



# Alternative Investment Funds

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# What makes us different?

Independent in structure and spirit, Elvinger Hoss Prussen guides clients in their most critical Luxembourg legal matters. Our firm was founded in 1964 by lawyers committed to excellence and creativity in legal practice. Since then, we have shaped a firm fit for one purpose: to deliver the best possible advice for businesses, institutions and entrepreneurs.

Delivering this responsive service, to an exceptional degree of precision, means working a little differently. Our partners are uncommonly supportive of clients; we form cross-border arrangements with the best-suited peers in the relevant jurisdictions; and our colleagues are unusually united around our values.

With teams based in Luxembourg, Hong Kong, New York and Paris, we are able to provide a global time zone coverage which has proved to be beneficial to our clients.

We are proud to play a unique role in the development of Luxembourg as a financial centre.



# 1. Legal structuring

We advise on a wide range of investment products, with a client base of similar diversity: from boutique investment houses to the largest American, British, continental European and Asian fund promoters. We are the leading firm in Luxembourg in terms of the size of the assets under management of the funds we advise.

Our service is based on our deep understanding of the fund industry and its needs, as well as on the collective legal and regulatory knowledge of our teams. We have extensive experience in setting up all types of investment vehicles such as UCITS (Undertakings for Collective Investments in Transferable Securities), regulated AIFs (Alternative Investment Funds), such as Part II UCI (Undertakings for Collective Investments which are open to retail investors), SIF (Specialised Investment Funds), and SICAR (Investment Company in Risk Capital) and non-regulated AIFs, like RAIF (Reserved Alternative Investment Fund) or SCS/SCSps (Luxembourg partnerships). Our teams guide fund promoters and asset managers on fund formation and structuring options, eligible investments and strategies, and ongoing legal matters. We are committed to the evolution of Luxembourg as the primary European investment fund centre. We actively participate in discussions with the government and the regulator on the evolution of the financial sector – thus contributing to legislative development and origination of new legal structures.

Our partners are members of a number of advisory committees led by the Commission de Surveillance du Secteur Financier (CSSF) where regulatory developments are discussed with industry practitioners. As a result of

our participation in such committees and our day-to-day involvement in the CSSF approval process, we have a very good relationship with the CSSF. Our clients therefore benefit from efficient resolution of their regulatory matters.

In the last decade, the Association of the Luxembourg Fund Industry (ALFI) has become a powerful entity, taking numerous initiatives to develop the Luxembourg investment fund industry. Our lawyers are members of ALFI's board of directors, regulatory board and various working groups, giving us direct exposure to the latest developments and the ability to keep you ahead of regulatory changes and opportunities. Apart from ALFI, our partners are also actively involved in the Luxembourg Private Equity and Venture Capital Association (LPEA), which plays a major role in the promotion and the development of the private equity industry in Luxembourg. We co-chair the legal committee of the LPEA. In addition, to be as close as permissible to the trends and needs of the private equity, venture capital and infrastructure markets, we are members of Invest Europe, the largest association of capital providers. This is essential, in that it allows us to better accompany our clients, investors and sponsors, by providing accurate legal advice while staying aware of their business and strategic issues.

Our full-service approach spans not only all types of investment funds, but also the entities providing supporting management, custody, administration and distribution services.

We have unique experience in helping asset managers and other institutions in setting up investment funds, from

selecting the most appropriate fund vehicle to tailored structuring, drafting the necessary documentation and, where applicable, securing relevant regulatory approvals for launch.

Key features of our service offering include the drafting of the legal documentation required for an investment fund set-up (articles of association, management regulations, limited partnership agreement, prospectus, offering memorandum and KIIDs) and reviewing agreements proposed by service providers (relating to management company, the AIFM, the depositary or administration arrangements and similar contracts). We can also negotiate with service providers on our client's behalf.

We regularly submit draft documentation and discuss any concerns arising with the Luxembourg regulator, in order to secure their final approval. Our knowledge of the regulator's functions and procedures, as well as our good relationship with them, ensures swift regulatory

approval for our clients. We can take care of all legal incorporation formalities, such as dealing with notaries, publications and filings with the regulator.

We also help with all the procedures to market funds in other EU Member States and third countries (including Switzerland and various Asian and Latin American states). We regularly assist our clients with pre-marketing-related queries and processes and are able to provide advice in respect of marketing communications used by our clients. In addition, due to our close connections with the regulator and past experience in relation to their frequently raised comments, we are able to achieve quick turnarounds, enabling us to satisfy even more complex time-to-market considerations.

We continue to act for many fund managers after the fund's launch, notably in the creation of new sub-funds, regular updating of fund documentation, additional closings and proactively solving everyday issues concerning legal and regulatory compliance.



*To read more about  
Reserved Alternative  
Investment Funds*



*To read more about  
Partnerships*





## a. Private equity

We offer legal services in all types of private equity transactions, from start-ups to major takeovers and leveraged buy-outs. We are the chosen adviser of sponsors seeking to set up fund structures in Luxembourg, or use Luxembourg structures as their acquisition structure.

### i. Private equity acquisition structuring

private Equity transactions and related structuring have, for a long time, been a key focus for our firm and we advise on all aspects of private equity. Because of the firm's multidisciplinary approach and the expertise and experience of our lawyers, we excel in private equity acquisition structures and transaction-related matters (going from acquisition, holding structure, financing, co-investments or joint ventures to management participation and exits).

Our team advises multiple private equity sponsors on all aspects of the transaction; structuring, acquisitions, financings and exit transactions and provides corporate, securities, financing, capital markets and litigation advice to the holding companies and the portfolio companies.

Our practice is top ranked in all major directories and a number of our partners are singled out as market leaders in that field.

### ii. Private equity fund structuring

Our private equity fund team can advise on the optimal structure for a private equity fund, whether the client is considering a regulated fund (Part II UCI, SIF, SICAR, RAIF, AIF with authorised AIFM) or a non-regulated structure.

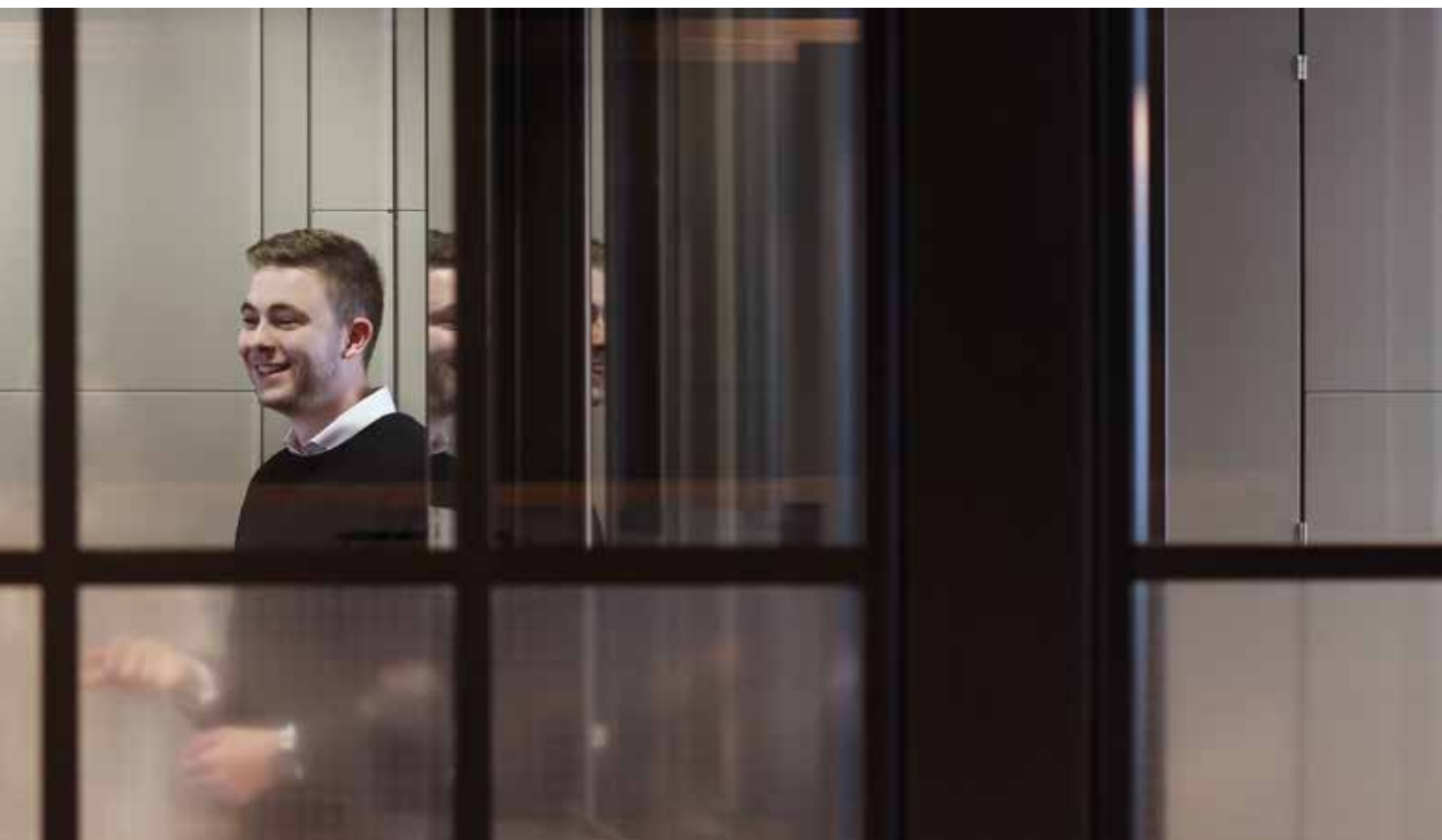
We work with all types of private equity funds, from small venture capital funds to management buy-out funds. Furthermore, we can also help structure co-investment, AIV, parallel funds and carried-interest vehicles.

We also provide practical assistance at every stage of the fund launch. This may include drafting all relevant documentation, negotiating with investors and service providers, and coordinating all regulatory and corporate requirements (as applicable).

Through active participation on committees within the supervisory authority, the CSSF, the ALFI and the LPEA, our private equity team seeks to ensure that Luxembourg offers private equity firms the optimal legal, regulatory and tax environment in which to structure their transactions.



*To read more about the different types of Luxembourg collective investment fund vehicles*



## b. Real estate

Our real estate and property practice focuses on international acquisitions and disposals as well as local development projects in Luxembourg. We offer guidance for most types of real estate, including offices, retail, warehousing, residential, infrastructure and hotels.

### i. Real estate acquisition structuring

Where a client is seeking to acquire Luxembourg real estate – or to acquire companies owning Luxembourg or foreign real estate assets – we can help manage legal, tax and technical due diligence. Our work on negotiating acquisitions leads, in turn, to the negotiation and structuring of financing and related guarantees.

### ii. Real estate structuring of construction and/or development projects

We assist clients who are landowners in the construction of their building, including assistance with the various types of construction contracts (contract for work, property development contract, sale, sale in future state of completion, delegated project management, etc.).

When a developer commits to a development project, we assist from the first to the last stage with all aspects of construction (specific development plan, administrative authorisations, etc.) but also with the legal and tax structuring of property rights (surface right, long-term lease, etc.) and their holding structure with a view to marketing. We have also developed special expertise on projects relating to the conversion of brownfield sites. More generally, we have strong and recognised expertise in environmental issues (asbestos, cessation of activity decree, etc.).

### iii. Real estate fund structuring

Our investment funds team has extensive experience in advising real estate asset managers on setting up regulated and non-regulated funds.

We provide practical and legal advice throughout the lifecycle of a real estate fund, bringing in partners from our tax, finance and M&A teams as and when required.

Through our involvement with Luxembourg market associations such as ALFI and LuxReal, we keep updated of any market developments, enabling us to deliver cutting-edge, pragmatic advice to our clients.

## c. Venture capital

We have extensive experience within the VC ecosystem and advise a wide range of clients including business angels, registered AIFMs, EUVECAs and funding platforms.

We provide first-time fund initiators with efficient and comprehensive support to launch their fund structure in Luxembourg.

## d. Private debt

Our firm has wide experience in advising clients on regulated or unregulated debt fund structures with diverse investment strategies.

We have advised and still assist a number of renowned asset managers in the structuring, set-up and ongoing developments linked to their platform.

We have also acted – and currently still act – as legal counsel of several investment funds investing in secondary debt (ABS, R/MBS, CDOs, CLOs etc.), long and short, managed by asset managers located mainly in the UK, US, Germany or The Netherlands and with several billion under management. These managers specialise in the structuring and provisioning inter alia of senior/mezzanine/junior finance, leveraged credit, asset and mortgage-backed securities or other forms of structured credit.

## e. Other strategies

We have extensive experience in advising asset managers on setting up regulated and non-regulated funds across a variety of other investment strategies (including infrastructure, hedge, fund-of-funds, microfinance, crypto-assets, etc.).

## 2. Investor due diligence

We advise a wide range of investors (ranging from high net worth individuals to institutional investors) in connection with their investment projects. Our advice typically includes due diligence-related work and negotiating commercial terms on behalf of our clients. More generally, for investors which are less familiar with

Luxembourg investment funds, we also guide our clients through the legal structuring aspects and ensure that the project fits their expectations and requirements from a legal and tax perspective (and highlighting the pitfalls to avoid!).





# 3. Regulatory

We offer advice on initial and ongoing matters, as well as operational, regulatory and outsourcing project issues affecting credit institutions, depositary banks and lenders, investment firms, insurance and reinsurance companies, brokers, investment fund managers, asset managers, investment funds and investors, providers of payment services, electronic money institutions, clearing systems, exchanges and other trading platforms, as well as other professionals of the financial sector and those operating at the perimeter of the financial services sector (e.g. central administration of funds).

We have considerable experience in compliance matters, in supporting clients examining new or existing compliance programmes and defending claims. We also assist clients during on-site/off-site visits from public authorities, investigations and proceedings, as well as in dealing with observations and sanctions from the public authorities.

In particular, we provide tailored regulatory advice to Luxembourg regulated professionals on topics as diverse as outsourcing, IT and cloud infrastructure, environmental, social and governance (ESG) or anti-money laundering (AML) and counter-financing of terrorism (CFT) matters (as further explained below).

## a. Management companies & AIFM

We have extensive experience in advising sponsors who want to provide management company services and

alternative investment fund manager (AIFM) services, including MiFID services. We can support you through initial discussions around your venture and give guidance on the best way to set up and organise a regulated company, vehicle or structure in Luxembourg.

Our services for management companies and AIFMs include:

- Identifying the key initial elements to be taken into account when defining the project
- Drafting legal documentation and policies and procedures
- Advising on operational needs, human resourcing, IT/cloud requirements and employment issues
- Assisting you to complete required forms, notifications and submitting applications to the regulator, supporting discussions and securing authorisation

Once a company is established, we provide ongoing guidance on running the business and responding to legal and regulatory developments. If you wish to grow your operations, we can advise on cross-border expansion, whether you are seeking to establish branches abroad or use EU freedoms to provide services in other member states.

Through our participation on committees with the Luxembourg supervisory authority, the CSSF, ALFI, ALCO, we work to ensure that Luxembourg continues to offer a highly attractive environment for international groups seeking to set up management companies or AIFMs.





## b. AML/CFT

We advise investment fund managers, asset managers and investment funds on a wide range of AML/CFT-related topics, from the definition of their initial AML/CFT framework (AML/CFT policies and procedures, risk appetite, risk assessment) and their ongoing updates in light of the latest legal and regulatory developments, to practical questions as to the daily implementation of their AML/CFT professional obligations (e.g. AML/CFT due diligence on assets and counterparties, acceptance of high-risk relationships, cooperation with competent authorities, international financial sanctions). We can also propose tailor-made AML/CFT training sessions to our clients.

We further assist our clients in dealing with punctual requests and on-site/off-site inspections of the competent authorities notably relating to AML/CFT matters.

Through our involvement with Luxembourg market associations such as ALFI and ALCO, we keep abreast of the market developments, enabling us to deliver cutting-edge, pragmatic advice to our clients.

## c. ESG

We also advise asset managers and funds on all asset management specific ESG matters with a particular focus on the new sustainable finance rules, such as the Sustainable Finance Disclosure Regulation, the Taxonomy Regulation, the ESG-related changes to the AIFMD/UCITS Level 2 framework and the ESG MiFID rules.

We closely follow the constantly evolving ESG landscape and take part in a number of ESG-related working groups of fund associations such as ALFI, EFAMA and Invest Europe, which means that we are always on top of the latest regulatory developments. In addition, close contact with the Luxembourg regulator ensures that we are aware of the latest supervisory expectations.

We offer advice on the various SFDR disclosure requirements and guide clients through the update of their fund documentation, which includes obtaining regulatory approvals where necessary. We regularly assist our clients with the uplift of their funds to Article 8 or 9 SFDR and advise AIFMs on the impact of the sustainable finance rules on their operations and procedures.

## 4. Fund finance

Our fund financing team works hand-in-hand with the investment funds team to ensure a global and comprehensive approach in connection with fund financing work.

We have extensive experience in advising clients (both borrower and lender) in connection with fund financing transactions, which range from subscription line, asset backed (NAV based), or GP line credit facilities to umbrella facilities and the related security packages (including guarantees).

When acting on the side of both the lender and the borrower on a financing transaction, we carry out a due diligence of the fund documents, which will typically cover the following items:

- interaction between the general partner, the AIFM and/or investment/portfolio manager, delegation of rights by the general partner (especially as regards entry into financing transactions and exercise of capital call rights to limited partners) and any impact on the security package structuring, corporate authorisations and the financing documentation
- cross-collateralisation between parallel funds and co-investment vehicles
- security perfection issues (e.g. location of bank account and governing law applicable to the security over such bank account, sub-deposit of assets subject to security and assessment of potential impact on governing law of security and/or perfection formalities) and notification to limited partners for security over undrawn commitments
- restrictions in limited partnership agreements on granting security or guarantees to the lender

- restrictions in subscription agreements and side letters on effective enforcement of security package (e.g. rights of counterclaims of limited partners, restrictions as to exercise by lender of capital call rights)
- restrictions in depositary/AIFM/investment or portfolio management agreements on granting security or guarantees to the lender (e.g. request for prior consent of depositary, pre-existing right of pledge of depositary/AIFM/manager)

For the lender, our fund financing team role also includes advice on, drafting and negotiation in the financing documentation of representations, undertakings and events of default specific to the type of fund involved (e.g. RAIF, SIF, SICAR, Part II UCI). We will also draft and negotiate the security package and provide financial collateral arrangements advice and analysis.

When instructed for the borrower, our fund financing team will negotiate the financing documentation, with a specific focus on the representations, undertakings and events of default. Our team will also assist borrowers in the negotiation of the security package.

In addition, at the set-up stage of the fund, our fund financing team assists our investment funds team to anticipate in the fund documentation the recourse to third-party financing (and the granting of security) by building in the provisions usually expected by lenders in financing transactions.

We have deep knowledge of industry trends and have established relationships with all major law firms in Luxembourg.

## 5. Securitisation

The Luxembourg market is a leading European market for securitisations, with a legal framework, which combines flexibility and legal certainty.

Our experience on securitisation covers a wide range of topics, from the funding of the platform (structured notes, profit participating notes, equity instruments etc.), including external debt, to the structuring of the investments (segregation amongst compartments, assumption of risks and management of assets) and the investors rights (limited recourse, non-petition and subordination provisions), from a Luxembourg, European and international perspective.

As leaders on regulated and unregulated securitisations, we advise the major issuers (companies and funds) in Luxembourg on their issues of asset-backed securities and, among others, shares, collateralised debt obligations of all types, credit default swaps, synthetic financial instruments, and hybrid securities combining elements of debt and equity securities. We have been responsible for pioneering fiduciary note structures.

Our banking and finance teams provide advice on Luxembourg regulated and unregulated securitisations and on international securitisations involving the use of Luxembourg structures, including in the context of the European Securitisation Regulation.



## 6. Tax

We offer tax advice on initial and ongoing matters for any type of clients, including investment and pension funds, sovereign wealth funds, national and multinational financial institutions and intermediaries, large corporations, leading private equity and real estate players, as well as for high-net-worth individuals.

Our dedicated tax team develops a deep knowledge of our clients' businesses in order to provide relevant and innovative advice and structuring. We have extensive experience in any kind of tax practices including amongst others income taxes, value added tax, registration taxes, transfer pricing. We also assist our clients in any tax litigations.

We collaborate and interact efficiently with our colleagues from the other practices on tax questions related to collective investment, corporate, banking, finance, real estate as well as personal compensation matters.

Whilst independent, we regularly work alongside tax lawyers from some of the most respected firms in the world, who share our commitment to technical excellence.

With increasing transparency and the implementation of BEPS, tax law demands greater technical knowledge. Our partners and counsels contribute to the competitiveness of the Luxembourg tax environment and the financial sector as active members of the most prominent professional associations, such as the Luxembourg Bankers Association (ABBL), ALFI, the Luxembourg Branch of the International Fiscal Association (IFA), LPEA and the Luxembourg Bar Association. You will see our contribution in specialised tax publications and in our appearances at international conferences.

## 7. ICT, IP, media and data protection

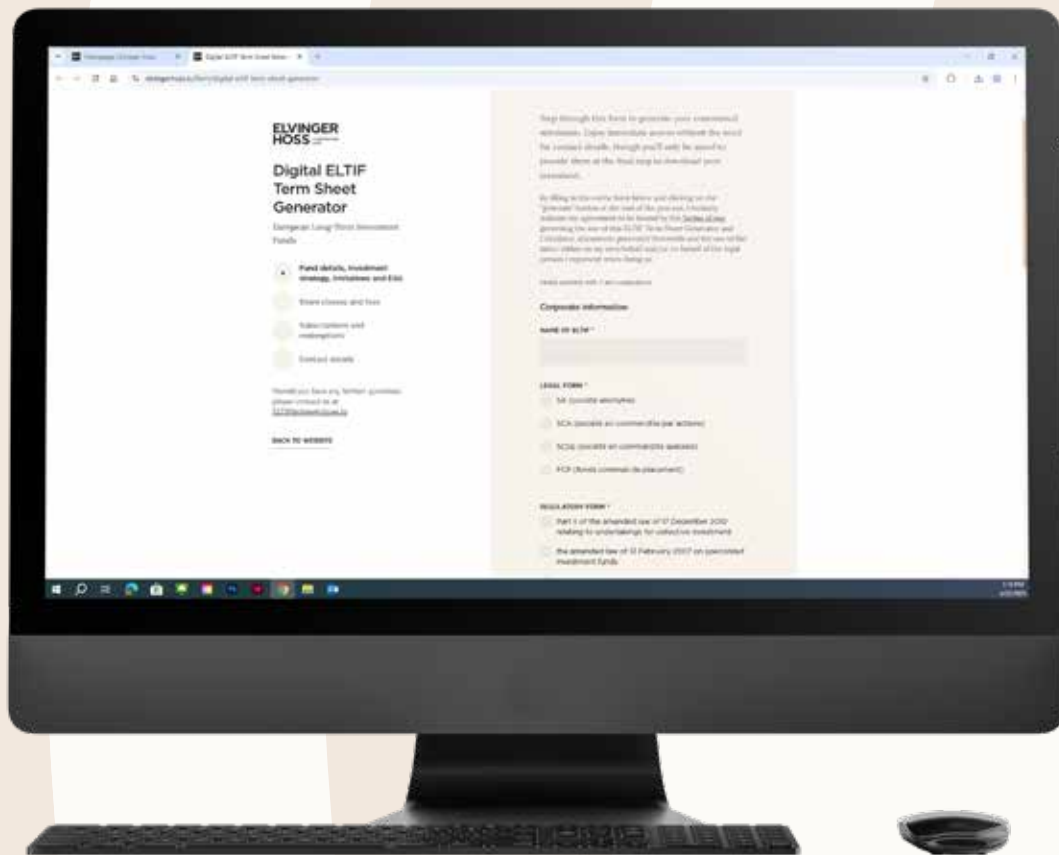
We advise AIFs on all aspects relating to data protection (e.g. contractual arrangements with service providers and notices relating to the processing of personal data about investors or their representatives and ultimate beneficial owners). We also provide guidance on digitalisation matters such as the use of electronic signatures for the

execution of fund documents, including subscription agreements and side letters. Additionally, we provide all necessary advice from an intellectual property perspective and, more specifically, trademarks when it comes to designing and protecting a brand, where applicable, for a particular investment setup.



## Notes





# The Elvinger Hoss Digital ELTIF Term Sheet Generator & Calculator

In order to assist managers with the first steps of an ELTIF project, Elvinger Hoss Prussen now provides a web-based tool that allows the automatic generation of a first term sheet for an evergreen ELTIF. The generated term sheet may then be used by managers to further conceptualise the project.

The tool calculates, in particular, the redemption limits that will apply to the ELTIF based on set criteria, which facilitates for instance the conversion of a limit applying to the liquidity pocket back into the global NAV of the fund. The tool is accessible via the QR code on the right or on our website at [www.elvingerhoss.lu](http://www.elvingerhoss.lu).



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