



INVESTMENT FUNDS

An overview of our practice

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WHY SET UP AN INVESTMENT FUND IN LUXEMBOURG

- **Second place worldwide for domiciled funds**
 - More than EUR 2.4 billion assets under management.
 - Leading European domicile for vehicles investing in international real estate.
 - Domiciliation and administration expertise.
- **European leader for cross-border distribution**
 - Marketing throughout more than 150 countries.
- **Flexible onshore regulation**
 - Fully compliant with EU regulation.
 - Pragmatic and responsive regulator (the “CSSF”).
 - Ready for the Alternative Investment Fund Managers Directive (AIFMD).
- **Large panel of investment funds for all types of business and investors**
 - Retail Funds (UCITS, Part II UCIs).
 - Alternative Investment Funds (SIF, SICAR) for institutional, professionals and HNWI.
- **Favorable tax impact**
 - Low taxation.
 - Large access to DTT.

PRIVATE EQUITY FUNDS

Luxembourg: a domicile of choice for structuring PE funds

- The last ten years have recorded an impressive number of European M&A transactions backed by private equity firms with Luxembourg emerging as a prime jurisdiction for the structuring of private equity acquisitions and financing.
- The Luxembourg market is active in two fields, its non-regulated special purpose companies (such as the "SOPARFI", a financial participation company), and its lightly regulated fund vehicles such as the "SICAR" (*société d'investissement en capital risque*) and the "SIF" (*specialised investment funds*).
- Until recently, private equity firms have preferred using special purpose vehicles ("SPV") located in offshore jurisdictions to structure their funds rather than submitting them to regulations considering the SPV's advantages such as flexibility and limited disclosure.
- With the SICAR and the SIF vehicles, numerous international private equity operators selected Luxembourg as a fund platform as an alternative solution to off-shore domiciliation of vehicles.
- Luxembourg has transposed the AIFM Directive.

PwC Legal' expertise and clients

- We advise our clients along the entire life cycle of private equity funds:
 - setting up
 - fund raising
 - investments
 - exits
 - winding up / liquidation.
- The private equity funds we are familiar with include:
 - venture capital funds
 - LBO funds
 - infrastructure funds
 - distressed funds
 - secondary funds
 - spin off / first time funds.
- Our main clients are:
 - Sponsors
 - Investors
 - Service providers.

PRIVATE EQUITY FUNDS

Recent transactions

- Assistance and advice to principals of a SICAR investing in the secondary market in connection with:
 - negotiation and amendment to the constitutive documents (PPM, LPA) further to the entry of cornerstone investors (among which the European Investment Fund) and negotiation of related side letters and legal opinion.
 - negotiation of the key fund terms and conditions from the General Partner's perspective including carried interest, GP and LP clawback, vesting schedules, corporate governance, management fees and rebate.
 - fundraising process and regulatory aspects (liaising with the CSSF).
- Assistance in connection with private equity transactions:
 - investments made by a SICAR (negotiation and drafting of share purchase agreements).
 - advising the GP and drafting documents related to a secondary sale of LPs interests.
 - venture capital transactions: assisting a leading Luxembourg communication group with an international network to raise funds from a private equity fund to assist its development and growth.
 - LBO financing: assisting a US private equity fund with more than USD 2 bn of AUM in structuring a back-to-back debt (hybrid) financing in Luxembourg via tracking convertible preferred equity certificates and additional senior credit agreement for the purpose of acquiring a leading service provider for online gaming.

REAL ESTATE FUNDS

Luxembourg: a domicile of choice for Real Estate vehicles

- Luxembourg is the leading European domicile for vehicles investing in international real estate portfolios.
- Capitalizing on the Grand Duchy's political stability and the flexibility of its legal system combined with a high quality and reliable regulatory supervision, the Luxembourg market for real estate investment vehicles has grown to EUR 25 billion in 2012.
- Real Estate investment funds can be structured under regulated vehicles (UCI part II, SICAR and SIF) or unregulated vehicles (SOPARFI) or with a combination of both, depending on the specific investment strategy being pursued, the target investor base and tax considerations.
- Currently, the SIF is considered as the most suitable vehicle for structuring a real estate fund in Luxembourg.

PwC Legal' expertise and clients

- We advise our clients along the entire life cycle of opportunistic real estate funds, including spin off / first time funds:
 - setting up
 - fund raising
 - investments
 - exits
 - winding up / liquidation.
- Our main clients are:
 - Sponsors
 - Investors
 - Service providers.

REAL ESTATE FUNDS

Recent transactions

- Set-up of a real estate fund under the form of an umbrella SIF for a French management company:
 - drafting of the marketing documentation related to the project.
 - negotiation with the CSSF in relation to the particular strategy of the SIF (raising money both by issuing convertible bonds alongside stocks).
 - drafting of the constitutional documents and of the agreements with the managers and the investors / coordination with the service providers involved in the project and liaising with the CSSF and the notary.
 - hybrid financial instruments (CPECS) so that the most tax-efficient means of repatriating profits derived from the underlying assets can be achieved.
- Listing of the securities issued by the SIF on the Luxembourg Stock Exchange's Euro-MTF market / Liaising with the Luxembourg Stock Exchange authorities.
- Structuring a real estate joint venture for a leading Austrian real estate company under non regulated form (SOPARFI) investing in real estate projects across Europe, assistance with the structuring of the joint venture documentation, financing documentation and setting-up of appropriate vehicles.

HEDGE FUNDS

Luxembourg, a new centre for hedge funds and fund of hedge funds structuring

- Luxembourg has become a leading domicile and administration centre for hedge funds and funds of hedge funds.
- Luxembourg also benefits from the re-domiciliation of hedge fund products from offshore centers to regulated EU centers.
- Hedge Funds players take advantage of Luxembourg for the distribution of their products among institutional, professionals, high net worth and retail investors.
- The Luxembourg investment funds landscape offers many possibilities for setting-up a hedge fund: alternative UCITS, Part II UCI and SIF.

Recent transactions

- Advising French Managers for the setting-up of a hybrid hedge fund.
- Umbrella SIF with one sub-fund focusing on proprietary event-driven strategies with a bottom-up approach.
- Drafting of the constitutional documents (issuing document, articles of incorporation) of the SIF and of the General Partner with particular attention to the clauses related to:
 - implementation of side pockets
 - structuring of performance fees and applicable equalization methods
 - management of liquidity tools (gates, lock-ups)
 - mergers of sub-funds
 - rehypothecation and segregation of assets kept by the custodian bank or the prime broker.
- Advising on the structuring of the general partner and in selecting the various options to implement incentives for the executives of the general partner (founders' shares and preferred shares without voting rights).

SETTING-UP OF A FUND

Preparation phase

- Determination of the specific needs of the project:
 - What kind of investment is contemplated?
 - Are the investments diversified enough?
 - Which type of management is contemplated in the project?
 - Distribution rules and key fund terms
 - What is the investor profile?
 - How much capital needs to be raised (type, country domicile)?
 - First time / spin-off fund?
- Advice on the choice of the best suited regulated (Part II UCI, SIF, SICAR) or non regulated vehicle (SOPARFI) and advice in the framework of the AIFMD.
- Selection of possible legal structure within the relevant tax wrapper:
 - SICAV
 - SICAF
 - FCP (with management company)
 - Suitable corporate form.
- Planning for the implementation process (including corporate, financial, tax and regulatory topics).

Negotiation and drafting phase

- Negotiation of the key fund terms and conditions.
- Drafting of the constitutive documents.
- Drafting/Review of all legal agreements with the different service providers.
- Drafting of agreements related to the management and the fund raising.

SETTING-UP OF A FUND

Implementation phase

- Submission of the application file to the CSSF:
 - Discussion / meeting with the CSSF
 - Amendment to documents up to approval.
- Coordination with the various fund actors:
 - Fund managers
 - Service providers (Depositary bank, central administrative agent)
 - Auditors, Notary public
 - Independent advisors.
- Incorporation of the structure:
 - Incorporation of the vehicle before a Notary (need be)
 - Auditors, Notary Incorporation of the GP in case of SCS or SCA.

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