



SJL Lexicon  
Fund Finance  
Round # 1

**SJL JIMENEZ LUNZ**  
Law Firm Luxembourg

# Reserved Alternative Investment Funds (RAIFs) - How to deal with RAIFs in fund financing

By Antoine Fortier Grethen  
Partner

Answering to the growing need for a new fund vehicle after the implementation of the rules on alternative investment fund management, **Reserved Alternative Investment Funds** (or “**RAIFs**”) have been introduced in the Luxembourg legal framework in 2016, following the adoption of the law dated 23 July 2016 on Reserved Alternative Investment Funds (the “**RAIF Law**”). The RAIF has quickly proved to be an efficient fund raising vehicle, adapted to the increasing regulatory burdens and costs linked to the European rules and regulations in the fund sector, notably pursuant to the directive on alternative investment fund managers (the “**AIFM Directive**”) and the Luxembourg law on alternative investment fund managers implementing such directive (the “**AIFM Law**”), while reducing time-to-market.

Its creation has been a real success so far, with around 1500 RAIFs listed with the Luxembourg Register of Commerce and Companies of Luxembourg (the “**RCSL**”) as of 15 September 2021. RAIFs may invest in all types of assets and are now largely used in all fund investment segments, such as real estate, private equity, transportation, private debt and direct lending. Accordingly, many fund finance transactions involve RAIFs, whether acting directly or for a specific compartment. Knowing its main features is a key element to properly structure a fund finance deal, in particular subscription and management lines.

## 1. What is a RAIF

A RAIF is an investment fund located in Luxembourg (a) which qualifies as alternative investment fund (“**AIF**”), (b) with a risk spreading investment policy, (c) which securities or partnership interests are reserved to one or several well-informed investors, and (d) which constitutional documents (articles of incorporation, the management regulations or the partnership agreement depending of the form) provide that it is subject to the provisions of the AIFM Law. The overall legal framework of RAIFs is similar to those of the traditional Luxembourg regulated funds, specialised investment funds (“**SIF**”) and investment companies in risk capital (“**SICAR**”).

Various **corporate forms** may be used to establish a RAIF. It may be incorporated as a common fund (*fond commun de placement*) (“**FCP**”) or in the form of a company, such as a limited liability company (*société anonyme* or *société à responsabilité limitée*), special limited partnership (*société en commandite spéciale*), or corporate partnership limited by shares (*société en commandite par action*), with variable or fixed capital, in each case using the terms “reserved alternative investment fund” or “RAIF” in its corporate name. RAIFs may be set up as an umbrella structure, using compartments (See Section “*How compartments work*” below for more details).

The **constitutional documents** of the RAIF will depend on its corporate form: articles of association for limited liability companies or corporate partnership limited by shares, partnership agreements for special limited partnerships and management regulations for FCP. In addition, any RAIF must establish an **offering document** (also referred to as issuing document, prospectus or private placement memorandum). The RAIF Law does not provide for guidance as to the content of such offering document. Each offering document may provide for different information and provisions and shall be analysed carefully for the purpose of a borrowing.

It is often the case that such offering document contains supplemental terms and provisions to the constitutional documents (in particular regarding the investment policy, the borrowing provisions and commitments of the investors), to which the articles of association, partnership agreement or management regulations cross refer. As such, an offering document may be assimilated as a constitutional document for the purpose of financing involving the RAIF.

The management of a RAIF is similar to other AIFs (with a dichotomy between the management body of the RAIF, such as a general partner or board of directors, depending on the corporate form, and an alternative investment fund manager (an “AIFM”) in charge of its portfolio management and risk management), except that a RAIF must appoint (a) an external and authorised AIFM (as opposed to be internally managed or managed by a registered AIFM), and (b) a depositary (or a branch of a depositary registered in another Member State) located in Luxembourg.

Unlike regulated Luxembourg funds, such as SIFs and SICARs, a RAIF is **not subject to any approval** or supervision from the Luxembourg Commission de Surveillance du Secteur Financier (“CSSF”) either at its creation or during its lifetime. However, a list of RAIF is held by and publicly available at the RCSL.

## 2. How compartments work

When set up as an umbrella structure, the RAIF will invest and act through different compartments. Each compartment is a **distinct part of the assets and liabilities** of the RAIF. It is managed by the management body or the AIFM of the RAIF independently of the other compartments. It pursues a specific investment policy, holding a specific investment portfolio, with its own allocated investors and its own creditors. To ensure the segregation of assets between compartments, each compartment would have its collection account, where its dedicated investors would pay their commitments. Accounting wise, separate annual report may be established for each compartment. For the purpose of the financing, referring to such separate annual report (or other separate financial statements) in the finance documentation is recommended.

The specifics of each compartment (such as investment policy, borrowing limits and, sometimes terms of drawdowns and commitments) are laid down in an additional and separate constitutional document, such as, in practice, a supplement or annex to the offering document or a separate offering document. In that respect, it is legally required that the offering document (or the separate offering document) describes the specific investment policy of the relevant compartment.

Towards creditors (such as lenders under a subscription line), a ring-fencing principle applies to the compartments. The **rights of creditors** concerning a compartment (such as lenders under a subscription line) are limited to the assets of that compartment, unless a clause included in the constitutional documents provides otherwise. The assets of a compartment are exclusively available to satisfy the rights of those creditors whose claims have arisen in connection with the creation, the operation or the liquidation of that compartment, unless a clause included in the constitutional documents provides otherwise. Accordingly, when a borrowing base is calculated, only the investors having a commitment towards the relevant borrowing compartment shall be taken into account. The constitutional documents and the subscription documentation shall clearly identify into which compartment an investor agreed to subscribe and contribute.

Because of the above segregation principle, **cross collateralisation** between compartments is barely permitted in practice by the constitutional documents. A cross collateralisation might indirectly occur when a compartment is permitted to invest in a second compartment. Such scenario is foreseen in the RAIF Law, subject to few conditions. In such case, the first compartment will be treated as investor in the second one, similarly to a master/feeder situation.

For the purpose of a subscription line granted to a compartment, the commitment of any “feeder” compartment may be part of the collateral provided by the borrower, with a cascading pledge structure, to the extent permitted by the constitutional documents of the “feeder” compartment. The cascading pledge structure would grant to the lenders access to the commitments of the investors of the “feeder” compartment, without breach of the ring-fencing principle, and allow them to consider such commitments for the purpose of the borrowing base calculation.

### 3. Structure of commitments

The commitment structure of a RAIF is similar to those for other AIFs. A RAIF may be financed by its investors via **equity or debt**. Accordingly, investors may invest in a RAIF through any type of commitments, whether equity or debt, or combination of both, with or without issuance of shares, units, interests or notes.

The choice of the type of commitments will largely be based on the form chosen for the RAIF. RAIFs which are in the form of companies would likely to be financed via an equity commitment with issuance of shares, units or interests, while RAIFs in the form of partnerships are most of the time based on equity commitments without issuance of shares, units or interests. In the same way, compartments of the same RAIFs may have different natures of commitments. There is no golden rule and it is likely that each commitment structure is tailor-made. A careful reading of the fund documentation remains advisable.

### 4. Borrowing /guaranteeing / securing limits applicable to RAIFs

The RAIF Law does not provide for any specific restrictions or limits as to borrowing, guarantee or security interests, and the risk of exposure related thereto. That being said, the constitutional documents usually provide for certain limitations, as for any other AIFs. In many cases, this restriction takes the form of a specific clause in the fund’s constitutional documents stating a maximum level of exposure to borrowing, whether in the form of loans linked to investors’ commitments or leverage. This maximum level is usually set by reference to the total amount of investors’ commitments. Most funds include in their documentation a borrowing limit (taking into account, depending on the terms thereof, any amount of guarantee) of no more than a certain threshold of this total amount. Although usually, a level is set for each compartment, it may not be excluded that the fund documentation of an umbrella RAIF contains also certain general restrictions applying to all compartments.

### 5. Pledge over interests/shares/units of a RAIF

Although pledge over interests/shares/units issued by a RAIF is not part of the standard security package for subscription lines, it is most common that these assets are pledged in favour creditors in the context of other fund financings, such as management lines, carry or co-investment scheme financing or hybrid facilities. There is no legal prohibition for an investor in a RAIF to do so. However, the constitutional documents are most likely to set an admission process and require a consent from the management body of the RAIF for the transfer of shares, units or interests. This type of provisions restricts, or may even prohibit, the granting of the pledge and /or the transfer of the relevant pledged shares, units or interests in the context of an enforcement.

In addition, securities or partnership interests in a RAIF shall be reserved to “well-informed investors”. “Well informed investor” is an investor who a) has stated in writing that he adheres to the status of well-informed investor and b) (i) invests a minimum of 125,000 euros in the RAIF, or (ii) has been the subject of an assessment made by a credit institution, a management company or an authorised AIFM certifying his expertise, his experience and his knowledge to adequately appraise an investment in the RAIF.

As a result, the partnership interests/shares/units in the RAIF may only be transferred as a result of an enforcement of a pledge over such interests/shares/units to a person qualifying as “well-informed investor”.

## 6. Specific liquidation and dissolution provisions

While a RAIF remains subject to any insolvency proceedings generally applicable to its form, a specific dissolution and liquidation regime applicable to RAIFs has been implemented under the RAIF Law. A **dissolution or liquidation** may be decided by District Court dealing with commercial matters, at the request of the State Prosecutor against any RAIF which pursues activities contrary to criminal law or which seriously contravene the provisions of the RAIF Law, the AIFM Law, or the laws governing commercial companies, but also following the withdrawal, removal or insolvency of the AIFM or the depositary, or should the AIFM be no longer authorised by the CSSF or the depositary no longer meet the conditions set forth in the RAIF Law to act as such.

Voluntary **liquidation** is also possible and usually provided for in the constitutional documents of the RAIF. In the same way, the constitutional documents of the RAIF provide for additional specific events triggering a compulsory liquidation. It is reminded by practitioners to always consult the specific documentation of a fund since they may contain specific provisions that govern the fund’s liquidation. All these situations shall be properly considered and covered in the loan arrangement. These may also apply to a compartment. Each compartment may be liquidated separately without that separate liquidation resulting in the liquidation of another compartment. Only the liquidation of the last remaining compartment will result in the liquidation of the RAIF.

At last, where the RAIF is in corporate form, as from the event giving rise to the liquidation of the RAIF, and under penalty of nullity, the issue of shares, units or interest shall be prohibited, except for the purpose of liquidation. However, RAIF in the form of FCP may not issue shares or units during the liquidation.

## 7. Conclusion

Although based on similar regimes for regulated funds, the RAIF regime **offers various structural options**, allowing a balance between alternative investment funds and regulated funds. That being said, few of its specificities require specific attention when structuring a fund finance deal. The various forms that may be used to establish a RAIF often requires some tailor made adjustments to standard facility arrangement forms and a thorough analysis of its fund documentation. For more information or specific advise do not hesitate to contact one of our experts.

## Overview of our Fund Finance Practice

SJL has developed a **strong expertise in Fund Finance** while acting for banks, investment funds and managers in the context of subscription lines, management lines or NAV facilities solutions aiming among others at financing their investments in real estate properties, private equity companies or infrastructure sectors.

The lawyers of SJL have acquired and developed a significant and recognised expertise in this area while working with firms such as Loyens & Loeff, Clifford Chance, Arthur Andersen and Baker & McKenzie before joining SJL.

The experience gained at international law firms has enabled the partners and lawyers of SJL to develop the skills which are necessary to provide legal services to demanding international clients. The experience gained in such a variety of firms also explains why SJL offers an outstanding approach on the Luxembourg legal market in terms of legal skills, pragmatism and responsiveness.

The partner of SJL heading the Fund Finance practice is recognized as Next Generation Partner in Banking, Finance & Capital Markets by Legal 500, and for its particular expertise in Fund Finance. The founding partner of SJL is recognised as a Leading Lawyer in its fields of expertise by Chambers & Partners since 2010.

SJL is a member and sponsor of the Fund Finance Association and Women in Fund Finance Association.

## Our team

### Antoine Fortier-Grethen | Partner and Head of Practice

#### Practice Areas & Descriptions



Antoine is advising on Banking & Finance transactions, with a particular focus on fund finance, real estate finance, debt capital markets, corporate and acquisition finance transactions. Antoine is recommended as a “**Next Generation Partner**” (Legal 500, 2021). He is recognized as “technically knowledgeable and pragmatic”, “whose versatile knowledge in the space includes advice to borrowers and lenders across equity bridge facilities, management lines, co-investment and carry schemes financings” (Legal 500, 2021). Antoine is the **author of major publications** in fund finance transactions, in particular on the impact of investors’ side letters, security structures and pledge in respect of investors’ commitments in fund finance transactions.

#### Career

Before joining SJL, Antoine spent 12 years at Loyens & Loeff, where he was actively developing the Loyens expertise in fund finance since its inception, including 2 years as local partner.

#### Contact details

e-mail: [fortier@sjl-legal.com](mailto:fortier@sjl-legal.com)

## Michel Jimenez Lunz | Founding and Managing Partner

### Practice Areas & Descriptions



Michel leads the banking & finance department and regularly advises on bank financing facilities, securitizations and capital market financings. His practice stretches from financial services to real estate, energy & power, telecom & media, global industry, consumer & retail, infrastructure, mining and hi-tech sectors. Michel is **praised by clients** for his responsiveness: He has **great technical skill** and is also extremely reactive. He is especially valued by clients for his ability to handle urgent requests and his vigor in negotiations. He is also commended for going the extra mile, providing a robust legal analysis for specific points, and being responsive and reliable and has broad and extensive knowledge of finance work. He has been recommended as a **leading lawyer** for several years in previous edition of Legal 500 and the Chambers Guides.

### Career

Prior to founding SJL, Michel has been a member of Arthur Andersen, Ernst & Young and Clifford Chance Luxembourg.

### Contact details

e-mail: [jimenezlunz@sjl-legal.com](mailto:jimenezlunz@sjl-legal.com)

## Iulia Gay | Senior Associate

### Practice Area & Description

Iulia has a **strong experience** in the banking and financing work including advising both borrowers and lenders on a broad range of national and cross-border structured finance transactions, secured or unsecured lending and refinancing, with a particular focus on acquisition finance, real estate finance, investment funds finance, non-performing and sub-performing loan portfolios acquisitions and securitisation. Her continuous goal is to provide **excellent client service**, her key words being professionalism, responsiveness, excellent commercial sense and sound communication.



### Career

Before joining SJL, Iulia was an associate and senior associate of a top ranked law firm, in Luxembourg and an in-house legal counsel of a major bank, in Paris.

### Contact details

e-mail: [gay@sjl-legal.com](mailto:gay@sjl-legal.com)