lecocqassociate

STRUCTURING A SPECIAL PURPOSE VEHICLE

	What?	Question for whom?	Consequences?
CORPORATE	What type of vehicle ("SPV")? Corporation, contractual joint-venture, securitisation vehicle, etc?	Investors and the manager.	This is an important issue to resolve as this may impact your investment, the financing, the taxation on the profits, the taxation on the investors as well as the banking relationship. Each jurisdiction has its own set of rules, forms of corporations and local specificities to look at.
JURISDICTION	In which jurisdiction will you set up your SPV?	Investors, the manager and the bank.	
	What jurisdiction is preferred by...	...investors?	You may lose a deal because the investors dislike the proposed jurisdiction.
TAX	Is your SPV in a jurisdiction with a double treaty network that would limit tax leakage?	...downward, when the SPV will deploy money or exit the investment?... upward, for your investors?	This may negatively impact your investment performance.
	Depending on how the project is mar-keted and/or the fund raising is conducted...	...stamp duty might be levied. It will impact investors and the manager if there is no paying agent in the country.	A heavy tax invoice on the manager. It might be difficult to recharge the invoice to your investor.
SUBSTANCE	Be careful about the economic substance test!	The manager and the investors.	Not enough substance may have a negative tax impact as another jurisdiction may consider that the effective management of your venture is being conducted abroad.

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REGULATORY	Depending upon the structure chosen, is there a risk that your SPV can be considered as an investment fund, or worse that you accept deposit from the public (e.g. a bank)?	The manager must ensure that the SPV is managed as a club deal.	The SPV may be fined or liquidated by a regulator if the structure is not right.
ACCOUNTING RULES AND DEBT-TO-EQUITY RATIO	The accounting rules may vary: US GAAP; IFRS; Swiss accounting rules, etc.	The manager.	Depending upon the investment's type, it is important to select well the applicable accounting rules (re valuation, amortization, expense deduction, debt-to-equity ratio, etc.)
BANK	What bank will you chose to pool investors' money?	It is important for the manager to select well the banking relation.	You want to avoid that the bank freezes the assets, ask delaying questions about your investors. You also want to avoid too many intermediary banks. Banks may ask for in-depth KYC files. Ensure you collect enough copies.
KNOW YOUR CUSTOMERS	You will need to collect a KYC file. Some jurisdictions are more stringent.	The investors and the bank.	
AMERICANS?	You cannot pool US money with others.	US Investors.	This will require heavy reporting and possibly tax issues. Specific structuring is required.

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COSTS	Set up and running costs.	The manager.	It impacts your performance if the size of the deal is moderate. You need to balance the cost. Look at the applicable amortization rules.
COMPLEXITY VERSUS SIMPLICITY	Always try to keep things simple.	The investors.	Investors dislike complex structures.
EQUITY OR DEBT SECURITIES	This is an important issue to resolve.	...downwards: will the SPV invest in debt or in equity? In some countries creditors have more rights than shareholders in times of insolvency. ...upwards: will your investors invest in debt or equity?	In some countries creditors have more rights than shareholders in times of insolvency.
CUSTODY OF ASSETS	Will your investors want to custody their investment at the bank? You may want to get an ISIN code or a listing.	The investors.	Banks are sometimes reluctant to let their clients wire money out for private equity investment. This changes when they can keep custody of the assets.
SECONDARY TRADING	Is a secondary trading of the shares in the SPV required?	The investors.	It may allow an early exit.

OUR EXPERIENCE

lecocqassociate provides a full range of financial regulatory, corporate and commercial advice in relation to the structuring and incorporation of entities. The group is gaining a reputation for outstanding service in the areas of data protection and online reputation management, as well as cyber security, blockchain and crypto asset regulation.

This newsletter is for information purposes only. It does not constitute professional advice or an opinion. Please contact Mr. Dominique Lecocq on **drl@lecocqassociate.com** for any questions.

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