



Private Equity Congress

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Private Equity Structures
under the Federal Act on Collective Investment
Schemes (CISA)
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Outline

- 1. General Remarks on CISA**
- 2. Limited Partnership (LP)**
- 3. Other Developments**



1. General Remarks on CISA

Federal Act on Collective Investment Schemes (CISA)

- On 1 January 2007 the CISA entered into force, introducing an amended version of the Limited Partnership (LP)
- Term „Collective Investment Schemes“:
 - Funds raised from investors for the purpose of collective investment, managed for the account of such investors
 - The investment requirements of the investors are met on an equal basis

Collective Investment Schemes

- Open-end collective investment schemes:
 - Contractual Fund (FCP)
 - Investment company with variable capital (SICAV)
- Closed-end collective investment schemes:
 - Limited Partnership (LP)
 - Investment company with fixed capital (SICAF) (to the extent not listed or restricted to QIs)



2. Limited Partnership (LP)

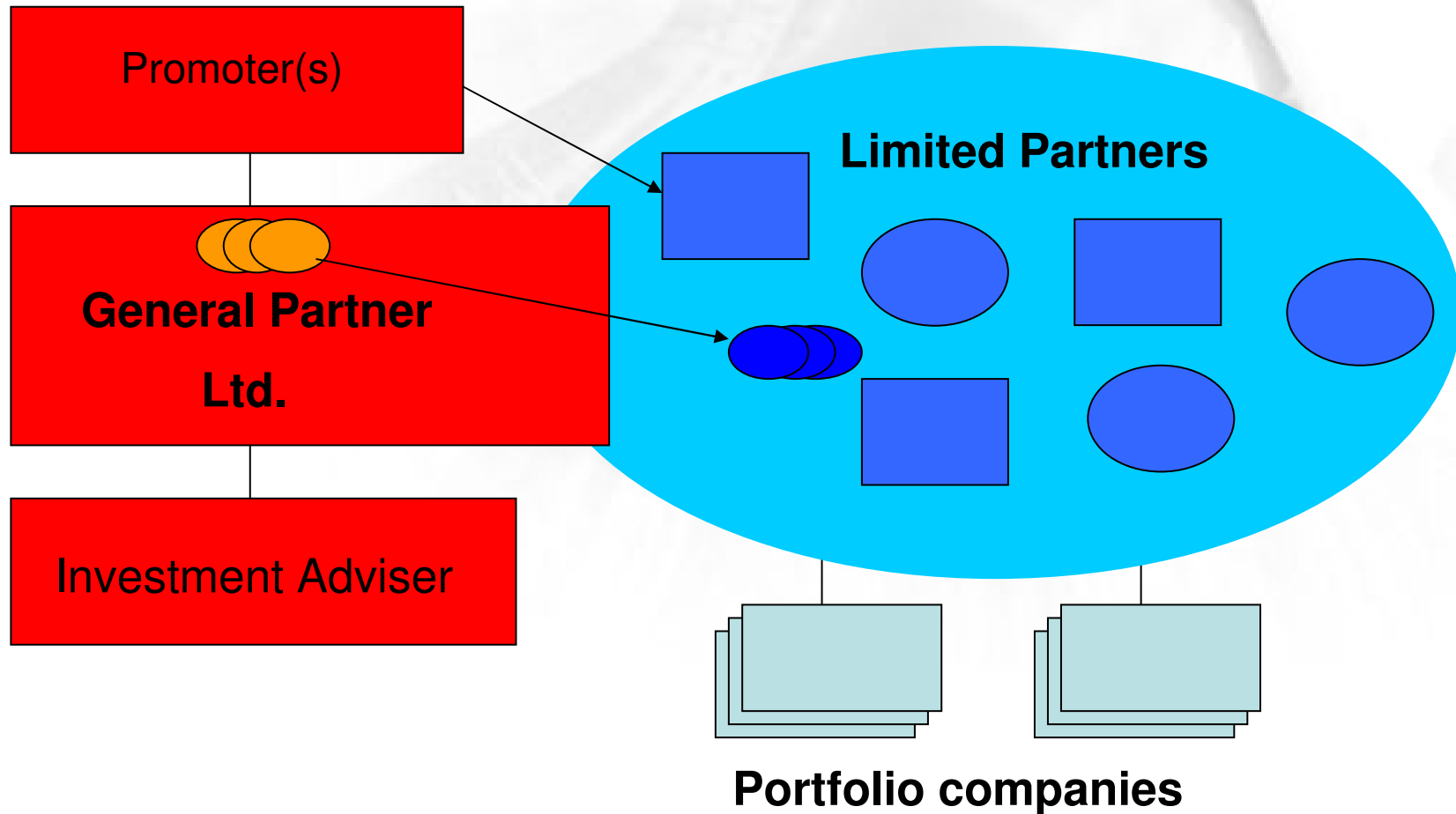
Introduction to LP

- LP as flexible investment vehicle for collective investments in PE, Hedge Funds and Real Estate Projects
- Sole purpose of LP: collective investments by qualified investors
- contractual structure
- transparent for tax purposes

Structure of LP

- General Partner
 - Swiss corporation
 - Responsible for (asset) management of LP
- Limited Partners
 - qualified investors (QIs)
 - at least 5 QIs after one year from launch
 - limited liability: capital commitment
 - capital calls according to cash needs

Limited Partnership Structure



Qualified Investors (QIs)

- supervised financial intermediaries like banks, insurance companies, pension funds etc.
- companies with professional treasury operations
- high net worth individuals which hold directly or indirectly financial assets $\geq$ CHF 2 mio.
- investors who have concluded a written discretionary asset management agreement with a qualified asset manager

Tax aspects: LP

- LP is transparent for tax puposes
- withholding tax on income (but not on capital gains!)
- no stamp duties on creation of LP interests
- no stamp duties on securities transactions of LP

Tax aspects: limited partners

- individuals: capital gains: no tax
interest and dividends: taxable
- social security contributions: Exempt
- flow-through entities: depending on their investors
- corporates: taxed

Tax aspects: general partner

- management fee: taxable
- carried interest: in discussion
- tax ruling necessary!

Tax aspects: promoter(s)

- entities: dividend exemption
- individuals: income tax (partly exempt)
capital gain in case of transfer
- carried interest (in case of direct investment
in LP): in discussion
(issues: qualification, securities dealer status)
- tax ruling necessary

Regulatory requirements

- prospectus (short version → QIs)
- requirement obligation to obtain authorization for General Partner and LP
- notification requirement re: changes
- reporting quarterly
- sanctions

Authorization requirements

- requirements for managing individuals
- requirements re: shareholders of GP
- adequate company organization
- sufficient financial basis

Authorization Requirements

- risk management
- compliance
- internal control systems
- professional qualifications for asset management



3. Other Developments:

Reporting obligations for holdings in listed
shares and derivatives

Calculation of threshold

- Aggregation of long positions and options
- Cash settled options
- SLB and repos need to be reported
- Purchase and sale of put-options
- Writing of call-options and conversion rights
- Catch all provision (total return swaps, other synthetic structures)

Art. 20 Duty to notify (amended)

- ¹ Whosoever, directly, indirectly or in concert with third parties, acquires or sells, equity securities or purchase/sale rightsand thereby attains, falls below or exceeds the threshold percentages of 3, 5, 10, 15, 20, 25, $33^{1/3}$, 50 or $66^{2/3}$ of the voting rights, whether or not such rights may be exercised, shall be obliged to notify the company and the stock exchanges on which the equity securities in question are listed.*

Art. 20: Indirect acquisitions

*2bis As **indirect acquisition** are considered in particular also transactions involving financial instruments which **economically** enable the acquisition of equity securities in view of a public offer.*

Possible Sanctions

- Suspension of voting rights for up to five years
- Suspension can be requested by target, other shareholders, TOB or FBC
- Fine in the amount up to the double of the purchase or sale price

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