

Private Equity Spotlight

Welcome to the first edition of **Private Equity Spotlight: Curated insights in private equity**, our new online newsletter for clients and friends in the private equity industry.

Private Equity Spotlight brings together recent private equity related contributions and publications authored by partners and associates of Loyens & Loeff. By sharing easy access to their insights, views, comments and annotations that have recently been published on our website or in external journals and other publications, we aim to help our readers to stay up to date of legal and tax developments in the private equity industry.

In this edition:

Fund finance

NAV facilities: A strategic tool

While traditional subscription line facilities are still used in the fund finance market, certain types of fund finance products such as net asset value (NAV) financings have emerged in recent years in Luxembourg and the Netherlands.

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Fund regulatory

Luxembourg implements the modernisation of its fund toolbox

On 11 July 2023, the Luxembourg legislator has adopted the bill of Law N°8183 (the Bill) introduced by the Ministry of Finance on 27 March 2023 amending several laws. The Law brings substantial improvements to the Luxembourg toolbox for investment funds and their managers. This article aims at providing an overview of some of the changes, which are deemed most relevant for fund managers.

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CSSF Thematic Review on the Implementation of Sustainability-Related Provisions: key points

Following the entry into force of various texts amending the sustainability-related Luxembourg legislative and regulatory framework, the CSSF conducted various supervisory actions, as part of the implementation of its Supervisory Priorities in the Area of Sustainable Finance, taking into account the ESMA Supervisory briefing on Sustainability Risks and Disclosures. The key takeaways for the funds industry are summarized in this article.

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The Legal 500 Alternative Investment Funds Comparative Guide 2023

This Legal 500 guide is produced in association with Loyens & Loeff and provides you with the latest insights on alternative investment funds laws and regulations applicable in the Netherlands.

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ELTIF 2.0 – Challenges & Opportunities

ELTIF 2.0, amongst others, revises the rules applicable to eligible assets and investments, liquidity management and the distribution to retail investors. This contribution provides an overview of ELTIF 2.0 with a particular focus on its challenges and opportunities.

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Legal developments on profit distribution in healthcare - *Publication in Dutch*

The issue of profit distribution by Dutch licensed healthcare institutions and possible alternative routes around the profit block have long been a subject of political discourse. Public debate has been revolving for a prolonged period of time around the question whether and to what extent healthcare companies are allowed to make a profit from the provision of care. In view thereof, our experts have written an article about profit distribution in healthcare.

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Fund management

Fund Management in Luxembourg – what you need to know

Are you interested in finding out more about fund management regulation, fund marketing, retail funds, and non-retail pooled funds, as well as trends? Read our contribution to the Luxembourg chapter of Lexology: Getting the Deal Through – Fund Management.

[Read more >](#)

US fund managers – insourcing functions related to Luxembourg holding structures

When US fund managers tap into the European investor market, they frequently offer prospective European investors the option to commit to a Luxembourg fund vehicle. EU investors generally prefer to commit to such a fund vehicle rather than an offshore vehicle, because of “smell test” reasons. This article is dedicated to the US market, but conclusions apply similarly to fund managers based in other countries.

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US alternative investment fund sponsors aiming for a European capital raise – some practical reflections

The majority of the more sizable US based fund sponsors have the topic of an EU capital raise on their agenda. For some it is just a vague dot on the horizon, while others have concrete plans to test the waters with prospective EU based investors. This article takes US sponsors, in a Q&A style, through the general EU regulatory landscape of fund-raising efforts in the order of the fund-raising process. It thus starts with the sponsor’s preliminary introductions and ends with the sharing of final fund documents with prospective investors to get them signed.

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Continuation funds, a sign of greed or a logical evolution of private equity? - *Publication in Dutch*

In recent years, managers of closed-ended investment funds have increasingly used so-called continuation funds. In the Netherlands, the continuation fund structures have only been widely applied since last year. Given the increasing use of continuation funds and the controversy surrounding this topic, it is time for a closer look at the state of the market and the issues surrounding these structures. In this article, we take a closer look at how these transactions are structured and how the associated risks and conflicts can be best mitigated.

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Leveraged buyouts (LBOs)

Considerations for directors and supervisory board members in LBOs

On 17 May 2023, the Enterprise Chamber of the Amsterdam Court of Appeal delivered an important judgment on the responsibilities of directors and supervisory board members in the context of leveraged buyout transactions.

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Mismanagement and application of the standard of enhanced due diligence in leveraged buyout transaction - *Publication in Dutch*

Mismanagement occurred during the acquisition of Catalpa through a leveraged buyout (LBO) and the subsequent debt pushdown via a legal merger. There were issues with the disclosure to the Works Council, which was incorrect, incomplete and misleading. Consideration of the pros and cons of the LBO was conducted with a high degree of carelessness, and both the directors and supervisory directors should have exercised more care. These actions were clearly contrary to the basic principles of proper business conduct. The importance of childcare in society also played a significant role. As a result, the decisions to discharge the individuals involved should be annulled. Four former Supervisory Board members have been held personally to blame and ordered to annul the inquiry costs.

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Tax

Landmark Luxembourg tribunal decision on share class redemption

The Luxembourg Administrative Tribunal issued its long-awaited judgment on the tax treatment of the repurchase of a class of shares (case 42432) on 27 January 2023. It notably deals with the question whether the repurchase (and cancellation) of a class of shares should trigger Luxembourg dividend withholding tax on (part of) the repurchase price.

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Impact of 2024 Dutch tax proposals on U.S. MNEs and fund sponsors

The 2024 Dutch Budget contains various tax proposals for the years 2024 and 2025. We highlight two of these tax proposals and their potential impact on U.S. multinationals (MNEs) and fund sponsors with presence and/or investments in the Netherlands.

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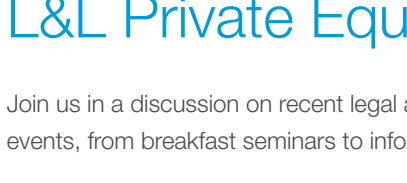
Private equity fund not entitled to VAT deduction, according to the court - *Publication in Dutch*

The District Court of Noord-Holland recently considered a case in which a private equity fund had reclaimed VAT on (transaction) costs. The court ruled that although the PE fund was the purchaser of the purchased (transaction) services, it lacked the entrepreneurship required for the deduction. According to the court, the provision of individuals as supervisory directors of the supervisory boards and the performance of preparatory work for the transaction did not constitute entrepreneurial activities.

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L&L Private Equity – events & webinars

Join us in a discussion on recent legal and tax developments in the world of private equity at our upcoming events, from breakfast seminars to informal drinks.

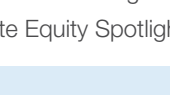


In our L&L Private Equity Expert series, we aim to provide you with valuable insights into current issues on private equity-related topics. The series will kick off on 19 April.

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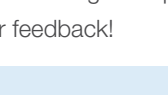
Editors

Thanks for reading the first edition of Private Equity Spotlight: Curated insights in private equity. We intend to publish the Private Equity Spotlight twice per year, and we’d love to hear your feedback!



Marc Meyers

Partner - Attorney at Law
T +325 466 230 306
E marc.meyers@loyensloeff.com



Herman Kaemingk

Partner - Attorney at Law
T +020 578 54 59
E herman.kaemingk@loyensloeff.com