French industry ready to say au revoir to FCPR fund structure

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The French business community has so far reacted positively to the raft of measures introduced by the government's Macron Act, some provisions of which are expected to be fiercely debated as the act shuttles back and forth between the country's two legislative chambers.

But one initiative in particular should be welcomed by the local private equity industry, and is expected to come out largely unscathed from the promulgation process: the creation of the Société de Libre Partenariat (SLP). This new fund structure is designed to be more flexible than the traditional French FCPR and more closely related to the Anglo-Saxon limited partnership model. The regulated vehicle is supervised by AMF, the French financial markets regulator, and falls under the definition of the alternative investment fund (AIF), set out in the AIFM Directive.

It is no coincidence that the initials of the new fund structure end with 'LP', as the introduction of the vehicle is clearly a move to make French asset managers more attractive to international investors. "French private equity managers have to explain the characteristics of the FCPR structure every time they meet new foreign investors, who have a tendency to favour other fund structures such as the UK's limited partnership or Luxembourg's SIF," explains Jérémie Duhamel of law firm Duhamel Blimbaum.

For a start, FCPR funds are not separate legal entities – this will change with the introduction of the SLP, which will be more akin to US or UK fund structures in the eyes of international investors. Furthermore, FCPRs are generally perceived as being more favourable to the manager when it comes to governance – the fact limited partners in the SLP can now undertake a wide range of tasks that will not be considered illicit acts of management could go some way towards reassuring LPs that want to be more closely involved in the fund's governance.

In addition, the new SLP appears much more favourable when it comes to tax matters. At this point in the legislative process, the new structure is fiscally transparent and will, therefore, be totally exempt from corporate income tax at fund level. Besides, one of the issues with the FCPR structure is that the fund does not benefit from tax treaties signed between France and other countries – the SLP will allow foreign investors to benefit from a sizeable number of double tax treaties.

Finally, the SLP is designed to be much more flexible than the FCPR, in a further bid to boost the structure's attractiveness to investors looking for diversified asset allocations. Rules governing the investment portfolio will be laid out in the constitutional documents, making the SLP suitable to invest in a range of scenarios such as quoted and unquoted assets, debt instruments, real estate or infrastructure.

Regaining ground

According to Duhamel, the new structure bodes well for the government's commitment to promote France's competitiveness in the financial space. "France and Luxembourg used to be two equally attractive destinations to domicile funds on the continent – the balance between the two progressively shifted and Luxembourg has become more attractive in recent years. It is an important issue to address, given the number of attractive investment opportunities in the country and the depth of the French asset management market."

The draft act was adopted in parliament at the end of February and is currently being debated in the Senate. "We are not anticipating major modifications to the draft, given that several more high-profile measures will be at the centre of the debates. We expect the new structure to become operational around the summer," says Duhamel.

As attractive as it is to international investors, the SLP will not, of course, be a silver bullet. Fund structuring issues aside, French GPs still have to address more pressing concerns when trying to woo foreign backers – such as the country's growth prospects, overcrowded mid-market or fiscal instability. But, much like the rest of the Macron Act, the introduction of the SLP is as much a PR exercise as it is a true game-changer: the government and the regulator are sending a clear message that France is eager to replicate the success of other popular fund domiciles to remain competitive in the post-AIFMD landscape.

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