Luxembourg

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1 Overview

1.1 What are the most common types of private equity transactions in Luxembourg and what is the current state of the market for these transactions?

Luxembourg has developed over the last 20 years into a major hub for private equity, both as regards the location of private equity funds, regulated and unregulated and as regards the structuring and financing of international Private Equity transactions. It results therefrom that the private equity market in Luxembourg is two-fold – with on one hand, the funding of the transaction being sourced from Luxembourg-based investment funds or vehicles, and on the other hand, Luxembourg being the location of the acquisition and holding structure.

Due to the size of the country, the actual target is not commonly located in Luxembourg; however, given the development of holding structures, the acquisition and sale of Luxembourg-based parent entities is increasing.

1.2 What are the most significant factors or developments encouraging or inhibiting private equity transactions in Luxembourg?

Luxembourg has become a pre-eminent jurisdiction for the structuring of private equity funds and private equity transactions through its flexible legal and tax environment. The key factors generally highlighted are the business-oriented approach of the authorities, which are accessible and pragmatic, the stable political, social and economic environment, the developed and experienced financial and legal infrastructure, as well as the attractive tax regime with a very wide treaty network (76 treaties currently in force) which continues to expand.

The Luxembourg legal environment is constantly providing for new features. In addition to lightly regulated private equity vehicles, over the last years, in particular with the *société d'investissement à capital risqué* (SICAR) and the specialised investment fund (SIF), Luxembourg enables private equity sponsors to use a wide range of entities for their deals, ranging from unregulated holding companies (*société de participation financière* (SOPARFI)) set up as *société anonyme* (joint stock company), *société à responsabilité limitée* (limited liability company), *société en commandite par actions* (corporate partnership limited shares) to tax transparent partnerships with or without legal personality, depending on their needs. The *société en commandite spéciale* (special limited partnership) is a recent example of legal innovation in Luxembourg, aiming to accommodate private equity sponsors in structuring their funds or their transactions.

2 Structuring Matters

2.1 What are the most common acquisition structures adopted for private equity transactions in Luxembourg?

Acquisition structures generally involve one or several layers of Luxembourg vehicles, depending on whether, in addition to a management participation, there is an institutional co-investment or a seller rollover, whether there is a multi-layer financing requiring structural subordination or providing for a high-yield notes offering.

Certain private equity sponsors also favour the so-called "master" or "super" Holdco structure whereby the deal-specific acquisition structures are set up as "silos" under a global Luxembourg holding company into which the relevant private equity fund would invest.

A typical acquisition structure will consist of a top holding Luxco which serves as sponsor and management, or possibly a joint venture vehicle. Certain sponsors prefer to invest into such Topco through their dedicated Luxco. Below Topco, one or more intermediate holding companies are set up to accommodate the debt financing and possibly security structure.

While the limited liability company (SARL) is commonly used, and provides flexibility as to the equity or debt securities issued, the corporate partnership limited by shares (SCA) as well as the joint stock company (SA) are also regularly implemented in order to accommodate, for example, certain governance requirements (such as for the SA, a two-tier board structure, or for the SCA, governance through a general partner), a larger number of shareholders or to permit the public issuance of debt or other securities. More recently, the tax-transparent special limited partnership is also being used in acquisition structures.

2.2 What are the main drivers for these acquisition structures?

The way the acquisition structure is set up is, as already indicated above, generally driven by the deal-specific requirements and the parties involved. Luxembourg is often chosen because of its EU on-shore nature, its flexibility as to corporate and financing structures, and tax efficiency (treaty network, participation exemption, withholding tax-free profit repatriation, etc.).

Commonly, it is desired that the sponsor and management investment vehicle are separated from the target group as well as outside the security circle in the case of debt financing. Furthermore, third party debt providers require the implementation of a structural subordination.

To give just a few examples as to why a Luxembourg acquisition structure is often used in private equity transactions:

- from a sponsor's perspective: flexible investor equity and debt instruments with possibility to accommodate the most commonly used governance requirements, limited liability for shareholders, and efficient and timely exit possibilities;
- from a management incentive scheme perspective: possibility to have management either invest directly in the Topco vehicle (e.g. an SA or SCA) or through a dedicated vehicle, fiduciary or nominee which may be transparent or not and permit, in most instances, capital gains treatment;
- from a financing perspective: possibility to obtain a robust security package, generally no withholding tax on interest paid on third party debt, structural subordination and no equitable subordination in case of enforcement of, e.g., share pledges; and
- tax neutrality: generous participation exemption on capital gains and dividends, generally, no withholding tax at exit and mitigation/elimination of withholding tax in the source state through treaty network and EU Directives (parent-subsidiary and royalties and interest directives).

2.3 How is the equity commonly structured in private equity transactions in Luxembourg (including institutional, management and carried interests)?

There is no general rule and a wide range of funding possibilities exists, however the Luxembourg companies would commonly be funded by way of "pure" equity (share capital and premium) as well as shareholder debt. Shareholder debt is treated the same way as third party debt in the sense that there is no equitable subordination but it is, however, possible to provide contractually for subordination.

The "pure" equity can take the form of shares as well as contribution to reserves or equity-like instruments. Luxembourg law is very flexible as to economic rights attached to shares. It is possible to provide for different classes of shares, with different economic and other rights and thus it is generally feasible to accommodate specific waterfalls. Economic rights can be featured so as to evolve over time, have one class of shares preferred over another, be subject to hurdles or other conditions. There is generally only one limitation under Luxembourg law as to the distribution of economic rights: no shareholder may be totally excluded from the profits or the losses of a company.

In addition to shares, depending on the type of company chosen, even more flexible securities may be issued such as so-called founder shares or beneficiary certificates (*parts bénéficiaires*). These instruments are very flexible and have the terms set forth in the articles of the Company and hence may be voting, non-voting, partially voting, have economic rights or not or, only some in certain circumstances, be convertible, redeemable or not, and can generally be used to accommodate the parties' agreement. These founder shares are not part of the capital of the company and their tax treatment depends largely on their terms.

The management incentive package implemented in Luxembourg companies can take various forms and it is often inspired by the type of mechanism used in the UK or the US. The package usually includes, in addition to a participation in the institutional strip, a sweet equity portion or an enhanced economic right above a certain hurdle. These economic rights can be built into different classes of shares; the rights which are conditioned upon the ratchet terms being met or are included in the same class of shares with the enhanced rights only being triggered in specified circumstances. In order to provide management with capital gains *in lieu* of debt income (which in most jurisdictions would be taxable at high rates, even if only dry income) the debt element of the strip can also be built into the pure equity portion by economically mirroring the terms of the sponsor's debt element. In such case, given the difference in ranking, the parties would agree on an equal treatment in the waterfall with possibly a sharing element.

For jurisdictional-related reasons it is sometimes necessary that the management securities provide *ab initio* for the full economic rights which management may benefit from if the various hurdle conditions are met. In such case, if the hurdle is not met and the entitlement of management is to decrease, their securities would have to convert into another type of security or become "deferred". This may be cumbersome to implement in a SARL as shareholder decisions would have to be passed, however in an SA or an SCA it is generally accepted that this may be built into the terms of the shares (with certain limitations) and occur quasi-automatically. It may, however, from a legal perspective be preferable to have rights attached to shares (or other equity-like securities) increase on certain trigger events rather than such rights being decreased.

Depending on the location of management, options and warrants are also regularly used for the management incentive plan.

2.4 What are the main drivers for these equity structures?

The split between shareholder equity and shareholder debt is generally governed by the funding of the transaction at a lower level, i.e. at Bidco level, and also the on-funding into the target group in the case, for example, of a refinancing and/or acquisition of shareholder debt.

Furthermore, at the set-up of the structure and the determination of the instruments to be used, various exit possibilities are taken into account to permit an efficient up-streaming of proceeds.

The choice of either debt or pure equity and the mix thereof will depend on the location and form of the sponsor vehicle, withholding tax implications on profit repatriations, the possibility to provide for capital gains or like treatment for the management participation, the interest deductibility in the target group, in the case of an on-lending, and such similar factors.

2.5 In relation to management equity, what are the typical vesting and compulsory acquisition provisions?

In Luxembourg structures all types of vesting provisions can be found. These may range from a year-by-year vesting (generally in equal percentages over three to five years), with an accelerated vesting at exit, on certain exit scenarios only, or good leaver situations, to an immediate vesting of part of the package and a performance vesting of another portion. While certain sponsors implement the same or similar management packages in most of their acquisition structures, others provide for different schemes depending on the investment and the business.

One would typically expect to see good leaver and bad leaver compulsory acquisition provisions either for the full management package or only for the hurdle shares or only the unvested portion.

The mechanism of compulsory acquisition provisions is important in order to ensure that when triggered, the securities are effectively transferred. Issues typically arise in bad-leaver situations where the relevant manager is asked to sign transfer documentation. If he refuses, which may well be the case, it may be difficult to enforce the provision. It is thus important that the mechanism provides for an automatic transfer on certain defined trigger events. In this case the

clause should include a price or a price determination mechanism. Furthermore, it is recommended that such provisions be included in the articles of the relevant company and not only the shareholders' agreement.

3 Governance Matters

3.1 What are the typical governance arrangements for private equity portfolio companies?

Typically the sponsors and management and/or co-investors would enter into one (or possibly more) shareholders' agreement. Due to the international investor base, shareholders' agreements are generally governed by a law other than Luxembourg law. However, it must be borne in mind that the terms regulate the relationship between shareholders of a Luxembourg company, which in turn is governed by its articles. While the freedom of choice of law of the Rome Regulations gives flexibility, it is important that the shareholders' agreement can effectively be implemented and enforced with respect to the Luxembourg entity. For that reason Luxembourg law should be considered as a governing law and crucial provisions included in the articles of the company.

While double-tier board structures are available in the SA, generally one-tier board structures are preferred, supplemented with one or more committees. In the corporate SCA or the partnership structures (SCS/SCSp), management lies in the hands of the general partner or one or several managers.

3.2 Do private equity investors and/or their director nominees typically enjoy significant veto rights over major corporate actions (such as acquisitions and disposals, litigation, indebtedness, changing the nature of the business, business plans and strategy, etc.)?

Private equity investors normally control the board either through a majority of board members or by the requirement of mandatory consent by certain board members. Prior approval or veto rights on certain reserved matters are provided for both at board level and sometimes at shareholder level. In the latter case, however, shareholders need to be circumspect in order to avoid shadow directors or similar concerns.

3.3 Are there any limitations on the effectiveness of veto arrangements: (i) at the shareholder level; and (ii) at the director nominee level? If so, how are these typically addressed?

The most secure situation is to maintain control of the required majorities at the general meeting and at the board. If this is not the case, veto arrangements are generally quite effective provided they are included in the articles of the company. There may, however, be certain limitations under corporate law, depending on the type of entity used.

3.4 Are there any duties owed by a private equity investor to minority shareholders such as management shareholders (or *vice versa*)? If so, how are these typically addressed?

Private equity shareholders do not as such have specific fiduciary or like duties to minority investors. Luxembourg law and principles do, however, provide for limitations such as abuse of majority, certain minority protection rights as well as the principle of good faith.

One way to mitigate these concerns is to outline in the shareholders' agreement and possibly the articles, certain prerogatives of the majority holders so that these are agreed from the outset by the minorities and hence are more difficult to challenge.

3.5 Are there any limitations or restrictions on the contents or enforceability of shareholder agreements (including governing law and jurisdiction)?

The EU Regulation on the law applicable to contractual obligations gives the parties freedom of choice as to the law which shall govern their contractual relationship, subject to certain limitations. The jurisdiction clause would generally refer to the country of the governing law. English and US law are predominant for reasons relating to the jurisdiction of the private equity sponsors.

While choosing the governing law is largely possible, the parties must, however, consider that the enforcement *in specie* of the relevant provisions directly concerning the company and, for example, its governance or the securities issued by it, may be more difficult but not entirely excluded. Depending on the type of provisions of the agreement, parties should therefore consider Luxembourg law for their shareholders' agreement with respect to a Luxembourg company. Another possibility (and which is very commonly used) is to include the crucial provisions into the constitutional documents of the company. Obviously, such provisions need to comply with Luxembourg law.

Provisions which are contrary to (international) public order or, as regards the company, mandatory corporate law will not, as in most other jurisdictions, be enforceable in Luxembourg.

3.6 Are there any legal restrictions or other requirements that a private equity investor should be aware of in appointing its nominees to boards of portfolio companies? What are the key potential risks and liabilities for (i) directors nominated by private equity investors to portfolio company boards, and (ii) private equity investors that nominate directors to boards of portfolio companies?

Directors are responsible for the management of the company and owe their duties to the company and not to individual investors. They are held to take decisions in the best interest of the company, to act honestly and in good faith with a view to the best interest of the company, and exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances. The interest of the company is different from the interest of the shareholders and may possibly conflict with that of all or some of the shareholders.

Commonly, the articles of the relevant company would provide for director indemnification provisions which are, however, subject to limitations resulting from law. Furthermore, companies would provide D&O insurance coverage to their directors. Finally, private equity investors customarily have additional insurance cover to protect their director nominees.

3.7 How do directors nominated by private equity investors deal with actual and potential conflicts of interest arising from (i) their relationship with the party nominating them, and (ii) positions as directors of other portfolio companies?

The specific provisions of Luxembourg law on conflicts of interest are very narrowly defined and generally do not raise major issues. This does not, however, mean that directors do not have to concern themselves with the issue of conflicts in view of their general duties of corporate governance and as directors.

In addition to their general duties to act in the best interest of the company (and not certain shareholders only) they have a duty of loyalty and/or confidentiality towards the company.

While these duties exist and may not be negated contractually or otherwise, concerns may generally be mitigated through disclosure in the shareholders' agreement and also in the articles of the company. Typically, for example, the company itself (*in lieu* of the directors individually) would be obliged to provide detailed information. Similarly, certain potential conflict situations such as exits, further funding at preferential terms in distressed situations or add-ons, etc., are dealt with in advance in the shareholders' agreement (and possibly the articles).

4 Transaction Terms: General

4.1 What are the major issues impacting the timetable for transactions in Luxembourg, including competition and other regulatory approval requirements, disclosure obligations and financing issues?

Currently there is no competition clearance requirement in Luxembourg and thus no delay in that respect.

Furthermore, there are no general regulatory approval requirements on acquisitions in Luxembourg. Such requirements could only arise if the business acquired is a regulated business. Over the last years, various private equity houses have acquired administration agents in Luxembourg which are "professionals of the financial sector" and hence the change of ownership is subject to the agreement of the *Commission de surveillance du secteur financier* (CSSF). In such case, the timetable must obviously take into account the need for regulatory approval. Similarly, the financing of the transaction must be adapted given that the regulated business entities may be restricted as to the provision of general guarantees or security. The structuring of the transaction to provide an adequate yet, from a regulatory perspective, acceptable security package is likely to be more time-consuming than for the acquisition of an unregulated business.

4.2 Have there been any discernible trends in transaction terms over recent years?

Various trends have been noted over the last years, some of which are "new" while others which had been used previously and virtually disappeared for a period are being used more frequently again.

Over the last years, vendor due diligences are again more common as are vendor loans and high-yield financings.

Another trend is the dual track or even (but less frequent) triple-track exit routes, with the final decision being taken quite late in the process.

5 Transaction Terms: Public Acquisitions

5.1 What particular features and/or challenges apply to private equity investors involved in public-to-private transactions (and their financing) and how are these commonly dealt with?

The situation of Luxembourg as to public-to-private transactions is somewhat unusual given that most Luxembourg listed companies are not listed in Luxembourg but typically elsewhere in the EU or in the USA. Indeed Luxembourg corporate law generally permits companies to adapt to the requirements of a foreign stock exchange and of investors, and thus there have been several listings of Luxembourg corporates on foreign markets.

If the relevant offer falls under the takeover law implementing EU Directive 2004/25/EC, Luxembourg securities laws would in the above scenario only be of residual application (in particular as to the determination of the mandatory takeover offer threshold and employee matters), but bidders would benefit from the Luxembourg squeeze-out provisions under the takeover law, while the shareholders of the target may be entitled to the buyout provisions. In a hostile scenario, it may be of interest to note that Luxembourg law provides for the reversible choice of companies to "opt in" to the board neutrality rules (i.e. providing for the requirement for prior authorisation by the general meeting of shareholders for the board to take frustrating actions (other than seeking a white knight)) as well as the breakthrough rules. Commonly Luxembourg listed companies do not opt in.

If the relevant offer does not fall under the takeover law, there are no specific provisions in the Luxembourg securities law which apply. A fairly new law of 2012 regulates, however, the mandatory squeeze-out and sell-out of securities of companies currently admitted or previously admitted to dealing on a regulated market in the EU or having been offered to the public. The purpose of the law is to introduce within Luxembourg law the provisions of a squeeze-out right in favour of majority shareholders, a sell-out right in favour of minority shareholders, and some obligations in terms of notification and information for the relevant companies having their registered office in Luxembourg.

5.2 Are break-up fees available in Luxembourg in relation to public acquisitions? If not, what other arrangements are available, e.g. to cover aborted deal costs?

There is no Luxembourg rule or regulation specifically dealing with break-up fees. There is also no accepted market practice in Luxembourg in this respect. The board of the relevant company must hence analyse the break-up fee in light of the general corporate law provisions such as possible financial assistance, corporate interest and misuse of assets of the company. If the board of directors reasonably believes that the proposed transaction represents a unique/serious opportunity for the development of the company in its existing business or in developing new opportunities or realise significant synergies, at conditions which the board considers attractive for the company and its shareholders, but where the counter-party requires a break-up fee as a condition for entering into the transaction (while possibly offering itself to commit to a break-up fee if it withdraws from the transaction), the board may find sufficient elements to identify adequate corporate interest. The break-up fee should also not by intent or implication be contrary to the takeover legislation, i.e. constitute an unlawful deterrent against a possible third party counter-offer.

6 Transaction Terms: Private Acquisitions

6.1 What consideration structures are typically preferred by private equity investors in Luxembourg?

It is uncertain whether there is a general preference, and it would appear that the consideration structure depends largely on the sponsors as well as on the target business. In Luxembourg structures, one may find various methodologies going from lock

box, completion accounts to net debt or working capital. There is no requirement under Luxembourg law to favour one structure over the other and hence sponsors have flexibility thereon.

6.2 What is the typical package of warranties/indemnities offered by a private equity seller and its management team to a buyer?

While the private equity sellers' warranty packages are typically limited to title and no-leakage, management is generally expected to provide for a full warranty package. It is also quite customary that an undertaking to this effect is already included in the shareholders' agreement at the time of the investment.

Additional comfort is regularly given by a vendor due diligence.

6.3 What is the typical scope of other covenants, undertakings and indemnities provided by a private equity seller and its management team to a buyer?

The typical scope would differ for the pre-closing period and the post-closing period. While during the period up to closing the private equity seller and management would regularly be subject to similar undertakings such as running of the business, no leakage, information duty, etc., the scope is generally quite different for the post-closing where the private equity seller would only be subject to limited covenants such as non-solicitation and the management team bound by a more extensive package.

6.4 Is warranty and indemnity insurance used to "bridge the gap" where only limited warranties are given by the private equity seller and is it common for this to be offered by private equity sellers as part of the sales process?

While one may observe an increase of warranty and indemnity insurances in transactions, they don't yet seem to be the norm. In most instances they have not been offered by the sellers but have been put in place or specifically requested by the buyers mainly in light of the fact that the seller entity is an SPV, and hence even in the presence of an adequate warranty and indemnity package, does not have, in the absence of a guarantee by the selling private equity fund, sufficient financial back-up. They have also been seen in situations where there was only very limited due diligence.

6.5 What limitations will typically apply to the liability of a private equity seller and management team under warranties, covenants, indemnities and undertakings?

Given that the private equity funds aim to wind up their acquisition structure and to return proceeds to their investors, they would generally seek to limit their liability both in amount (through limited warranties and representations, limited to net proceeds, only triggered on material breach, etc.) and in time, with generally one to three years, with possibly the exception on the representation for good title. Depending on the business sold, however, discussions may in particular arise around limitations on environmental risks, for example.

Management being normally subject to a more extensive warranty and undertaking package, it would appear that the limitation of their liability is not as customary. It should, however, be noted that management is clearly becoming more and more sophisticated and hence is seeking to restrict its liability.

6.6 How do private equity buyers typically provide comfort as to the availability of equity finance and what rights of enforcement do sellers typically obtain if commitments are provided by SPVs?

The most commonly used mechanisms are equity commitments from the private equity funds and/or interim facilities with certain or near-certain funds or bank commitments.

6.7 Are reverse break fees prevalent in private equity transactions to limit private equity buyers' exposure? If so, what terms are typical?

While reverse break fee provisions can sometimes be seen in agreements, they do not appear to be typical. As indicated above, there is, with respect to public transactions, no prohibition to provide for break fees, but they must be analysed under the general corporate law provisions (see the answer to question 5.2 above).

7 Transaction Terms: IPOs

7.1 What particular features and/or challenges should a private equity seller be aware of in considering an IPO exit?

There are no specific Luxembourg law features or challenges as to an IPO exit. Generally the listing would not be made on the Luxembourg stock exchange but one may observe that, due to the flexibility of corporate law, Luxembourg companies are regularly used for IPOs and listing on foreign markets.

7.2 What customary lock-ups would be imposed on private equity sellers on an IPO exit?

The typical lock-up would be for a period of 180 days with, however, certain exceptions such as transfers to the beneficial owners of the fund or certain affiliates.

7.3 To what extent can rights in pre-existing shareholders' agreements survive post-IPO?

There is no prohibition to maintain a shareholders' agreement post-IPO as such, but most likely various provisions will have to be adapted due to the new status of the company, the listing rules and requirements and applicable securities laws and, of course, the existence of minority shareholders. Similarly there will be disclosure requirements as to the terms. If the company is to be or to remain a party, the board of the company will have to analyse whether the entry into the agreement or remaining a party is in the corporate benefit of the company and in line with its governance. It would seem that more often than not European law shareholders' agreements provide for the termination of the agreement on IPO, while for US agreements the contrary appears to be the case.

8 Financing

8.1 Please outline the most common sources of debt finance used to fund private equity transactions in Luxembourg and provide an overview of the current state of the finance market in Luxembourg for such debt.

Generally, it would appear that the debt financing of a private equity transaction is not sourced from Luxembourg. While this is often true as to the bank debt, one may note, however, that there are numerous debt funds, opportunities or mezzanine funds or investment or institutional lending vehicles which are Luxembourg entities and which either directly or on syndication participate in the financing. In particular in the last years, when bank debt financing was not always readily available, there has been an important development in this alternative source of financing.

Another source of funds are high-yield notes issues by a Luxembourg company in the structure which are regularly listed on the Luxembourg regulated stock exchange, or more commonly on the Luxembourg Euro MTF.

8.2 Are there any relevant legal requirements or restrictions impacting the nature or structure of the debt financing (or any particular type of debt financing) of private equity transactions?

Luxembourg companies are normally not subject to any borrowing or guaranteeing limitations in their articles.

When negotiating the terms of the acquisition debt and the related security/guaranty package or considering a debt push-down, private equity sponsors should keep in mind that the target may be restricted from securing or guaranteeing the debt, having financed the acquisition of its own shares for financial assistance reasons. The Luxembourg financial assistance restrictions *stricto sensu* apply, however, only to the SA and SCA and certain whitewash procedures or alternative structuring may be available.

If it is considered that Luxembourg companies shall provide upstream or side stream guarantees or security, the board of the relevant company must determine whether such action is in the interest of the company. Subject to certain conditions, the group interest may also be taken into account though. The guaranty/security shall further not exceed the financial capacity of the company. This is customarily achieved by a limitation based on a certain percentage of net assets or fair value.

9 Tax Matters

9.1 What are the key tax considerations for private equity investors and transactions in Luxembourg?

Private equity investors will consider schematically the following three tax aspects: (i) elimination of taxation in the source state; (ii) tax neutrality in Luxembourg; and (iii) no Luxembourg withholding tax at exit. Luxembourg is a well-established investment hub for private equity investors, as these three goals may be achieved with a Luxembourg investment vehicle, in general, with a fully taxable limited liability company (under the corporate form of a SARL, SA or SCA), the so-called Soparfi. A Soparfi has access to all 76 double tax treaties currently in force and has full access to the EU directives (such as the Parent-Subsidiary directive or the Interest and Royalties Directive). Withholding tax on dividends or interest paid to a Soparfi may in most cases be eliminated in the source state (under applicable treaties or EU directives). At Luxembourg level, the generous participation exemption will, in most cases, achieve tax neutrality of dividends and capital gains derived from qualifying participations, subject to certain minimum holding requirements. These requirements are schematically: (i) minimum holding period of 12 months; and (ii) 10% stake or acquisition value of the participation of EUR 1.2 million for the dividends exemption, and 10% stake or an acquisition value of EUR 6 million for the capital gains exemption. There is generally no withholding tax in Luxembourg on interest payments and distributions of a liquidation bonus. Dividend distributions may be subject to a 15% withholding tax, which may, however, be mitigated/eliminated under a treaty or eliminated under domestic tax provisions. Under Luxembourg law, distributions to corporate shareholders will, in summary, be exempt from withholding tax if the shareholder is a fully taxable entity established in the EU/EFTA/Switzerland or in a treaty country and holds, for an uninterrupted period of at least 12 months, a participation of at least 10% of the Luxembourg company (or shares for an acquisition value of EUR 1.2 million). Luxembourg withholding tax on profit repatriations can hence be eliminated in most scenarios either by relying on a withholding tax exemption, by way of debt funding or upon distributions occurring in the course of liquidation (partial or final).

9.2 Have there been any significant changes in tax legislation or the practices of tax authorities (including in relation to tax rulings or clearances) impacting private equity investors or transactions and are any anticipated?

A law of 19 December 2014 introduced into Luxembourg tax laws a clear legal basis for the advance tax agreement (ATA) process and formalised the existing procedure. On 23 December 2014, a Grand Ducal decree was adopted to give further details on the procedure and the conditions required for obtaining an ATA. In a nutshell, the ATA must be introduced in writing to the tax inspector (*préposé*) of the tax office in charge and must be duly motivated. Where the ATA request concerns corporate tax issues, the tax inspector submits the ATA request to a newly created commission for advance tax agreements. The purpose of this commission is to assist the tax office in the uniform execution and implementation of tax laws. ATAs will be published anonymously and in a synthetic manner in the annual report of the Luxembourg Revenue. Corporate taxpayers are subject to a fee ranging from EUR 3,000 to EUR 10,000 in order to obtain an ATA. This new procedure has been applicable since 1 January 2015.

10 Legal and Regulatory Matters

10.1 What are the key laws and regulations affecting private equity investors and transactions in Luxembourg, including those that impact private equity transactions differently to other types of transaction?

There are as such no key laws or regulations which affect private equity investors or private equity transaction differently from any other types of transactions, except, but only to the extent applicable, the laws implementing the Alternative Investment Fund Managers Directive (AIFMD).

10.2 Have there been any significant legal and/or regulatory developments over recent years impacting private equity investors or transactions and are any anticipated?

Luxembourg has recently introduced the special limited partnership, without legal personality and being tax-transparent, which is a very flexible vehicle designed to accommodate private equity investors and structures.

10.3 Has anti-bribery or anti-corruption legislation impacted private equity investment and/or investors' approach to private equity transactions (e.g. diligence, contractual protection, etc.)?

The anti-bribery and anti-corruption legislation has clearly had an impact on the due diligence conducted prior to a transaction as well as on the representations requested in the purchase agreement and also the shareholders' agreement. Furthermore, if the target group does not have adequate policies in place these are implemented as a matter of urgency post-closing.

10.4 Are there any circumstances in which: (i) a private equity investor may be held liable for the liabilities of the underlying portfolio companies; and (ii) one portfolio company may be held liable for the liabilities of another portfolio company?

Luxembourg law provides for the limited liability of the shareholders of limited liability companies and for the limited liability of limited partners of partnerships. Hence, as long as the private equity investors act within their capacity as normal shareholders or limited liability partners, their liability is limited to their investment in or their commitment to the company.

It would only be if the private equity investors act outside of the scope of a normal shareholder or limited partner that there may possibly be questions of liability in cases of insolvency, mainly such as piercing the corporate veil or a liability for shadow directorship.

11 Other Useful Facts

11.1 What other factors commonly give rise to concerns for private equity investors in Luxembourg or should such investors otherwise be aware of in considering an investment in Luxembourg?

Investments in Luxembourg should not normally raise any concerns different from investments in other comparable jurisdictions.

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Her principal fields of activity are corporate law, mergers and acquisitions, private equity, financings and equity capital markets.

She has advised numerous private equity clients in relation to setting-up of acquisition and other structures, and has been active in the field of joint ventures and investment structures.

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Jean-Luc holds a Masters (*maîtrise en droit*) from the Université Montpellier I and an LL.M. in tax law from the Ludwig-Maximilians-Universität München (LMU). He became a member of the Luxembourg Bar in 1997.

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He is fluent in English, French, German and Luxembourgish.

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