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AIF Funds in Liechtenstein: Structuring Options with Foundations and Trusts

1. Introduction

Exactly one hundred years ago, Liechtenstein and Switzerland signed the Customs Treaty, which integrated Liechtenstein into the Swiss customs territory. In retrospect, Liechtenstein has changed fundamentally during this time. In 1923, it was still an agricultural state, but today the small Principality presents itself as one of the wealthiest economies in the world.

In addition to the constant development of the liberal and appealing company law, of which the Liechtenstein Foundation is the centrepiece, Liechtenstein has developed into a reputable market participant, particularly in the fund sector. Liechtenstein is currently experiencing an upswing as a fund centre, offering a broad range of options for setting up funds and, when compared internationally, it stands out with its short licensing process and manageable set-up, management and supervision costs. This paper deals with the investment vehicle of the Liechtenstein Alternative Investment Fund (AIF) as a private label fund, with a special focus on structuring possibilities with foundations and trusts.

2. Definition of AIF and private label funds

Article 4 of the Alternative Investment Fund Managers Act (AIFMG) defines AIFs as undertakings for collective investment, provided that they obtain their capital from a number of investors and that investments are made for their benefit according to a predefined investment strategy. Unlike traditional forms of investment, AIFs are not limited to traditional investments in securities (such as shares and bonds traded on the stock exchange). Rather, AIFs enable investors to invest, among other things, in illiquid assets such as real estate, private equity, commodities or other tangible assets.

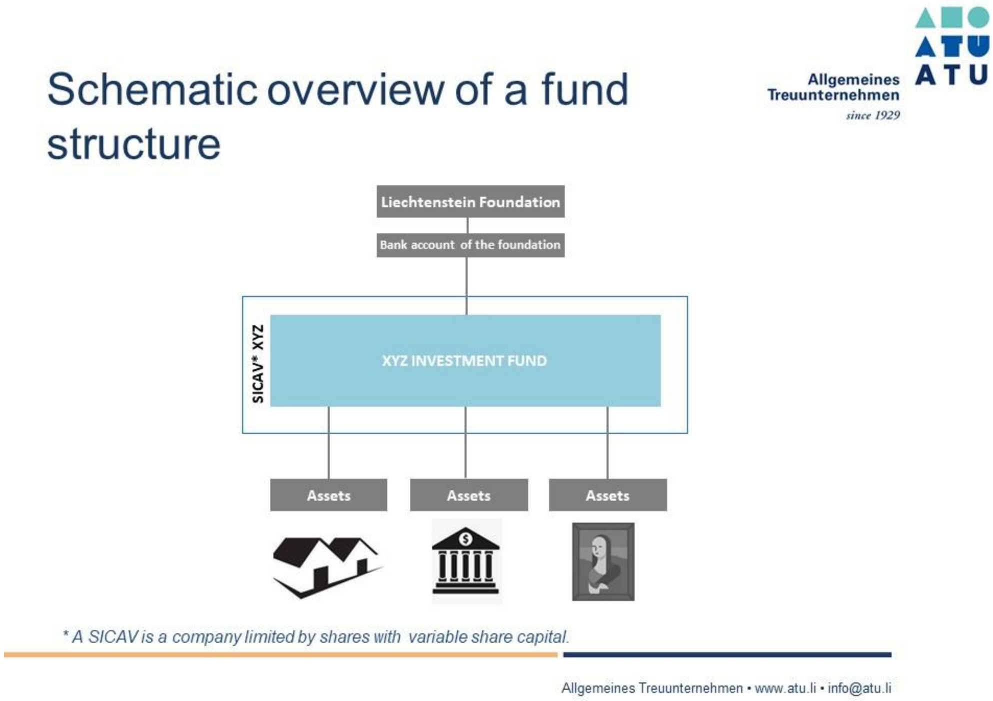
Private label funds (hereinafter PLFs) are investment funds that are specially designed and managed according to the needs of the individual clients (e.g. lawyers, trustees, family offices, banks, asset managers) and with which the investor enjoys full investor protection. The client has a say in the investment policy, can also freely choose the name of the fund and, for example, be a member of the board of directors of the PLF. Subsequently, the activities are carried out by service providers who are authorised and supervised for this purpose.

3. Advantages of AIFs in the context of foundations and trusts

Security: Funds are legal forms that are regulated and supervised in a special way. In Liechtenstein, this is the responsibility of the Liechtenstein Financial Market Authority. It is also mandatory for every fund to have an

auditor. This ensures that funds meet the highest international governance standards. In view of the rapidly changing regulatory and tax requirements, such governance rules are becoming immensely important.
Although the investment strategy, reporting and valuation intervals as well as other aspects are adapted to the individual situation and specifications of the investors in consultation with the client when the fund is being set up, all parties involved are bound by the specifications in the constituent documents once the fund has been established. As a result, the members of the foundation board or the trustees can be assured that the investment strategies and international governance standards will always be adhered to when structuring takes place by means of a fund.

Confidentiality: When investing through foundations or trusts, there are frequently questions about the identity of the founders or settlors and/or the beneficiaries. Certain legal systems are not familiar with foundation structures and the onboarding process for investments is therefore a challenge for the compliance department. The PLF, on the other hand, acts as the legal owner and counterparty in the interest of the investors in transactions; the identity of the investors therefore does not have to be disclosed as it is a fully regulated vehicle subject to the usual AML/KYC procedures; this results in simplification in onboarding for the investment and increased confidentiality for the foundation or trust (along with the beneficiaries of these structures), which can remain in the background as an investor.



Transparency of costs and performance: PLFs offer a high level of transparency regarding the overview of costs, which enables the investor to verify and track the actual costs of management. As all management costs are clearly defined in advance and must be disclosed as a mandatory requirement, the members of the foundation board and the trustees are in a position to precisely determine the actual costs of the entire structure.
With an AIF-PLF, it is also significantly easier to track the actual asset development due to regular reporting, which is mandatory and includes the calculation of the net asset value (NAV) at least once a year. In such cases, the NAV refers to all investments in the fund vehicle. Particularly in the case of large and complex structures involving a large number of investments or participations, the members of the foundation board or trustees thus acquire factual information "at the touch of a button" on the performance of the investments made and can assess on any given deadline whether the desired profitability has been achieved.

Flexibility: There is another interesting advantage for foundations and trusts, as they generally have the option of distributing their units in the AIF itself to their beneficiaries. This is particularly advantageous for assets that cannot be divided (e.g. works of art). Through the distribution of the fund units, the respective beneficiary gains the benefit of an asset value (the assessable fund units can, for example, be booked into his/her bank deposit) without having to sell the assets held by the fund. Furthermore, the fund remains the legal owner, which in turn can offer advantages with regard to confidentiality.

4. AIFs and Liechtenstein as the fund location

Liechtenstein is a highly attractive fund location, not only because of its AAA rating as confirmed by S&P or its close ties to Switzerland, but also because of its EEA membership, which entails full recognition of Liechtenstein funds in the entire EU/EEA area.
The Liechtenstein legislator also contributes to a positive climate by having reformed the AIFM as of 1 February 2020. This reform took into account practical experience with the aim to simplify the law and improve its applicability. In particular, this change affected aspects of fund creation, management and transfer of domicile to Liechtenstein.
In addition, Liechtenstein also has an attractive domestic tax landscape, as managed fund assets are not taxed in Liechtenstein. In 2020 alone, 763 funds with a volume of more than CHF 59 billion were active in Liechtenstein. Since 2016, the number of funds in Liechtenstein has grown by 73.9%. In comparison, during the same period, the number of funds in Switzerland has grown by 13.8%.
The development of paid-up capital funds is also evidence of Liechtenstein's attractiveness as a fund location, which has risen from 56 paid-up capital funds in 2015 to 110 in 2021. It should also be noted at this point that a continuous increase can be observed in the volume of funds in Liechtenstein. In 2013, for example, Liechtenstein had a fund volume of CHF 37.15 billion, while in 2021 the volume comprised a total of CHF 70.22 billion.

5. Final remarks

AIFs have established themselves in Liechtenstein as a permanent fixture and offer investors the opportunity to make investments in alternative assets that complement their portfolios in a promising way due to higher returns and the associated better diversification of risk. In addition, investors are provided with the opportunity to combine all of their investments via AIFs in one vehicle, which is characterised by transparency and security at the highest level. There are also special advantages for foundations and trusts when they make their investments through Liechtenstein PLFs. In addition, Liechtenstein provides the ideal framework for investors through attractive and practical legislation as well as a Financial Market Authority that is oriented towards the market participants and it presents itself as a highly attractive fund location.

If you require any further information, please do not hesitate to contact the author of this article, MMag. Dr. Bünyamin Taskapan LL.M. or your client advisor.

Yours sincerely,

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