A natural winner from the crisis?

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By Simon Henin - ***If there's such a thing as a winner from the recent economic downturn and the growth of regulation in the private equity industry, arguably one might be Luxembourg.***

As private equity investors have become more cautious, fund managers have looked for reputable and well-regulated jurisdictions to domicile their funds – and this has played to Luxembourg's strengths. Its EU membership status has also gone down well with managers with a European investor base in the light of the forthcoming AIFM Directive.

This has certainly been our experience. A specialist private equity fund services firm, Ipes established an office in Luxembourg in 2009, driven by demand for both the Soparfi holding structure behind non-EU funds from fund managers looking to benefit from Luxembourg's double tax treaties, and from clients wishing to establish a fundraising structure attractive to EU, and specifically German, investors.

Better known for its Ucits funds industry, Luxembourg has grown and diversified in recent years, building a formidable reputation as a hub for private equity. Since the 1990s the industry has seen increasing use of the unregulated Soparfi structure, of which there are now more than 25,000.

Since then, Luxembourg has introduced two regulated structures, the Sicar (risk capital investment company) launched in 2004 and SIF (Specialised Investment Fund) in 2007, both well received by fund managers.

Having reached out globally, Luxembourg now has access to more than 60 double tax treaties. Additionally the EU parent-subsidiary directive eliminates double taxation of dividends paid by a subsidiary in one member state to a parent company in another member.

Both Sicar and SIF structures benefit from consolidation exemptions, are reserved for 'well-informed' investors, and can have a variable capital base and a multi-compartment structure. Management services provided to SIFs and Sicars are VAT-exempt.

The CSSF supervises SIFs and Sicars with a lighter touch than other regulated vehicles, satisfying investor demands for corporate governance while offering flexibility.

SIFs and Sicars require the services of a central administrator such as Ipes, an independent auditor and a custodian bank. With third-party custodians being required by alternative funds under the AIFMD, Luxembourg has the advantage of an established pool of experienced custody providers for private equity structures.

Luxembourg's regulatory environment, skilled workforce and legislative framework have helped to establish a critical mass of private equity business. There are now more than 300 private equity funds in the jurisdiction, and firms including Carlyle, KKR, PAI, CVC, Partners Group and 3i have established a presence in the jurisdiction.

Private equity specific infrastructure has developed in tandem. The past two years have seen an influx of specialist administrators such as Ipes and the establishment of the Luxembourg Private Equity Association, which now has more than 60 members.

These developments will help to perpetuate the jurisdiction's success as the industry works together to address challenges and generate opportunities. Our professional bodies are actively lobbying in Brussels to influence the outcome of the AIFMD Level II discussions while also reaching out to fund managers across Europe and beyond.

While the implementation of the AIFMD will be a challenge, Luxembourg stands to benefit from its fund industry experience and rapid adaptation to new requirements. The grand duchy's proven track record in transposing EU directives in a way that benefits business should again serve the private equity sector well.

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