entered into MoUs with 47 non-EU authorities. ESMA has published a list of such MoUs (https://www.esma.europa.eu/document/aifmd-mous-signed-eu-authorities).

The CSSF furthermore entered into several MoUs with supervisory authorities defining the terms of the cooperation between the authorities with respect to prudential supervision. The list of MoUs signed with EU and non-EU authorities is available on the CSSF's website (https://www.cssf.lu/en/european-and-international-cooperation/#memorandum-of-understanding).

Additionally, the CSSF entered into an MoU on the cooperation between the financial supervisory authorities, central banks and finance ministries of the EU on cross-border financial stability (https://www.cssf.lu/wp-content/uploads/MoU_2008_Final_1_June_2008.pdf).

Luxembourg also has a wide network of 89 double tax treaties, most of which include provisions of the Organisation for Economic Co-operation and Development (OECD) model agreement on exchange of information between tax authorities.

2 Fund Structures

2.1 What are the principal legal structures used for Alternative Investment Funds (including reference where relevant to local asset holding companies)?

Except for SICARs, all AIFs subject to specific product laws (Part II Funds, SIFs and RAIFs) can be established as a corporate vehicle or in a contractual form (FCP). The latter is similar to a trust structure and does not have a legal personality, therefore requiring a management company (typically its AIFM) to represent it. Investors in an FCP typically do not have voting rights, and FCPs are mostly considered tax transparent. For an ELTIF to be structured as an FCP it needs to be combined with a product law as listed above.

Several different corporate forms can be chosen: public limited company (*société anonyme* or "**SA**"); limited liability company (*société à responsabilité limitée* or "**Sàrl**"); partnership limited by shares (*société en commandite par actions* or "**SCA**"); special limited partnership (*société en commandite spéciale* or "**SCSp**"); or simple limited partnership (*société en commandite simple* or "**SCS**"). The choice between them depends on several factors such as investor participation, initiator control over the structure or investor tax status. The most frequently chosen types for AIFs are partnerships, either the SCA or SCSp.

AIFs that are not subject to specific product laws are typically established in the form of an SCS or SCSp, as these are usually considered to be tax transparent.

Over the last few years, the majority of AIFs have been established in the form of a RAIF or as a partnership (SCS/SCSp) that is not subject to a specific product law.

The establishment of asset holding companies is not provided for under Luxembourg law.

2.2 Do any of the legal structures operate as an umbrella structure with several sub-funds, and if yes, is segregation of assets between the sub-funds a legally recognised feature of the structure?

The establishment of an umbrella structure including an unlimited number of so-called "sub-funds" or "compartments" is available for Part II Funds, SIFs, SICARs and RAIFs regardless of whether they are structured as a corporate vehicle or FCP. Each compartment may pursue its own investment strategy, acquire its own assets and have its own distinct investors.

The assets of the established compartments are segregated from each other. Therefore, the performance of one compartment has no impact on other compartments. An AIFM and a depositary have to be appointed for the entire fund structure, but each compartment can choose a different portfolio manager or advisor.

The economies of scale and advantages in terms of time to market for adding further compartments have resulted in approximately 65% of Luxembourg funds choosing an umbrella structure.

2.3 Please describe the limited liability of investors in respect of different legal structures and fund types (e.g. PE funds and LPACs).

The liability of the investors in an AIF is generally limited to the amount they have invested or committed to invest.

In case of a partnership, the liability of the general partner is unlimited. However, typically corporate entities such as an Sàrl are chosen to act as general partner, so that the liability is *de facto* limited to the share capital of such company.

2.4 What are the principal legal structures used for managers and advisers of Alternative Investment Funds?

The majority of AIFMs and investment advisors that are located in Luxembourg are established in the form of an SA or Sàrl.

2.5 Are there any limits on the manager's ability to restrict redemptions in open-ended funds or transfers in open-ended or closed-ended funds?

There are no legal or regulatory restrictions for an AIFM or delegate portfolio manager (or general partner) to limit redemptions in open-ended funds. The conditions under which investors can request a redemption of their shares is set out in the fund documentation and must therefore be appropriately disclosed to investors. In particular, for AIFs investing into illiquid assets, it is market practice to provide for restrictions (in time and volume) of redemptions. For loan-originating AIFs, the AIFMD II obligatorily requires certain liquidity management tools.

The relevant AIFM or manager should establish a liquidity policy adapted to the AIF, in order to avoid a mismatch between

investor expectations and the liquidity of the AIF. In its report dated 3 February 2022, ESMA indicated that the assets and the fund structure have to be aligned, and both ESMA and the CSSF indicated that this topic will remain among their supervisory priorities in the future.

Similarly, there exist no restrictions in relation to transfers in open-ended or closed-ended funds.

2.6 Are there any legislative restrictions on transfers of investors' interests in Alternative Investment Funds?

There exist no legal or regulatory restrictions in this respect. The only exception is that for SICARs, SIFs and RAIFs, only well-informed investors can invest into such funds.

In view of the fact that the AIFM marketing passport is restricted to professional investors, the fund documentation of AIFs frequently sets out that non-professional investors are excluded.

2.7 Are there any other limitations on a manager's ability to manage its funds (e.g. diversification requirements, asset stripping rules)?

Part II Funds, SIFs and RAIFs (except for a RAIF with a SICAR regime) must comply with risk diversification requirements.

In principle, the maximum exposure to a single asset is limited to 20% in case of a Part II Fund, and 30% for a SIF or a RAIF. For AIFs with an umbrella structure, the risk-spreading requirements must be respected within each compartment. For AIFs investing into illiquid assets, a ramp-up and/or dis-investment phase is permissible during which diversification rules do not apply.

SICARs are not subject to any risk-spreading requirements. For ELTIFs, specific rules as laid out in the ELTIF Regulation apply.

AIFs that are established without using one of the abovementioned specific product laws are not subject to any legal or regulatory diversification requirements, but can define such rules themselves in their fund documentation.

All AIFs are subject to asset stripping rules as set out in the AIFM Law.

2.8 Does the fund remunerate investment managers through management/performance fees or by a combination of management fee and carried interest? In the case of carried interest, how is this typically structured?

The remunerations of the managers may be freely determined and must be disclosed to the investors. The management fee usually varies by the type of assets, based on the net or gross assets (which is often the case for open-ended AIFs) or a carried interest (which is often the case for closed-ended AIFs).

Carried interest – typically used for AIFs investing in illiquid assets including venture capital, private equity and/or private debt – often has a waterfall with a preferred return and a catch up.

3 Marketing

3.1 What legislation governs the production and use of marketing materials?

The main framework on how AIFs can be distributed in Luxembourg or in other EEA countries is set out in the AIFM Law. In addition, since 2 August 2021, EU Regulation 2019/1156 has defined further rules for the marketing of AIFs.

Luxembourg is the largest investment fund hub for AIFs in Europe. As a consequence, most of the AIFs domiciled in Luxembourg are distributed within the EEA, but also abroad in the United States or Asia.

3.2 What are the key content requirements for marketing materials, whether due to legal requirements or customary practice?

The AIFM Law sets out the information that every AIFM must disclose to potential investors for each AIF that it manages and markets. Such disclosure document must include the information necessary for investors to be able to make an informed judgment, which includes, *inter alia*, the following information:

- description of the investment strategy and objective of the AIF, including the procedures by which the AIF may change its investment strategy;
- description of the maximum level of leverage that the AIFM is entitled to employ on behalf of the AIF;
- description of the main legal implications of the contractual relationship entered into for the purpose of investment;
- identity of the main service providers of the AIF;
- description of all fees, charges and expenses and the maximum amounts thereof that are directly or indirectly borne by the investors;
- the latest net asset value of the AIF; and
- the latest annual report of the AIF.

In addition, further marketing material can be provided to investors. Said marketing material needs to be identifiable as such, describe the risks and rewards of the AIF, and be fair, clear and not misleading. It also must not contradict the abovementioned disclosure document.

3.3 Do the marketing or legal documents need to be registered with or approved by the local regulator?

There is no registration or approval requirement for any marketing in Luxembourg for those AIFs that are not subject to CSSF supervision (RAIFs and AIFs under the Law of 1915). However, if any AIF is intended to be marketed in other EEA countries based on the AIFMD marketing passport, a notification procedure needs to be initiated. In the course of such notification procedure, a number of documents such as the investor disclosure document will need to be provided to the CSSF in order to be sent on to the relevant foreign regulators.

For Part II Funds, SIFs and SICARs, please refer to question 1.5 for the documents that have to be approved.

3.4 What restrictions (and, if applicable, ongoing regulatory requirements) are there on marketing Alternative Investment Funds?

SIFs, SICARs and RAIFs can only be marketed to "well-informed investors". Such term is understood to include institutional investors, professional investors within the meaning of MiFID II or any other investor that has either invested a minimum amount of EUR 100,000 or received an assessment from a bank or other financial service provider that confirms its expertise, experience and knowledge for the relevant investment.

Part II Funds and ELTIFs are not restricted to well-informed investors and can therefore also be marketed to retail investors in Luxembourg.

3.5 Is the concept of "pre-marketing" (or equivalent) recognised in your jurisdiction? If so, how has it been defined (by law and/or practice)?

In Luxembourg, the concept of pre-marketing is regulated by the law of 21 July 2021 that implements Directive (EU) 2019/1160 on cross-border distributions of collective investment funds ("**Directive (EU) 2019/1160**") as well as by Regulation (EU) 2019/1156 on facilitating cross-border distribution of collective investment undertakings ("**Regulation (EU) 2019/1156**").

Pre-marketing is defined as providing information or communication, direct or indirect, on investment strategies or investment ideas by an AIFM or on its behalf to investors to test their interest in an AIF that is not yet established. Such pre-marketing is subject to a notification requirement by the relevant AIFM to the CSSF within two weeks of it having begun pre-marketing. In addition, such pre-marketing cannot be a substitute for marketing in that it must not amount to distributing subscription documents or be sufficient to allow investors to commit to acquiring shares of the relevant AIF. Furthermore, if draft offering documents are provided, pre-marketing has to include a note that it should not be understood to be an offer to subscribe, and that its content is preliminary and cannot be relied upon.

It is not necessary for the relevant AIFM to notify the competent authorities in the countries where such pre-marketing takes place of the content or of the addressees of pre-marketing.

Any subscription by professional investors within 18 months of the start of such pre-marketing will automatically count as the result of marketing, thereby excluding the possibility of reverse solicitation for such time.

3.6 Can Alternative Investment Funds be marketed to retail investors (including any specific treatment for high-net-worth individuals or semi-professional or similar categories)?

Part II Funds and ELTIFs can be marketed to retail investors in Luxembourg. They may also be marketed to retail investors in other jurisdictions, subject to compliance with the applicable local rules.

SIFs, SICARs and RAIFs are restricted to well-informed investors. These could also be high-net-worth individuals provided they comply with the definition of such term (i.e., investing a minimum of EUR 100,000 in the case of a SIF, SICAR or RAIF).

However, as any cross-border marketing based on the AIFMD marketing passport is restricted to professional investors, any such marketing to such individuals would need to comply with the applicable local rules.

3.7 What qualification requirements must be met in relation to prospective investors?

Please refer to question 3.4 above.

3.8 Are there additional restrictions on marketing to public bodies such as government pension funds?

There are no restrictions on marketing to public bodies in Luxembourg. It should, however, be mentioned that if an investment fund is exclusively marketed to such bodies, it would not qualify as an AIF and therefore be exempted from the provisions of the AIFM Law.

3.9 Are there any restrictions on the participation in Alternative Investment Funds by particular types of investors (whether as sponsors or investors)?

There exist no restrictions on participation in AIFs by particular types of investors.

3.10 Are there any restrictions on the use of intermediaries to assist in the fundraising process?

In case such intermediaries act as distributors, they must have a licence to provide such services from the competent regulator. With respect to pre-marketing on behalf of an AIFM, only MiFID investment firms, credit institutions, UCITS management companies or other AIFMs are allowed to perform such services.

4 Investments

4.1 Are there any restrictions on the types of investment activities that can be performed by Alternative Investment Funds?

Part II Funds, SIFs and RAIFs with a SIF strategy can invest in any type of assets, subject to risk-spreading requirements (see question 2.7 above). SICARs and RAIFs with a SICAR strategy must invest their funds in risk capital as such term is defined in CSSF Circular 06/241. ELTIFs can only invest in eligible assets as laid out in the ELTIF Regulation.

4.2 Are there any limitations on the types of investments that can be included in an Alternative Investment Fund's portfolio, whether for diversification reasons or otherwise?

Please refer to question 2.7 above.

4.3 Are there any local regulatory requirements that apply to investing in particular investments (e.g. derivatives or loans)?

Please refer to question 4.1 above.

With regard to loans, Luxembourg AIFs can grant such loans (loan origination), syndicate these or otherwise invest in loans, without requiring any additional banking licence. However, the transposition of the AIFMD II in Luxembourg will set out further limits on AIFs with a loan origination strategy.

There are a number of specific risk diversification requirements for Part II Funds and ELTIFs investing.

4.4 Are there any restrictions on borrowing by the Alternative Investment Fund?

There are no provisions in Luxembourg law that restrict borrowing by AIFs.

Pursuant to the AIFM Law, the level of borrowing as well as the maximum level of leverage calculated pursuant to the commitment method and the gross method must be disclosed to investors. In addition, AIFMs managing AIFs with substantial leverage have specific reporting duties to the CSSF in this context.

The transposition of the AIFMD II will bring about a new leverage limit for loan-originating AIFs.

Specific leverage limits also apply to ELTIFs.

4.5 Are there are any restrictions on who holds the Alternative Investment Fund's assets?

No such restrictions exist in Luxembourg.

5 Disclosure of Information

5.1 What disclosure must the Alternative Investment Fund or its manager make to prospective investors, investors, regulators or other parties, including on environmental, social and/or governance factors?

For investment funds managed by a fully licensed AIFM, disclosures as described in question 3.2 need to be made. Furthermore, the agreements with the AIF's service providers and its constitutional documents (articles of incorporation or limited partnership agreement) are usually made available to investors.

AIFs that are managed by a registered sub-threshold AIFM are not subject to such disclosure requirements, even though, in practice, such documents are often produced.

Since the entry into force of Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial sector ("**SFDR**"), additional disclosure requirements on the webpage of the AIFM and the pre-contractual documents of the AIF (i.e., the offering document) have to be respected.

The following information must be disclosed on the AIFM's webpage:

- information about the AIFM's policies on the integration of sustainability risks in its investment decision-making process; and
- a statement on whether the AIFM considers principal adverse impacts ("**PAIs**") of investment decisions on sustainability factors and, in case PAIs will not be considered, clear reasons why the AIFM does not consider PAIs.

Furthermore, the pre-contractual documents (i.e., offering document) must include a disclosure on how sustainability risks are integrated in the investment decisions.

Additionally, since the entry into force of Regulation (EU) 2020/852 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, further disclosure requirements must be met in the pre-contractual documents (i.e., offering document) of the AIF. In particular, the European Commission has adopted the SFDR Regulatory Technical Standards ("**SFDR RTS**"), which applied from 1 January 2023. The SFDR RTS has subsequently been amended and a draft of the revised SFDR RTS was published on 4 December 2023 but has not yet been approved.

5.2 Are there any requirements to provide details of participants (whether owners, controllers or investors) in Alternative Investment Funds or managers established in your jurisdiction (including details of investors) to any local regulator or record-keeping agency, for example, for the purposes of a public (or non-public) register of beneficial owners?

The Luxembourg law dated 13 January 2019 requires that information on the beneficial owners of every entity registered with the Luxembourg Trade and Companies Register must be published in the register of beneficial owners. This also applies to AIFs established in the form of FCPs or SCSps, despite their lack of legal personality.

For those AIFs under direct supervision of the CSSF, the regulator requires knowledge of the owner, controller and initiator of such AIFs.

5.3 What are the reporting requirements to investors or regulators in relation to Alternative Investment Funds or their managers, including on environmental, social and/or governance factors?

Registered AIFMs only need to report to the CSSF information on the main instruments in which they are trading and on the principal exposures and most important concentrations of the AIFs that they manage.

Authorised AIFMs must ensure that an annual report with a number of financial and other details is made available for each financial year for each AIF that they manage and market. It must be provided no later than six months from the end of the financial year to investors upon request and to the CSSF, plus the home Member State of the AIF.

Authorised AIFMs are furthermore subject to regular reporting requirements to the CSSF, which include (i) the principal instruments and markets in which they trade, (ii) the principal exposures and most important concentrations, (iii) the main categories of assets, and (iv) the risk profile and risk management systems employed.

AIFs that are exclusively subject to specific product laws are also required to produce an annual report and make it available to investors. Part II Funds must additionally provide an unaudited semi-annual report to investors.

For AIFs that either promote environmental or social characteristics or that have sustainable investments as their primary investment objective, AIFMs must include in their periodic reports the following information:

- the extent to which environmental and social characteristics are met; and
- the overall sustainability-related impact of the financial product by means of relevant sustainability indicators.

5.4 Is the use of side letters restricted?

The use of side letters is not restricted by Luxembourg law. However, the provisions of the fund documentation with respect to the use of side letters and the principle of equal treatment of investors must be respected, as provided for by the AIFM Law (if the relevant AIF is subject to such law). It is the CSSF's administrative practice for AIFs under its supervision to prohibit side letters that deviate from the constitutional documents of the AIF as submitted to the CSSF.

6 Taxation

6.1 What is the tax treatment of the principal forms of Alternative Investment Funds and local asset holding companies identified in question 2.1?

In general, Luxembourg provides a favourable tax treatment for AIFs.

Part II Funds

Part II Funds are not subject to income tax or net wealth tax. Furthermore, distributions of Part II Funds to their investors are not subject to Luxembourg withholding tax and are not taxable if received by non-residents.

Part II Funds are subject to an annual subscription tax of 0.05% calculated on the aggregate net assets of the Part II Fund as valued on the last day of each quarter. The Law of 2010 provides for a number of exemptions from the subscription tax, for instance, in case the Part II Fund holds its assets in another Luxembourg fund that was already subject to the subscription

tax. Furthermore, the Law of 2010 provides for reduced rates of the subscription tax ranging from 0.04% to 0.01%. The reduced rates depend on specific circumstances and thresholds with respect to sustainable economic activities.

In 2021, a lump sum real estate levy of 20% on gross income derived from real estate located in Luxembourg and realised by Part II Funds was introduced. Luxembourg funds that do not invest in Luxembourg real estate are not affected by the real estate levy.

SICAR

A SICAR incorporated in the form of a joint stock company (i.e., Sàrl., SA or SCA) is fully taxable as an ordinary company at standard rates (i.e., 24.94% for Luxembourg City). As a result, it may benefit from applicable double tax treaties and domestic exemptions. The SICAR, however, benefits from an exemption on income from risk-capital securities, as well as income from the transfer, disposal contribution or liquidation of such securities. Other kinds of income remain fully taxable at the level of the SICAR. The SICAR is subject to the minimum net wealth tax.

SIF and RAIF

A SIF is not subject to any income tax or wealth tax in Luxembourg, meaning that the income and assets of a SIF are tax exempt in Luxembourg. Distributions by a SIF to its investors are not subject to withholding tax in Luxembourg. A SIF is liable to an annual subscription tax at the rate of 0.01% on its net assets. The annual subscription tax is payable quarterly on the basis of the net consolidated asset value as of the end of the preceding calendar quarter.

In certain cases, an exemption from the subscription tax may apply in Luxembourg. In this respect, (i) assets being invested in other Luxembourg-based undertakings for collective investment ("**UCIs**"), SIFs and RAIFs subject to the subscription tax, (ii) certain institutional cash funds, (iii) microfinance funds, and (iv) pension pooling funds, should be exempt from the Luxembourg subscription tax. In addition, the Toolbox Reform, as mentioned in question 7.2, promotes the development of new European products such as ELTIFs, by amending the existing subscription tax (*taxe d'abonnement*) regime.

In principle, the tax regime applicable to a RAIF, in whatever corporate form, is the same as that applicable to a SIF.

In specific cases and if the RAIF qualifies as a vehicle investing exclusively in venture capital in accordance with its corporate purpose, the vehicle can be subject to a different tax regime. RAIFs opting for this special tax regime are subject to the same tax regime as SICARs, i.e., being fully subject to corporate income tax and municipal business tax as well as the minimum net wealth tax. However, income from transferable securities, their transfer, contribution or liquidation is exempt in the hands of a SICAR, meaning that the taxable basis of a SICAR should be nil in most cases. It is to be noted that the option for the SICAR regime applies to the RAIF at the fund level. Consequently, all compartments of a multicompartment RAIF are subject to the same tax regime and it is not possible to apply the SIF regime to some compartments whereas others would benefit from the SICAR regime.

In 2021, a lump sum real estate levy of 20% on gross income derived from real estate located in Luxembourg and realised by SIFs and RAIFs was introduced. Luxembourg funds that do not invest in Luxembourg real estate are not affected by the real estate levy.

VAT treatment of AIFs

In accordance with European Court of Justice ("**ECJ**") case law, the Luxembourg tax authorities have expressly recognised that all investment funds are in general VAT-able persons. However, Luxembourg AIFs do not have an input VAT deduction right with regard to their fund management activities.

A VAT exemption applies for services qualifying as fund management services. As further detailed by ECJ decisions and Circulars from the Luxembourg VAT administration, this exemption covers administrative services outsourced to third-party providers, to the extent they are specific to and essential for the management of the funds.

Other services supplied to Luxembourg AIFs could potentially trigger VAT and require the VAT registration of the AIF in Luxembourg to self-assess the VAT regarded as due in Luxembourg on taxable services (or goods to some extent) purchased from abroad. Such VAT is a final cost at the AIF's level as the fund has no right to deduct input VAT.

No VAT liability in principle arises in Luxembourg in respect of any payments by the fund to its shareholders to the extent such payments are linked to their subscription to the fund's shares, and do not therefore constitute the consideration received for any taxable services supplied.

6.2 What is the tax treatment of the principal forms of investment manager/adviser identified in question 2.4?

Investment management companies established in Luxembourg are not subject to any specific tax regime. If incorporated as a standard joint stock company (i.e., an Sàrl), Luxembourg investment management companies are subject to income tax and municipal business tax at standard rates (i.e., a combined rate of 24.94% for Luxembourg City). Furthermore, Luxembourg investment management companies are subject to net wealth tax of 0.5% on their net assets (0.05% being applicable on the portion of the net assets exceeding EUR 500 million). Depending on the level of intra-group fees linked to the investment managers' activities, transfer pricing considerations would need to be tailored in.

Private portfolio managers and investment advisors are professionals and fall under the rules of individual taxation for independent activities.

In general, the share of profits paid by an AIF and received by AIFM employees is taxable as miscellaneous income, i.e., either as ordinary income (with a tax rate up to 45.78% for 2023), or as extraordinary income (with a tax rate up to 22.89% for 2023). However, if the employee satisfies certain conditions, the carried interest would be taxable at one-quarter of the global tax rate only.

Fund management services supplied in Luxembourg are in principle exempt from VAT (please refer to question 6.1 above).

6.3 Are there any establishment or transfer taxes levied in connection with an investor's participation in an Alternative Investment Fund or the transfer of the investor's interest?

No such taxes are applicable in Luxembourg.

6.4 What is the local tax treatment of (a) resident, (b) non-resident, and (c) pension fund investors (or any other common investor type) in Alternative Investment Funds?

Distributions by Part II Funds, RAIFs and SIFs are in general not subject to withholding tax regardless of the investor type. Also, distributions by an unregulated Luxembourg AIF in the form of an SCS/SCSp are not subject to withholding tax based on the tax transparency of an SCS/SCSp.

Under the current legislation, non-resident investors are not subject to any capital gains, income, estate, inheritance or other taxes in Luxembourg (with the exception of Luxembourg non-residents who, either alone or together with their spouse, partner and/or minor children, directly or indirectly, at any time within the five years preceding the disposal, hold more than 10% of the shares or units of a Luxembourg AIF and who dispose of all or part of their holdings within six months from the date of acquisition; or, in some limited cases, Luxembourg non-residents who have been Luxembourg residents for more than 15 years and have become non-residents less than five years before the disposal of the shares or units of a Luxembourg AIF who, either alone or together with their spouse, partner and/or minor children, directly or indirectly, at any time within the five years preceding the disposal, hold more than 10% of the shares or units of the Luxembourg AIF).

Luxembourg resident individual or corporate investors have to declare income received from a Luxembourg AIF in their annual tax return.

Dividends and other payments derived from a Luxembourg AIF received by resident individuals who act in the course of either their private wealth or their professional/business activity are subject to income tax at the progressive ordinary rates. A gain realised upon the sale, disposal or redemption of shares or units in a Luxembourg AIF by Luxembourg resident individuals acting in the course of the management of their private wealth is not subject to Luxembourg income tax, provided this sale, disposal or redemption took place more than six months after the shares or units were acquired or the disposal of the shares or units did not precede the acquisition and provided the shares or units do not represent a substantial participation.

Dividends received and capital gains realised by a Luxembourg corporate investor on shares or units in a Luxembourg AIF should be subject to corporate income tax.

The Law of 2007 and the Law of 2016 provide for exemptions from the subscription tax in case the shares or units of the Luxembourg AIF are reserved for institutions for occupational retirement provisions, or similar investment vehicles, established on the initiative of one or more employers for the benefit of their employees and companies of one or more employers investing funds they hold in order to provide retirement benefits to their employees.

6.5 Is it necessary or advisable to obtain a tax ruling from the tax or regulatory authorities prior to establishing an Alternative Investment Fund or local asset holding company?

It is not required or advisable to obtain a tax ruling from the Luxembourg tax administration prior to establishing an AIF. The Luxembourg ruling regime foresees the option to receive a confirmation at the request of the taxpayer of the correct application of the Luxembourg tax laws, and therefore to provide certainty to the concerned taxpayer with respect to its future tax liability. The ruling cannot by itself, however, provide for an exemption or reduction of the taxes due.

Further, the Luxembourg indirect tax administration, in charge of levying the subscription tax, does not allow advance tax agreements.

Finally, the number of rulings filed in Luxembourg has significantly decreased. This is a general downward trend that continues to be confirmed year after year.

6.6 What steps have been or are being taken to implement the US Foreign Account Tax Compliance Act 2010 (FATCA) and other similar information reporting regimes such as the OECD's Common Reporting Standard?

On 28 March 2014, Luxembourg signed an intergovernmental agreement regarding the automatic exchange of information between the Luxembourg and US tax administrations within FATCA, Model 1 ("**Lux IGA**") in order to implement FATCA in Luxembourg. The Lux IGA was transposed into Luxembourg domestic law by the Luxembourg Parliament (*Chambre des Députés*) on 1 July 2015, with the ratifying law dated 24 July 2015.

Luxembourg is signatory to the Common Reporting Standard ("**CRS**") and has implemented the automatic exchange of information in tax matters as of 1 January 2016.

Luxembourg implemented the fifth amendment to Directive 2011/16/EU as regards mandatory automatic exchange of information in the field of taxation in relation to reportable cross-border arrangements with the law of 25 March 2020 ("**Luxembourg DAC 6 Law**"). The Luxembourg DAC 6 Law is largely based on the wording of the Directive.

As per the Luxembourg DAC 6 Law, all transactions whose first steps were implemented after 25 June 2018 are in scope of a potential reporting obligation. Such reporting would, however, only need to take place in case of cross-border transactions, specifically transactions involving more than one EU Member State or transactions involving an EU Member State and a third country.

Furthermore, transactions that fall within the scope of at least one hallmark as provided for in the Appendix to the Luxembourg DAC 6 Law will need to be disclosed to the Luxembourg tax authorities by the relevant intermediary or taxpayer. Hallmarks A to C1 are subject to an additional main benefit test. However, very little guidance is given as to the interpretation of a "main tax benefit", thus giving room to different application of these hallmarks between Member States.

The Luxembourg tax authorities issued guidelines providing input on the main benefit test as well as certain hallmarks. These guidelines have been expected for a long time and were very welcome as regards interpreting the application of DAC 6.

6.7 What steps have been or are being taken to implement the OECD's Action Plan on Base Erosion and Profit Shifting (BEPS), in particular Actions 2 (hybrids/reverse hybrids/shell entities) (for example, ATAD I, II and III), 6 (prevention of treaty abuse) (for example, the MLI), and 7 (permanent establishments), insofar as they affect Alternative Investment Funds' and local asset holding companies' operations?

Luxembourg implemented various changes to align its laws with the BEPS Action Plan. Luxembourg also implemented ATAD 1, which deals with controlled foreign companies, anti-hybrid and interest deduction limitation rules, into Luxembourg tax law on 1 January 2019.

The hybrid rules under ATAD 2 were transposed into Luxembourg national law with effect as of 1 January 2020, extending anti-hybrid mismatch rules to certain arrangements. The rules with respect to reverse hybrid mismatches under ATAD 2, which specifically have a certain relevance for unregulated AIF structures involving transparent company forms such as an SCS/SCSp, entered into force as of 1 January 2022.

The future of the ATAD 3 proposal is still unclear due to a missing agreement for the approval of the proposal at the level of the Council of the European Union at the current

stage. Investment funds set up as AIFs or Part II Funds were specifically excluded from the scope under the ATAD 3 proposal in its latest version.

Luxembourg has signed and ratified the MLI. For Luxembourg purposes, the MLI entered into force on 1 August 2019. Hence, as of now, each tax treaty signed with Luxembourg will have to be interpreted in conjunction with the MLI provisions in case the countersigning country has also ratified the MLI.

6.8 What steps have been or are being taken to implement the OECD's Global Anti-Base Erosion (GloBE) rules, insofar as they affect Alternative Investment Funds' and local asset holding companies' operations? Do the domestic rules depart significantly from the OECD's model rules, insofar as they affect Alternative Investment Funds' and local asset holding companies' operations?

Luxembourg implemented the Council Directive ensuring a global minimum level of taxation for multinational groups in the Union in order to implement the OECD Pillar Two in the EU. The rules apply as from the fiscal years starting on or after 31 December 2023. Luxembourg law follows the EU Pillar Two Directive and the OECD Model Rules, which set out the rules of the Income Inclusion Rule ("**IIR**"), Undertaxed Payment Rule ("**UTPR**") and the Qualified Domestic Minimum Top-up Tax ("**QDMTT**"), introducing a 15% minimum effective rate.

Luxembourg law foresees several exclusions, potentially applying to regulated investment funds and real estate investment funds under specific conditions. As a result, investment fund structures are not entirely carved out from the Pillar 2 rules.

6.9 Are there any tax-advantaged asset classes or structures available? How widely are they deployed?

In general, and independently from a specific asset class or specific structure, Luxembourg AIF structures have a rather favourable tax regime. The tax treatment of an individual structure should be analysed on a case-by-case basis and depends on several factors, such as the underlying assets and the investor's status and residency.

6.10 Are there any other material tax issues for investors, managers, advisers or AIFs?

Access to double tax treaties as entered into between Luxembourg and other countries by Luxembourg AIFs is not always straightforward and a case-by-case analysis should be performed. The Luxembourg tax administration issued a Circular on 8 December 2017, establishing a list of double tax treaties where Luxembourg fund structures can – expressly or implicitly – claim treaty benefits.

6.11 Are there any meaningful tax changes anticipated in the coming 12 months other than as set out at question 6.6 above?

A potential implementation of ATAD 3 into Luxembourg national law will need to be closely monitored. The impact on Luxembourg fund structures and especially on holding companies is unclear under the latest version of the ATAD 3 proposal.

Given the complexity of the taxation mechanisms under Pillar 2, it will need to be further checked how this will impact Luxembourg fund structures.

7 Trends and Reforms

7.1 What have been the main trends in the Alternative Investment Funds space in the last 12 months?

Luxembourg remains the top investment fund centre in Europe with around EUR 5,400 billion of assets under management in regulated products and second globally and acting as the leading global distribution centre for investment funds with 77 countries where Luxembourg funds are sold. As a consequence, interest in the market for AIFs and AIFMs, and in particular the RAIF as well as unregulated partnerships (i.e., SCS and SCSp), remains very high. Both products have a short time to market and offer great flexibility in terms of structuring.

In terms of asset classes, debt funds in particular have continued to grow over the last few years. Due to the growing reticence of banks, resulting from their capital requirements, to finance SMEs, an increased need for alternative financings can be observed.

Since the entry into force of the SFDR, the increase in the number of ESG and impact funds has been ongoing. As a result of pressure from both investors and legislators, it appears certain that sustainable finance products will become a major trend in the investment funds industry in general. Luxembourg is the leader for sustainable funds in Europe. The CSSF will continue to monitor compliance with the sustainability-related provisions as set forth under SFDR, the SFDR RTS and Regulation (EU) 2020/852 (the Taxonomy Regulation).

With respect to ELTIFs and the major update to the ELTIF Regulation, given the fact that most of the already existing ELTIFs have been established in Luxembourg, substantial growth is expected. Some of the most important amendments are relaxed regulations for ELTIFs distributed solely to professional investors, lighter retail investor requirements, a broader scope of eligible investments and the introduction of fund-of-funds structures.

7.2 What reforms (if any) in the Alternative Investment Funds space are proposed?

As already mentioned in question 1.4 above, the adoption of the AIFMD II requires the Luxembourg legislator to transpose these new rules and amend local laws by 16 April 2026 at the latest. However, due to certain grandfathering provisions in the AIFMD II certain parts of the new rules should already be kept in mind as of the effective date of the AIFMD II (i.e., 15 April 2024).

Becoming effective on 28 July 2023, the Luxembourg legislator amended the RAIF Law, SIF Law, SICAR Law, the Law of 2010 and the AIFM Law ("**Toolbox Reform**"). The objective of the Toolbox Reform was to improve the Luxembourg investment funds toolbox and to introduce more flexibility and increase the attractiveness of the Luxembourg financial centre. For instance, the Toolbox Reform amended the definition of "well-informed investor", pursuant to which the threshold to qualify as a well-informed investor was reduced from EUR 125,000 to EUR 100,000. Other amendments included, e.g., the possibility for Part II Funds to adopt corporate forms other than a public limited liability company (SA) or mutual fund (FCP), which now in particular allows for more structuring options for deep-retail ELTIFs under the Part II Fund regime.

Whether the number of ELTIFs in the Luxembourg market will further increase will in large part depend on the final applicable Regulatory Technical Standards applicable for ELTIF ("**ELTIF RTS**"), which in particular lay out the specifics for

the redemption policy. ESMA published amended ELTIF RTS on 22 April 2024 following harsh criticism from the market and the European Commission on ESMA's initial draft. The ELTIF RTS have to be adopted by the European Commission now.

As regards sustainable finance and AIFs, we are awaiting the adoption of revised SFDR RTS (see question 5.1). The Luxembourg market is further closely following a potential larger overhaul of the SFDR following the European consultation process as Luxembourg has retained its place as the number one EU green financial centre.

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