

**LPEA** 

LUXEMBOURG PRIVATE EQUITY &  
VENTURE CAPITAL ASSOCIATION



# PRIVATE EQUITY IN LUXEMBOURG

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# 1. Introduction

## 1.1 About LPEA

The Luxembourg Private Equity and Venture Capital Association (LPEA) is the representative body of private equity and venture capital professionals in Luxembourg. With 150 members, LPEA plays a leading role in the discussion and development of the investment framework and actively promotes the industry beyond the country's borders.

The association provides a dynamic and interactive platform for its members to discuss and exchange information and organises working meetings and networking opportunities on a regular basis.

LPEA is a member of Invest Europe, a stakeholder of Luxembourg for Finance and is represented in the Haut Comité de la Place Financière (Luxembourg Ministry of Finance).



## 1.2 Foreword by the President of LPEA

Luxembourg is now firmly established as the jurisdiction of choice for the European Private Equity industry. Luxembourg is home today to over 80 Private Equity firms with most of the large European GPs and many of the large US GPs now having established operations in Luxembourg. According to LPEA estimates the industry's assets under management in Luxembourg have boomed to over €300 billion, a figure we expect to continue increasing as new players discover the many advantages this domicile offers.

Multiple factors have been contributing to the industry's growth. Besides a legal toolbox second to none (Funds, ManCos, Special Purpose Vehicles), political and economic stability, and predictable taxation on the back of an unrivalled financial infrastructure, Luxembourg boasts a business friendly attitude combined with a strong governmental commitment towards Private Equity. While a wide range of private equity and venture capital

funds have been using Luxembourg's SPV structure and double taxation treaty network as a hub for their cross-border investments, making their structuring both efficient and neutral, an ever growing number of firms are setting up middle and front office operations in Luxembourg to benefit from Luxembourg's critical size and expertise as Europe's leading AIFM-EuVECA-UCITS center.

This brochure aims to provide Private Equity professionals (LPs included!) and their advisers with a comprehensive yet focused overview of the general business, legal, tax and regulatory environment that Luxembourg offers to the Private Equity industry. Whether you are exploring Luxembourg for the first time or you are refreshing your knowledge, we trust you will find this brochure useful and we at the LPEA are at your disposal to provide you with any further information you may need.

**Jérôme Wittamer**

### 1.3 Message from the Minister of Finance of Luxembourg

Confidence and growth are back in Europe. Notwithstanding the present geopolitical risks, governments and companies have found new optimism and are stepping up their investments. An ever growing number of start-ups all across the European Single Market are looking for investors to fuel their expansion. While bank loans are still the preferred source of funding in Europe, there is a clear need for alternative solutions. In a time of historically low interest rates, investors are also exploring a broader range of investment opportunities. In this context, the role of Private Equity and Venture Capital (PE/VC) can only grow.

To facilitate these shifts, the European Union is putting into place the Capital Markets Union (CMU). Pushing forward this ambitious project was one of the priorities of last year's Luxembourg presidency of the Council of the European Union. Indeed, Luxembourg is a strong supporter of deeper and more integrated capital markets and cross-border funding solutions for companies, in particular start-ups and SMEs.

Major international success stories such as Skype, Wix, Spotify or Yo! Sushi are closely tied to Luxembourg and its Private Equity ecosystem. This is no coincidence. While it is largely known as the host to the world's second largest fund industry and a prime location for international wealth management, Luxembourg's financial centre is also a leading European hub for PE/VC operations.

The world's top 10 Private Equity players have operations in Luxembourg. The whole sector counts around 6000 PE/VC professionals and €300 billion of assets under management. The State of Luxembourg itself has become a player in this field, through the launch of the €150 million Luxembourg Future Fund, which has started to deploy in the area of cybersecurity, as well as the €20 million Digital Tech Fund, launched earlier this year. In this regard, the government follows the same philosophy that has led it already in the early 80s to be an investor in SES, which has now developed into the world's leading private satellite operator. In the same sense, the government's more recent commitment to the space mining venture is yet another illustration of the pioneering spirit that Luxembourg shares with the PE/VC community.

With mounting uncertainties around the globe, Luxembourg stands out as a highly stable and reliable jurisdiction in the heart of the European Union and the Euro zone, offering an unrivalled legal toolbox, sound public finances with a solid "AAA" rating, well established expertise, and a business friendly environment for the PE/VC industry. Add to this a highly skilled and multilingual workforce, an



ever growing ecosystem of specialised services providers and an increasing number of business incubators and accelerators, and you get a unique value proposition.

The LPEA and its members actively contribute to spreading this message across the world. I congratulate them on the work they have done to help positioning Luxembourg as a leading hub for innovate companies looking to develop and grow their business all across the European Single Market and beyond. Building on this experience, I encourage them to continue their efforts, for which they have my full support.

**H.E. Pierre Gramegna**

## 2. Executive summary

Luxembourg has become one of the leading jurisdictions worldwide and the leading place for setting up Private Equity and Venture Capital funds. Luxembourg can combine unique strengths that cannot be found elsewhere:

**The right structures** – the large range of available structures ensures that all fund promoters will find the suitable vehicle for their investors. Funds can be set up as regulated or unregulated vehicles for all asset classes with different corporate forms to choose from, as limited partnerships or mutual funds. In accordance with the type chosen, the tax status will vary accordingly

Luxembourg is an onshore **EU jurisdiction**, a prerequisite for many investors

**AIFM distribution capabilities** – following the introduction of UCITS in 1988, Luxembourg turned into the most recognized hub for distribution worldwide. With AIFMD Luxembourg is able to leverage on this unprecedented expertise

Sophisticated **infrastructure of service providers** with a multilingual and technically skilled workforce

Recognized, renown and proven concepts such as 3rd part AIFMs and outsourcing of back- and middle office functions

Luxembourg is a worldwide recognized **brand** for investment.

## 3. Luxembourg – a conducive environment for Private Equity

Choosing the right location for Private Equity houses means taking into consideration many different factors. The following features are Luxembourg's strengths – and the combination of these strengths makes Luxembourg attractive to Private Equity.

### Political & economic stability

The political stability of Luxembourg is marked by a political culture of consensus where the traditional parties coexist within the context of broad agreement on key issues. The business-friendly political environment is conducive to welcoming Private Equity promoters and entrepreneurs. Attracting international players is considered paramount in building an efficient business framework and economic growth, and has enabled Luxembourg to establish a permanent and innovative business community.

With the UK exiting the EU over the course of the next years, numerous actors of the financial sector will need to re-assess their current set-up even though they might have already adjusted their business model after the introduction of the AIFMD in 2013. It is well possible that numerous AIFMs and management companies will need to analyse whether their managing body may stay in the UK or needs to be redomiciled to an EU jurisdiction. The stable environment of Luxembourg offers in this respect a suitable attractive alternative.

### The strength of the Luxembourg financial services industry

Luxembourg is the largest financial centre for investments funds in Europe and the second largest worldwide. Promoters from more than 70 countries distribute their Luxembourg funds around the world through more than 52,000 distribution agreements: 65% of authorizations for distribution granted to worldwide funds are allocated to Luxembourg funds<sup>1</sup>). Luxembourg has been able to turn retail EU funds, the UCITS, into a brand that stands on its own, not only within Europe but worldwide. In view of the fact that more than 45,000 people are employed in the financial services industry which contributes around 26% of the gross domestic product<sup>2</sup> it is easily understandable why the financial industry and government are working closely and smoothly together to ensure continued efficiency. Today Luxembourg hosts more than 400 authorized and more than 600 registered fund managers<sup>3</sup>. In addition, it hosts a large number of support entities such as central administrators, domiciliary agents, law firms, auditors, consultants, depositaries and many more; an industry that continues to develop dynamically.

1 - PwC/Lipper: Global Fund Distribution 2016

2 - CSSF (Dec. 2015) and Statec (Nov. 2010)

3 - CSSF Annual Report 2015

## Business-friendly environment

Luxembourg has a unique system of social dialogue that involves regular meetings between the government, employers' representatives and unions, which is key to avoiding social conflicts and to reaching consensus on important decisions regarding economic and social affairs.

The government promotes a regular exchange with associations representing the financial sector, organises and takes part in economic missions abroad and creates a long-term dialogue with companies which are critical to the sector.

## Speed to market

Luxembourg is not only at the forefront of implementing new EU directives into national law, as was the case with UCITS in 1988 and AIFMD in 2013, but also of creating new, innovative structures that respond to market demand. The SICAR and the SIF, two entities introduced in 2004 and 2007 respectively, were the first regulated PE fund structures with oversight from a depositary. While many promoters shied away from this regulation, AIFMD introduced certain features that SICAR and SIF already applied well before the arrival of the AIFMD. Similarly, the need of a limited partnership structure led to the introduction of the Luxembourg unincorporated Special Limited Partnership ("SCSp") and the revamping of the existing incorporated limited partnership in 2013, removing all inconvenient features inherent in other limited partnership structures existing in the market. In line with AIFMD requirements, Luxembourg was one of the first financial places to have a considerable number of regulated and highly qualified Alternative Investment Managers ("AIFM") providing 3rd party management services to PE funds. Last but not least, 2016 saw the introduction of the Reserved Alternative Investment Fund ("RAIF"), a fund structure with legal and tax features of the well-established SICAR and SIF, without those being subject to direct regulation from the Luxembourg financial supervisory authority but requiring the appointment of an AIFM, itself a regulated entity.

## International distribution hub

The AIFMD entails a European marketing passport for AIFs, similar to UCITS. While Luxembourg has become the leading jurisdiction in the world for retail fund cross-border distribution, it is currently building on this experience and to repeat this success story for AIFs over the coming years.

## A strategic position at the heart of Europe

One of the prime features of Luxembourg's success is its geographical location. While being part of the EU is the most relevant argument from a regulatory standpoint, Luxembourg also profits from a strategic geographical position at the crossroads of Europe, with direct rail, road and air routes to the largest European cities.

### One hour flights to major European cities:

Luxembourg is served by an international airport connecting the country to major European business centres.

Luxembourg is a one hour (or less) flight from London, Paris, Frankfurt, Zurich, Geneva and Milan. Other direct flights connect Luxembourg to Amsterdam, Berlin, Copenhagen, Dublin, Istanbul, Madrid, Munich, Stockholm and Vienna.

### Efficient train connections:

The TGV brings Paris within a 2 hours reach while Brussels is 2,5 hours away by standard train.

### At the heart of Europe's highway network:

Taking the highway, Frankfurt, Cologne and Brussels are only at a 2 hour drive while Munich, Amsterdam, Paris and Zurich can be reached within 4 hours, Geneva in 6 hours.

## A highly innovative and dynamic centre

Alongside one of its main pillars, namely the financial services industry, the Luxembourg government has identified four major industries as the core sectors to be developed in Luxembourg over the coming years. Major efforts are made to attract innovative companies to either start their business in Luxembourg, set up in Luxembourg or to foster research and development. These key industries are:

- healthcare and clean technology
- telecommunication/media/technology
- information & communication technology, including FinTech
- transportation and logistics.

The Luxembourg government has set the goal to develop these industries leveraging on the expertise and reputation it already has in these fields.

## Skilled and multi-lingual workforce

The Luxembourg labour market offers a pool of highly skilled and multilingual resources. With more than 150 nationalities represented, its workforce is truly international: almost 45% of residents and more than 70% of the active population are well-integrated foreigners. The Greater Region represents a natural extension of Luxembourg's domestic market and also provides a solid workforce for Luxembourg's business. Around 150,000 or 45% of the Luxembourg work force commute from neighbouring countries France, Germany and Belgium to Luxembourg on a daily basis, contributing to the skill-set available in Luxembourg. Many people in Luxembourg speak 3 or 4 languages (Luxembourgish, German, French, English, Portuguese, Italian, Spanish, etc.). This, combined with the high level of professional qualifications held by staff has allowed Luxembourg to respond to the requirements of multilingual and multicultural investors.

## Commitment to Europe

Luxembourg is also well known for its role within the European Union. As a founding member of major international organisations such as BENELUX, the Council of Europe, the European Union, NATO, OECD, and the United Nations, Luxembourg has influence that belies its size, especially within Europe. It is host to many European Union institutions amongst which departments of the Commission, the Council and the Parliament, the Court of Justice, the Court of Auditors and the Statistical Office. Luxembourg also welcomes the headquarters of the European Investment Bank, the European Investment Fund and the European Stability Mechanism.

## High quality living standards

Luxembourg has one of the world's highest per capita gross domestic products and is one of the top ranking countries in terms of Human Development, Quality of Life, Personal Safety and Corruption Perceptions indices<sup>4</sup>.

# 4. Private Equity – Legal Framework

Private Equity vehicles in Luxembourg may (i) either be any normal commercial companies (as further detailed under 4.1 below), i.e. non-regulated structures or (ii) investment structures that are supervised by the Luxembourg Commission de surveillance du secteur financier ("CSSF") and therefore regulated structures (as further detailed under 5.2).

The specific (legal) features of all of these structures (non-regulated and regulated alike) are further explained in 5.3 below.

The aforementioned structures may qualify as an alternative investment fund ("AIF")<sup>5</sup> under the Luxembourg implementation of the AIFMD, i.e. the Luxembourg law on alternative investment fund managers ("AIFM") of 12 July 2013, as amended

(the "AIFM Law"). They would then potentially need to appoint an AIFM for the performance of the respective AIF's portfolio and risk management services within the meaning of the AIFM Law.

*"As a growth-stage investor in western European companies, we specialize in transforming companies into global ones. Creating and financing a holding company in centrally located Luxembourg from which to create many subs around the world not only is part of that transformation process but it also allows us to have an edge upon an exit opportunity".*

**Alexandre Rhea, Managing Partner, New Angle Capital**

4 - IMF, UNDP, OECD Better Life Index, Transparency International 2013

5 - According to article 1 (39) of the AIFM law, an AIF is any collective investment undertaking, including investment compartments thereof, which: (a) raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and (b) do not require authorisation pursuant to Article 5 of Directive 2009/65/EC;

## 4.1. Non-regulated (standard commercial) companies

Any standard commercial company under the Luxembourg law of 10 August 1915 on commercial companies (the “1915 Law”) can be used as a Private Equity structuring vehicle in Luxembourg. These vehicles may either be intermediate holding vehicles for an entity located abroad (typically a non-European Private Equity fund) or be themselves the investment vehicle for the end investors / beneficial owners of the structure.

To the extent that the corporate object of that vehicle is limited to the holding of participations in other (asset holding) companies (be it in Luxembourg or abroad) the most common non-regulated Private Equity structure in Luxembourg is the SOPARFI. SOPARFIs are ordinary commercial companies (in principle able to take any corporate form available under the 1915 Law, while in practice this often will be a private limited company, i.e. a société à responsabilité limitée, S.à r.l. or a simplified limited company, i.e. a société par actions simplifiée, S.A.S.) governed by the 1915 Law.

As an ordinary company, the SOPARFI is not subject to any risk-spreading requirements and may in principle invest in any asset class. SOPARFIs are used to invest and manage financial participations in Luxembourg or foreign companies. SOPARFIs can also undertake commercial activities which are directly or indirectly connected to the management of their holdings including the debt servicing of their acquisitions.

The Luxembourg law which implemented the AIFMD, revamped and updated the legal framework for limited partnerships under the 1915 Law, i.e. the société en commandite simple (S.C.S.). In addition, the law implementing the AIFMD also added another form of limited partnership under Luxembourg law, i.e. the société en commandite spéciale (S.C.Sp.), which, unlike the S.C.S., does not have legal personality itself. Both vehicles have increasingly been used for structuring private equity investments. Records of the Luxembourg trade register show that by June 2016, 1165 S.C.S. or S.C.Sp. had been set up since its introduction in July 2013, seemingly substituting the former vehicle of choice, the S.à r.l.. While the principal reasons for choosing the legal form of a Luxembourg private equity structuring vehicle may often be driven by considerations of applicable foreign (tax) law, the increased structuring flexibility of the S.C.S. or the S.C.Sp. has added to its increased popularity. The limited partnership agreement will define their operational rules and fix its tax-transparent status (under Luxembourg tax law and subject to appropriate structuring under applicable foreign tax law, to the extent applicable).

### Reserved alternative investment fund - RAIF

On 14 July 2016, bill of law n°6929 on reserved alternative investment funds (“RAIFs”) was adopted by the Luxembourg Parliament. Its purpose is to introduce a new type of Luxembourg investment vehicle that is reserved to Luxembourg alternative investment funds (“AIFs”) managed by an authorised external alternative investment fund manager (“AIFM”) within the meaning of Directive 2011/61/EU of 8 June 2011 on alternative investment fund managers (the “AIFMD”).

To a large extent, the RAIF vehicle offers similar structuring flexibilities as Luxembourg specialised investment funds (“SIFs”). However, in contrast to SIFs, RAIFs are not subject to supervision of the Luxembourg supervisory authority of the financial sector (the “CSSF”).

RAIFs are Luxembourg AIFs governed by the Luxembourg law of 23 July 2016 on RAIFs (the “RAIF Law”).

In addition, RAIFs adopting a corporate form are, unless it is derogated therefrom by the RAIF Law, subject to the general provisions of the 1915 Law.

Moreover, as RAIFs qualify as AIFs managed by a duly authorised AIFM subject to the full AIFMD requirements, RAIFs will be subject to the so-called “AIFMD Product Rules” applicable to them. These AIFMD Product Rules include, among others, specific AIFMD requirements in terms of (i) appointment of the RAIF’s depository, (ii) appointment of the RAIF’s approved statutory auditor, (iii) minimum content of the RAIF’s annual report, (iv) valuation of the RAIF’s assets, and (v) investment and leverage rules regarding certain types of assets. However, in exchange for complying with all the conditions laid down in the AIFMD and provided that their AIFM is fully licensed, RAIFs may benefit from the AIFMD passport under certain conditions in order to be marketed to professional investors (and retail investors if permitted by the relevant Member States) in the EU.

## 4.2. Directly regulated or indirectly supervised structures

The CSSF regulates SICARs and SIFs. SIFs are regulated under the provisions of the law of 13 February 2007 on specialised investment funds (the “SIF Law”) while SICARs are regulated under the provisions of the amended law of 15 June 2004 (the “SICAR Law”) on investment companies for risk capital investment. Both SICARs and SIFs are registered on official lists maintained by and accessible on the website of the CSSF. SIFs and SICARs would typically also qualify as AIFs under the AIFM Law.

Amidst an international regulatory environment seeking to increase transparency and oversight the SICAR and the SIF are tried-and-tested regulated Private Equity frameworks. The legal framework applicable to SICARs and SIFs offers a combination of a flexible and accessible regulatory infrastructure with strong investor protection features. They can only be subscribed to by “well-informed” investors (see the Glossary for a more detailed definition).

As of 31 December 2015 282 SICARs comprising in total a volume of €37.4 billion and the number of 1,602 SIFs comprising a total amount of €389.4 billion were registered with the CSSF.

### SICAR

SICARs are investment vehicles designed specifically to suit the needs of Private Equity and Venture Capital. SICARs allow direct or indirect contributions of assets to be made to entities in view of their launch, development or listing on a stock exchange.

### SIF

SIFs were created to replace a predecessor regime which was no longer suitable. In particular, with Luxembourg starting to position itself as an alternative funds domicile, the time was ripe for a complete overhaul of the then existing legal and regulatory framework. The SIF regime was thus created in 2007 in order to clearly establish Luxembourg as an AIF domicile further accommodating all alternative asset classes with hedge funds, real estate funds and private equity funds in particular.

### Conversions between legal regimes

The unregulated S.C.S. and S.C.Sp. can be converted into a regulated SIF or SICAR at any time. Advantages of starting off with an unregulated fund are:

- Quick set-up as no CSSF approval needed
- No depositary needed (cost savings)
- Contractual relationship means that parties have freedom to negotiate contractual contents, no regulation prescribes any rules. Note, however, that the costs for setting up legal documents is slightly higher than for an S.C.S./S.C.Sp. in the form of a SIF SICAR or RAIF as all details have to be defined individually and negotiated with the signees.
- When the unregulated S.C.S. or S.C.Sp. has reached a certain volume and/or more external fundraising is foreseen, it may be interesting to (i) convert the S.C.S./S.C.Sp. into a regulated SIF or SICAR (regulation on fund level) and (ii) nominate an alternative investment fund manager (AIFM) under the AIFMD regime (regulation on the manager level) to benefit from the distribution freedom in the EU under the AIFMD regime.

*“Our international investors appreciate the stable and reliable regulatory and fiscal environment offered and sustained by Luxembourg authorities.”*

Diana Meyel, Partner, Cipio Partners GmbH

*“There is a vast pool of knowledge and experience relating to funds and regulations in the financial sector in Luxembourg”.*

Stefan Holmer, Managing Director, EQT Management S.à r.l.

### 4.3. Features of Luxembourg Private Equity vehicles

SIF (CSSF REGULATED)	SICAR (CSSF REGULATED)	SOPARFI (UNREGULATED)	RAIF (INDIRECTLY SUPERVISED BY ITS AIFM)
<p>In principle always qualifies as an alternative investment fund (AIF) under the AIFM Law (unless single investor)</p> <p>De minimis AIF possible</p> <p>Internal management under the AIFM Law possible</p>		<p>May qualify as an alternative investment fund (AIF) under the AIFM Law</p> <p>De minimis AIF possible</p> <p>Internal management under the AIFM Law possible</p>	<p>Alternative investment fund (AIF) qualification under the AIFM law mandatory</p> <p>Not admitted for de minimis AIF</p> <p>Not admitted for internal management under the AIFM law</p>
<p><b>Choice of legal form: Corporate vehicles</b></p> <ul style="list-style-type: none"> <li>• Public limited company (S.A.)</li> <li>• Simplified limited company (S.A.S.)</li> <li>• Private limited company (S.à r.l.)</li> <li>• Corporate partnership limited by shares (S.C.A.)</li> <li>• Common limited partnership (S.C.S.)</li> <li>• Special limited partnership (S.C.Sp.)</li> </ul> <p>The aforementioned corporate vehicles will all qualify as investment companies with variable capital (société à capital variable, SICAV), i.e. their capital will be allowed to increase or decrease freely without the need to convene a shareholders' meeting to that effect</p>	<p><b>Choice of legal form: Corporate vehicles</b></p> <ul style="list-style-type: none"> <li>• Public limited company (S.A.)</li> <li>• Simplified limited company (S.A.S.)</li> <li>• Private limited company (S.à r.l.)</li> <li>• Corporate partnership limited by shares (S.C.A.)</li> <li>• Common limited partnership (S.C.S.)</li> <li>• Special limited partnership (S.C.Sp.)</li> </ul>		
<p><b>Choice of legal form: Contractual form</b> common fund (FCP-SIF)</p>	n/a	<p><b>Choice of legal form: Contractual form</b> common fund (FCP-RAIF)</p>	
<p><b>Tax Treatment</b></p> <p><b>Transparent:</b></p> <ul style="list-style-type: none"> <li>• Common fund (FCP-SIF)</li> <li>• Common limited partnership (S.C.S.)</li> <li>• Special limited partnership (S.C.Sp.)</li> </ul> <p><b>Not transparent (all vehicles in principle taxable in Luxembourg):</b> All corporate forms (see above)</p> <p>For all vehicles mentioned in this box, the SIF regime applies as set out below (other than that there is no other direct taxation in Luxembourg)</p>	<p><b>Tax Treatment</b></p> <p><b>Transparent:</b></p> <ul style="list-style-type: none"> <li>• Common limited partnership (S.C.S.)</li> <li>• Special limited partnership (S.C.Sp.)</li> </ul> <p><b>Not transparent (taxable vehicle in Luxembourg):</b> All corporate vehicles (see above). All these corporate vehicles are otherwise fully taxable in Luxembourg</p>	<p><b>Tax Treatment</b></p> <p><b>Transparent:</b></p> <ul style="list-style-type: none"> <li>• Common fund (FCP-RAIF)</li> <li>• Common limited partnership (S.C.S.)</li> <li>• Special limited partnership (S.C.Sp.)</li> </ul> <p><b>Not transparent (taxable vehicle in Luxembourg):</b> All corporate vehicles (see above). All these corporate vehicles are otherwise fully taxable in Luxembourg AIFs (except if they opt for the special tax status outlined in the next box below similar to the SIF and SICAR regimes only available to RAIFs)</p>	

SIF (CSSF REGULATED)	SICAR (CSSF REGULATED)	SOPARFI (UNREGULATED)	RAIF (INDIRECTLY SUPERVISED BY ITS AIFM)
<p><b>SIF regime, i.e. vehicles respecting the principle of risk spreading</b> (CSSF Circular 07/309):</p> <ul style="list-style-type: none"> <li>• Annual subscription tax (taxe d'abonnement) at a rate of 0.01%</li> <li>• Some SIFs are exempted from the subscription tax</li> <li>• SIFs are not subject to any Luxembourg taxes on capital gains or income</li> <li>• The corporate vehicles may in principle benefit from certain double tax treaties and other international tax agreements</li> </ul>			<p><b>SIF regime for RAIF respecting the principle of risk spreading</b> (mutatis mutandis CSSF Circular 07/309):</p> <ul style="list-style-type: none"> <li>• Annual subscription tax (taxe d'abonnement) at a rate of 0.01%</li> <li>• Some SIF-RAIFs are exempted from the subscription tax</li> <li>• SIF-RAIFs are not subject to any Luxembourg taxes on capital gains or income</li> <li>• The vehicle may benefit from certain double tax treaties and other international tax agreements</li> </ul>
<p><b>Tax Treatment</b></p> <p><b>Transparent:</b></p> <ul style="list-style-type: none"> <li>• common fund (FCP-SIF)</li> <li>• Common limited partnership (S.C.S.)</li> <li>• Special limited partnership (S.C.Sp.)</li> </ul> <p><b>Not transparent (all vehicles in principle taxable in Luxembourg):</b> All corporate forms (see above) For all vehicles mentioned in this box, the SIF regime applies as set out below ( other than that there is no other direct taxation in Luxembourg)</p>	<p><b>SICAR regime for funds investing in risk capital (CSSF Circular 06/241):</b></p> <ul style="list-style-type: none"> <li>• Subject to income tax in Luxembourg, but any income arising from securities held by the SICAR does not constitute taxable income</li> <li>• May benefit from certain double tax treaties</li> <li>• Capital gains realised by non-Luxembourg residents are not subject to tax in Luxembourg</li> <li>• Dividend and interest payments paid are exempt from withholding tax</li> </ul>		<p><b>SICAR regime for RAIF investing in risk capital (mutatis mutandis CSSF Circular 06/241):</b></p> <ul style="list-style-type: none"> <li>• Subject to income tax in Luxembourg, but any income arising from securities held by the SICAR does not constitute taxable income</li> <li>• May benefit from certain double tax treaties</li> <li>• Capital gains realised by non-Luxembourg residents are not subject to tax in Luxembourg</li> <li>• Dividend and interest payments paid are exempt from withholding tax</li> </ul>
<p><b>Duration</b> Unlimited or limited period of time</p>			
<p><b>Form of securities</b></p> <ul style="list-style-type: none"> <li>• (registered)* shares or units (FCP-FIS/SIF or FCP-FIAR/RAIF): ordinary, preference, beneficiary (the latter not for SIF)</li> <li>• Partnership interests (for S.C.S. and S.C.Sp.)</li> <li>• Redeemable</li> <li>• Voting and non-voting (only voting for SIF)</li> <li>• Bonds and/or notes</li> </ul> <p>*issuance of registered shares of any vehicle recommended in order to ensure proper management of eligible investors (i.e. professional investors to the extent vehicle qualifies as an AIF)</p>			
<p><b>Listing</b> Possible (only for S.A., S.C.A., FCP-SIF and FCP-RAIF)</p>			
<p><b>Redemption</b> Possible though unlikely in a PE / VC context</p>			
<p><b>Capital calls / Distributions</b> Capital calls and distributions to investors are subject solely to the rules provided for in the constitutive documents</p> <p>Flexibility on issue price (except where NAV calculation in specific cases) Preferential rights may be limited or cancelled</p>		<p><b>Capital calls / Distributions</b> Capital calls and distributions to investors are subject to the rules provided in the constitutive documents</p> <p>Flexibility on issue price Preferential rights may be limited or cancelled</p>	
<p><b>Permissible asset classes</b> asset classes as set out in SIF law (as amended by RAIF law)</p>	<p><b>Restricted asset classes</b> Investment in risk capital (according to definition of "risk capital" in CSSF Circular 06/241)</p>	<p><b>Permissible asset classes</b> Any kind of asset class</p>	
<p><b>Risk spreading</b> Risk diversification requirement (as contained in CSSF Circular 07/309)</p>	<p><b>Risk spreading</b> No risk diversification requirement</p> <p>i.e. as long as an S.C.S./S.C.Sp. remains unregulated, no need for risk diversification. If the S.C.S./S.C.Sp. is converted into a SIF, diversification is required, if converted into a SICAR, also no need for risk diversification.</p>		

SIF (CSSF REGULATED)	SICAR (CSSF REGULATED)	SOPARFI (UNREGULATED)	RAIF (INDIRECTLY SUPERVISED BY ITS AIFM)
<b>Compartments /Sub-funds</b> Possible		<b>Compartments</b> Not possible	<b>Compartments / Sub-funds</b> Possible
<b>Capital</b> <ul style="list-style-type: none"> <li>• Fixed or variable</li> <li>• € or foreign currency equivalent</li> <li>• Minimum of €1,250,000 (including share premium), to be reached within 12 months of authorisation provided at incorporation</li> <li>• Minimum of €12,000 for S.à r.l. and €30,000 for S.A. / S.C.A.</li> <li>• Partly paid shares must be paid up to at least 5%</li> <li>• No restriction for S.C.S. / S.C.Sp.</li> <li>• Contribution in kind and/or in cash permissible</li> <li>• Commitment or subscription based model.</li> </ul>	<b>Capital</b> <ul style="list-style-type: none"> <li>• Fixed or variable</li> <li>• € or foreign currency equivalent</li> <li>• Minimum of €1,000,000 (including share premium) to be reached within 12 months of authorisation, provided at incorporation</li> <li>• Minimum of €12,000 for S.à r.l. and €30,000 for S.A. / S.C.A.</li> <li>• Shares must be paid up to at least 5%</li> <li>• No restriction for S.C.S. or S.C.Sp.</li> <li>• Contribution in kind and/or in cash permissible</li> <li>• Commitment or subscription based model.</li> </ul>	<b>Capital</b> <ul style="list-style-type: none"> <li>• Fixed or variable € or foreign currency equivalent</li> <li>• Minimum of €12,500 for S.à r.l. and €31,000 for S.A./ S.C.A. at incorporation only</li> <li>• Shares must be paid up to 25% for S.A./ S.C.A. and 100% for a S.à r.l. No restriction for S.C.S. or S.C.Sp.</li> <li>• Contribution in kind and/or in cash permissible</li> <li>• Commitment or subscription based model</li> </ul> <p>Note: no share capital for S.C.S./S.C.Sp.</p>	
<b>Management bodies</b> <ul style="list-style-type: none"> <li>• Board of directors, manager(s) or managing general partner – dependent on corporate form</li> <li>• Approval of board members by the CSSF.</li> </ul>		<b>Management bodies</b> <ul style="list-style-type: none"> <li>• Board of directors, manager(s) or managing general partner – dependent on corporate form</li> <li>• No approval requirements for board members by the CSSF.</li> </ul>	
<b>Supervisory reporting</b> <ul style="list-style-type: none"> <li>• Monthly reporting</li> <li>• Annual audited report due 6 months after year end.</li> </ul>	<b>Supervisory reporting</b> <ul style="list-style-type: none"> <li>• Semi-annual reporting</li> <li>• Annual audited report due 6 months after year end.</li> </ul>	<b>Supervisory reporting</b> <ul style="list-style-type: none"> <li>• Not applicable (as long as the S.C.S./S.C.Sp. does not nominate an AIFM who needs to report on each fund it manages).</li> </ul>	<b>Supervisory reporting</b> AIFM supervised by responsible authority to report on RAIFs it externally manages.
<b>Filing requirements with trade register</b> Within 7 months after year end, audited annual accounts and appendix have to be filed.	<b>Filing requirements with trade register</b> Within 7 months after year end, audited annual accounts have to be filed.	<b>Filing requirements with trade register</b> Within 7 months after year end, annual accounts have to be filed.	<b>Filing requirements with trade register</b> Within 7 months after year end, annual accounts have to be filed.  <b>RAIF List</b> RAIF will have to be registered on RAIF list kept by RCS
<b>Depository</b> Luxembourg depository required (regardless of AIF qualification)		<b>Depository</b> Not required unless the relevant entity qualifies as an AIF, which is not a de minimis AIF	<b>Depository</b> Luxembourg depository required for RAIF
<b>Administrator</b> Administrator to be appointed unless own infrastructure		<b>Administrator</b> Administrator unless own Luxembourg infrastructure	<b>Administrator</b> Administrator to be appointed unless own infrastructure
<b>Auditor</b> Independent approved Luxembourg auditor required		<b>Auditor</b> Independent Luxembourg auditor in certain circumstances only (i.e. there is no audit requirement for an unregulated S.C.S./S.C.Sp. as long as not submitted to the AIFMD regime by appointing an AIFM)	<b>Auditor</b> Independent approved Luxembourg auditor required

## 5. The Luxembourg Tax Environment

One of the key factors in favour of Private Equity operations in Luxembourg remains its favourable tax environment. A stable tax framework, a highly competitive social security system (for companies, employers and employees) and the lowest VAT rate in Europe greatly contribute to making Luxembourg one of Europe's most attractive jurisdictions for Private Equity operations and investments. Of key importance remains, however, the double tax treaty network that Luxembourg has built up over many years.

### Luxembourg's Double Tax Treaty Network

Luxembourg has bilateral tax treaties with all EU Member States (except Cyprus) and with a number of other countries (including almost all OECD Member States). This network of tax treaties is constantly being expanded.

SICARs and SOPARFIs as Luxembourg taxable companies are, from a Luxembourg perspective, entitled to treaty benefits and therefore benefit from double tax treaties concluded between Luxembourg and third countries.

The application of tax treaties to SIFs in a corporate form is to be assessed on a case-by-case basis depending on the wording of the treaty provisions and their interpretation by the relevant foreign authorities. Fiscally transparent SIFs and RAIFs themselves may generally not benefit from treaty provisions due to their tax transparency.

### Taxation of Luxembourg PE vehicles

The Luxembourg tax environment is extremely beneficial for Private Equity structures, both regulated and unregulated.

#### • The SOPARFI:

As a regular company subject to normal corporate taxation and not subject to a specific regulatory regime, the SOPARFI benefits from Luxembourg's extensive network of double-taxation treaties and from the EU Parent-Subsidiary Directive. Despite being a fully taxable company, the SOPARFI allows for tailor-made structuring providing, under certain conditions, for a full exemption for dividends and capital gains upon exit.

#### • The SICAR:

SICARs can be created using different corporate forms.

##### - SICARs in the form of a limited partnership (S.C.S.):

The SICAR, organised in the form of an S.C.S., is tax transparent and thus not subject to corporate, municipal business and net wealth tax. Income and gains received or realised are thus not subject to tax in the hands of the SICAR. Income and gains may furthermore be paid to investors without any Luxembourg source taxation.

##### - SICARs in the form of a corporate partnership limited by shares (S.C.A.):

The SICAR, organised as an S.C.A., is a fully taxable company; income from transferable securities is however exempt under specific conditions; the SICAR in the form of an S.C.A. will equally not be subject to net wealth tax. Dividend distributions will also not be subject to Luxembourg taxation at source.

#### • The SIF:

SIFs, whether organised as a limited partnership or a corporate partnership limited by shares, are not subject to any Luxembourg taxes on capital gains or income; the sole tax due is a subscription tax of 0.01% based on the quarterly net asset value. SIFs in corporate form can moreover claim access to certain double tax treaties.

#### • The RAIF:

In principle, RAIFs will be subject to the same tax regime as SIFs (see above). However, optionally, RAIFs investing in risk capital can opt for the SICAR regime (see above).

### Highlights of Luxembourg's Tax Framework for Private Equity:

- Effective carried interest structuring
- Extensive double tax treaty network
- Legal basis for provision of tax confirmations
- Lowest VAT rate in the EU (17% currently), VAT exemption on management services rendered to RAIFs, SIFs and SICARs and free trade zone for valuable goods
- Competitive effective tax rates and low social security charges for individuals

## 5.1. Direct taxation of corporations

### Luxembourg companies are subject to the following taxes<sup>6</sup>:

- Income taxes at a combined rate of 29.22% in Luxembourg city in 2016, including municipal business tax
- Annual net worth tax levied at a rate of 0.5% on the company's worldwide net worth on January 1 up to a value of 500 million, and 0.05% on any amount in excess, subject to certain adjustments (eg. qualifying shareholdings). A minimum flat net worth tax of 3,210 (increasing to 4,815 from 1 January 2017) applies to most holding and financing companies which have a low or negative net worth.

### Taxation for Luxembourg entities:

Corporate income tax applies to all tax resident corporations and to Luxembourg permanent establishments of foreign corporations. Partnerships, other than those limited by shares, are regarded as tax transparent for Luxembourg tax purposes and are therefore not subject to corporate income tax and net worth tax at their own level. Income distributed by such entities will be considered, from a Luxembourg tax point of view, as flowing through the entity and are thus allocated directly to investors.

Resident taxpayers are liable to tax on their world-wide income, unless income is exempt under the provisions of applicable tax treaties or specific domestic tax law. There is a possibility of obtaining tax credits for foreign taxes paid. Non-resident taxpayers are liable to tax on their Luxembourg-sourced income only, e.g. income realized by and allocable to a Luxembourg permanent establishment.

Thin capitalization rules generally require a debt to equity ratio of 85:15 in the context of financing of participations or real estate. Following the example of other European countries, the Luxembourg direct tax authorities have clarified the tax treatment of Luxembourg group financing companies. Besides appropriate operational infrastructure, the relevant guidance provides that the equity of the financing company should be sufficient for the functions it performs, the assets used and the risks it assumes.

No CFC rules exist in Luxembourg.

### Capital gains taxation for non-residents

If a non-resident shareholder is resident (for tax purposes) in a country that has a double tax treaty with Luxembourg, the treaty will generally allocate the right to tax to the country of residence of the relevant shareholder. In the event that no such double tax treaty exists or can be applied, capital gains on the sale of shares in a Luxembourg company are subject to tax in Luxembourg only if the non-resident shareholder has held a substantial interest in the Luxembourg company and the transfer occurs within 6 months of the acquisition or in the event of a transfer after 6 months, the non-resident individual shareholder has been a Luxembourg resident taxpayer for more than 15 years and has become a non-Luxembourg taxpayer less than 5 years before the disposal takes place. For this purpose, a substantial interest exists if a shareholder, either alone or together with certain close relatives, has held a shareholding of more than 10% in a Luxembourg company at any time during the five year period preceding the transfer.

### Municipal business tax

Municipal business tax varies from 6% to 12% (levied on income of businesses operating in Luxembourg), depending on the municipality where companies have their registered office. For companies operating in the city of Luxembourg, the rate is 6.75%. A deduction of €17,500 applies to the municipal business tax base for entities liable to corporate income tax (€40,000 for other businesses). Municipal business tax is cumulative with corporate tax and is non-deductible.

### Net wealth tax

Net wealth tax is levied at a rate of 0.5% (or 0.05% when the net worth exceeds €500 million) on the company's worldwide net worth on 1 January of each year. Qualifying shareholdings under the participation exemption regime net of allocable debt (allocable debt that exceeds the value of the shareholding is deductible against other assets) are excluded from the taxable base. Luxembourg corporate income tax is creditable to the net worth tax provided certain conditions are met.

### Withholding taxes

A withholding tax of 15% is levied on dividend payments (17.65% if the dividend tax is not charged to the shareholder) unless an applicable tax treaty provides for a lower rate or the Luxembourg participation exemption regime reduces withholding tax to 0%. Liquidation proceeds are not subject to withhol-

<sup>6</sup> - All figures are applicable as of the time of publication. The combined rate will be reduced to 27.08% in Luxembourg City from 1 January 2017 and to 26%.01% starting 1 January 2018.

ding tax. Arm's length fixed or floating rate interest payments are generally not subject to withholding tax. Interest paid on certain profit sharing bonds and profit sharing interest paid on loans is subject to 15% withholding tax unless a lower tax treaty rate applies. Royalty payments are not subject to withholding tax provided they are not connected with non-resident artists' performances and sportsmen's activities in Luxembourg.

## Automatic Exchange of Information

On 28 March 2014, Luxembourg entered into an intergovernmental agreement ("Luxembourg IGA") with the United States of America with respect to the US Foreign Account Tax Compliance Act ("FATCA"), which was implemented into Luxembourg law by the law of 24 July 2015 ("FATCA Law"). Under the Luxembourg IGA and FATCA Law, Luxembourg financial institutions (including in certain cases SICARs, SIFs, RAIFs or SOPARFIs) are required to provide certain information about their US account holders to the Luxembourg tax authorities, which will share that information with the Internal Revenue Service ("IRS") on an annual basis. Luxembourg financial institutions that do not comply with their FATCA obligations risk being subject to a 30% US withholding tax on their US source income in addition to local penalties.

Largely inspired by FATCA, the OECD has developed a global standard for the automatic exchange of financial account information, the Common Reporting Standard ("CRS"). The CRS has been implemented at European Union level through the Directive on Administrative Cooperation (Directive 2014/107/UE), transposed into Luxembourg law by the law of 18 December 2015 ("CRS Law"). Under the CRS Law, Luxembourg financial institutions (including in certain cases SICARs, SIFs, RAIFs or SOPARFIs) are required to collect certain information about their account holders that are fiscally resident in a EU Member State or in a country with which Luxembourg has a tax information sharing agreement, and to report this information to the Luxembourg tax authorities: The Luxembourg tax authorities will thereafter automatically exchange the information with the foreign tax authorities on an annual basis. Luxembourg financial institutions that do not comply with their CRS obligations may be subject to local penalties (no withholding tax penalty system).

## Value Added Tax ("VAT")

The Luxembourg VAT standard rate of 17% is the lowest in the EU, compared with an average of 21% in the other EU Member states. The Luxembourg VAT regime furthermore exempts from VAT management services provided to investments funds. Since July 2013, the exemption has been available for all alterna-

tive investment funds covered by the law of 12 July 2013 transposing the AIFMD, including unregulated funds. This exemption is applicable on portfolio management, advisory services and administrative services. Due to this exemption and the low VAT rate, the VAT burden of SICAR, SIF and other alternative investment funds is very limited. This exemption is however not available to SOPARFIs unless they qualify as an AIF. Assuming their activity is limited to the ownership of shares, SOPARFIs are not obliged to register for VAT except in the unlikely case they acquire goods from abroad. They cannot recover the VAT incurred on their costs.

Luxembourg has no "use and enjoyment" rule obliging, as in some Member States, holding companies, which are not VAT taxable persons, to self-assess the local VAT on services received from non EU service providers without allowing the deduction of this VAT.

A Freeport, operational since September 2014, in the vicinity of the Luxembourg airport, benefits from the VAT-free zone regime on transactions in valuable goods, including their storage. Certain types of investment funds (i.e. passion funds, investing into art and other collectibles) may take advantage of the Freeport.

## Registration duty and transfer taxes

A fixed registration duty of €75 is due upon incorporation and modification of the articles of association of a Luxembourg company or upon transfer of the statutory seat or place of central administration of a company to Luxembourg.

Transfer taxes on the sale of local real estate amount to 7% or 10%.

## Tax treatment of carried interest

In the law transposing the AIFM directive, a regime for the taxation of carried interest from AIFs was also introduced.

The share of profits derived from an AIF and paid to AIFM employees is treated as ordinary income and is thus subject to the highest marginal rate of tax for the recipient (44.10% for 2016) on global income. However, if the employee satisfies certain conditions, the carried interest would be taxable at one quarter of the global tax rate.

The conditions to be fulfilled are:

1. The recipient was neither resident in Luxembourg nor subject to Luxembourg tax on his/her professional income during the 5 preceding years
2. The recipient becomes Luxembourg tax resident

3. No advance payments were received by the recipient
4. The entitlement to carried interest is conditional on the investors having priority in recovering their initial investment.

The individual can benefit from this tax treatment for up to 10 years after having started his/her professional activity in Luxembourg.

The beneficial tax rates do not apply to capital gains realised on the sale of interests in the AIF, which are subject to standard capital gains rules.

### Implications of OECD BEPS

In February 2013, the Organization for Economic Development (OECD) issued a report entitled "Addressing Base Erosion and Profit Shifting" (BEPS), followed by an action plan with 15 actions in July 2013 (Action Plan). The BEPS project is supported by the G20 and is not limited to OECD member countries only, but also includes a number of developing countries. The Action Plan is intended to prevent taxpayers operating internationally from shifting profits to low- or no-tax jurisdictions and thereby reducing their tax base. While BEPS was not aimed at the fund sector, many of the actions and recommendations will likely have an impact

on private equity and venture capital funds and/or their portfolio companies. The recommendations include rules to deal with hybrid instruments and entities, a review of harmful tax practices of Member States and associated countries, a framework for mandatory spontaneous information exchange on tax rulings covering certain regimes, rules against treaty abuse as well as an update of transfer pricing rules for intangible assets. In addition, groups would be required to draw up a "country-by-country-report" that is to be made available to tax authorities and should allow tax authorities to get a more global view on a group's worldwide operations, also functioning as a risk-assessment tool.

Many countries have started to consider or are already implementing some of the solutions suggested by the OECD. Many of the recommendations are primarily targeted at multinationals seeking to minimise their tax burden, rather than through -bound investment and financing structures typically used by Private Equity. There may be an effect on the businesses into which Private Equity Funds invest, however the primary areas, for example deduction of interest expense and transfer pricing, had already been the subject of focus by many of the key larger economies. It will therefore be important to regularly review existing structures to ensure they are not adversely affected by tax law changes implemented as a result of the BEPS project.

## 5.2. Miscellaneous charges and fees

### Chamber of Commerce Fee

All Luxembourg commercial companies are subject to an annual contribution (cotisation) ranging from 0.02% to 0.025% based on the relevant taxpayer's profit generated in the penultimate fiscal year before the relevant contribution generating year. This contribution is capped at €3,000 for SOPARFIs, however the company in question must be coded with the correct NACE code in order to benefit from this cap.

### CSSF Fees

Prudential oversight comes at a cost to the entities supervised.

Authorisation: 3,500 for single-compartment structures and 7,000 for multi-compartment structures.

Annual fee: for single-compartment structures 3,000.

In case of SIFs, for multi-compartment structures the charge varies according to the number of compartments:

1-5 compartments: €6,000

6-20 compartments: €12,000

21-50 compartments: €20,000

More than 50 compartments: €30,000

The annual fee for SICARs is fixed at €3,000 (single-compartment) and €6,000 (multi-compartment).

## 5.3. Personal taxation

Luxembourg is one of the EU Member States with the lowest effective taxes and social security charges for individuals.

### Social security

Social security contributions are computed on the annual gross remuneration capped at €115,261. Self-employed persons are subject to a 23.2% rate on their gross professional income capped at also €115,261.

In addition, employees and self-employed persons are subject to a 1.4% dependency contribution (assurance dépendance) assessed on their annual gross professional income (uncapped). This dependency contribution applies to all income (and not only to employment or self-employed income) in the hands of taxpayers who are subject to the Luxembourg mandatory State social security regime.

### Income tax

Resident taxpayers are subject to income tax on their worldwide income. Non-resident taxpayers are only subject to income tax on Luxembourg-sourced income. Taxable income is assessed on the basis of total income less exemptions, deductible expenses and allowances. The law provides for many exemptions and deductions especially for families with children. Income tax is progressive with rates between 0% and a maximum 40% and is assessed on the basis of the taxpayers' family status. This tax rate is itself increased by an employment fund contribution of 7% or 9% (depending on the family status and level of income) resulting in a top marginal rate of 44.10%. (45.60% as from January 2017).

In principle personal tax is assessed on the basis of an annual tax return that must be lodged by taxpayers. A withholding tax is levied on employment income (progressive withholding tax scale) and director's fees (20% flat withholding under conditions). Withholding taxes on employment income and director's fees are creditable against the taxpayer's final income tax liability.

A special regime for highly skilled workers ("HSWs"), who are seconded to a Luxembourg undertaking belonging to an international group or are recruited from abroad by a Luxembourg undertaking, has been applicable since 1 January 2011. This special regime consists - subject to certain conditions - of an exemption from Luxembourg personal income tax on certain expenses and allowances paid to or on behalf of HSWs due to their expatriation. However these expenses and allowances remain tax deductible costs for the Luxembourg undertaking.

### Net wealth tax

There is no net wealth tax for individuals.

### Inheritance/Gift tax

Inheritance tax is due on the value of all property inherited from a Luxembourg resident whereas transfer tax is due on the value of real property located in Luxembourg that is inherited from a non-resident.

Where the heir is a direct descendant or a spouse with children, there is in principle no inheritance tax liability. Gift tax rates vary according to the degree of kinship between the donor and the donee, ranging from 1.8% to 14.4%.

### Summary of tax-related features:

- Attractive effective tax rates
- Broad participation exemption regime
- Significant exemptions from withholding tax on dividends
- No withholding tax on interest, royalties and liquidation proceeds
- No capital / stamp duties on the sale of shares in a Luxembourg company
- Use of international exchange of information standards
- Extensive double tax treaty network
- Transfer pricing and thin capitalization adhering to international standards
- Advance tax clearance system
- Specific tax regimes for investment funds, securitization activities, risk capital and reinsurance
- Competitive personal income tax regime and low social security contributions for employers and employees

*"The positive feedback we receive from our clients as to the ability of the Luxembourg PE industry to service multicultural managers, both experienced and also new to the Luxembourg regulatory regime, continues to be a major benefit to our business as a third party super ManCo and one that we expect to build on in the years to come."*

**Robert Munday, Senior Portfolio Manager, BIL Manage Invest**

### 5.4. Structuring by means of Luxembourg vehicles

The following examples illustrate how PE investments could be structured via a variety of Luxembourg vehicles, including options to locate the PE fund itself in Luxembourg.

Luxembourg structures typically consist of either a SOPARFI, SICAR or SIF or of a combination of the latter two with one or more SOPARFIs.

In the case of an FCP-SIF, an S.C.S. or an S.C.Sp., each qualifying as a tax transparent vehicle, the use of intermediate companies is usually recommended to benefit from double tax treaties and national law implementing EU directives (such as the directive on the participation exemption) that only companies

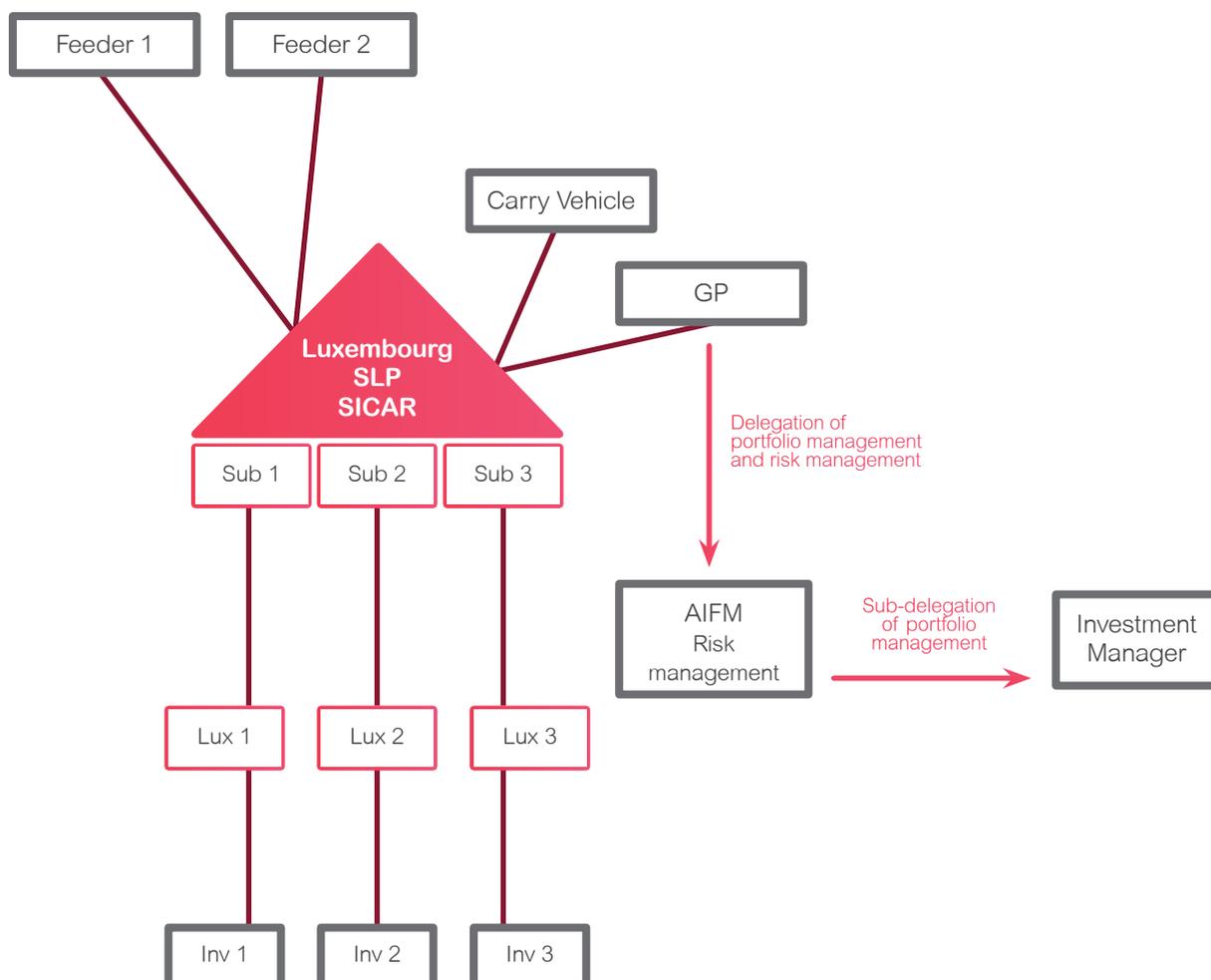
can benefit from, unlike an FCP-SIF or tax-transparent companies such as the SCS or the SCSp.

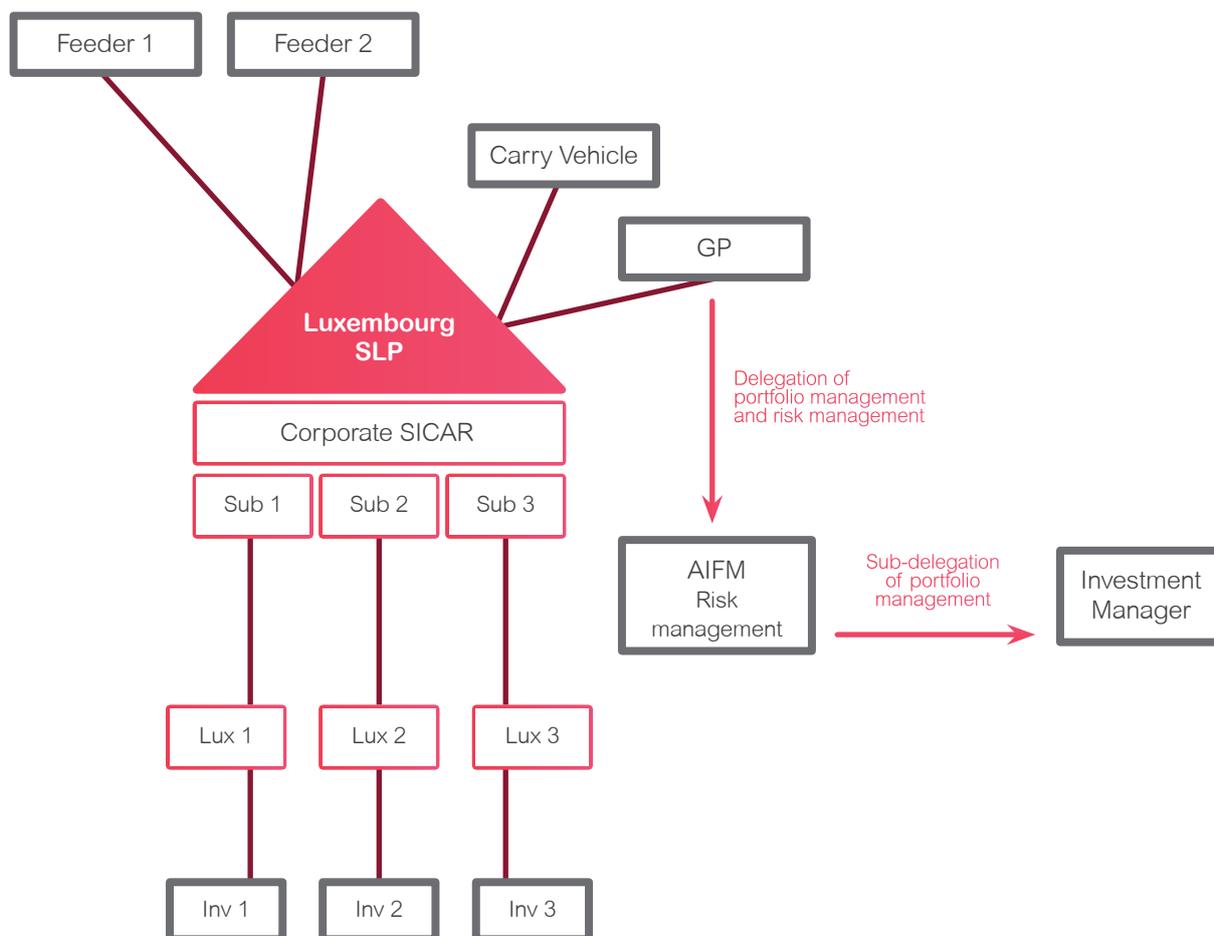
Investors can invest either directly into the Luxembourg vehicle or indirectly via an additional Luxembourg-based or non-Luxembourg-based feeder vehicle.

The following charts are examples of typical Luxembourg Private Equity structures and do not purport to be or should not be interpreted to be legal advice:

Direct investment or investment via a Luxembourg or non-Luxembourg based feeder vehicle into a Luxembourg SOPARFI: the SOPARFI, possibly via a second SOPARFI, invests into a local target company.

**Example 1:** Traditional investment via a Luxembourg SOPARFI. The financing structure respects the thin capitalization rule of 85:15 debt/equity ratio. Any reference to B2B financing must be eliminated as this implies conduit financing structures.



**Example 2:** Intransparent / corporate form

## 6. Accounting Framework for Luxembourg PE vehicles

### 6.1. Accounting standards and audit requirements

With the exception of the Contractual Joint Venture (“S.N.C.”), the Partnership limited by Shares (whose annual turnover does not exceed 100,000 ex-VAT and whose partners with unlimited liability are not all limited liability companies) as well as the Special Limited Partnership, companies can elect any accounting framework. All Luxembourg vehicles may choose to adopt Luxembourg Generally Accepted Accounting Principles (“Lux GAAP”) or International Financial Reporting Standards (“IFRS”) as adopted by the EU. In addition, with the specific approval from the local Accounting Standards Board a company may use any alternative internationally accepted accounting framework such as US GAAP. In practice, the standalone annual accounts

of Luxembourg Private Equity vehicles are very frequently prepared under Lux GAAP whereas consolidated annual accounts (whether legally required – see below – or contractually required – for example through the raising of external financing) are frequently prepared under IFRS as adopted by the EU. Through its international exposure, Luxembourg service providers have in most cases significant experience in the application of IFRS.

Note that while most companies are required to prepare annual accounts there are specific size thresholds that will determine if an audit by an approved statutory auditor under International Standards on Auditing (“ISA”) is required by law.

## 6. 2. Valuation Rules

As a general rule, Luxembourg accounting rules have always been a primarily prudence-focused framework permitting the booking of investments at cost less durable impairment with the recognition only of unrealized losses and not of unrealized gains in the profit and loss accounts of a company. In recent years, with the creation of vehicles such as the SICAR and the SIF and with the harmonization derived from recent EU accounting directives, the possibility of using fair value in the financial statements of Luxembourg companies has been

introduced. Depending upon the corporate structure and nature of a private equity vehicle different valuation principles are thus allowed.

Companies adopting IFRS as an accounting framework have to apply valuation policies depending on the type of instruments being valued. Under Lux GAAP there is a certain level of additional flexibility and possible choices as outlined in the table below:

Type of vehicle / Regulatory framework	Valuation under Lux GAAP
<b>Unregulated S.C.S. and S.C.Sp.</b>	The valuation rules to follow can be freely determined in the partnership agreement. In practice, these rules will follow internationally recognized principles for determining fair value (see below).
<b>Other unregulated vehicles</b>	Valuation rules are governed by the Law of 19 December 2002, as amended.  <b>There are two valuation options:</b> a) Acquisition cost/principal less any durable impairment b) Fair Value.  The choice of which method to use rests with the management of the company. As a general rule, companies tend to adopt option a).
<b>SICAR, SIF</b>	SICARs are obliged to account for their investments at fair value. SIFs are also required to account for investments at fair value unless their constitutional documents specify otherwise. Generally the prospectus, Private Placement Memorandum ("PPM") or the Offering Memorandum ("OM") will contain more detailed explanations with regard to the valuation methodology adopted.

The International Private Equity and Venture Capital ("IPEVC") guidelines are typically used as a reference basis for calculating the fair value of private equity type investments.

*"Mangrove's activity, both on the investor as well as the portfolio level, is highly international. Luxembourg is all set to provide the instruments you need to set up international investment projects – since the home market is small, everything is geared to accommodate the legal, fiscal and regulatory requirements to invest both in Europe and overseas.*

*Concerning fund formation and management you can achieve all you need towards your investors here in Luxembourg and there are no structural disadvantages. In addition the Government is keen to diversify the economy and open for exchange with GPs."*

**Hans-Jürgen Schmitz, Mangrove Capital Partners**

## 6.3. Consolidation

### 6.3.1. Unregulated Vehicles

**Principles:** Luxembourg law requires that limited liability companies, as well as the S.N.C. and the S.C.S. whose partners with unlimited liability are all limited liability companies that control another company prepare and publish consolidated financial statements. S.C.Sp. are not required to produce consolidated financial statements. If consolidated annual accounts are required, most companies ensure today that their preparation is actually done in Luxembourg, either internally or through specialised service providers.

Consolidation exemptions are foreseen in the following cases:

#### • Exemptions

- **Sub-group exemption:** any parent company which is also a subsidiary undertaking of a parent undertaking may be exempted from the obligation to draw up consolidated accounts and a consolidated annual report under certain conditions. The parent undertaking might be governed by the law of a Member State of the EU or not, but different conditions apply. This exemption is not applicable if the Luxembourg parent company has its securities (shares and/or bonds) listed on an EU regulated market.

- **Threshold exemption:** consolidation is not required for consolidated groups which do not exceed the following metrics: balance sheet total: 17.5m / total turnover: 35m / total employees: 250. However, the "threshold exemption" is not applicable in case the relevant company has its securities (shares and/or bonds) listed on an EU regulated market.

- **Financial Holding exemption:** no consolidation is required if the parent company has not intervened in the management of the subsidiary, has not exercised its voting rights in respect of the appointment of the management within the current and the last 5 years, has not granted loans to the subsidiary and, if the conditions were met, has received an exemption granted by the Luxembourg authorities. This exemption is quite rare in practice.

#### • Exclusions

Specific investments may be excluded from the consolidation requirement if they meet one of five possible exclusions as set out by the 1915 Law. These are: immateriality, severe restrictions or disproportionate costs on obtaining financial information, subsequent resale or diverging activities.

However, in these cases, the consolidated accounts will still have to be published in Luxembourg according to the local requirements and the notes to the annual accounts of the excluded company must disclose the name and registered office of

the parent undertaking and the exemption from the obligation to draw up consolidated accounts and a consolidated annual report.

#### **Specific application of the "subsequent resale" exclusion for private equity holding vehicles:**

In December 2009, the Luxembourg Ministry of Justice, through the Accounting Standards Board, issued a recommendation relating to the "subsequent resale" exclusion that allows private equity companies (for which all their subsidiaries are held for subsequent resale) not to present consolidated financial statements in case six conditions are fulfilled:

1. The company is subject to the 1915 Law and is held by one or more well-informed investor(s)
2. The company's exclusive corporate object is to invest in risk capital, which is defined as direct or indirect contribution of funds to one or several entities in view of their launch, development and their listing on a stock exchange. These investments are held with the intention to sell them at a profit
3. An ex-ante exit strategy has been formally defined and documented in writing, communicated to investors, and it is part of the investment policy, implying the intention to divest on a mid-term basis (generally 3 to 8 years)
4. The company's objective is to provide its investors with the benefit of the results of the management of its investments in return for the risk which they incur
5. If the investments are not carried at fair value on the face of the balance sheet, the fair value is disclosed in the notes to the financial statements
6. Any event, guarantee or uncertainty that might have a significant impact on the entity's ability to continue as a going concern, on its cash-flow situation, on its available liquidities or on its solvency has to be disclosed adequately in the notes to the annual accounts.

#### • IFRS Exemption from Consolidation

Under IFRS 10, an entity is exempted from consolidating its subsidiaries if it qualifies as an "investment entity".

An investment entity is defined as an entity that:

1. Obtains funds from one or more investors for the purpose of providing those investor(s) with investment management services
2. Commits to its investor(s) that its business purpose is to invest funds solely for returns from capital appreciation, investment income or both and
3. Measures and evaluates the performance of substantially all of its investments on a fair value basis.

An investment entity is however required to account for its investments at fair value through profit or loss.

It is important to note that the determination as to whether a company is in scope of the investment entity

exemption under IFRS 10 is a significant judgement and will be impacted by the way the Private Equity investment(s) is (are) managed from Luxembourg.

### 6.3.2. Regulated Vehicles (SICARs and SIFs)

The SICAR and the SIF are specifically exempted by law from the consolidation requirement.

### 6.4. Profit Repatriation

Through the use of appropriate financial instruments and an adequate regulated or non-regulated structure, the tax charge levied on profit repatriation can be minimized both at investment level and investor level.

(RAIF)-SIF (regulated)	(RAIF)-SICAR (regulated)	SOPARFI (unregulated)
<b>Distribution of dividends (*)</b> Not subject to specific restrictions except compliance with minimal capital requirements and limitations provided for in the articles of incorporation/management regulations.	<b>Distribution of dividends (*)</b> Not subject to specific restrictions except compliance with minimal capital requirements and limitations provided for in the articles of incorporation.	<b>Distribution of dividends</b> For S.A., S.A.S., S.C.A. and S.à r.l. subject to the requirements of the 1915 Law.
<b>Withholding tax on distributions</b> Distributions, whether paid to resident or non-resident investors, are not subject to withholding tax in Luxembourg.	<b>Withholding tax on distributions</b> Distributions, whether paid to resident or non-resident investors, are not subject to withholding tax in Luxembourg.	<b>Withholding tax on distributions</b> Except for specific situations, no withholding tax should apply to liquidation proceeds or interest payments. Dividend payments are subject to 15% withholding tax (exemptions are available under certain conditions).
<b>Non-resident capital gains taxation</b> Non-residents are not subject to capital gains tax in Luxembourg.		

(\*) For vehicles with variable capital, the Luxembourg manager should pay attention to the qualification of distributions between return of capital and income. This analysis should take into account the specific tax situation of the investors in the various countries in which they are tax residents.

## 7. The Alternative Investment Fund Managers Directive

On 11 November 2010 the European Parliament adopted the Alternative Investment Fund Managers Directive ("AIFMD"). The AIFMD came into force in July 2011 and had to be implemented by 22 July 2013 in all European Member States.

The AIFMD creates a regulatory framework that primarily affects managers of alternative investment funds, as well as alternative investment funds (AIFs) including private equity funds based in the EU and, under specific circumstances, managers and investment entities established outside the EU.

The AIFMD introduces amongst others a marketing passport (the "Passport") permitting the offer or placement of qualifying AIFs in all EU Member States without additional authorisation or registration requirements and which is intended to fully replace, after a transitional period still in place for non-EU AIFM or non-EU

AIFs, the fragmented national private placement regimes currently existing within some EU Members States.

While many see AIFMD as a burden as it has increased costs for managers, the Passport is equally seen as an opportunity that will make AIFs and Private Equity in particular a more widely accessible and attractive asset class. While the UCITS passport, introduced in 1988, revolutionized the European fund market and put Luxembourg at the forefront, Luxembourg is now determined to provide the same opportunities to Private Equity players under AIFMD.

Luxembourg is a unique place for Private Equity and provides Private Equity houses with advantages not only in terms of political, economic and fiscal stability, infrastructure and manpower but also constitutes a legacy of more than 20 years of being the world's second largest, mature and sophisticated fund domicile.

When the regulated Luxembourg Private Equity structures, the SICAR and the SIF, were introduced in 2004 and 2007 respectively, they displayed many of the features that became a standard feature under AIFMD, i.e. they already had the highest compatibility standard compared to other existing vehicles for Private Equity. Light and pragmatic supervision, stringent custody requirements and sophisticated reporting represent recognised standards in Luxembourg which service providers are familiar with. Last, but not least, the Passport represents the ultimate benefit of the AIFMD, a concept Luxembourg is not only familiar with but for which Luxembourg is recognized worldwide.

The introduction by the law of 12 July 2013 of the S.C.Sp. provides for an attractive revamping of the limited partnership.

### AIFMD Passport versus National Private Placement Regimes.

While the distribution of certain AIFs in the EU is still subject to various national private placement regimes ("NPPR"), the introduction of the Passport will enable a non-EU AIFM to market a Luxembourg AIF to professional investors in any Member State without an additional authorisation or registration obligation. The AIFMD requires a precise mapping exercise in order to determine its scope of application. The AIFMD thus applies to:

- Luxembourg funds that are managed by non-EU fund managers, for as long as NPPRs have not been phased out and depending on the decision of each individual EU country (at the latest currently foreseen for 2018)

- Managers of some closed-ended AIFs existing at the final date of transposition may benefit from grandfathering clauses, namely:

1. Managers of closed-ended AIFs "which do not make any additional investments" after mid-2013
2. Managers of fully subscribed closed-ended AIFs which had their final close prior to July 2011 and are constituted with a maximum life that requires them to be liquidated by mid-2016 at the latest, with certain exceptions that need to be respected

- Small and mid-sized AIFMs falling below the *de minimis* thresholds of either €100 million or €500 million (leveraged and non-leveraged respectively)

- Luxembourg SOPARFIs\*

- Luxembourg securitization vehicles\*

*\*on a case-by-case basis*

On the distribution of AIFs the next important milestone dates of the AIFMD (availability of EU passport for third-country alternative funds and alternative fund managers) and mid-2018 (end of EU national private placement regimes).

## 8. The Regulations on European Venture Capital Funds

### 8.1 EuVECA Regulation (the Regulation)

The regulation of the EU Parliament and Council of 17 April 2013 on European venture capital funds (EuVECA) entered into force on 15 May 2013, although the majority of its articles applied from 22 July, the same date as the AFIM Directive.

Objective:

The objective of the Regulation is to create an optional legislative framework tailored to the needs of the managers to make it easier for them to raise funds across the EU. The EUVECA label was introduced together with an EU passport to allow EuVECA managers to market their funds across the EU and grow while using a single set of rules, provided that they comply with certain qualifying requirements.

In regards to the Regulation, several characteristics can be extracted and summarized as follows:

- Optional regime: The manager can decide whether or not he wants to comply with the Regulation in order to make use of the status and benefit from the EU passport regime.
- Conditions to be complied with by the manager: The manager must be registered by the competent authority of its home Member State, in Luxembourg the CSSF. Established in one of the EU Member States, the manager also needs to comply with the condition to have total assets under management below the €500 million Euro threshold laid down in the AIFM Directive.
- Conditions to be complied with by the fund: The fund must be a collective investment undertaking qualifying as an EU AIF under the AIFM Directive and established in an EU member state. It is also subject to some investment restrictions.

Generally, it must invest at least 70% of its aggregate capital contributions and uncalled committed capital in qualifying investments as it is defined in the Regulation.

- Conditions to be complied with by the investors: The fund may only be offered to certain eligible investors.
- Conditions in relation to the depositary: The Regulation does not contain any provision imposing a depositary on EuVECA funds.

- Connection to the AIFM Directive: the Regulation is in certain respects complementary to the AIFM Directive as it offers an EU marketing passport to small AIFMs. Thus, acquiring the EU marketing Passport via the EuVECA Regulation seems less burdensome than the opt-in compliance of the small AIFs with the entire AIFM Directive.

- Connection to the UCITS Directive: The managers may additionally manage UCITS for which they need to comply with the UCITS Directive.

## EU Commission Technical Standards for EuVECAs

The EU Commission regulation of 3 June 2014 and entered into force on 7 June 2014 lays down implementing technical standards with regard to the

format of the notification according to Article 16(1) of the Regulation.

## EU Commission delegated Acts for EuVECA

On 3 February 2015, ESMA published the final report containing its technical advice to the EU Commission

on the delegated acts to be adopted in relation to the EuVECA Regulation (2015/ESMA/227).

## ESMAs Q&A on the EuVECA Regulation

On 26 March 2014, ESMA published a Q&A (updated from time to time) on the application of the EuVECA regulation. The questions covered relate to

the management of EuVECA by AIFMs, the registration, and the management and marketing of AIFs by EuVECA managers.

## 8.2 Regime for European long-term investment funds (ELTIF)

The ELTIF Regulation (2015/760) of the EU Parliament and Council of 29 April 2015 on European long-term investment funds (the "ELTIFs Regulation") was published in the Official journal on 19 May 2015. The ELTIFs Regulation came into force on 8 June 2015 and is applicable since 9 December 2015.

The ELTIFs Regulation created a legislative framework for long-term EU funds which only invest in businesses that need money to be committed for long periods of time. Furthermore it also aims at increasing the non-bank financing available for companies that are investing in the real economy within the EU.

With this objective, the optional ELTIF regime can be considered as some kind of hybrid between the institutional AIF product and the retail UCITS and PRIIP products. By definition, ELTIFs are EU

AIFs that are managed by authorised EU AIFMs in accordance with the AIFM Directive, meaning that they need to comply with both the AIFM Directive and the ELTIFs Regulation.

The main characteristics of the ELTIFs Regulation are summarized below.

(i) Authorisation: The ELTIF designation shall be reserved only to EU AIFs, or compartments of EU AIFs, that are marketed in the EU by an authorized EU AIFM. As a result, both ELTIFs and their managers will be subject to the AIFM Directive rules.

(ii) Eligible assets: The ELTIF will only be authorised to invest in limited categories of eligible investment assets as referred to in Article 9 of the ELTIFs Regulation.

(iii) Prohibited activities: Pursuant to the ELTIFs Regulation, an ELTIF is not authorised to undertake certain activities, such as for example short-selling of assets.

(iv) Cash borrowing: An ELTIF may borrow cash, but its borrowing is subject to strict conditions such as the condition to appropriately disclose the borrowing in its prospectus.

(v) Investment policies and restrictions: In general, an ELTIF is required to invest at least 70% of its capital in ELTIF eligible assets, and the remaining 30 % can be invested in UCITS eligible assets by a date no later than 5 years or half the life of the ELTIF. In addition to this 30 /70% ratio, diversification requirements and concentration limits still apply under certain conditions. Also, the ELTIFs Regulation provides that where an ELTIF comprises more than one investment compartment, each compartment shall be regarded as a separate ELTIF for the purposes of the investment policies and restrictions.

(vi) Target Investors: Investors targeted by ELTIFs include both professional and retail investors within the meaning of the MIFID. Marketing of units or shares to retail investors is subject to specific disclosure requirements. In addition, the manager of an ELTIF shall only be able to market the units or shares of that ELTIF to retail investors provided that additional specific requirements in relation to the facilities or the internal process for the assessment of the ELTIF are fulfilled.

(vii) Redemption and Secondary Market: Due to the illiquid nature of an ELTIF's assets, redemption to investors shall in principle only be possible as of the day following the date defining the end of life of the ELTIF. To protect retail investors, however, the ELTIFs Regulation provides for redemption rules that would enable an ELTIF which has enough liquid assets to organise, under certain conditions, the possibility for redemption before the end of life of the ELTIF.

(viii) Distributions: In order to compensate the lack of early redemption possibilities, the ELTIFs Regulation contemplates favouring the provision of steady income to investors. In particular, an ELTIF may regularly distribute to investors the proceeds generated by the assets contained in its portfolio as well as the capital appreciation realised after the disposal of an asset, as long as such income are not required for future commitments of the ELTIF.

(ix) Disposal of the assets: Each ELTIF shall adopt an itemised schedule for the orderly disposal of its assets in order to redeem investors after the end of life of the ELTIF and shall disclose this to the competent authority of the ELTIF at the latest one year before that date.

(x) Transparency requirements: The ELTIFs Regulation contains various transparency rules where ELTIFs are being advertised to investors. In particular, the prior publication of a prospectus including the constitutive documents attached as an integral part thereof and, in case of marketing to retail investors and the publication of a KID pursuant to the PRIIP KID Regulation, will be required before the ELTIF is marketed.

(xi) ESMA Consultation on RTS:

On 8 June 2016 ESMA published a draft regulatory technical standards to be adopted under the ELTIFs Regulation in order to determine the expected criteria for establishing the circumstances in which the use of financial derivative instruments solely serves hedging purposes, the circumstances in which the life of a European long-term investment fund ("ELTIF") is considered sufficient in length, the criteria to be used for certain elements of the itemised schedule for the orderly disposal of the ELTIF assets, the costs disclosure and the facilities available to retail investors. This final report contains the RTS that ESMA has developed.

The RTS set out in this final report have been submitted to the European Commission for endorsement. From the date of submission the European Commission should take a decision on whether to endorse the RTS within three months.

*"Having moved to Luxembourg recently, after 15 years in London as a GP/LP, I am pleasantly surprised by the quality of the ecosystem to actually operate in PE from here. And this is not just to domicile a PE fund... whether it is investor access, international travel connections or financial talent Luxembourg is a very solid base. Post Brexit I am convinced more and more PE teams will come here, which will further strengthen Luxembourg as a PE hub."*

**Rajaa Mekouar, Direct PE Investments, Kharis Capital**

## 9. Private Equity Services Provision

The dense network of recognized and highly professional service providers is a major component of the success of Luxembourg.

### 9.1. Context and overview

The Luxembourg Private Equity fund administration sector basically falls into two categories: large international administrators servicing all fund ranges, including Private Equity funds, as well as independent local and international specialist Private Equity administrators. The former category usually consists of local banks and branches of international banks, usually offering custody banking and administrative services as well as a large range of other banking services. Management services, such as AIF Management, are often provided only for the bank's own range of funds.

The latter category consists of administrators that have their origins in Luxembourg, traditionally

servicing corporate vehicles but having expanded into servicing PE funds, as well as administrators that have set up branches in Luxembourg. Of this second category, several have obtained depositary and/or AIFM licenses to complement their range of services.

Today, the vast majority of Private Equity administrators offer the full range of central administration services, including domiciliation, administration, accounting, tax filing and company secretarial services to AIF including their controlled special purpose vehicles located in Luxembourg or abroad.

### 9.2. Depositary services

Under AIFMD, funds generally need to appoint a depositary though exceptions do exist. Depositary services for regulated Private Equity structures comprise the following two specific components: the safekeeping and the monitoring of the structure's assets.

The depositary services for funds investing in financial instruments, i.e. UCITS funds, are only performed by credit institutions or investment firms. The AIFMD

Law permits certain closed-ended AIFs to appoint as depositary non-banking institutions provided the relevant AIF and assimilated structures generally do not invest in assets that must be held in custody (i.e. financial instruments). This depositary function is only open to qualifying PSFs serving as professional depositary of assets other than financial instruments. Funds need to appoint a depositary in the country of domicile of the fund.

#### 9.2.1 Monitoring function

As Private Equity fund assets are usually not physically safeguarded by the depositary itself, the depositary usually focusses on its oversight duties. In such case the scope of the supervision and oversight function of the depositary implies:

- Handling of the legal documentation related to the transactions carried out
- Compliance monitoring of the cash and securities flows linked to transactions

- Control of any single transaction including settlement
- Implementation of an internal verification check list and escalation procedure
- Monitoring of subscriptions and redemptions
- Valuation duties.

## 9.2.2. Safekeeping of assets

Following a steep learning curve after the introduction of the SICAR in 2004, Luxembourg based depositaries are today very well positioned to perform these legal duties under the AIFMD. The know-how of Luxembourg -based depositary institutions in providing a full range of customised services for Private Equity structures is nowadays widely recognized.

The services cover all investment and divestment processes, such as:

- Follow-up of board approval process as well as collection of underlying agreements and documentation related to the transactions
- Supervision and monitoring of investments and divestments
- Asset registration in the name of the vehicle under the supervision of the depositary
- Compliance checks with the investment policy as described in the private placement memorandum/ offering memorandum

In addition, the depositary, in its role as paying agent or in cooperation with the transfer agent, may also offer among others, the following services:

- Processing of payments linked to the underlying investments
- Collection of interest income and dividends from underlying investments
- Processing of corporate events on underlying investments
- Liaison with local correspondents, lawyers, notaries and others service providers
- Recording of documentation and data back-up
- Collateral management services
- Tax reclaim management services (withholding tax treaty)
- Collection of subscription proceeds
- Payment of redemption amounts
- Execution of dividend payments to investors.

## 9.3. Banking services

Luxembourg banks offer cash management services, treasury, foreign exchange management, bridge financing and management of escrow accounts to their Private Equity clients.

For funds using the services of a depositary without banking license, the fund needs to open its accounts with a local banking institution.

## 9.4. Legal, tax and audit services

Luxembourg avails itself of significant expertise in legal and tax matters through numerous local and international law firms, tax advisors and audit firms experienced in Private Equity structuring and servicing.

## 10. How to set up a Private Equity Fund in Luxembourg

The below table provides an overview of the most relevant steps in setting up a Private Equity structure in Luxembourg. It particularly focuses on those issues that are specific to Luxembourg.

Each project being obviously individual, the table purports to provide general guidelines only.

Phases	Activities in Luxembourg	Activities outside Luxembourg	Comments
<b>Analysis Phase</b>	Domicile of Investors  Countries of target companies • Choice of Fund Jurisdiction • Choice of other jurisdictions required in efficient tax structuring • Choice of legal/tax advisors	Domicile of Investors  Countries of target companies • Choice of Fund Jurisdiction • Choice of other jurisdictions required in efficient tax structuring • Choice of legal/tax advisors	
<b>Preparation Phase</b>	Definition of legal and tax Structure  Preparation of the term sheet  Selection of all service providers (Central administrator, AIFM, depositary, auditor)		Depositary only for RAIF, SICAR and SIF, auditor depending on certain criteria
<b>Pre-Filing Phase</b>	Preparation of legal documentation Preparation of application file to the CSSF • PPM • Subscription Agreement • Articles of Association of all companies • CVs of all directors/ managers • Certificate of good standing • service provider agreements • CSSF "information request for authorization" questionnaire • Risk Management & Conflict of Interest Procedures  Client Acceptance Procedure (Transfer Agent and GP).		Only for regulated SICAR and SIF  All legal documentation and filing with the CSSF can be done in English, German or French
<b>Filing Phase</b>	Filing	Final presentation of documentation to Limited Partners  Final fundraising stage	Only for SICAR and SIF
<b>Implementation Phase</b>	Approval of the File Incorporation of the companies  Registration of the company with the Luxembourg Trade and Companies Register (RCS) and publication of the deed of incorporation in the Mémorial  Set-up of fund with service providers	Signature of subscription agreements  First capital call	Only for SICAR and SIF

*"We at BlueOrchard recognize that Luxembourg not only offers a stable legal environment but also highly professional service providers for Private Equity funds. Luxembourg evolved as a preferred place of incorporation for many microfinance investment vehicles over the past years and, more recently, impact investment funds."*

*"Our investors recognize these advantages. We therefore believe that Luxembourg's developed infrastructure for impact investment funds will help strengthening its competitive position and attract further funds in the future."*

**Christian Schattenmann, BlueOrchard Investments**

## Appendix 1: Double Tax Treaty Network

- |                           |                              |                                 |
|---------------------------|------------------------------|---------------------------------|
| 1. Albania <sup>2</sup>   | 32. Indonésia                | 63. Portugal                    |
| 2. Andorra <sup>2</sup>   | 33. Ireland <sup>1</sup>     | 64. Qatar                       |
| 3. Argentina <sup>2</sup> | 34. Israel                   | 65. Romania                     |
| 4. Armenia                | 35. Isle of Man <sup>2</sup> | 66. Russia                      |
| 5. Austria                | 36. Italy <sup>1</sup>       | 67. San Marino                  |
| 6. Azerbaijan             | 37. Japan                    | 68. Saudi Arabia <sup>2</sup>   |
| 7. Bahrain                | 38. Jersey <sup>2</sup>      | 69. Senegal <sup>3</sup>        |
| 8. Barbados               | 39. Kazakhstan               | 70. Serbia                      |
| 9. Belgium                | 40. Korea (South)            | 71. Seychelles                  |
| 10. Botswana <sup>2</sup> | 41. Kyrgyzstan <sup>2</sup>  | 72. Singapore <sup>4</sup>      |
| 11. Brazil                | 42. Kuwait <sup>2</sup>      | 73. Slovak Republic             |
| 12. Brunei <sup>2</sup>   | 43. Laos                     | 74. Slovenia <sup>1</sup>       |
| 13. Bulgaria              | 44. Latvia                   | 75. South Africa                |
| 14. Canada                | 45. Lebanon <sup>3</sup>     | 76. Spain                       |
| 15. China                 | 46. Liechtenstein            | 77. Sri Lanka                   |
| 16. Croatia <sup>2</sup>  | 47. Lithuania <sup>1</sup>   | 78. Sweden                      |
| 17. Cyprus <sup>2</sup>   | 48. Macedonia                | 79. Switzerland                 |
| 18. Czech Republic        | 49. Malaysia                 | 80. Syria <sup>3</sup>          |
| 19. Denmark <sup>1</sup>  | 50. Malta                    | 81. Taiwan <sup>2</sup>         |
| 20. Egypt <sup>3</sup>    | 51. Mauritius <sup>1</sup>   | 82. Tajikistan                  |
| 21. Estonia <sup>4</sup>  | 52. Mexico                   | 83. Thailand                    |
| 22. Finland               | 53. Moldavia                 | 84. Trinidad and Tobago         |
| 23. France                | 54. Monaco                   | 85. Tunisia <sup>1</sup>        |
| 24. Germany               | 55. Morocco                  | 86. Turkey                      |
| 25. Georgia               | 56. Netherlands              | 87. Ukraine <sup>2</sup>        |
| 26. Greece                | 57. New Zealand <sup>3</sup> | 88. United Arab Emirates        |
| 27. Guernsey <sup>2</sup> | 58. Norway                   | 89. United Kingdom <sup>5</sup> |
| 28. Hong Kong             | 59. Oman <sup>2</sup>        | 90. United States <sup>1</sup>  |
| 29. Hungary <sup>4</sup>  | 60. Pakistan <sup>3</sup>    | 91. Uruguay <sup>2</sup>        |
| 30. Iceland               | 61. Panama                   | 92. Uzbekistan                  |
| 31. India                 | 62. Poland                   | 93. Vietnam                     |

1. Amendment signed and enacted but not yet in force.

2. New treaty signed or initialled or signed and enacted but not yet in force.

3. First treaty being negotiated.

4. Replacement treaty signed or initialled but not yet in force

5. Replacement treaty being negotiated.

## Appendix 2: Glossary

<b>AIF</b>	Alternative Investment Fund as defined in the AIFMD Law.
<b>AIFMD</b>	Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010.
<b>AIFMD Law</b>	The Law of 12 July 2013 implementing Directive 2011/61/EU into Luxembourg law.
<b>Capital Call</b>	Written notice to Limited Partners requesting them to make a capital contribution to the fund vehicle (within the limits of their subscription commitment) in order to permit the fund vehicle to pay for its investments or to pay expenses.
<b>Carried Interest</b>	Carried interest or carry is a share of the profits of the fund vehicle that is paid to the general partner and/or the investment manager/advisor in excess of the amount that the general partner/manager/ advisor contributes to the fund vehicle. In order to receive carried interest, the fund vehicle must first return all capital contributed by the investors, and, in certain cases, the fund must also return a previously agreed-upon rate of return (the "hurdle rate" or "preferred return") to investors.
<b>CSSF</b>	<i>Commission de Surveillance du Secteur Financier</i> , the Luxembourg supervisory authority of the financial services sector.
<b>FCP</b>	<i>Fonds Commun</i> de Placement, an undivided co-ownership of assets or proprietorship managed by a management company.
<b>GP</b>	The general partner of either a corporate partnership limited by shares (S.C.A.), a common limited partnership (S.C.S.) or a special limited partnership (S.C.Sp.). The managing general partner is normally jointly and severally liable with the partnership for any liabilities which may not be satisfied out of partnership assets.
<b>IFRS</b>	International Financial Reporting Standards.
<b>1915 Law</b>	Law of 10 August 1915 on commercial companies, as amended.
<b>LP</b>	The limited partner, typically an investor or limited shareholder in a fund vehicle; limited partners enjoy limited liability (i.e., up to the amount invested or committed for investment).
<b>LPEA</b>	Luxembourg Private Equity & Venture Capital Association.
<b>Lux GAAP</b>	Luxembourg Generally Accepted Accounting Principles. Most frequently used accounting framework in Luxembourg for PE vehicles.
<b>PSF</b>	<i>Professionnel du Secteur Financier</i> , a professional of the financial services sector; each PSF is subject to the prior authorisation and ongoing prudential supervision by the CSSF.
<b>RAIF</b>	<i>Reserved Alternative Investment Fund</i> , a fund structure with legal and tax features of the well-established SICAR and SIF, without those being subject to direct regulation.
<b>RCS</b>	<i>Registre de Commerce et des Sociétés</i> , the Luxembourg register of commerce and companies.

<b>S.A.</b>	<i>Société Anonyme</i> ; Public limited liability company.
<b>S.A.S.</b>	<i>Société par actions simplifiée</i> ; simplified limited liability company.
<b>S.à r.l.</b>	<i>Société à Responsabilité Limitée</i> ; private limited liability company.
<b>S.C.A.</b>	<i>Société en Commandite par Actions</i> ; corporate partnership limited by shares.
<b>S.C.S. (L.P.)</b>	<i>Société en Commandite Simple</i> ; common limited partnership.
<b>S.C.Sp. (S.L.P.)</b>	<i>Société en Commandite Spéciale</i> , a special limited partnership without legal personality introduced into Luxembourg law by the AIFMD Law.
<b>SICAR</b>	<i>Société d'Investissement en Capital à Risque</i> ; investment company investing in risk capital only.
<b>SICAV</b>	<i>Société d'Investissement à Capital Variable</i> ; investment company with variable capital.
<b>SIF</b>	Specialized Investment Fund, a collective investment scheme governed by the law of 13 February 2007 on specialised investment funds, as amended.
<b>SOPARFI</b>	<i>Société de Partipation Financière</i> , a mere marketing acronym used to designate an ordinary commercial company governed by the 1915 Law and which is used as a vehicle for holding participations in Luxembourg or foreign companies or other instruments.
<b>Subscription Tax</b>	Also: <i>Taxe d'Abonnement</i> ; a tax of 1 basis point assessed on the net asset value and payable by certain collective investment schemes only.
<b>UCI</b>	Undertakings for Collective Investments; collective investment schemes governed by the law of 17 December 2010 relating to undertakings for collective investment, as amended.
<b>UCITS</b>	Undertaking for Collective Investments in Transferable Securities; collective investment schemes organized in accordance with Directive 2009/65/EC of the European Parliament and Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS).
<b>VAT</b>	Value Added Tax.
<b>Well-informed investors</b>	Well-informed investors are: <ul style="list-style-type: none"> <li>• Institutional investors</li> <li>• Professional investors</li> <li>• Any other investor who declares in writing that he/she/it is an informed investor, and either invests a minimum of 125,000 or benefits from an appraisal from a bank, an investment firm or a management company certifying that he/she/it has the appropriate expertise, experience and knowledge to adequately understand the investment made in the relevant collective investment scheme.</li> </ul>

## Appendix 3: Useful References

- Luxembourg Private Equity & Venture Capital Association - LPEA: [www.lpea.lu](http://www.lpea.lu)
- Association of the Luxembourg Fund Industry - ALFI: [www.alfi.lu](http://www.alfi.lu)
- Luxembourg for Finance, the agency for the development of the financial services industry: [www.lff.lu](http://www.lff.lu)
- Regulator of the Financial services industry - CSSF (Commission de Surveillance du Secteur Financier): [www.cssf.lu](http://www.cssf.lu)
- List of PSF: [www.cssf.lu/surveillance/psf](http://www.cssf.lu/surveillance/psf)
- List of registered SICARs: [www.cssf.lu/surveillance/vgi/sicar](http://www.cssf.lu/surveillance/vgi/sicar)
- List of registered SIFs: [www.cssf.lu/surveillance/vgi/fis](http://www.cssf.lu/surveillance/vgi/fis)
- List of registered AIFMs: [www.cssf.lu/surveillance/vgi/gfia-aifm](http://www.cssf.lu/surveillance/vgi/gfia-aifm)
- Questionnaire of the CSSF for applications for SICARs: [www.cssf.lu/surveillance/vgi/sicar](http://www.cssf.lu/surveillance/vgi/sicar)
- Q&A of the CSSF concerning SICARs: [www.cssf.lu/surveillance/vgi/sicar/questionsreponses](http://www.cssf.lu/surveillance/vgi/sicar/questionsreponses)
- Questionnaire of the CSSF for applications for any other vehicle regulated by the CSSF (OPC/FIS): [www.cssf.lu/documentation/formulaires/](http://www.cssf.lu/documentation/formulaires/)
- List of double tax treaties: [www.impotsdirects.public.lu/conventions/conv\\_vig/index.html](http://www.impotsdirects.public.lu/conventions/conv_vig/index.html)
- Law of 1915: [www.legilux.public.lu/leg/textescoordonnes/guides/law\\_commercial\\_companies](http://www.legilux.public.lu/leg/textescoordonnes/guides/law_commercial_companies)
- Law of 12 July 2013 implementing the AIFMD: [www.legilux.public.lu/leg/a/archives/2013/0119/index.html](http://www.legilux.public.lu/leg/a/archives/2013/0119/index.html)
- Law of 28 July 2014 on immobilisation of bearer shares: [www.legilux.public.lu/leg/a/archives/2014/0161/index.html](http://www.legilux.public.lu/leg/a/archives/2014/0161/index.html)
- EuVECA Regulation No. 345/2013: [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:115:0001:0017:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:115:0001:0017:EN:PDF)
- EuSEF Regulation No. 346/2013 of 22 July 2013: [www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:115:0018:0038:EN:PDF](http://www.eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2013:115:0018:0038:EN:PDF)
- Grand-Ducal Decree of 28 October 2013 on CSSF fees: [www.cssf.lu/fileadmin/files/Lois\\_reglements/Legislation/RG\\_NAT/RGD\\_281013\\_taxes\\_CSSF.pdf](http://www.cssf.lu/fileadmin/files/Lois_reglements/Legislation/RG_NAT/RGD_281013_taxes_CSSF.pdf)

## Appendix 4: List of LPEA Members

### Private Equity firms

- |  |  |
|--|--|
| 3i Luxembourg                              | HLD Associés Europe                        |
| 2be.lu Investments SCS                     | IDI Emerging Markets                       |
| AC Nordic Investments S.à.r.l.             | IK Investment Partners Luxembourg S.à.r.l. |
| Allegro S.à.r.l.                           | Investindustrial (Bi-Invest Advisors S.A.) |
| Alpha Private Equity Fund & Management Cy. | Kharis Capital                             |
| AMI (Luxembourg) S.à.r.l.                  | Lemanik Asset Management S.A.              |
| Aquasourca S.A.                            | LetterOne Holdings S.A.                    |
| Astorg Asset Management S.à.r.l.           | Lone Star Capital Investments S.à.r.l.     |
| Bain Capital Luxembourg S.à.r.l.           | Luxempart S.A.                             |
| Bamboo Finance S.A.                        | Mangrove Capital Partners                  |
| BIL Manage Invest S.A.                     | Marguerite Adviser S.A.                    |
| Bridgepoint Services S.à.r.l.              | Mediaset Investment S.à.r.l.               |
| Canna Luxembourg S.à.r.l.                  | Monitor Clipper Partners                   |
| CapMan                                     | MPEP Luxembourg Management S.à.r.l.        |
| Castik Capital S.à.r.l.                    | New Angle Capital                          |
| Centerbridge Partners Luxembourg S.à.r.l.  | Oaktree Capital Management                 |
| Cinven Luxembourg S.à.r.l.                 | OneLife                                    |
| Cipio Partners S.à.r.l.                    | PAI Partners Sà.r.l.                       |
| CIR International S.A.                     | Partners Group (Luxembourg) S.A.           |
| CPP Investment Board Europe S.à.r.l.       | Permira Luxembourg S.à.r.l.                |
| Creon Capital S.à.r.l.                     | Riverside S.à.r.l.                         |
| Cube Infrastructure Managers               | Royalton Partners S.A.                     |
| CVC Capital Partners                       | Saphir Capital Partners                    |
| DHC Luxembourg V S.à.r.l.                  | Sienna Capital S.à.r.l.                    |
| EQT Management S.à.r.l.                    | Sofina Private Equity                      |
| Equinox S.A.                               | Starwood Capital Funds Services Luxembourg |
| Eurazeo Management Luxembourg S.A.         | SwanCap Investment Management S.A.         |
| European Investment Fund                   | The Carlyle Group (Luxembourg) S.à.r.l.    |
| Expon Capital                              | TPG Capital Luxembourg S.à.r.l.            |
| Field Point                                | Trilantic Capital Partners                 |
| Five Arrows Managers                       | Triton                                     |
| Genii Capital S.A.                         | VIY Managers S.à.r.l.                      |
| HgCapital (Luxembourg) S.à.r.l.            | Warburg Pincus S.à.r.l.                    |
|  | Wert Investment Holdings S.à.r.l.          |
|  | Winvest Conseil S.à.r.l.                   |

**Private Equity Services Providers**

ABN Amro Bank (Luxembourg) S.A.  
 AIG Europe Limited  
 Allen & Overy, S.C.S.  
 Alter Domus  
 Amicorp Luxembourg S.A.  
 Arendt & Medernach  
 Astris S.à.r.l.  
 Atoz S.A.  
 Augentius (Luxembourg) S.A.  
 AVEGA S.à.r.l.  
 Aztec Financial Services (Luxembourg) S.A.  
 Baker & McKenzie Luxembourg  
 Banque de Luxembourg  
 BDO Tax and Accounting  
 BGL BNP Paribas  
 BIL Luxembourg  
 Bonn & Schmitt  
 Bonn Steichen & Partners  
 Brown Brothers Harriman  
 Caceis Bank Luxembourg Branch  
 Capita Fiduciary SA  
 Carey S.A.  
 Casa4funds  
 CBP Quilvest SA  
 Centralis S.A.  
 Citco Fund Services (Luxembourg) S.A.  
 Citibank Europe plc, Luxembourg branch  
 Clément & Avocats  
 Clifford Chance, S.C.S.  
 Credit Suisse Fund Services (Luxembourg) S.A.  
 Crestbridge S.A.  
 Dechert (Luxembourg) LLP  
 Deloitte Audit S.à.r.l.  
 Dentons Luxembourg (OPF Partners Luxembourg)  
 DLA Piper Luxembourg S.à.r.l.  
 Edmond de Rothschild Asset Management (Luxembourg)  
 Elvinger Hoss Prussen S.A.  
 Ernst & Young Services S.A.  
 Etude Loesch  
 Fiduciaire Jean-Marc Faber S.à.r.l.  
 Gentoo Financial Services (Luxembourg) S.A.  
 Grant Thornton Weber & Bontemps  
 GSK Luxembourg S.A.  
 Halsey Group S.à.r.l.  
 Hogan Lovells (Luxembourg) LLP  
 ING Luxembourg S.A.  
 Intertrust (Luxembourg) S.à.r.l.  
 IPES (Luxembourg) S.A.  
 Jeantet Luxembourg S.à.r.l.  
 JTC (Luxembourg) S.A.  
 KBL European Private Bankers S.A.  
 KPMG Luxembourg, Société coopérative  
 Linklaters LLP  
 Loyens & Loeff  
 LRI Invest S.A.  
 Luther S.A.  
 Luxembourg Investment Solutions S.A.  
 Mazars Luxembourg SA  
 M.M. Warburg & CO Luxembourg  
 MNKS  
 Molitor Avocats à la Cour  
 Ogier  
 Oppenheim Asset Management Services  
 Pandomus  
 Pricewaterhouse Coopers  
 Quilvest Luxembourg S.A.  
 RBC Investor Services S.A.  
 RBS Global Banking (Luxembourg) S.A.  
 RDT Treuhand GmbH  
 RSM Tax & Accounting  
 Luxembourg S.à.r.l.  
 Sanne Group (Luxembourg) S.A.  
 SGG S.A.  
 Intesa Sanpaolo Bank Luxembourg S.A.  
 Société Générale Bank & Trust  
 SS&C GlobeOp (Luxembourg) S.à.r.l.  
 State Street Global Services (AIS)  
 Stibbe Avocats  
 TMF Luxembourg S.A.  
 United International Management S.A.  
 ValuePartners S.A.  
 Vandenbulke  
 Vistra Luxembourg S.à.r.l.  
 VP Bank (Luxembourg) S.A.  
 Wildgen S.A.

List as of 31/08/2017

Contributions provided by the following LPEA members: Clifford Chance, Elvinger Hoss Prussen, Etude Loesch, EY, PwC and SGG.



# LUXEMBOURG PRIVATE EQUITY & VENTURE CAPITAL ASSOCIATION

The Luxembourg Private Equity and Venture Capital Association (LPEA) is the representative body of private equity and venture capital professionals in Luxembourg.

As a global private equity hub, Luxembourg disposes of a stable tax regime and is today at the forefront of international regulation providing a flexible, secure, predictable and multi-lingual jurisdiction to operate in.

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We provide a dynamic and interactive platform for members to discuss and exchange information and organise working meetings and networking opportunities on a regular basis.

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