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Fund relocation from Luxembourg to Liechtenstein or vice versa: some practical questions

From time to time, promoters decide to relocate an existing fund from one jurisdiction to another. This may be done to take advantage of benefits offered by another European jurisdiction, including increased choice of best service providers within the EU/EEA. Below we outline certain issues that we have seen in our practice.

1. What are the options for relocation of a fund?

There are several ways to relocate an investment fund from one jurisdiction to another, such as:

- *Cross-border merger*
- *Transfer of the legal seat*
- *Contribution of assets to a sub-fund and winding up of the old fund to reduce the number of umbrella platforms*

In many cases, the transfer of the registered office may be an interesting option, as it gives a number of benefits: (i) the fund maintains its legal personality and no new fund set up is required; (ii) the fund keeps its track record; (iii) the relocation can be tax neutral.

2. When is a transfer of a legal seat possible?

Re-domiciliation requires that both the jurisdiction of the incorporation of the fund and the target jurisdiction permit a company to move its legal seat and governing law and recognise that its legal personality remains intact. This is not always so. However, in case of Liechtenstein and Luxembourg, both countries allow the transfer of the registered seat of a fund and recognise that the fund remains in existence as the same legal entity.

3. How to make a relocation tax-neutral?

The transfer of the legal seat of the fund from Liechtenstein to Luxembourg or vice versa should not trigger a stamp duty in Switzerland as there is no transfer of securities for a remuneration, because the fund continues to exist with its shares. There is only a change of ISIN from LI to LU. It is recommended to obtain a tax ruling from the Swiss tax authorities to confirm that there is no Swiss stamp duty when ISIN is changed. Typically, a confirmation from lawyers in Liechtenstein and Luxembourg would be required that the re-domiciliation does not lead to a setup of a new company or liquidation of the old and there is no new issue of securities.



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4. Who bears the costs?

In principle, the fund acts in accordance with the contract law. Generally, costs incurred in the interest of the investors may be charged to the fund, unless there are specific restrictions in the law (e.g., UCITS law disallows charging costs of a merger to any UCITS fund involved in the merger or to the investors).

If the transfer of the registered seat from Liechtenstein to Luxembourg or vice versa is in the interest of the investors, e.g., because the investors benefit from the positive economies of scale effects or new service providers, the costs of the transfer could be charged to the fund, if allowed by the terms and conditions of the fund.

5. Is approval from FINMA required?

Generally, an authorisation from FINMA is required before a foreign collective investment scheme can be offered in Switzerland to non-qualified investors. For foreign funds already authorised by FINMA, the transfer of the legal seat would constitute a change in the organisation which would also require a FINMA authorisation. The authorisation should generally be obtained prior to the transfer of the legal seat.

LINDEMANNLAW can help you relocate investment funds and provide legal and tax assistance along the way.

Please feel free to contact us for more information, we are happy to help.

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