

Luxembourg, Real Estate Investment Vehicles

Cannes, March 9, 2011

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AVOCATS À LA COUR





Luxembourg Financial Center and Real Estate Market Opportunities and Challenges after the crisis

Ernst Wilhelm Contzen, President, The Luxembourg's Bankers Association



REAL ESTATE INVESTMENT VEHICLES

Stéphane Haot

KPMG Luxembourg, representative of the
Association of the Luxembourg Fund Industry

Keith O'Donnell

Atoz Tax Advisers Luxembourg

Rodrigo Delcourt

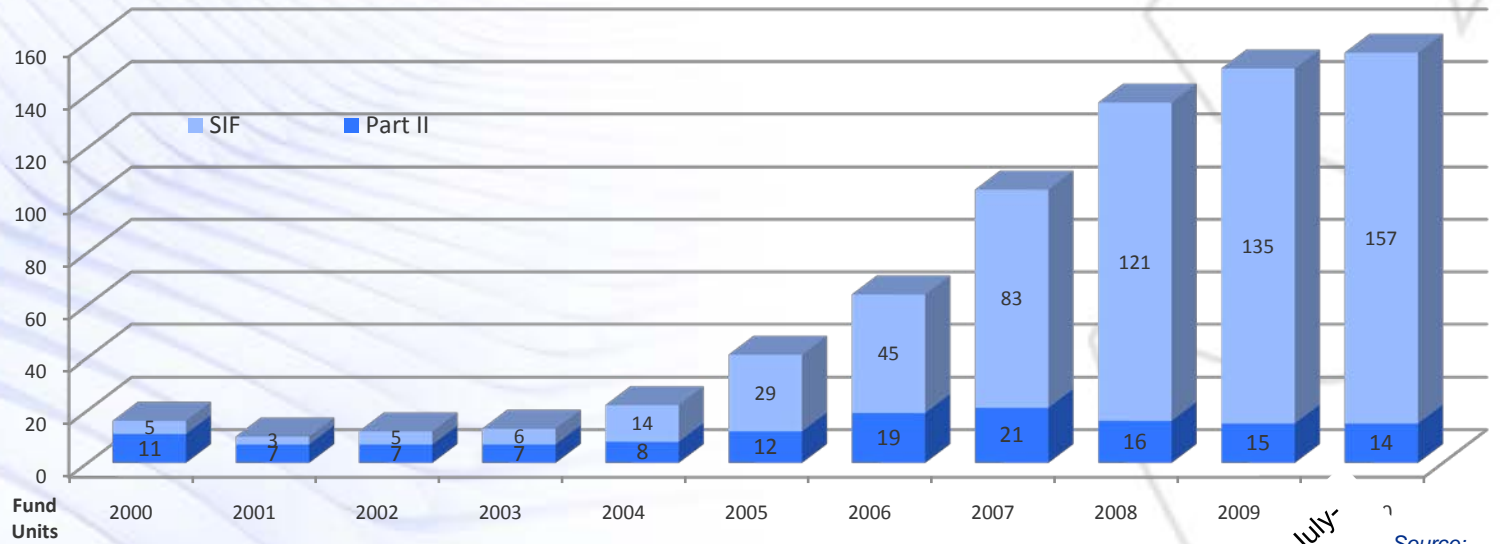
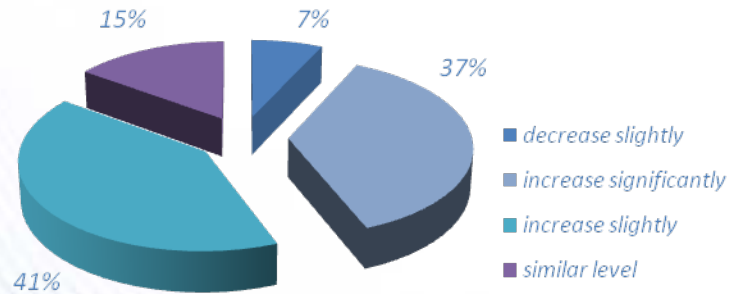
Linklaters LLP



ALFI Survey Snapshot

Market

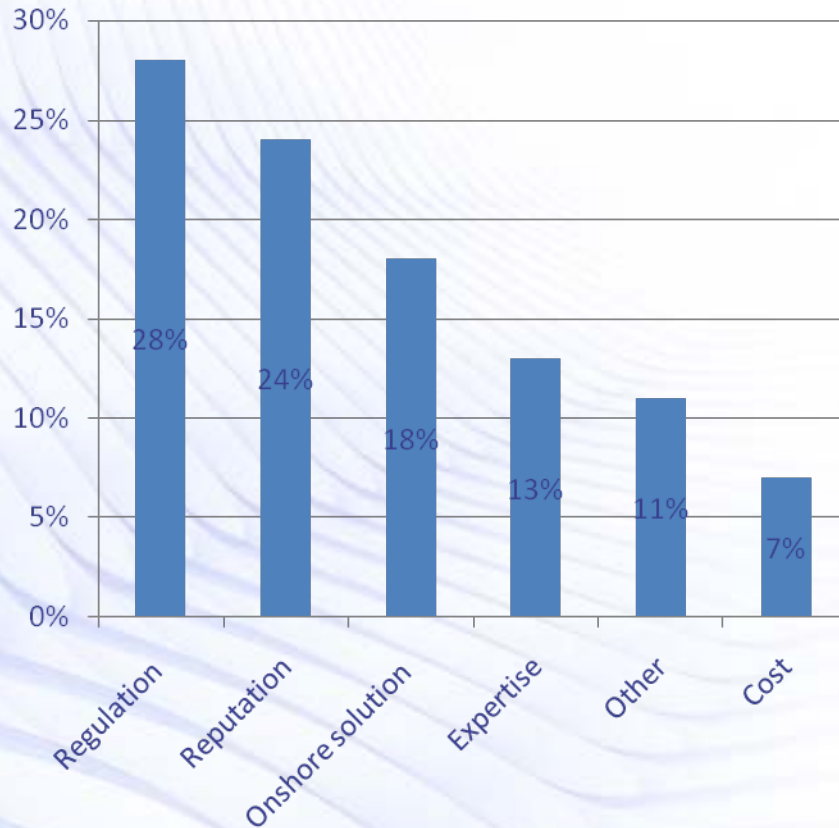
Expected level of activity in Luxembourg over the coming years



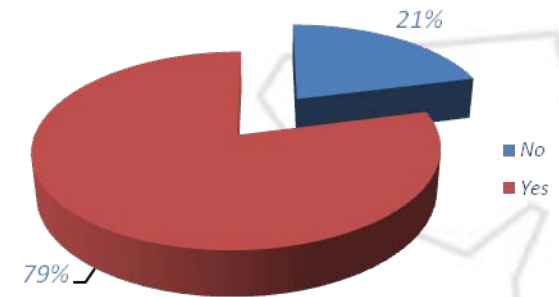
July 10
Source: ALFI, 2010

Onshoring

Are Investors asking to domicile in Luxembourg.
If yes, top reasons



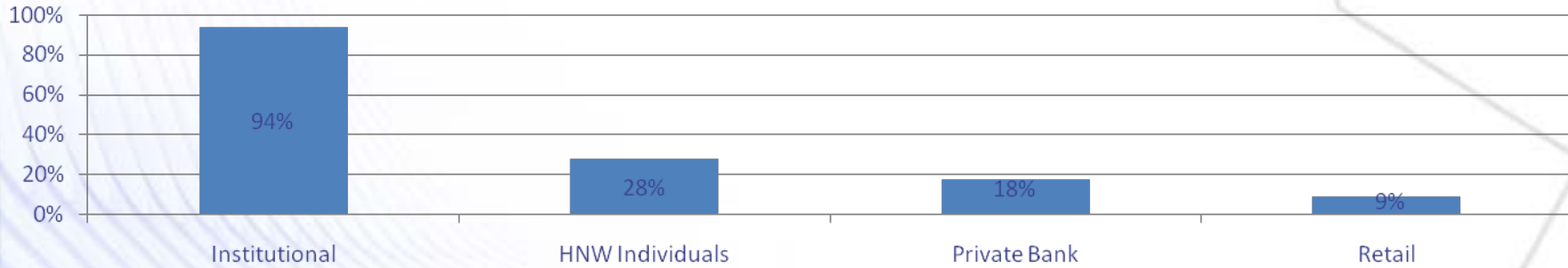
Have you recently reviewed Luxembourg as a platform for new or existing structures



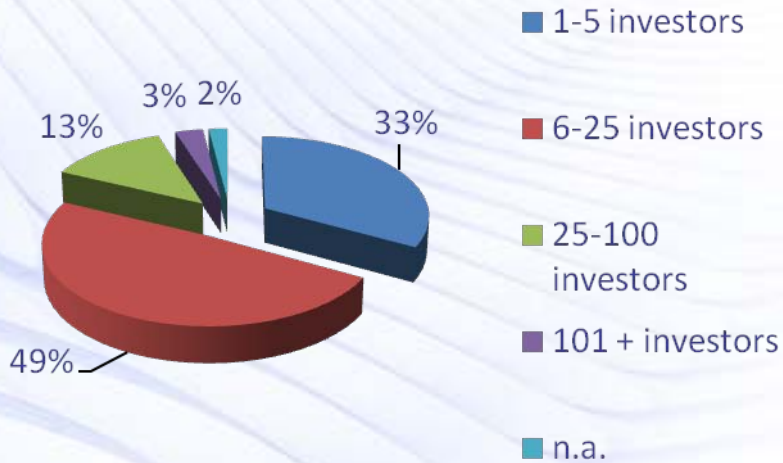
Source:
ALFI, 2010

Investors

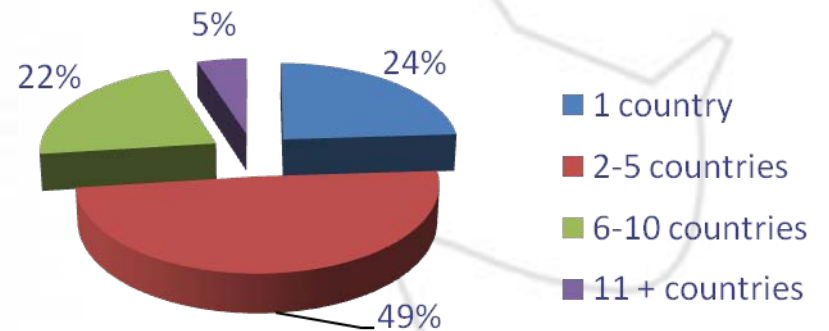
% of fund units which allow specific investor groups



Number of investors



Investor origin



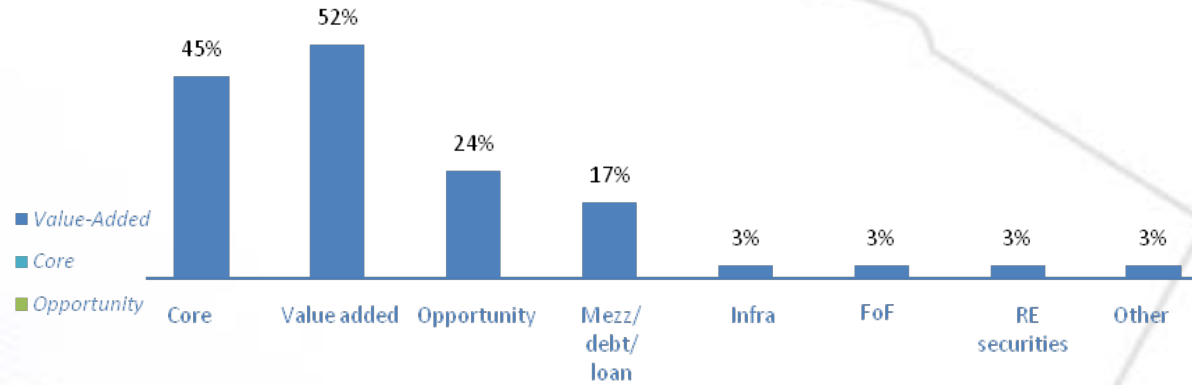
Source:
ALFI, 2010

Investments

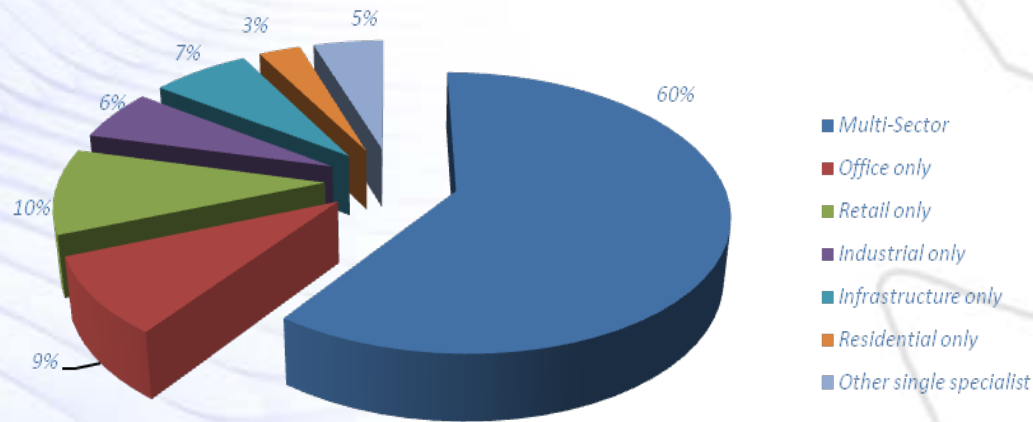
Current Investment styles



Investment types in the future



Current sectoral investment strategy



Source:
ALFI, 2010

Real Estate Promoters Testimonial

“At Aviva Investors we manage over €1bn of real estate asset in Luxembourg. The domicile of real estate funds is primarily driven by the tax consideration of both the fund and its investors. In the majority of cases, Luxembourg provides a relatively favourable tax environment for our fund structures and investors. However, it is also seen as a world leader in fund servicing and recognised globally as a centre of regulatory excellence. With its central European location, friendly and efficient network of service providers, Luxembourg is often the first choice in locating real estate funds.”

Jeremy Souter
Global Head of Product



Case studies

- Case study 1 : Core Strategy
by Stéphane Haot, KPMG Luxembourg,
Representative of the Association of the Luxembourg Fund Industry
- Case study 2 : Sharia Compliant Funds
by Keith O'Donnell, Atoz Tax Advisers Luxembourg
- Case study 3 : Distressed and Opportunistic Strategy
by Rodrigo Delcourt, Linklaters LLP



Case Study 1: Core Strategy

Case Study 1 – Core Strategy

Case

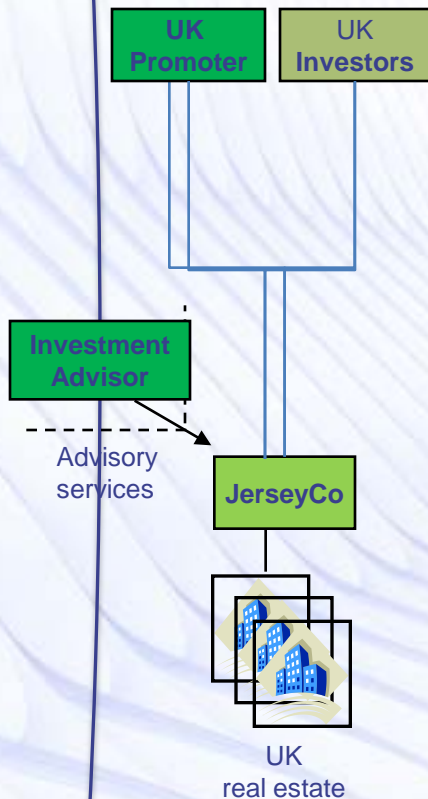
A client with a low financial base seeks to raise liquidity from new institutional investors interested by core assets, some 50% leverage and yearly profit distribution. The client prefers to keep control over the structure.

Key Attention Points

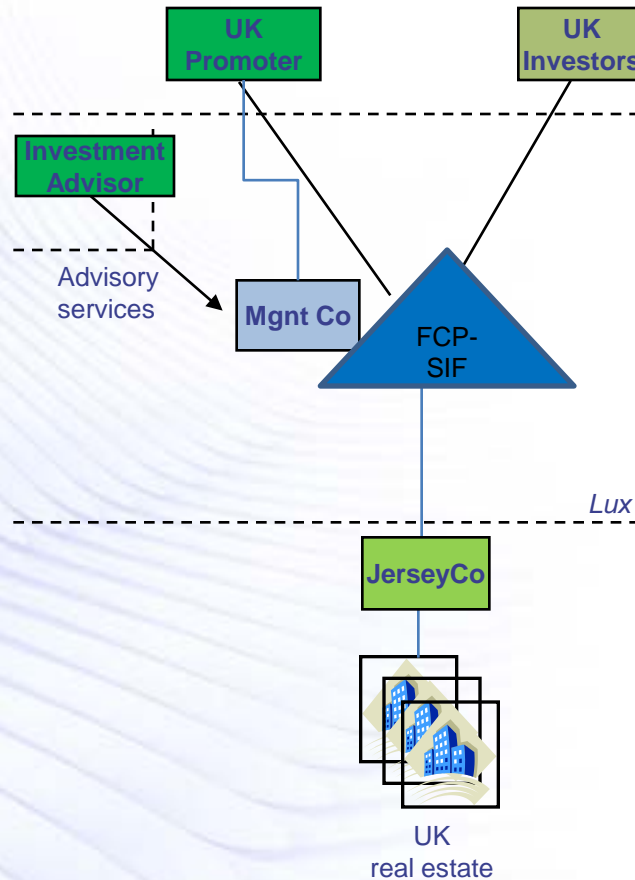
- ✓ Perception of the market place being considered
- ✓ Tax Neutrality
- ✓ Type and location of assets
- ✓ Type and location of investors
- ✓ Profit distribution
- ✓ Control mechanisms
- ✓ Leverage
- ✓ Costs and services

Case Study 1 – Core Strategy

Current



Seeding

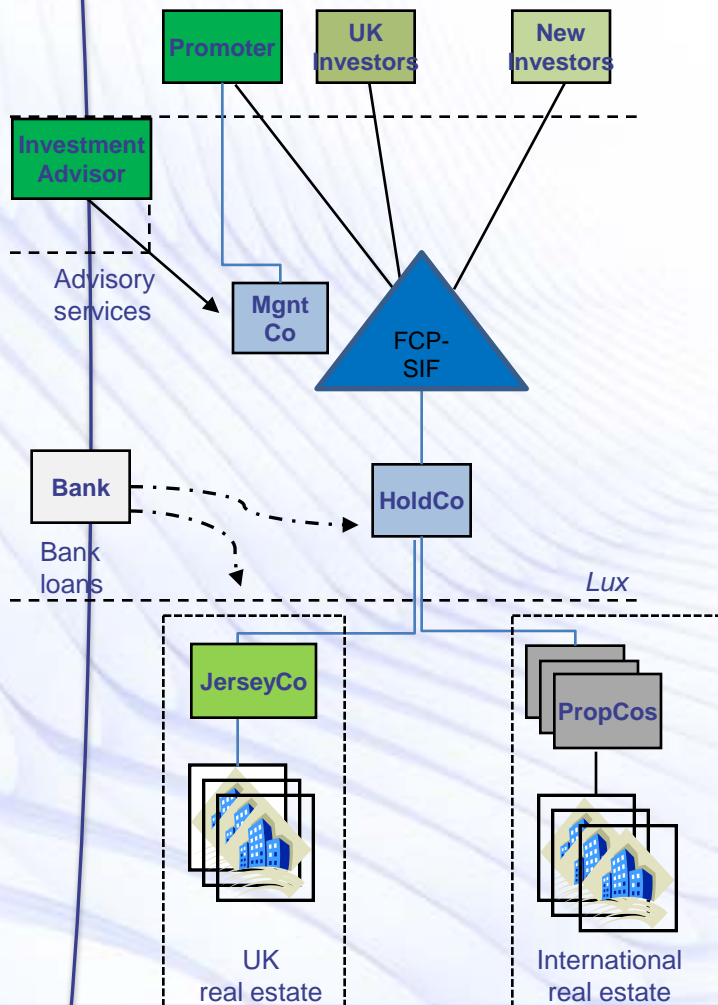


Key drivers

- Track record on existing portfolio to attract new investors
- Luxembourg FCP-SIF is a benchmark investment vehicle
- Promoter keeps control through FCP
- CSSF Regulated vehicle with flexible fund structure
- INREV compliant
- Benefit from experienced providers
- Pre-alignment with AIFMD

Case Study 1 – Core Strategy

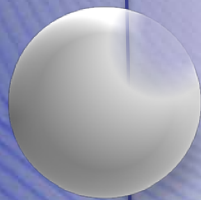
Expansion



- Investors usually achieve same result as direct investment

- No WHT, no taxation at FCP SIF level
- EU Directives and DTT access by Holdco
- No or optimally reduced WHT
- Certainty around tax exposure

- All asset classes / strategies
- Internal leveraging only constrained by local tax regime
- Transfer tax optimisation



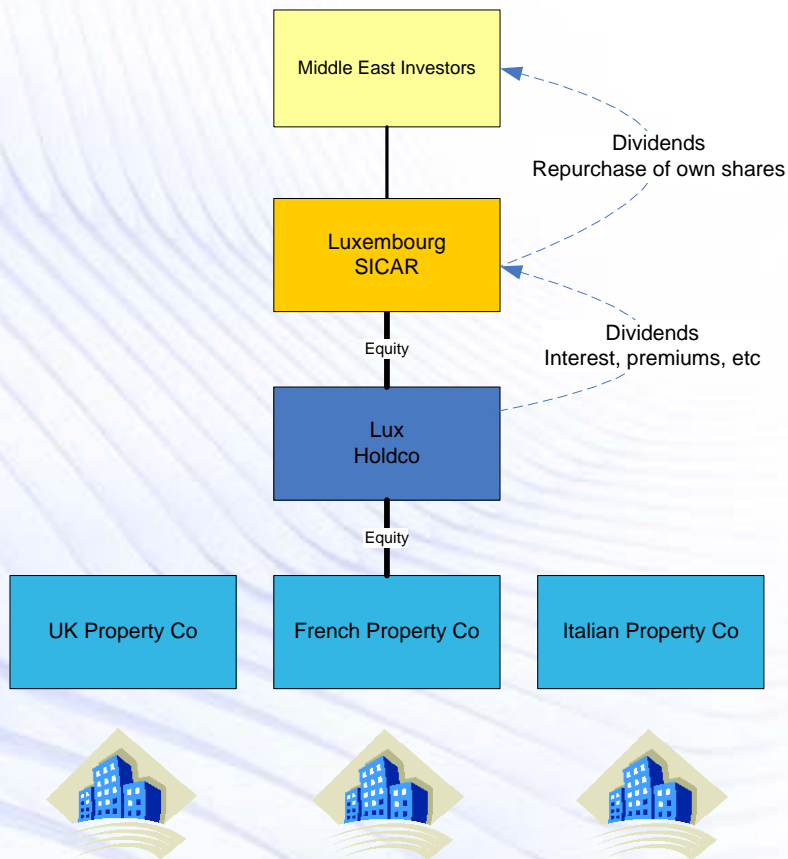
Case Study 2 : Sharia Compliant Funds

Setting up of a sharia compliant real estate fund – facts & issues

- Middle East Investors wish to invest in European real estate
- Meeting the challenges of sharia compliant products in a non-Islamic jurisdiction while minimizing the tax cost at all levels:
 - The requirements of the sharia law include:
 - Riba: Prohibition of all fixed returns on a debt (i.e. interest)
 - Masir: Prohibition of speculative transactions
 - Gharar: prohibition of uncertainty in the quantity, quality and the existence of the purpose of a contract
 - Obligation of the investor to take part to the risk when investing (profit sharing)
 - Minimize tax costs at all levels; i.e.:
 - At the level of the real estate assets and/or the property companies
 - At the level of the real estate investment vehicle
 - At the level of the investors upon profit repatriation and exit

Sharia compliant real estate fund

The SICAR



- Luxembourg SICAR exempt from taxes on income from movable property
- Distributions to investors exempt from withholding taxes in Luxembourg
- Capital gains realised upon the sale of shares in the SICAR exempt in Luxembourg
- Lux Holdco exempt on equity return under certain conditions and taxed on a small margin on its financing activity, if applicable
- Profit repatriation from the property companies to Lux Holdco exempt from withholding tax under the parent subsidiary directive or the local regime



Case Study 3: Distressed and Opportunistic Strategy

Case Study 3 – Distressed and Opportunistic Strategy

Case

A client seeks to set up a fund to raise capital from a small number of institutional and sophisticated investors to capitalize on current distressed pricing of property assets due to the impact of the 2008/2009 global financial crisis and economic recession.

Fact Patterns

- ✓ Closed-ended fund
- ✓ Limited duration
- ✓ Opportunistic strategy
- ✓ High leverage
- ✓ Acquisition, development and re-development of projects
- ✓ Investors aware of political risks, corruption etc
- ✓ Not transparent
- ✓ Investing in Russia and Poland
- ✓ High returns: 20-25% net of costs and fees

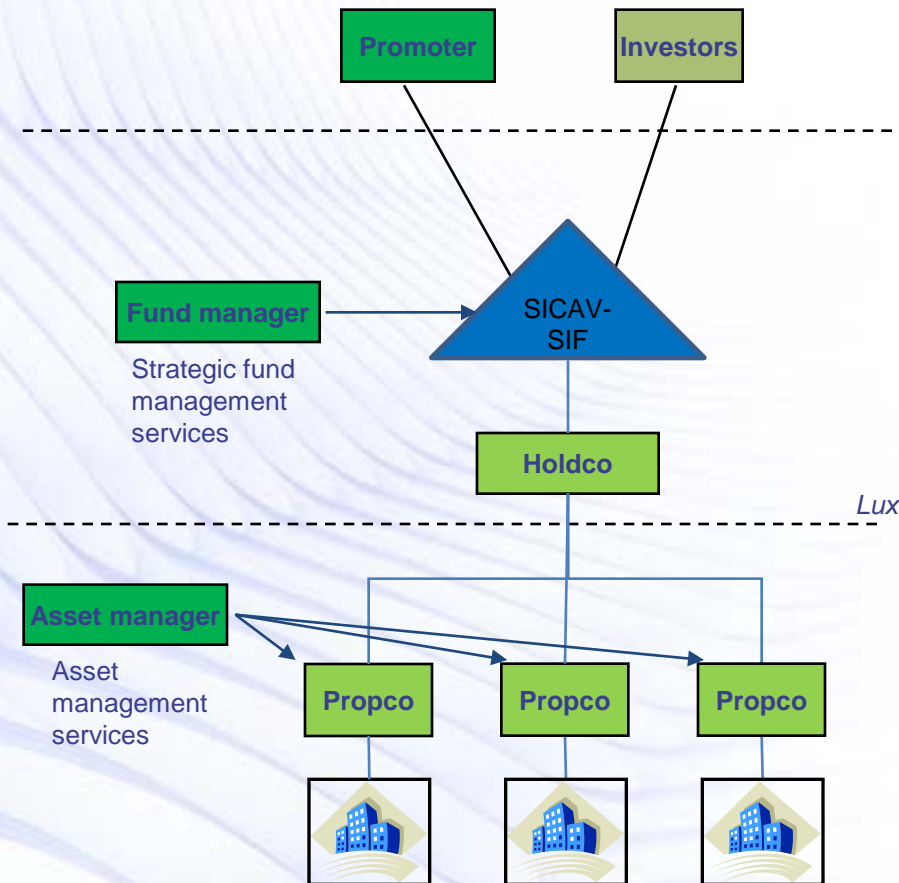
Case Study 3 – Distressed and Opportunistic Strategy

Main issues

- ✓ Investors protection
- ✓ Need for well-established in-country platforms regarding both sourcing and execution of investments
=> real estate is ultimately a local business
- ✓ Diversification requirements
(concentration limits)
- ✓ Calculation and limits of leverage
(projects vs assets)
- ✓ Tax structuring for project acquisition and exit

Case Study 3 - Distressed and Opportunistic Strategy

Proposed structure



Solutions

Investors:

- Regulated funds offering transparency, reporting and supervision

Managers:

- Vehicles can be structured to suit promoters with extensive network or to establish JV arrangements
- Interaction between fund manager and asset manager

Investments:

- Diversification: 40/30/30 based on GAV or committed capital
- Leverage: loan to cost vs loan to value
- Proven intermediary holding vehicles and internal financing structures allowing tax optimisation and flexible disposal

Thank you for your attention

The slides can be downloaded at www.lff.lu

