Luxembourg Private Equity & Venture Capital Association

LPEA Newsletter

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Dear LPEA Member, Dear Reader:

What an exciting year it has been for LPEA, the PE industry and Luxembourg already. As planned, LPEA launched a number of promotional activities such as its proprietary magazine, **Capital V** and a new and improved brochure on **Private Equity in Luxembourg**. In addition to that, the association continued its foreign outreach with another representation at Super Return 2013 and a roadshow to London. You can find additional information on those initiatives below.

Luxembourg continues to lead the way with the AIFMD implementation as well as the transposition of other industry related local and global tax, legal and regulatory initiatives. I encourage you to read the technical articles in this newsletter for details. While all these changes bring a certain set of challenges, they ultimately make the industry transparent and when implemented properly, as advocated by Luxembourg, offer a multitude of opportunities.

Lastly, the volume of private equity and venture capital deals, local and global, is increasing. We are pleased to profile some of those deals in this issue. Industry players are cautiously optimistic for the first half of the year; hopefully that trend will continue.

LPEA will go on with its mission in the same upbeat and practical spirit. As always, we thank all of our members for their support and look forward to continuing serving them.

With best regards,
Hans-Jürgen Schmitz, Chairman of the LPEA

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London Calling: LPEA London Roadshow

The Luxembourg Private Equity and Venture Capital Association (LPEA) held its long-awaited workshop in London's British Library in front of an audience of 120 participants. The audience consisted of representatives of the PE servicing industry and a good number of PE houses, some already with experience in structuring deals through Luxembourg, others contemplating Luxembourg for future fund structuring.

Unlike the previous roadshows in Germany, which consisted of one animated panel discussions including a local German PE house and its fund's Luxembourg service providers, the London program was diversified, including presentations, panel discussions and interviews.

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LPEA

April 22 2013
LPEA Board of Directors meeting

May 13 2013
LPEA Annual General Meeting

EVCA

March 13-13 2013
EVCA Investors' Forum
Hotel InterContinental
7-9 Chemin du Petit-Saconnex
Geneva - Switzerland

March 14-17 2013
EVCA Networking Event
Hotel Cresta et Duc via Circonvallazione, 7 Courmayeur - Italy

May 14-15 2013
CFO / COO Summit
Hilton Hotel
Apollolaan 138
Amsterdam - The Netherlands

For additional information contact

of the AIFMD into local law. For the first time, Luxembourg will provide a structure familiar to the Anglo-Saxon-based PE houses. Cintia Martins, EHP and Raphael Louage, Deloitte Luxembourg explained to the audience the legal and tax-related details of the two partnership forms: the common limited partnership and the special limited partnership.

Last but not least, a roundtable discussion about the practical aspects of implementation of AIFMD in Luxembourg, including the various additions such as regimes for management companies, the execution of depositary function and a planned change of the taxation of carried interest, closed the workshop session. Animated by Patrick Mischo, Allen & Overy Luxembourg, experts, representing custody, administration and legal services for PE funds: James Bermingham, Aztec Financial Services, Graham Parry Dew, JP Morgan and Anthony Tulloch, Olswang LLP, discussed how they see Luxembourg positioned today and under AIFMD. Optimism prevailed due to Luxembourg's strong assets such as stability, proactivity and financial services openness, as well as its long tradition as a hub for fund distribution.

The morning session concluded with a standing lunch buffet, giving the participants the opportunity to continue the discussions with the Luxembourg hosts and to network. The popularity and lively dialogue of the workshop is a testament that Luxembourg is indeed on the radar of London PE houses and that AIMFD will foster and expand the scope of their interest further.

Anja Grenner, Associate LPEA Member

DeaLux: Local Deals for Global Players

Luxembourg is well known as one of the most attractive and widely used centers for structuring of Private Equity investments in Europe and beyond. What is less known to the general public is that Luxembourg also provides a fertile ground for entrepreneurship and as a result, it offers opportunities for local Private Equity and Venture Capital deals. To remedy that LPEA is introducing this new, "DeaLux" (Deals in Luxembourg) section in LPEA's Newsletter, which will feature prominent local transactions and conversations with the key players.

TENZING Partners advises EMRESA S.A., a Luxembourg specialist in employee benefits, discount and concierge services - in a MBO transaction, backed by FIELD SICAR.

Emresa, better known as SYMPASS and ALADIN, was founded by Marc Neuen, a serial entrepreneur in Luxembourg back in 2003. The company is based on a simple but innovative concept: it allows employees to take advantage of benefits services to SMEs and financial investors. As a member of the international network Globalscope, Tenzing has access to corporate finance and business advisers from more than 21 countries worldwide. Luxembourg M&A market is not much different from other European markets; there are SMEs with succession problems. "Exit should be a part of the entire lifecycle of the organization," said Joubin BASHIRI, a Partner at Tenzing.

Luxembourg happens to be the home of many companies with niche products and solutions, which could be the base for PE funds with growth strategies. Many of those companies already have international vision and would have greater opportunity with international partners and support. "Private Equity investment is often used for cash in and out, but it is mainly focused on the strategic development of a company," closed Joubin. Emresa was a prime example of that. According to Joubin, "the company offered an interesting business model with its unique position in the Luxembourg market and immense growth." "Luxembourg, in general, is a good test market for first time foreign investors due to the high purchasing power per capita and diversity," added Joubin, although that was not the case this time.

After going through the traditional sourcing process (from company and market analysis to prospectus issue and pitching) facilitated by Tanzing, Marc had the opportunity to meet two interested investors. "The choice was obvious, based on personal feeling," said Marc of selecting the investor, Field Sicar.

Field Sicar is a fund, specializing in Leveraged-buy-out transactions in the East of France, the Grand Duchy of Luxembourg and the Walloon Region and in the adjacent areas of its target market, such as the Saarland, the Nord Pas de Calais, Brussels and Flanders. Most of Field's investments are made in the context of LBO via minority or majority participations, with the objective to support niche companies with strong competitive advantages.

"Field Sicar is pleased to support the transmission and development of Emresa. The company will develop new growth sources in order to duplicate the model in the Belgian, German and French bordering areas, introduce the Sympass product and continuing to strengthen the Aladin services in Luxembourg," said Philippe Denis, manager of FIELD SICAR.

A marriage made in heaven, one might say. What contributed to this success story? The answer appears to be a combination of multiple factors, with Luxembourg in the heart of it all. The country has created a marketplace catering to business owners and investors alike. It has managed to foster real entrepreneurial spirit and it is striving to provide the necessary support infrastructure. It also continues to sustain its competitive tax, legal and regulatory environment and attract both global and local PE / VC players.

giveaway of an Apple Macbook. The winner is Mkhululi Mazibuko, Chief Operations Officer, Technology Innovation Agency, Pretoria, South Africa. The LPEA delegation, led by Hans-Jürgen Schmitz, Chairman of the Association, had a meeting with the Luxembourg Ambassador in Germany, Mr Georges Santer, to give the Luxembourg Embassy a better understanding of the PE industry, the relevance of this industry to Luxembourg and the role of LPEA.

The overall sentiment of the political and economic state of play at the conference was not as bad as one could think. On the contrary: there was an unanimous consent that Europe offers investment opportunities, in particular in countries such as Germany, the UK as well as the Nordics and Benelux regions. While Italy and Spain are certainly not on many PE houses' agenda, well-selected opportunities exist anywhere, and it was agreed that at the end, it is on the micro-level where value is created and returns are generated. Similarly to last year, the conference provided a key message: PE has refocused on value enhancement on company level, notwithstanding the fact that current low interest rates and increasingly lighter covenant conditions create a positive environment for investments. At the same time, in another unanimous consent: "it is not all pie in the skies." Fundraising is still not easy. Many GPs have to seek new investor groups, and investment terms and conditions set by LP make every fundraising round a challenge, not only for first-time funds, but also for established houses.

It also shows that the industry has matured since the boom years of 2005 - 2008. Issues like reporting to both investors, and in the future, to authorities and public, transparency, governance and the like, while forced upon the industry through AIFMD, may bring further investors to the industry and make it more accepted to the broad public. Here again, like every year, the PE industry's consensus is that PE is good for the economy, but it also has to "sell" itself better.

Apart from Europe, where does the money go? The US remains a fairly safe bet and Africa is increasingly on the radar of PE houses, in particular the sub-saharian countries; Asia and LatAm provide for excellent opportunities. Here again the message remains: no matter what the macro-economic conditions, it is on the micro-level where value is created and money made, so careful selection and management of portfolio companies is a key in any country.

So what can we take home from this year's most important PE conference? In one word: optimism. Yes, we haven't returned

The AIFM depositary revolution

AIFM depositary reform is seen by many as a small revolution. While the industry focus has been mainly on the duty of restitution, which is of lesser importance for private equity products, the release of the Level II measures in December 2012 has crystallized some issues, highly relevant to the sector. One of the topics related to the special regime that is created for depositories of closed ended AIF's, raises much debate around the best industry models in a private equity context.

James Bermingham, General Counsel at Aztec Group, explains: "Non-banking depositories will be a revolution in the look and feel of the Luxembourg private equity product. Sponsors will no longer be forced to rely upon institutional support, and will be free to adopt expert solutions in an industry context. This means dedicated resource for more complex funds delivered by a pro-active and locally-based team."

Reform will bring Luxembourg in line with its competitors, offer more choices and, certainly, limit custody costs to those situations, where there are actual 'financial instruments'. "A good domicile is all about competition and choice," James says, "and we are very excited to be able to offer clients exactly the same support in Luxembourg that has proved so successful elsewhere. We can guarantee that there will be no service differential locally, except that our team here is multilingual of course and much more accessible to the Continent market."

A point of concern relates to the duty of the depositary to ensure that the ownership of the assets has been properly acquired by the AIF. In particular, how far a depositary should go in challenging apparent title of ownership, provided by the AIFM in the different jurisdictions where the AIF acquires properties. What could this involve in terms of due diligence to be performed on the registrars of targeted funds? Should regulators promote best practices/ legal opinions for depositories? James is quick to address these points too, "Specialists will be familiar with private equity and venture capital investment processes and will prefer to work alongside lawyers to seamlessly discharge supervisory functions."

Monthly cash reconciliation is now a feature of fund administration and it is unlikely, therefore, that the monitoring obligations in the Directive should pose much of a problem. A greater issue will be to understand exactly what is meant by the definition of "financial instruments", especially in the case of nominative shares, held directly by the AIF, which by nature are susceptible to being held through the depositary, or through SPVs, in the case of transferable securities.

Another related issue is whether and how practically the

AIFMD update on remuneration policy and tax aspects

Remuneration policy guidelines in a nutshell

The final guidelines on remuneration policies under AIFMD aim at ensuring that AIFMs' remuneration practices promote sound and effective risk management. The requirements should be implemented by AIFMs by July 22, 2014.

Governance: AIFMs shall establish a remuneration policy, and where "significant" in size (AuM and number of employees), appoint a remuneration committee. A supervisory function must oversee the policy implementation, and control functions must ensure regular reviews.

Risk alignment: Variable remuneration is performance based and risk-adjusted through deferral, payment in instruments and claw back measures, notably. It can even be reduced to zero.

Transparency: AIFM shall disclose quantitative and qualitative information on remuneration policies and practices. While some aggregated remuneration amounts must be published in the AIF report, the disclosure of detailed information does not necessarily have to be public.

While some requirements may not be applicable, considering the proportionality principle (depending on the AIFM size, activities and internal organisation), detailed assessment should be performed on each requirement.

Watch the tax implications of cross-border management and delegation

Cross-border management of AIFs, as allowed by the Directive will create opportunities for pan European managers to benefit from economy of scale in terms of e.g. infrastructure, capital and lean operations.

To avoid undermining this benefit, it will be important to ensure that cross-border management does not trigger adverse tax consequences or unpredictable tax treatment. Risks that tax authorities of jurisdiction, where the AIFM is established, may claim that the AIFs should be considered tax residents or that the AIFs (or their investors) have a taxable presence (in the form of a permanent establishment) in that jurisdiction should be monitored. The other way around, risks that the AIFM be considered to have taxable presence in the country where the AIFs are established should also be analyzed.

From a VAT perspective, the main impact of AIFMD should be the extension of the scope of the VAT exemption on management services rendered to investment funds.

Indeed, while today such VAT exemption only concerns management services rendered to UCITS and some specifically listed vehicles, the implementation of AIFMD in the Luxembourg law should clarify the situation and extend the benefit of the VAT exemption to any vehicle qualifying as an AIF.

This is good news for AIFs, which generally don't benefit from an input VAT deduction right and will no longer be charged with unrecoverable VAT on the management services received.

AIFs should also carefully monitor the services received from foreign suppliers to ensure an optimal use of the scope of the VAT exemption, where possible, especially where the cross-border flow of services will significantly increase.

The extension of the VAT exemption will also have an impact on the AIFMs, who will render new VAT exempt services to the AIFs and therefore will be restricted in their input VAT deduction possibilities. They should carefully review their flow of services rendered / received to ensure a full identification of potential VAT issues and remedial actions.

Raymond Krawczykowski, Associate LPEA member

EU Financial Transaction Tax: revised draft directive released

On 14 February 2013, the Commission published a revised draft Directive implementing a Financial Transaction Tax (FTT) via the enhanced cooperation procedure[1]. This follows the decision of the Council of EU to authorize enhanced cooperation between a subset of eleven EU Member States[2] (the "Participating Member States" or the "FTT zone").

The proposal foresees the FTT entering into effect on 1 January 2014, pending the Council reaching an agreement on the proposal.

Overview of the proposal

The proposal is largely based on the original draft Directive published by the Commission in 2011, although some adjustments have been made. The scope of the tax is very wide as it is envisaged to cover many transactions, carried out by financial institutions and all financial instruments, as long as there is a link to the FTT zone:

securities of a FTT zone issuer as well.

The proposed minimum rate set would be 10 bps, except for derivatives transactions, for which the minimum rate would be 1bp on the notional value.

Impact on the Private Equity industry

Private Equity players are likely to be impacted by the proposed tax, with possible cascading effects on both the distribution and investment sides.

While the issuance of units/shares by AIFs would benefit from the primary market exemption, the redemption and the transactions on the secondary market would be affected. On the contrary, in principle the redemption of units/shares by AIFs, established outside the FTT zone, would not be subject to FTT, unless the investor is established in a Participating Member State.

The acquisition of companies established in the FTT zone would also be subject to the tax, based on the issuance principle.

Finally, FTT charges may arise at the level of the various acquisition vehicles used in the chain, depending on their location and the way the transaction is structured. Acquisition vehicles, located outside the FTT zone, should not be subject to the FTT, unless their counter-parties in a financial transaction are residents in the FTT zone or they trade securities of a FTT zone issuer.

Eric Centi, Associate LPEA Member

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[1] http://ec.europa.eu/taxation_customs/resources/documents/taxation/com_2013_71_en.pdf
[2] Austria, Belgium, Estonia, France, Germany, Greece, Italy, Portugal, Slovakia, Slovenia and Spain
[3] See Art. 2.1(2)(j).

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