PRIVATE EQUITY (FUND FORMATION)

Luxembourg

LEXOLOGY
Getting The Deal Through

Consulting editor
Simpson Thacher & Bartlett LLP

Private Equity (Fund Formation)

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Quick reference guide enabling side-by-side comparison of local insights, including into choice of vehicle and formation process; regulation, licensing and registration; taxation; selling and investor restrictions; money laundering rules; listing considerations; participation in private equity transactions; compensation and profit-sharing issues; and recent trends.

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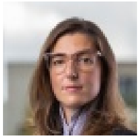

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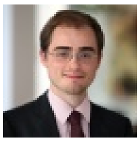

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FORMATION

Forms of vehicle

What legal form of vehicle is typically used for private equity funds formed in your jurisdiction? Does such a vehicle have a separate legal personality or existence under the law of your jurisdiction? In either case, what are the legal consequences for investors and the manager?

When opting for Luxembourg as their investment hub, initiators (or promoters or sponsors) generally opt for either a non-regulated ordinary commercial company (Soparfi) or one of the following fund regimes:

- an investment company in risk capital (SICAR), based on the Law of 15 June 2004, as amended, on the Investment Company in Risk Capital (the SICAR Law) (the SICAR is a vehicle specifically dedicated to private equity and venture capital investments, whether diversified or not); or
- a specialised investment fund (SIF), based on the Law of 13 February 2007, as amended, on Specialised Investment Funds (the SIF Law); or
- a reserved alternative investment fund (RAIF), based on the Law of 23 July 2016, as amended, on Reserved Alternative Investment Funds (the RAIF Law).

Although the SIF Law does not prescribe any quantitative, qualitative, geographical or other types of investment restrictions, the Luxembourg Financial Supervisory Authority (CSSF) has issued a circular (Circular 07/309), pursuant to which a SIF should generally not invest more than 30 per cent of its assets or commitments in securities of the same kind issued by the same issuer. Certain exemptions may apply to this rule (eg, in the case of a feeder fund structuring). While it is not subject to any direct regulatory approval or supervision, it is generally considered that a RAIF must comply with similar diversification rules. To the extent such restriction makes the SIF and the RAIF incompatible with non-diversified private equity investments strategies, an initiator would instead either opt for the Soparfi, taking advantage of a flexible and efficient fiscal and legal framework, for the SICAR, or for the RAIF with a corporate object restricted to investment in risk capital assets (within the same meaning as for SICARs), in which cases no diversification requirements apply.

The Soparfi and the SICAR can only be formed as a corporate form having a legal personality separate from that of their investors (except if the Soparfi or the SICAR is established as a special limited partnership (SCSp) that does not have legal personality), whereas the SIF and the RAIF may, in addition, be organised as a common fund (FCP) managed by a Luxembourg-based management company. It is important to stress that the Soparfi, SICAR, SIF and RAIF acronyms do not refer to specific legal forms, but merely to a specific set of legal, regulatory and tax provisions, with the actual investment vehicle or entity being formed as one of the following:

- a public limited liability company (SA);
- a private limited liability company (SARL);
- a partnership limited by shares (SCA);
- a cooperative company in the form of a public limited liability company (Coop SA);
- a common limited partnership (SCS);
- an SCSp; or
- solely in respect of the SIF and the RAIF, an FCP.

The SCA, SCS, SCSp and FCP deserve special attention. The SCA, SCS and SCSp are formed by agreement between one or several general partners with unlimited liability and general management powers, together with limited partners who participate in any profits and share in any losses, generally, pro rata with their participation in the partnership and up to the amount of their commitment or contribution, as the case may be. Unlike the SCSp, which does not have legal personality, the SCA and SCS have full legal capacity distinct from that of their partners. The SCA, SCS and SCSp will further allow the initiator to structure the acquisition vehicle by using common law-style partnership concepts, well known to the international investor and initiator base. The SCS and SCSp can implement capital account mechanisms that are customary for common law limited partnerships. Under this mechanism, each limited partner has typically an account reflecting its contribution to the partnership, which is adjusted over time to reflect its participation in profits and losses of the partnership. This mechanism does not require the issuance of securities of any kind to the limited partners. The full significance of the limited partnership as an investment vehicle can be further appreciated when looking at its fiscal treatment.

The FCP is similar to a unit trust in the United Kingdom or a mutual fund in the United States. It is organised as a co-proprietorship whose joint owners are only liable up to the amount they have committed or contributed. The FCP does not have a legal personality and must be managed by a Luxembourg-based management company.

Law stated - 21 January 2022

Forming a private equity fund vehicle

What is the process for forming a private equity fund vehicle in your jurisdiction?

A Soparfi, SICAR, SIF or RAIF may be formed within a relatively short period of time. While the Soparfi and the RAIF do not require any regulatory approved incorporation, SICARs and SIFs require prior CSSF approval before being allowed to do business. Upon completion of the regulatory review, both the SICAR and the SIF will be registered on an official list of regulated investment vehicles maintained by the CSSF.

As a general rule, the investment vehicle will come into existence when its articles of association or the partnership agreement (of the Soparfi, the SICAR or the SIF) are approved in front of a Luxembourg notary public, although SCS and SCSp may also be formed under private seal. The SIF in the form of an FCP will come into existence upon the execution of its management regulations. The incorporation deed – or an excerpt thereof for the SCS, the SCSp and the FCP – will be thereafter filed with the Luxembourg Register of Commerce and Companies (RCS) and published in the Luxembourg official electronic platform of central publication in respect of companies and associations (RESA) (for the FCP, an excerpt of registration of the signed management regulations with the RCS will be published). The formation of a RAIF shall be recorded in a notarial deed within five business days from its constitution. Within 15 business days from such notarial deed, a notice in respect of the RAIF's formation, with an indication of the RAIF's alternative investment fund manager (AIFM), shall be filed with the RCS with a view to being published in the RESA. RAIFs must be registered on a list held by the RCS within 20 business days of their formation.

The formation costs will comprise the notarial fees, the registration duty as well as publication costs. The minimum share capital amounts to €12,000 for a Soparfi in the form of a SARL and €30,000 for an SA or SCA. Investment funds taking a corporate form (SA, SARL, SCA or Coop SA) must open a bank account with a bank in Luxembourg and their shareholders must transfer the initial share capital to this bank account, prior to being incorporated before a Luxembourg notary. In addition, SICARs must have a minimum capitalisation of €1 million (including any issue premium), while SIFs and RAIFs must have a minimum capitalisation of €1.25 million (including any issue premium), to be reached within 12 months of the official CSSF registration. The SICAR, SIF and RAIF may, further, have a variable capital structure whereby their capital will at all times be equal to their net asset value.

Law stated - 21 January 2022

Requirements

Is a private equity fund vehicle formed in your jurisdiction required to maintain locally a custodian or administrator, a registered office, books and records, or a corporate secretary, and how is that requirement typically satisfied?

In accordance with Luxembourg law, a SICAR, SIF or RAIF must have its registered office and head office (central administration) in Luxembourg. Luxembourg company law follows the real seat theory (versus the incorporation theory) whereby any company maintaining its central place of administration in Luxembourg becomes subject to Luxembourg law.

All investment regimes (Soparfi, SICAR, SIF and RAIF) may either be self-administered (eg, by renting their own premises and possibly hiring staff) or enter into a domiciliation (and administration) agreement with a third-party service provider. With Luxembourg being Europe's largest fund administration centre, a large selection of service providers will be available to the fund's initiators. The cost of these services (including a fund's ongoing maintenance costs) and the level of substance required to be kept in Luxembourg will have to be assessed on a case-by-case basis. The SICAR and the SIF will have to pay, in addition, an annual registration fee to the CSSF.

SICARs, SIFs and RAIFs must appoint a Luxembourg-based depositary bank or the Luxembourg branch of a foreign credit institution to safeguard their assets, with the objective being a higher standard of protection for investors. In carrying out its duties, the depositary must act independently and solely in the interests of the investors. The depositary shall be liable in accordance with Luxembourg law towards the SICAR, SIF or RAIF and to their respective investors for any loss suffered by them as a result of the depositary's wrongful failure to perform its obligations or its wrongful improper performance thereof.

Under the Law of 12 July 2013, as amended, implementing Directive 2011/61/EU of the European Parliament and the Council on alternative investment fund managers (AIFMD) into Luxembourg law (the AIFM Law), it is expressly required that AIFMs have to appoint a depositary for each alternative investment fund (AIF) they manage (irrespective of whether the AIF is a non-regulated ordinary commercial company, or set up under the SICAR, the SIF or the RAIF regime). Such depository shall either be a credit institution, an investment firm or another category of institution eligible to act as depositary under Directive 2009/65/EU (Undertakings for Collective Investment in Transferable Securities). In respect of AIFs, which have no redemption rights exercisable during a period of five years from the date of the initial investments and which, in accordance with their investment policy, do not invest in financial instruments or invest in issuers or non-listed companies to potentially acquire control, the AIFM Law has embraced the option offered by the AIFMD to expand the scope of eligible depositaries. The AIFM Law has created the status of 'depositary of non-financial assets' under the Law of 4 April 1993 on the financial sector (the Banking Law), which can act as depositary in respect of those AIFs (irrespective of whether those AIFs are established as SICARs, SIFs, RAIFs or non-regulated commercial companies).

Law stated - 21 January 2022

Access to information

What access to information about a private equity fund formed in your jurisdiction is the public granted by law? How is it accessed? If applicable, what are the consequences of failing to make such information available?

Access to information is generally limited to what is disclosed in the formation deed in the RESA. This generally includes, but is not limited to, the identity of the founding shareholders or partners, the initial subscribed share capital, as well as information on management and shareholders' or partners' meetings. SICARs, SIFs and RAIFs set up with a variable capital structure will not disclose the identity of further subscribers in the event of additional subscriptions. If the SICAR, SIF or RAIF is formed as a SARL with fixed capital, the identity of its shareholders and the number of shares held by them will be published in the RESA and also publicly available at the RCS. As per the reform to the partnership legislation under the AIFM Law, the identity of the limited partners of an SCS are no longer published in the RESA. The same goes for the SCSp. In both instances (SCS and SCSp), only an extract comprising the following information will be published in the RESA:

- the identity of the general partners;
- the corporate denomination of the SCS or SCSp;
- its corporate object and registered office;
- the name of its managers and their signatory powers; and
- the term of the SCS or SCSp (inception and termination date).

Disclosure obligations are therefore rather limited. Luxembourg company law provides for a series of sanctions in the event mandatory information is not made available by publication in the RESA. Certain documents and extracts of documents will only be binding towards third parties from the day of their publication in the RESA, unless the company proves that the relevant third parties had prior knowledge thereof. Third parties may, however, rely upon documents or extracts thereof that have not yet been published. For transactions taking place before the 16th day following the day of publication, these documents or extracts of documents will not be binding towards third parties who can prove that it was not possible for them to have knowledge thereof. In the event of a discrepancy between the document filed and the document published in the RESA, the latter is not binding towards third parties unless the company can prove that they had knowledge of the contents of the document filed.

Based on the Law of 13 January 2019 introducing in Luxembourg a register of ultimate beneficial owners (UBOs) of companies and other legal entities (RBE), as amended, Luxembourg entities falling within the scope of this law (ie, most of the Luxembourg entities registered with the RCS) have to collect information about their UBOs, file it with the RBE, keep it up to date and give it to national authorities upon request.

In principle, the UBO is any natural person who ultimately owns or controls the entity through direct or indirect ownership of a sufficient percentage of the shares or voting rights or ownership interest in that entity or through control via other means (in principle a shareholding of 25 per cent plus one share shall be an indication of respectively direct or indirect ownership). In line with EU requirements, the public will have access to information contained in the RBE without having to demonstrate a legitimate interest. However, the UBO is expressly given the right to request that the access to information recorded in the RBE be restricted (eg, if the UBO would otherwise be exposed to a risk of fraud or kidnapping). Any communication between the manager of the UBO register and the entities subject to disclosure obligations will occur via a secure electronic system that leaves a trace of such communication.

Law stated - 21 January 2022

Limited liability for third-party investors

In what circumstances would the limited liability of third-party investors in a private equity fund formed in your jurisdiction not be respected as a matter of local law?

The corporate veil may only be pierced in very limited circumstances where, for example, there has been a mingling of the assets of the partners or shareholders and the assets of the entity, creating a false perception in the mind of third parties. In relation to investment vehicles formed as an SCA, SCS or SCSp, the involvement of limited partners in acts of management towards third parties could potentially put their limited liability at risk. Managers and directors could also under certain circumstances be held liable. In relation to limited partners' liability, the AIFM Law has introduced a list of permitted management acts that, if carried out by limited partners, would not trigger the loss of their limited liability. While exhaustive, the list is wide-ranging and covers the following:

- the exercise of partners' rights under the constitutive documents;
- any advice given by the limited partners to the SCA, SCS or SCSp;
- any supervisory authorisation powers given to limited partners under the constitutive documents; and
- the granting of loans-security arrangements to the SCA, SCS or SCSp.

Limited partners may also act as managers of the relevant partnership and represent it on the basis of a proxy without losing their limited liability status.

Law stated - 21 January 2022

Fund manager's fiduciary duties

What are the fiduciary duties owed to a private equity fund formed in your jurisdiction and its third-party investors by that fund's manager (or other similar control party or fiduciary) under the laws of your jurisdiction, and to what extent can those fiduciary duties be modified by agreement of the parties?

Appointed managers and directors will be liable toward the investment entity, in accordance with general civil law principles, for the execution of the mandate entrusted to them and for any misconduct in the management of corporate affairs. They shall be jointly and severally liable both towards the Soparfi, SICAR or SIF and any third parties for damages resulting from a violation of the Luxembourg Law of 10 August 1915, as amended, on commercial companies (the Company Law) or the articles of association of the relevant entity.

The fiduciary duties of the directors and managers of Luxembourg companies will be governed by the same minimum duty of care standard to act as a bonus paterfamilias in similar circumstances for the execution of the mandate that has been entrusted to them. The constitutive documents of the entity may nevertheless provide for higher standards. It is debatable whether lower standards would be upheld by Luxembourg courts. In respect of SCA, SCS and SCSp, it should be pointed out that both internal management by one (or several) general partners or external management by a third-party manager is permitted. Liability status will differ in both instances. While the general partner of an SCA, SCS or SCSp is subject to joint, several and unlimited liability, a third-party manager will be liable in accordance with general civil law principles (as mentioned earlier).

Law stated - 21 January 2022

Gross negligence

Does your jurisdiction recognise a 'gross negligence' (as opposed to 'ordinary negligence') standard of liability applicable to the management of a private equity fund?

Luxembourg law does not distinguish between gross negligence and ordinary negligence, except that one's liability for gross negligence may not be validly limited or excluded.

Under Luxembourg company law, management is liable towards the company, in accordance with general civil rules, for the execution of its mandate and for any misconduct in the management of the company's affairs. Misconduct does not imply a fault on the part of the director, who may incur liability for his or her passive attitude, negligence or carelessness. Moreover, the Luxembourg company law provides for a joint and several liability of the directors towards the company as well as third parties for damages resulting from an infringement of the provisions of the Luxembourg company law or the articles of incorporation of the company.

In the case of bankruptcy, management and de facto managers of a company may be held personally, jointly and severally, or not jointly and severally, liable for all or part of the shortfall of assets over liabilities if they committed a manifestly serious fault that contributed to the bankruptcy of the company. The fact that this (serious) fault must be 'manifestly' serious seems to indicate a stricter standard of appreciation, namely that only a really strong, undisputable and unequivocal serious fault may give rise to this liability.

Law stated - 21 January 2022

Other special issues or requirements

Are there any other special issues or requirements particular to private equity fund vehicles formed in your jurisdiction? Is conversion or redomiciling to vehicles in your jurisdiction permitted? If so, in converting or redomiciling limited partnerships formed in other jurisdictions into limited partnerships in your jurisdiction, what are the most material terms that typically must be modified?

Luxembourg law allows the migration or redomiciliation of foreign entities to Luxembourg with full legal and corporate continuity and thus their transformation into Luxembourg companies or partnerships, provided the jurisdiction of origin also allows the migration. It is possible to change the corporate form of the entity upon migration or to keep the original legal form, provided that such form also exists (possibly with some adjustments) under Luxembourg law. The underlying corporate form to be adopted will thus be determined in the light of a variety of legal, fiscal or commercial considerations. It is also possible to transform a foreign entity into a SICAR, SIF or RAIF upon arrival in Luxembourg, subject, in respect of a SICAR and a SIF, to the filing of a submission for regulation with the CSSF (containing all required documents). The migration will in some cases require the prior preparation of a valuation report to be drawn up by an independent Luxembourg auditor and confirming that the minimum capitalisation required under Luxembourg law is reached. The scope of the adjustments will depend on the corporate form chosen upon entry in the Luxembourg legal sphere. If the initiator decides to set the redomiciled entity up as a SARL, its shares will be subject to statutory transfer restrictions. The initiator may decide to retain the SCA, SCS or SCSp as the legal regime to replicate the common law-type limited partnership. The SARL or the SCA corporate forms are often chosen for US tax reasons, as they are not considered as corporations per se. The SARL will not be open to more than 100 investors and may not offer its shares or beneficiary shares publicly. The latter limitation also applies to the SCS.

Law stated - 21 January 2022

Fund sponsor bankruptcy or change of control

With respect to institutional sponsors of private equity funds organised in your jurisdiction, what are some of the primary legal and regulatory consequences and other key issues for the private equity fund and its general partner and investment adviser arising out of a bankruptcy, insolvency, change of control, restructuring or similar transaction of the private equity fund's sponsor?

The bankruptcy or change of control of the initiator of a SICAR, SIF, RAIF or Soparfi does not per se affect the vehicle from a legal point of view. For a SICAR and a SIF, although there is no requirement for an initiator to be formally approved by the CSSF, good practice dictates that any change of control at the level of the initiator should be communicated to the CSSF. Under certain circumstances, investors in a SICAR, SIF or RAIF may have to be given the right to exit the vehicle. All of the aforementioned comments are made without prejudice to any provision included in the fund documentation to the effect of triggering a dissolution or removal rights at the fund level.

Law stated - 21 January 2022

REGULATION, LICENSING AND REGISTRATION

Principal regulatory bodies

What are the principal regulatory bodies that would have authority over a private equity fund and its manager in your jurisdiction, and what are the regulators' audit and inspection rights and managers' regulatory reporting requirements to investors or regulators?

This primarily addresses the investment company in risk capital (SICAR), specialised investment fund (SIF) and reserved alternative investment fund (RAIF), the non-regulated ordinary commercial company (Soparfi) escaping in principle regulation as long as it does not offer its securities to the public and does not qualify as an alternative investment fund (AIF) under the Law of 12 July 2013, as amended, implementing Directive 2011/61/EU of the European Parliament and the Council on alternative investment fund managers (AIFMD) into Luxembourg law (the AIFM Law). It also covers the implications of the AIFMD regime as implemented by the AIFM Law for each of those regimes.

SICARs and SIFs are always subject to prior authorisation and remain thereafter subject to the prudential supervision of the Luxembourg Financial Supervisory Authority (CSSF). The SICAR and SIF regimes apply upon formal election. The CSSF will verify that the SICAR, the SIF and their representatives comply with the applicable legal provisions and contractual arrangements. When submitting an application to the CSSF, the legal representatives of the SICAR and the SIF (namely, their managers or directors, or both), as well as their service providers (namely, the depositary bank, the administrative agent, the register and transfer agent and the auditor) must demonstrate professional honour and sufficient experience. Any replacement is subject to the prior approval of the CSSF, although the managers and directors will not be required to register as investment advisers or otherwise in Luxembourg. The managers and directors of the SICAR and SIF will have to produce a detailed CV showing their track record and experience, and an extract from their criminal records as well as a declaration of honour to that effect clearing the applicant of any involvement in bankruptcy matters or other criminal acts.

The CSSF licence is further conditional on a show of evidence that the central administration of the SICAR or SIF is located in Luxembourg. The applicant thus needs to demonstrate that the main back-office operations (eg, accounting, subscription, the keeping of the shareholder register, redemptions, reporting, etc) are carried out in and from Luxembourg. The SICAR or SIF may, however, rely on the investment expertise of an investment adviser or manager established in another jurisdiction. Delegation of investment management functions is subject to specific conditions under the SIF law (including, prior notification to the CSSF; justification of the delegation structure by a more efficient conduct of business; and as far as portfolio or risk management functions are concerned, prior authorisation or registration of the delegate for the purpose of asset management (CSSF approval remaining possible in the absence of any such licence or registration)). Similar requirements are applicable to SICARs within the scope of the AIFM Law regime. It is important, further, to note that the SICAR or SIF regimes are not applied selectively. Any initiator of whatever origin or qualification may thus apply for and organise a SICAR or SIF upon the satisfactory instruction of its application. Once authorised, the SICAR and the SIF will be entered into the official list maintained by the CSSF.

Both the SICAR and the SIF must comply with certain disclosure requirements. They must inter alia produce an issuing document (eg, in the form of a prospectus or private placement memorandum) and an annual report that they also need to communicate to the CSSF and investors. These documents must include the information necessary for investors to be able to make an informed judgment on the proposed investment and the related risks. The annual report must be finalised within six months of the end of the financial period to which it pertains. Although the annual reporting obligations are in line with the common reporting obligations of commercial companies, neither the SICAR nor the SIF is subject to consolidated reporting.

The annual accounts must be audited, further, by a certified Luxembourg independent auditor. The auditor is appointed and remunerated by the SICAR or SIF but will have to inform the CSSF about serious violations of the applicable legal provisions or about any facts or decisions that could potentially threaten the continuity of the SICAR or SIF.

A SICAR is invited to submit half-yearly financial information to the CSSF, including the following, at the least:

- a statement of the SICAR's financial situation and notably the total of its assets;
- a detailed account of its portfolio;
- the amount of the SICAR's subscribed and paid-up capital, as well as the total of investors' subscription commitments;
- information concerning the profile of the investors that subscribed to the SICAR's shares; and
- where applicable, information on the level of the SICAR's indebtedness.

A SIF is invited to submit yearly and monthly financial information to the CSSF.

Since the implementation of the AIFMD as per the AIFM Law, it should be noted that unregulated funds (any investment vehicle not subject to the supervision of the CSSF, potentially a Soparfi) could qualify as an AIF within the meaning of the AIFMD, and its manager be subsequently subject to registration or authorisation under the AIFM Law. An AIF is defined by the AIFMD as a collective investment vehicle, including investment compartments thereof, which raises 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 does not require authorisation under Directive 2009/65/EU (Undertakings for Collective Investment in Transferable Securities). Being subject to regulatory supervision or authorisation is not a requirement to qualify as an AIF. The CSSF confirmed that it is the responsibility of the management body of the collective investment vehicle to self-assess if it qualifies as an AIF. Assuming AIFs are being managed, then the manager shall apply for an AIFM licence should the AIFMD thresholds of assets under management be met. The standard threshold is set at €100 million, including assets acquired through the use of leverage but is increased to €500 million, when the portfolio of assets managed consists of AIFs that are not leveraged and have no redemption rights exercisable during a period of five years following the date of the initial investment in each AIF. The AIFM licence can be applied for internally by the AIF itself (where the legal form of the AIF permits internal management) or the AIF may appoint a third-party AIFM (in Luxembourg or another EU jurisdiction, pending the extension of the AIFMD passport to non-EU AIFMs).

While managers of sub-threshold AIFs are not subject to authorisation under the AIFM Law, they are not entirely exempted from the AIFM Law requirements. Those managers are required to register themselves with the CSSF, disclose the AIF they manage (and their investment strategies) and regularly report to the CSSF the principal instruments in which they trade and the relating investment exposures. Managers of sub-threshold AIFs may nonetheless elect to subject themselves to the AIFM Law requirements (especially if they want to benefit from the EU passport attached to the licence).

Alongside non-regulated AIFs, the AIFM Law regime can also be applicable to SIFs and SICARs if:

- they do qualify as AIFs; and
- their manager reaches the applicable threshold of assets under management.

In this context, the AIFM Law has amended the SIF and SICAR laws to establish two types of SIF and SICAR, namely those managed by an AIFMD-compliant manager and those managed by an AIFMD non-compliant manager.

Any AIFMD-compliant SICAR or SIF manager is subject to the following regime, which is the same as the general SICAR or SIF regime, with some exceptions:

- the CSSF may approve a SIF or SICAR whose central administration is not in Luxembourg if it has delegated its management to an AIFMD-compliant manager who performs the functions required by the AIFMD;
- the valuation rules contained in the AIFM Law will apply together with the current valuation rules contained in the SICAR Law or the SIF Law;
- the content of a SIF or SICAR's annual report must comply fully with the AIFM Law;
- the information to be communicated to the SIF or SICAR's investors must be in line with the AIFM Law requirements;
- the AIFM Law delegation rules will have to be complied with;
- it will benefit from the AIFMD marketing passport; and
- it must align its depositary regime with AIFMD requirements.

As far as the reserved alternative investment fund (RAIF) is concerned, although it is neither subject to any prior regulatory approval nor any ongoing direct supervision, a RAIF must qualify as an AIF within the meaning of the AIFM Law. It is required to appoint an AIFMD-compliant AIFM and thus comply with all provisions of the AIFM Law.

In terms of reporting requirements, the AIFM Law contains obligations applicable to the manager of any AIF in scope. For SIFs and SICARs, those requirements will apply alongside the SIF or SICAR laws specific reporting rules, which, to a large extent, have anticipated the AIFM Law reporting rules. The AIFMD reporting framework mainly consists of annual reporting and disclosure to investors and regulators requirements. Annual reports must be prepared at least once a year and within six months following the end of the financial year for each Luxembourg AIF managed or marketed in the European Union. The annual reports will be audited and provided to investors upon request as well as to the CSSF. Disclosure to investors requirements entails communication of certain information prior to their investments (generally contained in an issuing document). Such information relates, inter alia, to the AIF's investment strategy and objectives, techniques it may employ and associated risks, the use of leverage and collateral and the procedures for issue and sale of shares or units. Further aspects that need to be disclosed are as follows:

- the AIF's valuation procedure and pricing methodology;
- a description of liquidity risk management and redemption arrangements;
- a description of all fees, charges and expenses and maximum amounts thereof, which are directly or indirectly borne by the investors;
- the policy on ensuring fair treatment of investors; and
- a description of any preferential treatment of investors.

AIFMs are now subject to the new EU disclosure requirements with respect to the environmental, social and governance (ESG) criteria, both at the level of the AIFM itself and the level of their investment funds, whether such investment funds have an ESG focus or not.

In respect of reporting to the CSSF, a Luxembourg-based AIFM should regularly report on the principal markets and instruments in which its AIFs trade and is required to disclose certain additional information encompassing, inter alia, the following:

- the percentage of the AIF's assets that are subject to special arrangements arising from their illiquid nature;
- any new liquidity management arrangements;
- the AIF's risk management systems;
- information on the AIF's main categories of assets; and
- the results of any stress tests.

The frequency of reporting is dependent on the threshold of assets under management.

Following the publication of CSSF Circular 21/789 and Circular 21/790 on 22 December 2021, SIFs, SICARs and Luxembourg-authorised AIFMs (among other entities) will be required to complete a self-assessment questionnaire (SAQ) on a yearly basis regarding their compliance with the applicable legal and regulatory requirements. This new requirement will apply for financial years ending on or after 31 December 2021 (for authorised AIFMs and self-managed regulated funds) or 30 June 2022 (for regulated funds that are externally managed). Certain questions of the SAQ will be subject to a yearly review by the approved statutory auditor of the relevant entity, which will complete on that basis a separate report (the SAQ Report). The SAQ Report will be implemented gradually and be required for the financial years ending on or after 31 December 2021 for Luxembourg authorised AIFMs and 30 June 2023 for SIFs and SICARs.

Law stated - 21 January 2022

Governmental requirements

What are the governmental approval, licensing or registration requirements applicable to a private equity fund in your jurisdiction? Does it make a difference whether there are significant investment activities in your jurisdiction?

The level of investment in Luxembourg is without bearing on applicable rules and regulations.

Law stated - 21 January 2022

Registration of investment adviser

Is a private equity fund's manager, or any of its officers, directors or control persons, required to register as an investment adviser in your jurisdiction?

While there is currently no registration or authorisation requirement for managers or directors of Luxembourg non-regulated investment vehicles, managers or directors of SICARs and SIFs must be authorised by the CSSF. The same approval requirement applies to Luxembourg regulated management companies of SIFs or RAIFs set up as a common fund (FCP). In practice, the Luxembourg-based management of a SICAR, SIF or RAIF delegates the investment advisory function, under its responsibility, to advisers located outside Luxembourg. While recourse to a third-party investment adviser is not subject to prior regulatory approval, the delegation of investment management functions is subject to prior notification for any SIF and any SICAR falling in the scope of the AIFMD requirements. Relevant AIFMD delegation requirements must be complied with.

The Banking Law requires Luxembourg-based investment advisers (other than authorised management companies and AIFMs) to be authorised as investment advisers under article 24 of the Banking Law.

Law stated - 21 January 2022

Fund manager requirements

Are there any specific qualifications or other requirements imposed on a private equity fund's manager, or any of its officers, directors or control persons, in your jurisdiction?

Assuming AIFs are being managed, a manager shall apply for an AIFM licence should the AIFMD thresholds of assets under management be met.

Law stated - 21 January 2022

Political contributions

Describe any rules – or policies of public pension plans or other governmental entities – in your jurisdiction that restrict, or require disclosure of, political contributions by a private equity fund's manager or investment adviser or their employees.

The amended Law of 21 December 2007 on the Financing of Political Parties regulates contributions to political parties. This law provides that contributions to political parties by legal entities are forbidden and can only be made by natural persons. Natural persons must, however, provide their identity to the political party as anonymous contributions are not authorised. The identity of the contributors is recorded by the political party and a list of contributors and contributions amounting to more than €250 is filed together with the party's annual accounts.

Private equity fund managers, investment advisers or their employees who wish to make contributions to political parties are subject to this law. Therefore, their identity will be disclosed with the publicly available party's annual accounts, if the contribution is more than €250 or, for contributions in kind, if their value exceeds this threshold.

Law stated - 21 January 2022

Use of intermediaries and lobbyist registration

Describe any rules – or policies of public pension plans or other governmental entities – in your jurisdiction that restrict, or require disclosure by a private equity fund's manager or investment adviser of, the engagement of placement agents, lobbyists or other intermediaries in the marketing of the fund to public pension plans and other governmental entities. Describe any rules that require a fund's investment adviser or its employees and agents to register as lobbyists in the marketing of the fund to public pension plans and governmental entities.

As far as the Luxembourg state pension scheme governed by the Luxembourg social security legislation is concerned, there is no possibility to invest in any type of investment vehicle. With regards to other supplementary pension schemes, there are no specific rules governing the marketing of regulated or non-regulated private equity investment vehicles to public pension plans and other governmental entities. In relation to SICARs and SIFs, the CSSF does, however, request information as to the means by which shares or interests issued by such vehicles are marketed or channelled to potential investors.

To the extent the relevant vehicle qualifies as an AIF, the applicable rules under the AIFM Law governing the marketing and distribution of AIFs will need to be complied with.

Law stated - 21 January 2022

Bank participation

Describe any legal or regulatory developments emerging from the recent global financial crisis that specifically affect banks with respect to investing in or sponsoring private equity funds.

As Luxembourg private equity investment structures usually attract international investors and local (Luxembourg) banks rarely act as investors or sponsors to such vehicles, it is likely that investment in Luxembourg private equity funds will be affected much more by internationally driven changes to European legislation and the legislation of foreign jurisdictions, such as the Basel III regulations providing for stricter capital requirements for banks as well as the US Dodd-Frank Act setting limitations on banks' investment in private equity funds, than by any changes to the domestic legislative framework.

Law stated - 21 January 2022

TAXATION

Tax obligations

Would a private equity fund vehicle formed in your jurisdiction be subject to taxation there with respect to its income or gains? Would the fund be required to withhold taxes with respect to distributions to investors? Describe what conditions, if any, apply to a private equity fund to qualify for applicable tax exemptions.

The analysis of the tax features of Luxembourg private equity investment vehicles requires a schematic approach. By and large, the available investment vehicles can be divided into vehicles that are in principle (if they are considered opaque) subject to general taxation rules on one hand (non-regulated ordinary commercial company (Soparfi), an investment company in risk capital (SICAR) or reserved alternative investment fund (RAIF) SICAR-like) and vehicles that are generally exempt from tax on the other hand (specialised investment fund (SIF) or the standard RAIF). Within each category, we further need to distinguish between entities that are fiscally opaque (private limited liability company (SARL), public limited liability company (SA) and partnership limited by shares (SCA)) and those that are fiscally transparent (eg, common limited partnership (SCS), special limited partnership (SCSp) or common fund (FCP)).

Soparfi

A Soparfi, whether in the form of an SA, SARL or SCA, is an ordinary fully taxable commercial Luxembourg resident company subject to income taxation (namely, corporate income tax plus an employment fund surcharge and municipal business tax) on its worldwide income (combined rate for the city of Luxembourg in 2022 is 24.94 per cent), subject to specific domestic or treaty exemptions, and indirect taxation (eg, value added tax (VAT)). However, exemptions apply as regards income and capital gains derived from qualifying participations (the participation exemption).

A Soparfi is also subject to a 0.5 per cent net wealth tax on its net asset value as of 1 January of each year (0.05 per cent tax rate for net assets exceeding €500 million). Exemptions apply as regards, inter alia, qualifying participations. Soparfis are subject to a minimum net wealth tax ranging from €535 to €32,100 (depending on the size of their balance sheet). A Soparfi whose assets comprise at least 90 per cent of financial assets and which has a total balance sheet exceeding €350,000 is subject to a minimum net wealth tax of €4,815.

Dividend distributions by a Soparfi are generally subject to Luxembourg dividend withholding tax at a rate of 15 per cent, although this rate may often be reduced to zero by the application of Luxembourg double tax treaties or the exemptions provided under Luxembourg tax law (notably, Luxembourg's implementation of the Parent-Subsidiary Directive or the withholding tax exemption available for certain shareholders that are resident in a country with which Luxembourg has a tax treaty in force and are subject to a corporate income tax considered as comparable to the Luxembourg one).

Liquidation surpluses distributed by a Soparfi to its shareholders are not subject to withholding tax in Luxembourg. Capital gains realised by non-resident shareholders (who were not Luxembourg residents for more than 15 years in Luxembourg and then non-residents in Luxembourg for less than five years before the sale of the Luxembourg participation) are taxable only if they have held a significant shareholding (at least 10 per cent) in a Luxembourg company for less than six months.

Luxembourg introduced a set of rules implementing Directive (EU) 2016/1164 (Anti-Tax Avoidance Directive 1 (ATAD 1)), which came into force on 1 January 2019. ATAD 1 targets, in principle, taxpayers subject to Luxembourg corporate income tax. Alongside exit taxation, the controlled foreign company rules, the general anti-abuse rule and the intra-EU anti-hybrid rules, these regulations include in particular interest deduction limitation rules, according to which the deduction of a taxpayer's exceeding borrowing cost in a given fiscal year is in principle capped at the higher of

- 30 per cent of such taxpayer's taxable earnings before interest, tax, depreciation and amortisation; or
- €3 million.

Non-deductible borrowing costs that cannot be deducted in a given fiscal year can be carried forward without time limitation.

Unregulated transparent investment vehicle

An unregulated transparent investment vehicle, commonly taking the form of an SCS or SCSp, is not subject to corporate income tax or net wealth tax. It is further not subject to municipal business tax (6.75 per cent for 2022 for Luxembourg City) to the extent it does not or is not deemed to conduct a commercial enterprise in the sense of the Luxembourg municipal business tax law. In principle, when an SCS or SCSp qualifies as an alternative investment fund, its activities are deemed not to be commercial. The SCS or SCSp would be deemed to have a commercial activity if its Luxembourg general partner incorporated in the form of a capital company holds 5 per cent or more in the SCS or SCSp.

Being a transparent entity, an SCS or an SCSp is not entitled to claim tax treaty or EU directive benefits. Considering its tax transparency, investors in an SCS or an SCSp are deemed to directly hold the underlying assets and realise the income of the SCS or SCSp in proportion to their respective interests. The SCS and SCSp are not withholding tax agents.

Luxembourg introduced a set of rules implementing Directive (EU) 2017/952 (Anti-Tax Avoidance Directive 2), which aims at combating hybrid situations. Those anti-hybrid rules notably include the reverse-hybrid rule that is applicable since the 2022 tax year. A reverse hybrid is an entity that is seen as transparent in its country of establishment but opaque by (some of) its investors. The reverse hybrid rules apply where non-resident investors who consider the fund as opaque are associated with the fund and own 50 per cent or more of interests, voting rights or rights to profits in the fund.

The reverse hybrid entity will become subject to corporate income tax on its income to the extent that its income is not taxed in any other jurisdiction (ie, at the level of the investors). However, an exemption from the reverse hybrid rule applies if the SCS or SCSp qualifies as a collective investment vehicle (CIV). To qualify as a CIV, the following criteria should be met:

- the SCS or SCSp should be widely held;
- the SCS or SCSp should hold a diversified portfolio of securities; and
- the SCS or SCSp should be subject to investor protection rules.

SICAR

The SICAR can, generally speaking, be described as a tax-neutral vehicle for private equity investments.

Taxation of the SICAR: fiscally opaque

The SICAR regime for fiscally opaque entities (eg, an SA, SARL or SCA) follows the ordinary income tax regime of the

Soparfi with a few risk capital-specific adjustments. The SICAR is thus also subject to corporate income taxes and specific domestic or treaty exemptions, and should qualify as a resident company for domestic and Luxembourg tax-treaty purposes. However, such type of SICAR benefits from a specific, objective, unconditional risk capital exemption: income from securities (namely, bonds, shares, other transferable securities as well as negotiable instruments giving the right to acquire the aforementioned risk capital securities), as well as income derived from the transfer, contribution or liquidation thereof is exempt. Income derived from temporarily invested idle funds also benefits from an exemption, provided that these funds are effectively invested in risk capital investments within a 12-month period. The SICAR is not eligible for the Luxembourg fiscal unity regime.

All other income is fully subject to ordinary Luxembourg direct taxation rules.

Fiscally opaque SICARs are exempt from net wealth tax. However, they are subject to a minimum net wealth tax in the same way as Soparfis.

Taxation of the SICAR: fiscally transparent

A SICAR formed as a fiscally transparent SCS allows for the replication of a common law-type limited partnership vehicle. Although the limited partnership has its own legal personality separate from that of its partners, it is itself not liable for corporate income taxation or net wealth tax in Luxembourg and cannot benefit from double tax treaties concluded by Luxembourg. It should not be liable to municipal business tax, to the extent that its Luxembourg general partner incorporated as a capital company does not hold 5 per cent or more of interest in the SCS, as it is by law deemed not carrying on a business activity. The same applies to the SICAR formed as an SCSp, with the difference that the SCSp has no legal personality of its own.

SICARs that are fiscally transparent (incorporated as an SCSp or SCS) might also be concerned by the above-mentioned reverse hybrid rule. CIV exemption could potentially apply if the aforementioned conditions are met.

Taxation of distributions by the SICAR

The SICAR regime distinguishes itself from the rules applicable to Soparfis in that it always permits fiscally neutral (namely, without source taxation) profit repatriations: neither dividends nor liquidation proceeds distributed by a SICAR to investors are subject to withholding tax.

SIF

Generally speaking, a specialised investment fund (SIF) is characterised by its tax neutrality:

- it is exempt from tax on income or capital gains;
- it is also exempt from net wealth tax; and
- distributions (including dividends and liquidation surpluses) made by a SIF to investors are not subject to withholding tax in Luxembourg.

However, the SIF is subject to an annual subscription tax of 0.01 per cent. The taxable basis of the subscription tax is the aggregate net assets of the specialised investment fund as valued on the last day of each quarter. Certain money markets and pension funds or SIFs investing in other funds, which are already subject to subscription tax, are exempt from subscription tax.

SIFs are presumed to be CIVs for the purpose of the above-mentioned reverse hybrid rules, although it is a rebuttable presumption.

RAIF

RAIFs are also characterised by their tax neutrality. The default tax regime applicable to RAIFs mirrors the SIF regime. This means that the RAIF will only be subject, at the fund level, to an annual subscription tax levied at a rate of 0.01 per cent of its net assets calculated on the last day of each quarter. Depending on the investment assets, some exemptions from subscription tax apply to avoid a duplication of this tax. Irrespective of the legal form chosen for the RAIF, it is wholly exempted from corporate income tax, municipal business tax and net wealth tax, and distributions of profits by the RAIF do not give rise to a withholding tax.

However, RAIFs whose constitutive documents provide that their sole object is the investment in risk capital assets (the RAIF SICAR) and that they are subject to article 48 of the RAIF law, are taxed according to the same tax rules as those applicable to SICARs. In the case of an umbrella fund, this option will apply to the entire umbrella and cannot be applicable to only some of the compartments involved. An auditor will have to certify annually that the investment requirement has been met during the accounting period.

Under these SICAR-mirroring tax rules, a RAIF SICAR that takes a corporate legal form (eg, the SA, SARL or SCA) is fiscally opaque and is a normally taxable entity for corporate income tax purposes, but with an exemption for any profits and gains derived from securities and funds held pending investment in risk capital. Fiscally opaque RAIF SICARs are subject to a minimum net wealth tax (as SICARs).

Likewise, a RAIF SICAR that takes the form of a partnership (the SCS or SCSp) is tax transparent.

RAIFs are presumed to be CIVs for the purpose of the aforementioned reverse hybrid rules, although it is a rebuttable presumption.

Law stated - 21 January 2022

Local taxation of non-resident investors

Would non-resident investors in a private equity fund be subject to taxation or return-filing requirements in your jurisdiction?

The answers that follow are given for non-resident investors who do not have a permanent establishment or representative in Luxembourg to which their holding in the respective fund is attributed.

Soparfi

Unless a reduced rate under a double tax treaty or an exemption (either domestic or under a tax treaty) applies, dividends distributed by a Soparfi are subject to 15 per cent withholding tax. A non-resident investor is not subject to any tax reporting formality in this respect – it is the company that has to file a withholding tax return – unless the investor wants to effect any entitlement to a (partial or total) reimbursement of the withholding tax on dividends.

Non-resident investors are taxed in Luxembourg for the capital gains realised upon the alienation of their shares in a Soparfi only if the investor has not held the shares in the Soparfi for more than six months and disposes of a participation representing more than 10 per cent of the share capital of the Soparfi. In all other cases, the capital gain is not taxable unless the non-resident investor has not been Luxembourg-resident for more than 15 years in Luxembourg and then non-resident in Luxembourg for less than five years before the sale of the Luxembourg participation. Liquidation surpluses distributed by Soparfis are not subject to withholding tax in Luxembourg.

It is important to note that in most cases, if a double tax treaty concluded by Luxembourg is applicable, the non-resident investor could benefit from treaty protection (most of the double tax treaties concluded by Luxembourg stipulate that such capital gains are not taxable in Luxembourg, but the country of residence of the foreign investor).

Unregulated transparent investment vehicle

When incorporated under the form of an SCS or an SCSp, unregulated transparent investment vehicles are not withholding tax agents. Provided that the SCS or SCSp does not (or is not deemed to) conduct a commercial enterprise, non-resident investors should not be liable to any taxation in relation to their interest in the SCS or SCSp, as well as filing obligations in Luxembourg. However, as a result of the transparency, they may be subject to Luxembourg non-resident taxation in respect of Luxembourg assets held by the SCS or SCSp, and notably non-resident capital gains taxation as described earlier.

Further, dividends paid to the SCS or SCSp will be deemed paid directly to its investors. Hence when paid by a Luxembourg company, these dividends might attract 15 per cent withholding tax, unless the investors themselves would be entitled to an exemption or a reduction under a tax treaty.

SIF and RAIF (not opting for SICAR regime)

As a general rule, non-resident investors in a SIF or RAIF are not subject to Luxembourg income tax unless they invest in an FCP, SIF or RAIF and derive capital gains taxable in Luxembourg from an indirect participation in a Soparfi incorporated as a Luxembourg capital company (a rare scenario).

SIF and RAIF: fiscally transparent

Generally, non-resident investors are not taxed in Luxembourg on the income (dividends, liquidation surplus and capital gains) derived from a SIF or a RAIF incorporated under the form of an FCP, SCS or SCSp. However, if such SIF or RAIF holds a shareholding in a Soparfi, the non-resident investor would be deemed to hold directly the shares in the Soparfi owing to the tax transparency of the SIF or RAIF. In this case, the non-resident investor could be taxed on the capital gain realised on the alienation of its units only if the investor has not held the shares in the Soparfi for more than six months and has a participation representing more than 10 per cent of the share capital of the Soparfi via the fiscally transparent SIF or RAIF taxable in Luxembourg. It should be noted that such taxation could be mitigated if a double tax treaty concluded by Luxembourg (with the country of residence of the investor) was applicable and stipulated that such capital gain is not taxable in Luxembourg.

SIF and RAIF: fiscally opaque

Distributions made by a fiscally opaque SIF or RAIF (including dividends and liquidation surpluses) are not subject to taxation in Luxembourg in the hands of a non-resident investor.

Non-resident investors are not taxed in Luxembourg for the capital gains realised upon the alienation of their shares in a fiscally opaque SIF or RAIF.

SICAR and RAIF SICAR

Dividends and liquidation surpluses distributed by any type of SICAR or by a RAIF SICAR are not subject to Luxembourg taxation in the hands of non-resident investors (either fiscally opaque or transparent). The same rule applies to capital gains deriving from the sale of shares in the SICAR.

Law stated - 21 January 2022

Local tax authority ruling

Is it necessary or desirable to obtain a ruling from local tax authorities with respect to the tax treatment of a private equity fund vehicle formed in your jurisdiction? Are there any special tax rules relating to investors that are residents of your jurisdiction?

The tax exemption applicable to SIFs and RAIFs does not need to be confirmed by way of a tax ruling. The same is generally true for SICARs. In certain instances, it may be desirable to obtain tax clearance from the tax authorities for the tax treatment of a Soparfi – whether the fund is a Soparfi itself or Soparfis are used by SIFs, RAIFs or SICARs as an investment vehicle – to get five years of certainty regarding certain tax matters. The tax authorities will charge an administrative fee ranging from €3,000 to €10,000 for the treatment of each tax ruling request. For ruling requests that meet the requirements (simply, a detailed description of the applicable facts and circumstances and a sufficiently detailed tax analysis), the responsible tax office will have to provide an answer. As of 1 January 2017, certain pieces of information on cross-border tax rulings and advanced pricing agreements have been subject to automatic and spontaneous exchange of information obligations with jurisdictions affected by the cross-border tax ruling or advanced pricing agreement. A ruling is generally valid for a period of at most five years.

Finally, rulings issued before 1 January 2015 were automatically terminated as per the end of the tax year 2019 and are no longer valid as from the tax year 2020.

Law stated - 21 January 2022

Organisational taxes

Must any significant organisational taxes be paid with respect to private equity funds organised in your jurisdiction?

RAIFs, SICARs, SIFs and Soparfis are subject to an annual fee due to the Chamber of Commerce. SICARs and SIFs, given that they are regulated vehicles and supervised by the Luxembourg Financial Supervisory Authority (CSSF), have to pay certain fees to the CSSF. In certain instances, fixed registration duties of €75 become due upon the incorporation of a corporate vehicle or any changes made to its constitutional documentation.

Law stated - 21 January 2022

Special tax considerations

Describe briefly what special tax considerations, if any, apply with respect to a private equity fund's sponsor.

The initiators, to the extent that they are not residing in Luxembourg, of a RAIF, SICAR, SIF or Soparfi will generally be able to structure their carried interest and incentive payments in a fiscally neutral manner in Luxembourg.

In addition, a VAT exemption for management fees applies to management services when supplied to a range of fund vehicles.

Law stated - 21 January 2022

Tax treaties

List any relevant tax treaties to which your jurisdiction is a party and how such treaties apply to the fund vehicle.

Luxembourg is currently party to 89 tax treaties covering most industrialised nations, according to data provided by the Luxembourg tax authorities, with some 15 additional treaties (including new treaties with countries having an existing treaty with Luxembourg) under negotiation or pending entry into force. Soparfis and fiscally opaque SICARs should be entitled to benefit from all the treaties currently in force. Insofar as SIFs are concerned, they might be able to do so for those countries for which the Luxembourg tax authorities state that investment companies with variable capital and investment companies with fixed capital can benefit from the respective tax treaty, which are the treaties with Andorra, Armenia, Austria, Azerbaijan, Bahrain, Barbados, Brunei, China, Croatia, the Czech Republic, Cyprus, Denmark, Estonia, Finland, France, Georgia, Germany, Guernsey, Hong Kong, Isle of Man, Indonesia, Ireland, Israel, Jersey, Kazakhstan, Kosovo, Laos, Liechtenstein, Macedonia, Malaysia, Malta, Moldova, Monaco, Morocco, Panama, Poland, Portugal, Qatar, Romania, San Marino, Saudi Arabia, Serbia, Seychelles, Singapore, Slovakia, Slovenia, Spain, Sri Lanka, Tajikistan, Taiwan, Thailand, Trinidad and Tobago, Tunisia, Turkey, the United Arab Emirates, Uruguay, Uzbekistan and Vietnam. For Bulgaria, Greece, Italy and South Korea, the applicability of the tax treaty is not clearly derived from its wording.

In June 2017, Luxembourg formally signed the Organisation for Economic Co-operation and Development's Multilateral Instrument (MLI) developed as part of BEPS Action 15. The MLI will implement in the tax treaties (between its signatories) certain recommendations arising from the BEPS project, for example, the prevention of treaty abuse and anti-hybrid rules. Luxembourg has not excluded any of its bilateral tax treaties from the scope of the MLI, but made a series of reservations regarding specific provisions. The Luxembourg parliament approved the ratification of the MLI on 7 March 2019. With respect to many double tax treaties, the MLI has been in force as of January 2020.

Law stated - 21 January 2022

Other significant tax issues

Are there any other significant tax issues relating to private equity funds organised in your jurisdiction?

On 14 October 2020, the Luxembourg government published the 2021 budget bill, which provides for the introduction of a new real estate tax for investment vehicles such as SIF and RAIF. Certain non-transparent investment vehicles will be subject to a new real estate tax, at a flat rate of 20 per cent, on income derived directly or indirectly via a transparent entity held in real estate assets (rental income and capital gains) located in Luxembourg.

Also, to the extent that SICARs, SIFs or any kind of alternative investment funds (AIFs) (including RAIFs) typically rely on the services of specialist investment managers or advisers, a specific VAT exemption applies to fund management services in accordance with article 44.1.d) of the Luxembourg VAT Law implementing article 135.1.g) of Directive 2006/112/EC (the Value Added Tax Directive). This exemption also covers some of the administrative services generally provided to funds. The case-law of the Court of Justice of the European Union confirmed that fund investment advisory services can be covered by the exemption, even when delegated to a third party, and irrespective of whether the fund investment adviser has a power of decision for the investment fund.

According to the Luxembourg VAT Authorities, funds benefiting from the VAT exemption for fund management services qualify as VAT taxable persons. Although this does not, per se, trigger an obligation for the SICARs, SIFs, RAIFs or other AIFs to register for VAT, the latter may have to do so, should they receive VAT-taxable services from suppliers located outside Luxembourg.

SICARs, SIFs, RAIFs and other AIFs are generally not able to recover VAT incurred on their costs. However, thanks to the broad application of the VAT exemption of article 44.1.d) of the Luxembourg VAT Law, the VAT leakage is in practice limited to the VAT due on services such as custodian notary, auditor or lawyer services. Moreover, the Luxembourg VAT rate is the lowest in the European Union (17 per cent as of 1 January 2015, compared with an average of 21 per cent in the European Union (20 per cent in the United Kingdom and 23 per cent in Ireland)).

In 2018, Luxembourg implemented the VAT grouping mechanism, to replace the no-longer-available cost-sharing agreements. The VAT grouping mechanism allows for savings of VAT costs and may therefore be beneficial for Luxembourg private equity structures.

On 22 December 2021, the European Commission released several legislative proposals that will impact corporate taxpayers. One of these is the proposed directive laying down rules to prevent the misuse of shell entities for tax purposes (the Shell Directive). The Shell Directive aims to avoid the use of legal entities and arrangements without minimal substance for tax avoidance or tax evasion purposes in a cross-border context. The proposal will be tabled for discussion and, finally, adoption in the forthcoming 2022 meetings of the European Council on Economic Affairs. The aim of the European Commission is to have it adopted in 2022. Once adopted, the Shell Directive should be transposed into member states' national law by 30 June 2023 and come into effect as of 1 January 2024. It is currently still too early to conclude on the exact impact the Shell Directive will have on the private equity industry in Luxembourg.

Law stated - 21 January 2022

SELLING RESTRICTIONS AND INVESTORS GENERALLY

Legal and regulatory restrictions

Describe the principal legal and regulatory restrictions on offers and sales of interests in private equity funds formed in your jurisdiction, including the type of investors to whom such funds (or private equity funds formed in other jurisdictions) may be offered without registration under applicable securities laws in your jurisdiction.

Most private equity funds will be privately placed within or outside of Luxembourg. Assuming that any such offering falls outside the scope of application of Regulation (EU) No. 2017/1129 of 14 June 2017 (the Prospectus Regulation) and the Luxembourg Law of 16 July 2016 on prospectuses for securities (the Prospectus Law), the offering will not be subject to additional rules or regulations (other than those provided for under the investment company in risk capital (SICAR) or specialised investment fund (SIF) regimes). In a scenario under Directive 2011/61/EU of the European Parliament and the Council on alternative investment fund managers (AIFMD), EU-based alternative investment fund managers (AIFMs) benefit from a European passport to market EU alternative investment funds (AIFs) throughout the European Union to professional investors. Extension of the passport to non-EU-based AIFMs is on the agenda but not yet available. Luxembourg AIFs that are regulated AIFs established as SIF or SICAR are automatically authorised for marketing to well-informed investors in the territory of Luxembourg. With respect to Luxembourg non-regulated AIFs (eg, non-regulated ordinary commercial companies (Soparfis)), marketing in Luxembourg is limited to professional investors. In terms of marketing of non-Luxembourg AIFs in Luxembourg, those AIFs benefit from the passport to the extent that their manager is an authorised AIFM either in Luxembourg or in another EU jurisdiction. A non-EU manager must notify the Luxembourg Financial Supervisory Authority (CSSF) prior to any pre-marketing and marketing activities in Luxembourg relating to a foreign or Luxembourg AIF.

The Luxembourg law of 21 July 2021 transposing Directive (EU) 2019/1160 on the cross-border distribution of collective investment undertakings in Luxembourg Law, imposes specific de-notification rules to be complied with to discontinue the marketing of shares or interests in AIFs. AIFMs should consider that they cannot market interests in AIFs with a similar investment strategy within a period of 36 months following a de-notification in a jurisdiction.

Law stated - 21 January 2022

Types of investor

Describe any restrictions on the types of investors that may participate in private equity funds formed in your jurisdiction (other than those imposed by applicable securities laws described above).

Luxembourg private equity investment vehicles, whether they are formed as regulated or non-regulated vehicles, generally obtain their funding from institutional, professional or sophisticated private investors. However, the SICAR, SIF and reserved alternative investment fund (RAIF) legislation restrict the offering of an interest in a SICAR, SIF or RAIF to three well-informed investor groups who are deemed to be able to adequately assess the risks associated with an investment in this type of vehicle. These three groups are:

- institutional investors;
- professional investors; or
- any other investors who meet the following conditions:
  - the first option is that they confirm in writing that they adhere to the status of the well-informed investor and that they invest a minimum of €125,000 into the fund; or
  - alternatively, if they invest less than €125,000, they must confirm in writing that they adhere to the status of the well-informed investor and they must ensure that they have obtained an assessment made by a credit institution within the meaning of Directive 2006/48/EC, by an investment firm within the meaning of Directive 2004/39/EC on Markets in Financial Instruments, by a management company within the meaning of Directive 2009/65/EC, or, in respect of RAIFs, by an authorised AIFM, certifying their expertise, experience and knowledge in adequately appraising an investment in the SICAR, SIF or RAIF.

For SICARs, SIFs and RAIFs, these conditions apply neither to the general partners of limited partnerships and of partnerships limited by shares, nor to their managers or any other persons involved in their management.

In addition, the distribution of Luxembourg-based AIFMD-compliant funds within the European Union on the basis of the AIFMD distribution passport is restricted to professional investors. Professional investors are a slightly more restrictive circle of investors (as compared with well-informed investors) as they include institutional investors, professional 'per se' investors and 'opt-in' professionals as further described in Annex II of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on Markets in Financial Instruments II.

Law stated - 21 January 2022

Identity of investors

Does your jurisdiction require any ongoing filings with, or notifications to, regulators regarding the identity of investors in private equity funds (including by virtue of transfers of fund interests) or regarding the change in the composition of ownership, management or control of the fund or the manager?

Investors in SICARs, SIFs or RAIFs are not subject to any notification, monitoring or approval from the CSSF. The CSSF may, however, request certain shareholder information when verifying the fund's compliance with applicable rules and regulations to ensure that only qualifying investors are invested in the fund. For SICARs, however, the CSSF requires that the identity of the controlling ultimate beneficial owner, if any, be disclosed to it. Any such communication is protected by professional secrecy rules. Any change in the management, administration or custody of assets will, each time, require prior approval from the CSSF. With respect to Luxembourg-based AIFMs, they are required to file to the CSSF any substantial change to the information provided to it when filing for the AIFM licence (which includes a change in the composition of ownership at the AIFM level).

Based on the Law of 13 January 2019 introducing in Luxembourg a register of ultimate beneficial owners (UBOs) of companies and other legal entities (RBE), as amended, Luxembourg entities falling within the scope of this law have to collect information about their UBOs, file it with the RBE, keep it up to date and give it to national authorities upon request.

Law stated - 21 January 2022

Licences and registrations

Does your jurisdiction require that the person offering interests in a private equity fund have any licences or registrations?

One needs to establish whether the offeror is offering the investment on a professional basis or not. If the offeror is performing the services of an investment company or another regulated activity of the financial sector, it will need to hold the requisite licences either in Luxembourg or abroad.

Law stated - 21 January 2022

Money laundering

Describe any money laundering rules or other regulations applicable in your jurisdiction requiring due diligence, record keeping or disclosure of the identities of (or other related information about) the investors in a private equity fund or the individual members of the sponsor.

Pursuant inter alia to the Luxembourg Law of 12 November 2004 on the fight against money laundering and terrorist financing, as amended, to CSSF Regulation No. 12-02 of 14 December 2012, as amended, and to CSSF Circular 13/556 of 16 January 2013, Circular 18/698 of 23 August 2018, Circular 19/732 of 20 December 2019 and Circular 20/746 of 9 July 2020 and its subsequent versions released on a regular basis, obligations have been imposed on all professionals of the Luxembourg financial sector to prevent the use of investment companies for money-laundering purposes. The same obligations have been extended to SICARs and SIFs by the Law of 13 July 2007 (as amended) on markets in financial instruments implementing the Directive 2004/39/EC on Markets in Financial Instruments into Luxembourg law.

In this context, a procedure for the identification of investors is being imposed on all investors. Investor due diligence measures shall include, but are not limited to, the following:

- identifying the investor and verifying the investor’s identity on the basis of documents, data or information obtained from a reliable and independent source;
- identifying the beneficial owner and taking ‘reasonable measures’ to verify his or her identity using relevant information or data obtained from a reliable and independent source, and to understand the ownership and control structure of the investor;
- assessing and understanding the purpose and intended nature of the business relationship, and, as appropriate, obtaining information on the purpose and intended nature of the business relationship; and
- conducting ongoing due diligence of the business relationship including scrutiny of transactions undertaken throughout the course of that relationship to ensure that the transactions being conducted are consistent with the professional’s knowledge of the investor, the business and risk profile, including, where necessary, the source

of funds and ensuring that the documents, data or information collected under the customer due diligence process are kept up to date and relevant.

Professionals of the financial sector are responsible for verifying whether professionals situated in third countries are subject to equivalent anti-money laundering obligations in their own country.

The CSSF has reminded the professionals under its anti-money laundering (AML) and combating the financing of terrorism (CFT) supervision that investment funds should be registered on goAML, an electronic platform to be used to declare any suspicious transactions to the Luxembourg Financial Intelligence Unit (FIU). Investments funds should further designate at least one compliance officer to be able to declare any suspicious transactions to the FIU without delay, as the case may be.

Participants in fund structures, like in any other industry, may have reporting obligations to the Luxembourg tax authorities under the Luxembourg implementation of Directive (EU) 2018/822 of 25 May 2018 on the disclosure of cross-border tax arrangements (DAC 6) if they are involved in a reportable cross-border arrangement and there is no EU intermediary involved in designing or assisting with setting up such an arrangement, or all intermediaries involved are exempt from the obligation to report such an arrangement.

To comply with the recommendations of the Financial Action Task Force and Directive (EU) 2015/849 (Anti-Money Laundering Directive 4), Luxembourg introduced tax swindle as well as aggravated tax fraud as a primary offence for acts committed as of 1 January 2017. A distinction has to be made between:

- simple tax fraud;
- aggravated tax fraud, qualified as such depending on the amount of annual tax evaded; and
- tax swindle, defined as fraud involving a significant amount of tax, which has been committed by the systematic use of fraudulent practices intended to conceal pertinent facts from the Luxembourg tax authorities.

While simple tax fraud is subject only to administrative sanctions, both aggravated tax fraud and tax swindle constitute criminal offences.

CSSF Circular 20/744 added specific indicators concerning the asset management industry likely to reveal a possible laundering of a predicate tax offence, such as the illegal use of the SICAR status.

CSSF Circular 21/788, published on 22 December 2021, clarified the content of the report that must be drawn up by the approved statutory auditor regarding the compliance by the Luxembourg AIFMs with the legal and regulatory AML and CFT obligations and provisions.

Law stated - 21 January 2022

EXCHANGE LISTING

Listing

Are private equity funds able to list on a securities exchange in your jurisdiction and, if so, is this customary? What are the principal initial and ongoing requirements for listing? What are the advantages and disadvantages of a listing?

The Luxembourg Stock Exchange (LuxSE) operates the following two trading venues on which the widest range of securities can be admitted to trading:

- a regulated market within the meaning of Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on Markets in Financial Instruments II (MiFID II) and listed as such on the list of regulated markets on the website of the European Securities and Markets Authority (the Regulated Market); and
- an exchange-regulated market, set up as a multilateral trading facility (within the meaning of MiFID II) designated as the 'Euro multilateral trading facility market' (the Euro MTF Market).

Issuers of securities admitted to trading on the Regulated Market are subject to the obligations of various EU legislation, in particular:

- Regulation (EU) No. 2017/1129 of 14 June 2017 (the Prospectus Regulation) together with the related Commission Delegated Regulation (EU) No. 2019/980 of 14 March 2019 (the 2019 Delegated Regulation);
- the Luxembourg Law of 16 July 2019 on prospectuses for securities (the Prospectus Law);
- Directive 2004/109/EC of the European Parliament and of the Council dated 15 December 2005 on the harmonisation of transparency requirements, as amended (the Transparency Directive);
- the Luxembourg Law of 11 January 2008, as amended (the Transparency Law) implementing the Transparency Directive in Luxembourg;
- Regulation (EU) No 596/2014 on market abuse (the Market Abuse Regulation);
- Directive 2014/57/EU on criminal sanctions for market abuse (the Market Abuse Directive); and
- the Law of 23 December 2016 on market abuses, as amended (the Market Abuse Law) implementing the Market Abuse Directive in Luxembourg.

The Prospectus Regulation, the Transparency Directive and the Transparency Law does not apply to units issued by collective investment undertakings (UCIs) other than the closed-end type.

The Luxembourg Financial Supervisory Authority (CSSF) is the competent authority to approve prospectuses related to offers of securities to the public as well as admission to trading on the Regulated Market drawn up in accordance with the Prospectus Regulation. One of the major advantages of drawing up a Prospectus Regulation compliant prospectus is that once the prospectus is approved in one of the EU member states it can be passported to any other member state for the purposes of offering securities to the public or for their listing on a regulated market, or both (within the meaning of MiFID II) located in another member state (the EU Passporting Regime).

The Euro MTF Market launched in July 2005, offers an alternative to the Regulated Market for issuers not willing to be subject to the more stringent and burdensome EU legislation and, not intending to make use of the EU Passporting Regime.

Prospectuses for an admission to trading on the Euro MTF Market must be drawn up in accordance with the Rules and Regulations of the LuxSE (the Rules and Regulations).

The initial requirements for the admission to trading on the Regulated Market and the Euro MTF Market are similar. The application will consist of the following documents:

- a (draft) prospectus;
- an application form;
- a letter of undertaking on future compliance with ongoing obligations;
- a know-your-customer form;
- a declaration confirming, among other things, the compliance of the issuers' and securities' legal position and structure with applicable laws and the appointment of a financial institution to ensure the financial service of securities for securities holders in Luxembourg;
- the articles of association of the issuer; and

- the annual reports of the issuer for the past three years (or the initial balance sheet for a new issuer, for the period from incorporation until the date of the prospectus).

The authority empowered to approve the listing prospectus will depend on the trading venue chosen and the type of the fund issuing the securities to be listed:

- the regulated market:
  - prospectuses for open-ended UCIs for distribution in Luxembourg are exempted from approval under the Prospectus Law;
  - prospectuses for closed-ended UCIs shall be approved by the CSSF under the Prospectus Law and the Prospectus Regulation; and
  - prospectuses for foreign open-ended UCIs not being distributed in Luxembourg shall be approved by the LuxSE pursuant to Part 3, Chapter 2 of the Prospectus Law; and
- the Euro MTF market:
  - prospectuses for closed-ended and foreign open-ended UCIs not being distributed in Luxembourg shall be approved by the LuxSE; and
  - prospectuses for open- and closed-ended UCIs accepted by the CSSF for distribution in Luxembourg are exempt from approval by LuxSE.

The LuxSE also offers the possibility for issuers to have their securities listed on the Official List of the LuxSE without being admitted to trading on one of the aforementioned two trading venues. These securities are included in the Securities Official List (SOL), which is a dedicated section of the LuxSE's Official List. The SOL has been designed for issuers looking for visibility and for whom admission to trading is not a prerequisite and who do not intend to be subject to the regulations applicable to admission to trading (notably the Market Abuse Regulation). The procedure to list securities on the SOL is fairly straightforward. An information notice shall be drawn up in accordance with the LuxSE SOL Rulebook and be approved by the LuxSE.

The ongoing and periodic disclosure requirements applicable to issuers of securities depend on the market where the securities are admitted to trading. More stringent ongoing obligations apply to companies admitted to trading on the Regulated Market.

For issuers whose securities are admitted to trading on the Regulated Market, these obligations mainly arise from the Transparency Law, the rules and regulation of the Rules and Regulations, the Luxembourg law of 24 May 2011 on the exercise of certain rights of shareholders in listed companies, as amended (the SRL), the Market Abuse Regulation and the Luxembourg Law of 19 May 2006 on takeover bids, as amended (the Takeover Law).

Issuers whose securities are admitted to trading on the Euro MTF Market do not fall within the scope of the Transparency Law, the SRL and the Takeover Law. However, the market abuse regime set out in the Market Abuse Regulation also applies to issuers with securities admitted to trading on the Euro MTF Market. Issuers with securities admitted to trading on the Euro MTF Market shall comply with the ongoing and periodic disclosure obligations set out in the Market Abuse Regulation and the Rules and Regulations. These obligations include the publication of annual reports and interim financial statements and the disclosure of all other important information affecting the securities or the issuer (eg, inside information).

As for securities listed on the SOL, ongoing disclosure obligations are limited to certain communication obligations to the LuxSE in accordance with the SOL Rulebook.

A listing may facilitate fundraising by reaching a larger number of investors and may increase the liquidity of otherwise rather illiquid investments. Certain institutional investors may only invest through listed private equity investment vehicles.

Law stated - 21 January 2022

Restriction on transfers of interest

To what extent can a listed fund restrict transfers of its interests?

Listed private equity vehicles should, in principle, not be subject to any transfer restrictions. This requirement needs to be reconciled with the fact that investments in investment companies in risk capital, specialised investment funds and reserved alternative investment funds are restricted to well-informed investors only. The transfer restrictions are thus a crucial issue. In practice, the fund regulations will therefore provide for a forced repurchase or exit of non-qualifying investors.

The LuxSE has recently established two professional segments for its Regulated Market and the Euro MTF (the Professional Segments). The Professional Segments are specifically designed for issuers targeting professional clients only within the meaning of MiFID II. Securities admitted to the Professional Segments are not accessible to retail investors as trading on the Professional Segments is only allowed between professional investors.

Issuers may opt for the Professional Segments when applying for an admission to trading of their securities on either the Regulated Market or the Euro MTF.

Law stated - 21 January 2022

PARTICIPATION IN PRIVATE EQUITY TRANSACTIONS

Legal and regulatory restrictions

Are funds formed in your jurisdiction subject to any legal or regulatory restrictions that affect their participation in private equity transactions or otherwise affect the structuring of private equity transactions completed inside or outside your jurisdiction?

A non-regulated ordinary commercial company (Soparfi) is not subject to any investment restrictions and thus may participate in a private equity transaction of any type or size. An investment company in risk capital (SICAR) or a reserved alternative investment fund (RAIF) SICAR-like may solely invest in risk-bearing (private equity) securities, being the direct or indirect contribution of assets to entities in view of their launch, development or listing in the stock exchange. This potentially qualifies any type of investment, whether in the form of equity or debt.

As far as the SICAR regime is concerned, the parliamentary documents give a further indication of the legislator’s intent to provide maximum flexibility owing to the hybrid nature of true risk-capital financing. Listed companies therefore may also qualify as risk-bearing investments to the extent that the investment aims at the financing of, for example, a new business development or where the target company is to be taken private again. Most importantly, however, the SICAR is not subject to any risk-diversification rules and may thus concentrate its resources on a single target. The law, further, does not impose any geographical or sector restrictions. A SICAR may be set up either as a single or as a multi-compartment (umbrella) entity, with each compartment of such a vehicle being linked to a specific portfolio of assets and liabilities that is segregated from the portfolio of assets and liabilities of the other compartments. Although the umbrella SICAR constitutes one single legal entity, the assets of a compartment are exclusively available to satisfy the rights of investors in relation to that compartment and the rights of creditors whose claims have arisen in connection with the operation of that compartment, unless a clause provided in the constitutive documents of the SICAR provides otherwise.

As far as the specialised investment fund (SIF) and the RAIF are concerned, although the principle of spreading risk still applies, there are no preset quantitative, qualitative or other investment restrictions other than the 30 per cent safe harbour rule (and which applies on a compartment-by-compartment basis for a SIF or a RAIF set up as an umbrella vehicle). The SIF and RAIF initiators may thus freely determine their investment policies (eg, within a single or multi-compartment (umbrella) SIF), investment restrictions or limitations. SIFs and RAIFs, further, are not bound by any borrowing restrictions.

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Compensation and profit-sharing

Describe any legal or regulatory issues that would affect the structuring of the sponsor's compensation and profit-sharing arrangements with respect to the fund and, specifically, anything that could affect the sponsor's ability to take management fees, transaction fees and a carried interest (or other form of profit share) from the fund.

While the SICAR Law, the SIF Law, the RAIF Law, as well as the Luxembourg Financial Supervisory Authority (CSSF) do not impose specific restrictions on the structuring of the carried interest or the management compensation package, general rules and regulations will apply as to the structuring thereof and the remuneration rules contained under the Law of 12 July 2013, as amended, implementing Directive 2011/61/EU of the European Parliament and the Council on alternative investment fund managers (AIFMD) into Luxembourg law (AIFM Law) may become applicable (both for SICARs, SIFs and RAIFs and non-regulated commercial companies within the scope of the AIFM Law). Different classes of securities can be created within a SICAR, SIF or RAIF, such classes potentially having different characteristics, notably as regards the fee structure, the type of targeted investors or the distribution policy. As far as the SICAR and SIF regimes are concerned, the CSSF will merely ensure that any such scheme is properly disclosed, giving investors the possibility to understand the full bearing thereof and, further, that it does not prejudice their interests. Should the AIFMD remuneration requirements be applicable, those requirements will be applicable at the AIFM level and require the latter to establish remuneration policies and practices that promote sound and effective risk management for those categories of staff whose professional activities have a material impact on the risk profiles of alternative investment funds (AIFs) they manage. These categories of staff should at least include senior management, risk-takers, control functions and any employees receiving total remuneration that takes them into the same remuneration bracket as senior management and risk-takers. The AIFM shall set up remuneration policies and practices in accordance with the principles listed in Annex II to the AIFMD setting forth, inter alia, the following:

- that guaranteed variable remuneration should be exceptional and only occur in the context of hiring new staff and must be limited to the first year;
- that subject to the legal structure of the AIF, a substantial portion of any variable remuneration consists of units or shares of the AIF concerned; and
- that a substantial portion of the variable remuneration component is deferred over a period that is appropriate in view of the life cycle and redemption policy of the AIF concerned and is correctly aligned with the nature of the risks of the AIF in question.

Compliance with these principles may take into account the appropriateness of the principles considering the size, internal organisation and the nature, scope and complexity of the relevant AIFM. Guidelines have been issued by the European Securities Market Authority in relation to the remuneration principles contained under Annex II of the AIFMD. These guidelines notably address how to apply the proportionality principle and remain to be incorporated by the CSSF in its supervisory practice.

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UPDATE AND TRENDS

Key developments of the past year

What are the most significant recent trends and developments relating to private equity funds in your jurisdiction? What impact do you expect such trends and developments will have on global private equity fundraising and on private equity funds generally?

The overhaul of the limited partnership regime in 2013 has produced significant effects, which have been accelerated since the successful introduction of the reserved alternative investment fund in 2016.

The impressive development of the alternative fund sector in Luxembourg over recent years has also been fuelled by a combination of other factors, among them the coming into effect of Directive 2011/61/EU of the European Parliament and the Council on alternative investment fund managers (AIFMD) in 2013 and Brexit. As a result, on one hand, investors' appetite for AIFMD-compliant products has grown significantly, and on the other hand, managers have been using Luxembourg increasingly as their hub, both for the formation of their vehicles and for the pooling of resources.

This development has also led to the increased complexity of Luxembourg fund structures, comprising, in the same jurisdiction, various layers, including parallel entities, feeders, co-investment and carry entities, depending on investors' or managers' needs.

Law stated - 21 January 2022

LAW STATED DATE

Correct on

Give the date on which the information above is accurate.

21 January 2022

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Jurisdictions

Australia	Ashurst LLP
Austria	Schindler Attorneys
British Virgin Islands	Appleby
Cayman Islands	Stuarts Walker Hersant Humphries
Germany	POELLATH
India	Khaitan & Co
Japan	Nishimura & Asahi
Luxembourg	Loyens & Loeff
South Korea	Bae, Kim & Lee LLC
Spain	Alter Legal
United Kingdom	Simpson Thacher & Bartlett LLP
USA	Simpson Thacher & Bartlett LLP