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Luxembourg – An Attractive and Dynamic Market for Private Equity

With the possibility of a hard Brexit looming, Luxembourg remains a prominent and stable location for doing business in the European Union and beyond. Located in the centre of the European Union, the Grand-Duchy of Luxembourg is Europe's leading investment fund centre and the second largest fund centre worldwide after the US. 9 out of 10 of the largest private equity houses worldwide are doing business out of Luxembourg. The country also benefits from a stable political regime where traditional political parties and policy makers, regardless of their position on the political spectrum, have worked together to make Luxembourg a business-friendly political environment, conducive to welcoming decision-makers and entrepreneurs. The Luxembourg tax framework is also regarded as one of the most stable and rewarding in Europe for companies, their shareholders and their employees and corporate laws and regulations are highly flexible and competitive. This, in a nutshell, explains the country's propensity to attract private equity houses.

When it comes to setting up a structure, Luxembourg's efficiency within the civil law world is second to none. It is possible to incorporate companies within a few days and office space is readily available. A large number of leading, global service providers are already present in Luxembourg to service the ever growing accounting and day-to-day management needs of operating companies. Furthermore, Luxembourg is host to an increasingly large number of companies dedicated to servicing funds. With a growing population and a well-educated, multilingual workforce, Luxembourg has become increasingly attractive to non-EU private equity houses and asset managers as the hub for their European operations.

Range of Private Equity Investment Vehicles

The go-to structures for private equity houses in Luxembourg are investment funds typically structured as limited partnerships and holding companies owned by private equity funds.

Luxembourg company law offers a wide range of partnership and company formation options, each flexible in their own way, to allow the shareholders and limited partners to tailor the management and general organisation of such vehicles to their specific needs. Luxembourg company law recognises the validity of shareholder agreements and allows for complete contractual freedom, including choice of governing law, as long as fundamental civil law principles are respected. Luxembourg partnerships offer complete contractual freedom and the levels of flexibility usually associated with Anglo-Saxon partnerships. They have proven to be extremely popular as pooling vehicles for private equity fund houses. With respect to a portfolio company, limited liability companies are also the preferred vehicle for private equity houses due to their unmatched flexibility and relatively low associated costs. With regard to unwinding an existing structure or exit strategies, private equity houses will find flexible, straightforward and time efficient options that can be implemented in a cost-effective manner by service providers.

Bank Account as a Formation Requirement

However, due to the current trend of European and global legislators and regulators, the economic substance of companies is a focus point and it is becoming increasingly important for holding companies to comply with these substance requirements.

Opening a bank account in Luxembourg is both a prerequisite to forming a company and is often an important consideration in terms of economic substance. However the realities and requirements which need to be met before a bank account can be opened and activated in Luxembourg means that a number of steps need to be taken and a fairly significant amount of information and documentation needs to be provided at the beginning of the process. This can lead to delays and frustrations for the uninitiated.

Luxembourg is reviewing the protocols and regulations relating to bank accounts. One option would be to adapt a system similar to France. The French legal system has developed an efficient tool to overcome the systematic and sometimes random refusals from banks to open a bank account for a holding company. It is possible to whistle blow the bank's behaviour to its regulator, the "*Banque de France*". French law recognises the principle that all persons, whether individuals or companies, have a right to a bank account if domiciled in France. The "*Banque de France*" will then review the merits of the request and if it is deemed to have grounds in fact and in law, the regulator will designate a third-party bank to open a bank account for the client within three working days after such bank has received all the necessary documentation from the prospective client.

Another option would be to further develop eBanking in Luxembourg in order to reduce operating costs and facilitate the process for banks and their clients. In light of Luxembourg's focus on FinTech, this may well be the more likely outcome.

Despite this ultimately surmountable issue of opening a bank account, the fact remains that most private equity houses and a large proportion of smaller managers successfully use Luxembourg as their European hub for private equity and that assets under management in Luxembourg private equity structures has experienced exponential growth over the last several years, with no signs of a slowdown.

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