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Your LCG Team

Funds in Liechtenstein

I. Legal framework in Liechtenstein

With the Europe-wide coordination of the European investment fund regulations through the UCITS-IV (undertakings for the collective investment in transferable securities) Directive as well as the AIFM (alternative investment fund managers) Directive and the complete regulatory revision entailed therein, a second legal foundation for fund transactions in Liechtenstein was created alongside the law on certain undertakings for the collective investment in securities (UCITSG), namely the law on alternative investment fund managers (AIFMG). The implementation of these Directives pursues the goal of making the fund centre Liechtenstein more attractive for both undertakings for the collective investment in securities (UCITS) and alternative investment funds (AIF), especially with regard to foreign fund initiators and their managers, in order to ensure a long-term growth of the fund and banking centre of Liechtenstein.

In contrast to the classification of the previous investment company law (Investmentunternehmensgesetz, IUG) into investment companies for securities, for other values, for real estate and, in addition, the special type of investment company for qualified investors, the new law differentiates, in compliance with the European regulations, only between undertakings for the collective investment in securities (UCITS) and alternative investment funds (AIF).

1. UCITS

UCITS are regulated in the law on certain undertakings for the collective investment in securities (UCITSG) that took effect in Liechtenstein on 1 August 2011 and contains provisions with regard to the approval, supervision and investment activity of UCITS and their management companies. The UCITSG applies to all UCITS that have been founded in Liechtenstein or are offered to the public in or from Liechtenstein.

2. IUG

The provisions of the Liechtenstein IUG regarding investment companies for other values, for real estate as well as for qualified investors apply until the implementation of the AIFM Directive through the law on alternative investment fund managers (AIFMG). The AIFMG will probably take effect in Liechtenstein on 22 July 2013.

The implementation of the AIFM Directive in Liechtenstein brings about a complete revision of the IUG. The AIFMG entails major changes in the business with alternative investment funds (AIF). The managers of alternative investment funds (AIFM) who conduct the portfolio management and risk management for AIF, i.e. all funds that are not UCITS and thus not regulated by the UCITSG, will be regulated on a European basis for the first time. The AIFMG allows for a flexible

arrangement of AIF: on the one hand, it provides a choice of legal forms; on the other, it contains precisely regulated standards for structural measures and transfers of registered offices that rely on a high degree of flexibility. In conformance with the European requirements, the AIFMG for the ensuring of international competitiveness and the uniform protection of shareholders/investors—alongside the introduction of the EU passport for funds and AIFM—makes greater personal and organisational demands on managers, business partners, custodians and the Financial Market Authority (FMA).

2.1. Possible legal forms of a company according to the AIFMG

Beside the legal forms approved in the UCISTG, the structures of an investment limited partnership under Liechtenstein law, where only one partner is absolutely liable and that has a similar structure to the Luxembourgian SICAR (Anlagekommanditgesellschaft), as well as the investment limited partnership under Liechtenstein law that has no absolutely liable partner (Anlagekommanditärengesellschaft), are possible under the AIFMG.

2.2. Application for a licence

The AIFMG rules that the AIFMs are subject to a disclosure duty and are obligated to obtain an FMA licence. In order to obtain a licence as AIFM, either the portfolio management or the risk management has to be provided by the AIFM in Liechtenstein.

2.3. Minimum capital of the Liechtenstein AIF

For self-managed Liechtenstein AIF, an opening capital of at least EUR 300,000 (or the equivalent in CHF) is required; for a Liechtenstein AIF that is managed by an AIFM, an opening capital of at least EUR 125,000 (or the equivalent in CHF) is required.

II. Fund types in Liechtenstein

1. UCITS

1.1. Concept of the Liechtenstein UCITS fund or investment company for securities

Investment funds that contain, alongside securities such as stocks or bonds, also other financial products, e.g. derivatives, are called Liechtenstein UCITS funds. Funds of that type are characterised by the fact that they have the EU passport and are allowed to be sold publicly in the entire EEA region only with a licence from the Finanzmarktaufsicht (FMA, Financial Market Authority) Liechtenstein (single licence principle). Pursuant to the UCITSG, the cross-border management of funds, the merger of funds as well as the establishment of so-called master feeder structures, which entails the pooling of the assets of one or several feeder funds into a common master fund.

1.2. Legal forms of a Liechtenstein UCITS fund

A Liechtenstein UCITS fund can have the following legal forms:

1.2.1. Investment fund (contractual investment fund)

The Liechtenstein investment fund describes a legal relationship, established by a contract whose contents are identical, of several investors to a management company and to a custodian for the purpose of capital investment, the management and safeguarding of assets on behalf of the investors in the form of a legally separate fund in which the investors participate. Investment funds do not have a legal personality and are to be entered into the Liechtenstein Commercial Registry (Public Registry) subsequent to having been approved by the Finanzmarktaufsicht (FMA, Financial Market Authority) Liechtenstein. The fund contract that requires approval as well, however, does not have to be entered into the Commercial Registry.

1.2.2. Collective trust

The Liechtenstein collective trust entails the conclusion of a trusteeship, identical in terms of content, with an indeterminate number of investors for the investment and management of assets on behalf of the investors; the individual investors invest only on a pro-rata basis and are personally liable only up to the amount of the investment sum. Collective trusts do not have a legal personality and are to be entered into the Liechtenstein Commercial Registry (Public Registry) subsequent to having been approved by the Finanzmarktaufsicht (FMA, Financial Market Authority) Liechtenstein. The trust contract that requires approval by the FMA as well, however, does not have to be entered into the Commercial Registry.

1.2.3. Investment company

A Liechtenstein investment company, whose only purpose is the investment and management of assets on behalf of the investors, can be an UCITS fund in the form of a public limited company (PLC., Corp.), of a public EU company (SE) or of an establishment and can be capitalised with variable (SICAV) or fixed (SICAF) capital. The Liechtenstein investment company can be managed by its own bodies or by an external management agency. Unlike the investment fund and the collective trust, a Liechtenstein investment company is created only upon entry into the Commercial Registry.

1.3. Approval of the UCITS fund

Every Liechtenstein UCITS fund domiciled in Liechtenstein has to have the approval of the Finanzmarktaufsicht (FMA, Financial Market Authority) Liechtenstein. The approval by the FMA is valid in all other EEA member states. Moreover, every Liechtenstein UCITS fund, with the exception of self-managed investment companies, requires a management company. The management company has to apply for a licence with the Finanzmarktaufsicht (FMA, Financial Market Authority) Liechtenstein.

1.4. Minimum capital of the UCITS fund

The minimum capital of a self-managed Liechtenstein investment company has to amount to EUR 300,000 (or the equivalent in other currencies). With regard to an externally managed Liechtenstein investment company as well as a management company, EUR 125,000 (or the equivalent in other currencies) is required.

1.5. Safekeeping of the UCITS fund

Liechtenstein UCITS are to be transferred to a custodian for safekeeping; the custodian can be a bank or securities company; the domestic branch of a bank or securities company domiciled in the EEA; or another person with residency or registered office in Liechtenstein under the supervision of FMA. Here the reservation applies that the tasks of the custodian and the management company or the self-managed investment company may not be executed by one and the same company.

2. Non-UCITS products

The IUG (law on investment companies) presently applies to all non-UCITS products.

2.1. Investment companies for other values

This fund type includes Liechtenstein investment companies that are neither investment companies for securities nor investment companies for real estate. Funds for other values are investments that are marketable only to a limited extent, are subject to strong price fluctuations, show a limited risk spread or whose valuation is difficult. Investments in rare earths, mass-produced goods and derivative financial instruments in particular are allowed. The minimum fund volume amounts to CHF 2 million (or the equivalent in other currencies); it has to be achieved at the latest 6 months after the first subscription and may not fall short of this sum afterwards. There are only a few restrictions in place for this fund type, so that investments can be realised that would not be possible under the UCITSG on account of the comparatively strict diversification regulations and upper investment limits for securities funds.

2.2. Investment companies for other values with heightened risk

Such funds show an even higher risk profile in comparison to the normal funds for other values. In addition, borrowing, derivatives for speculation purposes and short selling, for instance, are allowed. The requirements for risk controlling are high for these funds; the risk controlling is audited by the Finanzmarktaufsicht (FMA, Financial Market Authority) Liechtenstein at regular intervals. The minimum fund volume also amounts to CHF 2 million (or the equivalent in other currencies); it has to be achieved at the latest 6 months after the first subscription and may not fall short of this sum afterwards.

2.3. Investment fund for qualified investors

With the investment fund for qualified investors, Liechtenstein has created facilities for the struc-

turing of wealth. This fund is subject to special restrictions in terms of the qualification of the investors; however, owing to low publicity regulations and simplified authorisation provisions, it can be launched very quickly. One can assume with a qualified investor that, on account of his experience, the legal form, assets and investment volume, he is aware of specific risks and has only a limited need of protection; hence this fund is exempt from certain provisions of the law on investment companies (IUG) and the ordinance on investment companies (IUV). The launch of this Liechtenstein fund type, for instance, does not require the prior material authorisation by the Liechtenstein Finanzmarktaufsicht (FMA, Financial Market Authority). Qualified investors include, for instance, banks, insurance companies, retirement funds, asset managers, funds, other companies and Family Offices. The minimum fund volume amounts to CHF 2 million (or the equivalent in other currencies); it has to be achieved at the latest 6 months after the first subscription and may not fall short of this sum afterwards.

2.4. Investment companies for real estate

In compliance with the principle of risk spread, investments can be made in private or commercial properties with this fund. The minimum fund volume amounts to CHF 2 million (or the equivalent in other currencies); it has to be achieved at the latest 6 months after the first subscription and may not fall short of this sum afterwards.

III. Advantages of the Liechtenstein fund centre

1. Tax benefits in terms of the taxation of investment companies

1.1. Income tax flat rate

Investment companies with registered office or their actual administrative location in Liechtenstein are subject to unlimited income tax with their entire company income in Liechtenstein. All Liechtenstein investment companies are correspondingly subject to income taxes. The income tax amounts to 12.5%, at least however CHF1,200 annually. Taxation is limited to the taxable net income. The net income under commercial law has to be reduced, among other things, by the so-called equity return deduction of currently 4% on the modified equity. This equity return deduction reduces the taxable base and lowers the effective tax rate. What has to be taken into account here is that dividends from the investment in juridical persons as well as capital gains from the sale or liquidation of investments in juridical persons are exempt from Liechtenstein income tax. The proceeds from the managed assets, by contrast, are non-taxable income.

1.2. Sales charge and property fee

On the basis of the custom union agreement as well as the import law in the wake of the agreement, the Swiss federal law is applicable in Liechtenstein and the Swiss stamp duty also applies in Liechtenstein. Therefore the sales charge has to be kept in mind in the context of the Liechtenstein investment companies.

Liechtenstein funds are considered investors that are exempt from the stamp duty. Hence the stamp duty ascribed to the fund is dispensed with when domestic securities are bought or sold by a Liechtenstein fund. Provided that the Swiss regulations on the stamp duty are not applicable, the formation tax is levied according to Liechtenstein law.

1.2.1. Investment fund (contractual investment fund)

With regard to Liechtenstein investment companies with the legal form of an investment fund, a differentiation in terms of the sales charge has to be made between the shares in the fund management (management company) and the shares in the managed assets.

If the management company is a Liechtenstein public limited company (PLC., Corp.) or public EU company (SE), the issuance or increase of the nominal value of the shares in Liechtenstein is subject to a 1% sales charge, provided that the equivalent exceeds CHF 1 million. If the management company is organised in the legal form of a Liechtenstein establishment, the formation tax amounts to 1%, if the equivalent exceeds CHF 1 million. The formation tax is reduced to 0.5% for the capital exceeding the amount of CHF 5 million; to 0.3% for the capital exceeding CHF 10 million.

The creation of shares in the managed assets, in contrast, does not prompt a sales charge or formation tax.

1.2.2. Investment company (investment company with variable capital)

In the case of the investment company with variable capital, the shares in the nominal capital and the shares in the managed assets are not subject to sales charge or formation tax.

1.2.3. Investment company (investment company with fixed capital)

In the case of the investment company with fixed capital, the issuance or increase of the nominal value of the shares are subject to a 1% sales charge provided that the equivalent exceeds CHF 1 million.

1.3. Turnover tax

The transfer of property in shares of the managed fund against payment is subject to the Liechtenstein turnover tax provided that a party or broker is a domestic securities dealer. The redemption and issuance of Liechtenstein fund shares are exempt from the turnover tax.

1.4. Tax exemption

The property tax was abolished through the Liechtenstein tax law coming into effect on 1 January 2011. The coupon tax is also omitted. Old reserves existing as at 31 December 2010 do not fall under the abolition of the coupon tax. Within the first two years, until 31 December 2012, the old reserves can be distributed at a lower tax rate of 2% or carried forward. As of 2013, the tax on old reserves not settled will be 4% again.

1.5. Privileged taxing of companies with the tax status of a personal wealth structure (PVS, Privatvermögensstruktur)

Liechtenstein juridical persons that hold fund shares can also refer to the tax privileges entailed in their qualification as personal wealth structure (PVS). The PVS is only subject to the minimum income tax of CHF1,200. Beyond that, no income tax is levied.

2. Easy access to European markets

Under certain conditions, membership in the European Economic Area (EEA) facilitates an easy access to the European market that is free from discrimination for both Liechtenstein fund management companies and UCITS- and AIF-compliant investment funds.

3. Swift licensing process

The coordination between Liechtenstein's financial institutions and authorities is excellent. Especially the binding time allowance for the approval of new funds established by the Finanzmarktaufsicht (FMA, Financial Market Authority) Liechtenstein guarantees a swift licensing process.

4. Investor protection

The fund centre and financial centre of Liechtenstein is subject to a modern and Europe-compliant legislation and independent supervision. The protection of investors is anchored in the Liechtenstein fund law and is continually ensured by the Finanzmarktaufsicht (FMA, Financial Market Authority) Liechtenstein as well as by independent auditors, who likewise have to have the approval of the FMA. In compliance with laws and directives, the FMA has established good behaviour rules for the Liechtenstein fund centre that contribute to the protection of investors and ensure and advance the trust in the Liechtenstein fund centre and the Liechtenstein finance sector (market integrity).

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