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LUXEMBOURG
REPORT

PE AND VC:
GROWTH OPPORTUNITIES IN LUXEMBOURG

TALENT:
THE NEED FOR TRAINING SOLUTIONS

REGULATIONS:
NEW REFORMS BOOST LUXEMBOURG'S APPEAL

FEATURING
ALTER DOMUS, ALFI, AKD, MAPLES, CSC, RFA, GSK STOCKMANN, LPEA & OCORIAN

LUXEMBOURG FUND MANAGERS

AND CURRENT GEOPOLITICAL LANDSCAPE

2020 was a challenging year for the Luxembourg funds market. Despite a strong start in January and February, the Covid-19 pandemic caused a slowdown to fund set-up and net asset developments due to valuation issues and travel restrictions. However, it should be noted that the Luxembourg investment fund industry remained robust given the market regained growth starting mid-2020 and continuing into the third quarter of 2021. This positive development was driven predominantly by increasing net assets and incoming new commitments to the fund vehicles. Net assets under management in Luxembourg investment funds reached EUR5.22 billion at 31 March 2021 and increased to EUR5.49 billion as of 30 June 2021. Moreover, since the Brexit referendum, Luxembourg has attracted increasing interest from UK based fund managers or other fund managers or originators having planned and implemented the centralisation of their cross-border activities via Luxembourg in the post-Brexit era. Several dozen market participants, such as M&G, have also been relocating to Luxembourg over the last three years.

In terms of the origins of Luxembourg fund initiators, it is worth noting that the first place is well occupied by the US initiators, followed by UK, Swiss and German initiators.

1. SUSTAINABLE FINANCE

One of the new key trends driving growth and development in the Luxembourg fund industry is sustainable finance. Due to the Luxembourg Green Stock Exchange that doubled its green, social, suitability and ESG (environmental, social and governance) securities over the last years and the Luxembourg Finance Labelling Agency (LuxFLAG) that grew considerably over the previous years and continues to label sustainable products across several jurisdictions, Luxembourg retains its status as the place of interest for various fund initiators as well as investors across the globe.

Along with those market players, the Luxembourg government plays an important role in developing a sustainable finance area. Implementation of the EU Sustainable Finance Disclosure Regulation 2019/2088 (SFDR), applicable from 10 March 2021, creates some challenges for financial market participants from a short-term perspective. However, it will definitely create some opportunities from a long-term perspective, especially for those who are up to speed with the measures. Those fund managers potentially will benefit from the opportunities in terms of performance, growth of assets under management and reputation that sustainable finance products could bring. It is worth noting that sustainable funds represented a growing segment of investment solutions over the last years in Europe. The net assets in sustainable funds have doubled since 2018 and reflect around 11 per cent of total net assets domiciled in Europe at the end of 2020. More than half of the cash flows went into the sustainable investment fund market in 2020 and that trend might only grow in the near future.

Another growing trend appears with view to the increasing set-up of non-regulated funds instead of regulated vehicles. In particular, the reserved alternative investment funds (RAIFs) which are not subject to direct supervision of the Luxembourg regulatory authority, the Commission de Surveillance du Secteur Financier (CSSF), have proven to be the preferred fund vehicle of promoters and initiators looking after alternative assets classes.

Fintech and investment into venture capital is another key trend that drives the growth of Luxembourg economy and will continue to develop over the years bringing new business opportunities to the country.

2. FUND STRUCTURING VEHICLES

Luxembourg, as a financial centre, continues to create a favourable environment allowing the development of new products and services, giving

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&
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investors flexibility in terms of fund structuring.

The Luxembourg law dated 10 August 1915 on commercial companies (Corporate Law), to the extent it is applicable, and various fund product laws, such as the law dated 13 February 2007 relating to specialised investment funds (SIFs), the law dated 15 June 2004 relating to investment companies in risk capital (SICARs), the law dated 17 December 2020 relating to undertakings for collective investment (UCIs), the RAIFs and other alternative investment funds (AIFs) offer to potential investors and fund initiators, a varied choice in terms of fund structuring vehicles. The most common structures being used are as follows: (i) investment companies with variable capital (SICAVs), taking the form of a corporate vehicle or (ii) contractual form funds (FCPs). Both SICAVs and FCPs allow a number of flexibilities with regard to the structuring aspects and can take the form of SIFs, UCITS and RAIFs.

SICAVs could be set up in various corporate forms, such as a public limited company (SA), a limited liability company (SARL) and different types of partnerships, such as a partnership limited by shares (SCA), a special limited partnership (SCSp) or a simple limited partnership (SCS). The corporate choice of a vehicle quite often depends on various factors, such as the investor's geographical location, tax considerations and/or control over the vehicle or other aspects. One of the major advantages of a SICAV is a floating share capital, meaning that its share capital is always equal to the value of its net assets thereby dispensing with costly notarial recordings of share capital variations.

On the other hand, FCP is a contractual form vehicle without legal personality and not subject to the Corporate Law provisions which allows those entities certain flexibilities.

Both FCPs and SICAVs could fund-raise by means of equity or debt instruments and allow creation of so-called umbrella funds with multiple compartments that could have different investment strategies and invest in different asset classes. The constitutive documents can be drafted only in the English language and it is not required to translate those into French or German.

3. KEY OBJECTIVES OVER THE COMING YEARS TO ENSURE LUXEMBOURG REMAINS A COMPETITIVE GLOBAL JURISDICTION

Up until now, Luxembourg has taken a leading position as a financial centre within the EU and has shown strong expertise and high resilience during the pandemic crisis. To continue to remain a competitive global centre, the key objectives should be to (i) offer flexible products and high-quality services at reasonable costs, (ii) maintain a high level of professionalism, and (iii) continue to serve as a global hub for cross-border activities focusing on digitalisation, sustainable finance and other sectors.

Creating an additional framework for sustainable finance products will help the Luxembourg fund industry to flourish on a greater scale. It is expected that the green finance sector will contribute to a strengthening of Luxembourg's position as a key, global hub for impact investment and sustainable finance. ■

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Dr. Marcus Peter heads the Investment Funds and Private Equity practice of GSK Stockmann in Luxembourg. He has worked as a lawyer in Germany since 2004, and in Luxembourg since 2005. He obtained his LL.M. and Ph.D. degrees from the European Institute in Saarbruecken, Germany. Prior to joining GSK Stockmann in Luxembourg, Marcus Peter worked for a Luxembourg law firm from 2004 to 2016 (the latter four years as partner). Since 2016, he has been a partner at GSK Stockmann in Luxembourg. Marcus Peter is an expert in Luxembourg Investment Funds & Private Equity Law, Mergers & Acquisitions and Corporate Law. He speaks German, English, French and Russian. Marcus Peter is a member of the Luxembourg Private Equity Association (LPEA), Chinese-Luxembourgish Chamber of Commerce, DAV Luxembourg, EVER and CBBL (Cross Border Business Lawyers).

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