

Re-Domiciliation of Investment Funds - Cayman Islands blacklisted by European Union

Cayman Islands/Liechtenstein/EEA: In February 2020, the Cayman Islands was added to the EU's list of non-cooperative jurisdictions for tax purposes ("blacklist"). The jurisdiction was previously on a "grey list" but was not able to implement the so-called economic substance reforms by the deadline. This development of blacklisting started when the EU and the Economic and Financial Affairs Council (ECOFIN) listed the Cayman Islands to Annex 1 of the list of "non-cooperative jurisdictions" for tax purposes, which became effective on February 18, 2020.

The Cayman Islands is a well-established domicile for investment funds, in particular AIF such as globally managed private equity and hedge funds and is especially recognized as an attractive jurisdiction for investment funds by US investors/promoters due to its common law system (mostly private non-retail funds).

However, the EU decision could have far-reaching consequences for existing and planned funds. Current developments in the investment fund market have prompted many investors and asset managers to consider re-domiciling or domiciling an alternative investment fund in other jurisdictions such as Liechtenstein. The new status of the Cayman Islands could create significant difficulties for existing AIFs to market an investment. This is of course all the more true for newly planned investment projects in the Cayman Islands, which are generally dependent on a high level of investor confidence, especially in the initial period. In addition, problems could arise not only in terms of attracting new investors, but also, and in particular, in the case of planned investments by the AIF in the EEA. For example, the numerous investment projects in the commercial real estate sector or in the area of start-up companies. It is also to be expected that the blacklisting of the Cayman Islands will have an impact on the financing level, especially as lenders will have to protect themselves from a compliance perspective.

Unlike the Cayman Islands and some other offshore jurisdictions, Liechtenstein is not blacklisted. The Principality is generally regarded as one of the most cooperative countries with regard to the international standards of the OECD and Moneyval. This includes not only a long-standing participation in the automatic exchange of information in tax matters, but also a comprehensive revision of the compliance and anti-money laundering provisions. Already a year ago, the OECD Global Forum once again attested Liechtenstein a high degree of conformity with international tax standards. The report of the Global Forum on Transparency and Exchange of Information for Tax Purposes (Global Forum) states that the legal framework and practice in Liechtenstein is highly consistent with the international standards on tax

assistance. In its country report, Liechtenstein again received an overall rating of "Largely Compliant" in 2019.

Apart from this, from the point of view of AIF, it is particularly relevant and attractive that Liechtenstein is not only a member of the EEA but also entered into a currency, customs and economic union with Switzerland. Because of the passporting system, Liechtenstein AIF and AIF-Managers (AIFM) will have full access to the entire EEA internal market as well as of the EEA/EFTA states Norway and Iceland. At the same time, the full market access to Switzerland allows the involvement of Swiss service providers such as asset managers or banks.

When choosing the appropriate jurisdiction for the establishment of an AIF, investors/promoters should in any case consider that since 01.02.2020, the set-up of an AIF in Liechtenstein only requires a mere notification to the Financial Market Authority (FMA). This speeds up and facilitates the establishment of the AIF considerably, as independent authorization by the FMA was previously required. Nevertheless, even under the new regime, AIF will be regulated and directly supervised by the FMA.

Also on the actual fund-level, Liechtenstein offers competitive solutions for newly established AIF. Despite the commonly known SICAV and SICAF, the AIF may also be established in the form of a contract ("investment fund"), in the form of a trust ("collective trusteeship"), in a corporate form ("investment company") or in the form of a partnership ("investment limited partnership with one unlimited partner"; "investment limited partnership without unlimited partners"). It is possible for the AIF to have different classes of shares. This includes voting and non-voting as well as participating or non-participating shares. Furthermore, it is feasible to have distributing and an accumulating share classes (i.e. automatic re-investment of dividends). There is the possibility to make distributions from capital (dividends, interest, gains from capital). In addition to these possibilities, the investors may choose to either take investments in only one or just some of the several sub-funds or in all of the sub-funds. The above applies not only to a single AIF but rather also to Umbrella-Fund structures with one or more (unlimited) Sub-Funds. Investment funds may be established as umbrella funds with several sub-funds within a single legal structure. The sub-funds are considered independent economic entities. This allows the investors to set up different classes of investment and enables the investors to realize different strategies (i.e. low and high risk; different diversification and ratio).