



Luxembourg Private Equity & Venture Capital Association

LPEA Newsletter

Issue: #8

December 2012

Dear LPEA Member, Dear Reader:

As the end of the year nears it is a good time to reflect on the developments of the Private Equity and Venture Capital industry and accomplishments of LPEA. True to predictions, 2012 continued to present a multitude of challenges to the industry. The liquidity gap continued to play a major role in the quantity and quality of transactions. While alternative financing options have come to play, the trend will most likely continue into 2013.

Regulations such as AIFMD, Dodd Frank, FATCA and the likes, came upon the industry in full force this year and are here to stay. Fortunately, Luxembourg has so far been able to take a pro-active approach to adopting and implementing these regulations. Unfortunately, measures such as transfer pricing rules, an ill-conceived carry taxation proposal and the doubling of the minimum corporate taxation are adversely affecting the country's credibility and by doing so, Luxembourg weakens its image as a global financial center and its position as the European hub for Private Equity and Venture Capital.

It has been a busy year for LPEA, albeit a lot of it being "behind the scene". The association outlined an ambitious plan early on and I am pleased to report that it is to a large part on track. LPEA committed to expand its reach and promote Luxembourg with PE houses and their decision makers in selected geographies. That was accomplished by a number of roadshows throughout the year and others to come in 2013. LPEA also promised to contribute to the further development of the knowledge and skill base of the local community through the creation a dedicated Training function within LPEA. We have laid the foundations and implementation will begin next year. The association facilitated a number of best practices roundtables and plans

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LPEA FUTURE EVENTS

28 January 2013
LPEA New Year's
Event,
Luxembourg
6:00 pm - on

**26-28 February
2013**
[SuperReturn
International 2013,
Berlin, Germany](#)
LPEA members
are entitled to
25% off
registration;
contact us for a
voucher number.

5 March 2013
LPEA Roadshow
London, UK
British Library
9:00-12:00 am

INDUSTRY FUTURE EVENTS

29 January 2013
EVCA Responsible
Investment
Summit, Brussels,

to continue with an even more structured approach. Lastly, LPEA pledged to enhance member communication, notably through the new LPEA website (www.lpea.lu), this publication and periodic member events. A work in progress and certainly a focus area for next year. I encourage you to read the full report of the accomplishments of LPEA's technical committees below and join me in thanking all members involved for their support.

I believe we all can agree that LPEA, which now amounts to almost 100 member organizations, has made an impressive progress. Last but not least, thanks to the engagement of the members of the Executive Committee as well as Paul Junck, the LPEA's Managing Director, and his team, whom I both thank wholeheartedly for all of their contributions throughout this past year.

LPEA's members will kick off 2013 at our (traditional) New Year's Event on January 28, 2013. It will be another testing year for the industry and Luxembourg. On behalf of LPEA, let me assure you that we will work hard to continue to defend the industry's interests.

Merry Christmas and all the best for a Happy New Year!
Hans-Jürgen Schmitz, Chairman of the LPEA

LPEA: Update of activities

LPEA continues to expand its national and international footprint with a slate of initiatives. The first semester of 2012 LPEA joined forces with ALFI to represent Luxembourg at Super Return, Berlin 2012. Later in the year, during the month of June, LPEA returned to Germany on two occasions with the purpose of introducing Luxembourg to the private equity community in Munich and Frankfurt. The second half of the year proved to be just as busy for the association. LPEA was represented at the AFIC Meeting and Eurogrowth, both of which took place in October. To close the year, LPEA took an active role in ALFI's Alternative Investment Fund Conference during the week of Thanksgiving, November 20/21.

2013 is sure to be yet another busy year for LPEA. The association, supported by its Promotion Committee, has already planned Roadshows to London for Q1 and another joint attendance with ALFI to SuperReturn, Berlin, February 26 - 28, 2013. Stay tuned for details on these initiatives and others to come.

Belgium

13-14 March 2013

EVCA Investors' Forum, Geneva, Switzerland

14-17 March 2013

EVCA Networking Event, Courmayeur, Italy

For additional information contact info@lpea.lu

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2012 has also been an important year for in launching key industry representation initiatives. LPEA has submitted its position on AIFMD and remuneration to ESMA & EVCA (September) as well as commented on the Alternative Package (Bill of Law 6471). It has also provided official feedback through the Chamber of Commerce and has facilitated one-on-one meetings with key influencers to articulate the position of the industry on key legal and regulatory issues.

As part of the LPEA's strategic points, over the past year the association has structured and improved the quality and quantity of member and public communication. LPEA now releases topical Newsflash and regular Newsletter publications. It also hosts thematic breakfast conferences, on subjects such as "FATCA" (March 12) and "Private Equity and Insurance" (June 22). Due to positive feedback, other focused events on pressing issues i.e. AIFMD, Limited Partnership, etc., are currently in planning. In efforts to further enhance communication, LPEA is exploring additional thought leadership platforms along the lines of a print journal.

LPEA's technical committees have also raised the bar over the past year. They have consistently increased their work and industry support. The legal committee has formed AIFMD and Commercial Law task forces with active membership participation. It has also monitored the Bill of Law 5730 (Commercial Law) and IORP, and is following up on EUSEF and Venture Capital Regulation.

The LPEA Tax Committee has formed a task force to produce commentaries on the tax section of the bill implementing AIFMD (in particular Carried Interest regime and VAT). Commentaries have been provided to the Chambre de Commerce and used as part of lobbying activities contemplated by LPEA (vis-a-vis tax administrations, finance commission of the Parliament, etc). Lobbying activities by LPEA may have to be envisaged during Q1 2013.

LPEA's AIFMD Committee has been busy this year. The Alternative Package (Level 2 measures) has dictated the formation of four task forces : Limited Partnership, lead by Nicolas Gauzès, Depositary, lead by Arnaud Bon, Tax (carried interest, VAT, Tax rulings), lead by Patrick Mischo, and Specific issues (asset stripping, side letters, remuneration guidelines), lead by Nick Tabone.

The hard work of the **Accounting and Valuation Committee of LPEA** has been evident by the mere number of knowledge sharing initiatives. The committee has developed a paper on

"PE valuation: Trends & constraints", and a note on the Draft Law 6376 (CNC & modernization of Accounting law) and planning to develop a document on "Transfer Pricing Studies".

The newly formed **Market Intelligence and Training Committee** will continue to work on the already established PE Survey in conjunction with ALFI and EVCA, and also establish a training curriculum in cooperation with IFBL (the training organization of the ABBL). The latter initiative will provide a credible PE career path certification to LPEA members (developed by IFBL-ALFI) and bridge a gap, identified by LPEA in its last member survey.

In addition to playing a key role in LPEA's strategic expansion and communication efforts, **LPEA's Promotion Committee** has worked to update LPEA's PE brochure and LPEA's leaflet. The committee orchestrates the development of the regular communication materials and their distribution as well as the continuous enhancement and update of LPEA's website and supporting infrastructure.

LPEA will continue to defend the industry interests and present its members with a strong educational platform in the upcoming year.

Mira Ilieva-Leonard, on behalf of
LPEA Promotion Committee

EC adopts implementing rules for the Directive on AIFM

The European Commission has acted to solidly underpin the new rules for Alternative Investment Fund Managers (AIFM) by adopting a Delegated Regulation supplementing the Directive on Alternative Investment Fund Managers (AIFMD)(see MEMO/10/572), dated December 19, 2012.

The AIFMD is part of the Union's response to the financial crisis, and aims to create a comprehensive and effective regulatory and supervisory environment for alternative investment fund managers in Europe. The Delegated Regulation is a precondition for the application of the AIFMD in EU countries and was adopted to supplement certain elements of the AIFMD. These rules concern the:

- conditions and procedure for the determination and authorisation of AIFMs, including the capital

requirements applicable to AIFMs;

- operating conditions for AIFMs, including rules on remuneration, conflicts of interest, risk management, liquidity management, investment in securitisation positions, organisational requirements, rules on valuation;
- conditions for delegation;
- rules on depositaries, including the depositary's tasks and liability;
- reporting requirements and leverage calculation;
- rules for cooperation arrangements.

The Delegated Regulation adopted on December 19, 2012 is subject to a three-month scrutiny period by the European Parliament and the Council and will enter into force, provided that neither co-legislator objects, at the end of this period and the day following publication in the Official Journal.

For additional information click [HERE](#).

Source: The European Commission

The NEW SPECIAL LIMITED PARTNERSHIP

The SLP is a partnership entered into by one or more general partners (GPs) with unlimited and joint and several liability for all the SLP's obligations, with one or more limited partners (LPs) contributing only a specific amount pursuant to the provisions of the limited partnership agreement (LPA). It does not constitute a legal person separate from that of its partners.

The SLP may be used by regulated and non-regulated entities whether qualifying as alternative investment funds under the AIFMD or not. Thus, regulated investment vehicles such as the Specialised Investment Fund (SIF) and the Investment Company in Risk Capital (SICAR) may adopt the legal form of the SLP with the inherent structural and tax advantages which this new type of investment vehicle will entail. Similarly, non-regulated financial participation companies (SOPARFIs) may also adopt this legal form.

1. FEW MANDATORY RULES - PREDOMINANCE OF THE LPA

The mandatory provisions relate inter alia to (i) the keeping and content of a register of partners, (ii) information (excluding on LPs) to be published, (iii) limited causes of avoidance and (iv) the manner inscriptions and other formalities regarding the SLPs's assets are made.

All other aspects of the SLP such as inter alia the type of partnership interests, timing, method and type of contributions, timing and extent of distributions and reimbursements or exclusions therefrom, claw back rules, political rights, LP matters and information, reduction and redemption of partnership interests, can be determined by the LPA to be agreed upon by the partners.

2. MANAGEMENT OF THE SLP AND ROLE OF LPS

The new regime gives GPs the right to manage the SLP, but not the obligation to do so. If the appointed manager is not a GP, the manager is considered as an agent (mandataire) liable only for the execution of its mandate (with the possibility to arrange for delegation) and for any misconduct in the management of the SLP's affairs.

The new regime contains a non-exhaustive list of actions that may be taken by LPs that shall not be considered as management actions and thus shall not jeopardise their limited liability.

3. TAX FEATURES

The SLP is tax transparent for Luxembourg income and net wealth tax purposes. Further, if the GP is a Luxembourg limited liability company holding less than 5% of the partnership interests, the SLP is not subject to Luxembourg trade tax either.

Management services rendered to a regulated SLP (such as a SIF or a SICAR) are exempt from Luxembourg VAT. It is expected that this new type of vehicle will put Luxembourg on equal footing with those jurisdictions, which offer the anglo-saxon type limited partnership which has traditionally been the favoured investment vehicle for structuring private equity investments.

Katia Panichi
Associate LPEA Member

Sincerely,

Paul Junck
Managing Director, LPEA

About LPEA

LPEA is a non-profit organization serving a threefold mission:

- Towards its members, represent and promote the interests of Private Equity and Venture Capital players based in Luxembourg;
- Towards Luxembourg, support government and private initiatives to enhance the attractiveness, competitiveness and efficiency of the Luxembourg economic, legal, regulatory and operational framework as an international hub for carrying out Private Equity and Venture Capital business and / or servicing the industry in all its dimensions.
- Towards the European Venture Capital and Private Equity Association (EVCA) and other relevant international industry bodies, represent the interests of the members of the LPEA and the industry as well as Luxembourg as a place for doing Private Equity and Venture Capital business.

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