

AREF FutureGen Educational Series 2022
The Fund Lifecycle Revisited
Event 1: Introduction to Fund Structuring

Wednesday 15th June 2022



Sponsored by
CAREY OLSEN



Welcome

Will Lawrence, Senior Associate at CMS UK
& Member of the FutureGen Committee



Agenda for today

- 09.00 Event start
- 09.00 Welcome and housekeeping - Will Lawrence, CMS UK
- 09.05 Fund Formation
Presentation from Patrick Groves, Partner at CMS UK
& Will Lawrence, Senior Associate at CMS UK
- 09.50 Q&A with speakers
- 10.00 Close

Today's speaker



Patrick Groves

**Partner, Funds and Indirect Real Assets
at CMS UK**

**& member of the AREF Education and
Training Committee**



Will Lawrence

**Senior Associate, Funds and Indirect
Real Assets at CMS UK**

**& member of the AREF FutureGen
Committee**



CAREY OLSEN

Introduction to Fund Structuring

Patrick Groves and Will Lawrence

15 June 2022

Overview

Introduction

1. Key fund structuring concepts
2. Common private fund vehicles
3. Fund structuring in practice

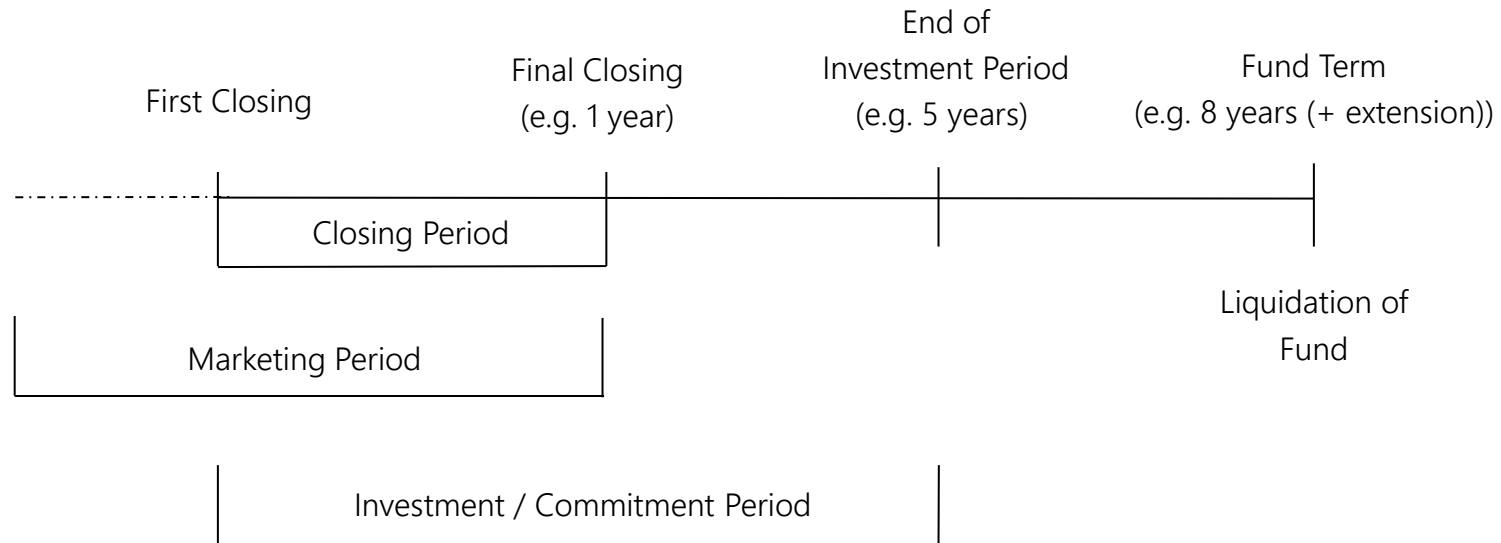
1. KEY FUND
STRUCTURING
CONCEPTS

Open-ended funds

- Perpetual life
- Interests priced on NAV:
 - Pure NAV pricing
 - Bid offer spread
 - Capitalisation and amortisation
- Regular subscriptions / redemptions
- Recycling of capital
- Fees typically based on valuations (i.e. NAV / GAV)
- Liquidity management

Closed-ended funds

- Finite life with limited subscription window
- Equalisation
- Investors have no right to withdraw – secondary market in fund interests
- Issues around end of fund life / market cycles



Authorised & unauthorised funds

- Authorised funds
 - Fund supervised by a regulator (e.g. FCA or CSSF)
 - Prescriptive rules – e.g. governance / assets / leverage / derivatives
 - UK: OEIC / ICVC, AUT, ACS, PAIF
 - Luxembourg: SIF, SICAR
 - European Union: UCITS

- “Unauthorised” funds
 - All other funds
 - Predominantly institutional / professional investors
 - NOTE still indirectly regulated through management

AIFMD – A quick recap

- Alternative Investment Fund Managers Directive - EU regime for unregulated funds (AIFs)
- Implemented into national law – e.g. UK AIFM Regulations / Lux AIFM Law.
- AIFM, not fund, is regulated – in UK by FCA / in Lux by CSSF
 - Responsible for risk and portfolio management
 - Delegation permitted subject to letter box entity rule
- Marketing rules vary depending on where fund and manager are located:
 - EU AIF and (full scope) EU AIFM: marketing within EU under passport
 - Non EU AIF or non-EU AIFM: marketing only under NPPRs.
 - Brexit: So passporting rights not available in respect of UK AIFs and/or UK AIFMs.
 - Varying degrees of flexibility under NPPRs, e.g.:
 - UK / Lux quite flexible
 - Germany / Denmark – gold plating requirements
 - France / Italy / Spain – very difficult

2. COMMON PRIVATE FUND VEHICLES



UK / Lux Limited Partnership (LP)

- Legal form
 - Partnership, constituted by limited partnership agreement
 - ELP / Lux SCSp (no legal personality) v SLP / Lux SCS (separate legal personality)
 - UK reform with introduction of PFLP regime – aligns UK with other jurisdictions
- Key players
 - General partner (GP) – responsible for management and liable for all debts
 - Limited partners – limited liability but cannot take part in management
 - Fund manager / investment adviser – appointed by GP, typically in same group
 - Carried interest partner – receives carry (performance related profit share over a “hurdle”)
- Tax treatment
 - Tax transparent for income and gains – investors taxed as though making direct investment.
- ELP still commonly used for UK funds and where Europe is not a significant target market.
- Lux SCSp / SCS now first choice for pan-European funds.

Jersey Unit Trust (JUT)

- Legal form – Offshore contractual trust arrangement, no separate legal personality
- Key players
 - Trustee (offshore – usually professional)
 - Manager (offshore – often combined with trustee role)
 - Investment adviser (usually onshore)
- Tax treatment
 - Tax transparent for income (if structured as “Baker” trust)
 - Since 2019, subject to CGT on disposals of UK property (or on disposal of UK property rich entities), but may be able to take advantage of exemption or transparency election
 - No transfer tax on the issue, transfer or redemption of units
 - Management and operation must remain offshore
- More often used as a structuring vehicle within fund structures, rather than fund vehicle itself
- Allows efficiencies on exit

Real Estate Investment Trust (REIT)

- Legal form
 - Must be UK tax resident
 - Can be incorporated in UK or offshore, e.g. Jersey / Guernsey
 - Prior to April 2022 required listing or technical listing e.g. on TISE. However the listing requirement for private REITs no longer applies from April 2022 provided certain conditions are met.
- Tax treatment
 - Tax exempt on **income** from its property rental business and **gains** on sale of properties and property-rich companies.
 - A 20% withholding tax applies to distributions of property income and gain, but the rate of withholding may be eliminated or reduced depending on the tax profile of the relevant investor.
- Key legislation
 - Applicable company law and UK REIT regime (CTA 2010)
- We typically use as underlying structuring vehicle (“private” / “captive” REIT)

3. FUND STRUCTURING IN PRACTICE

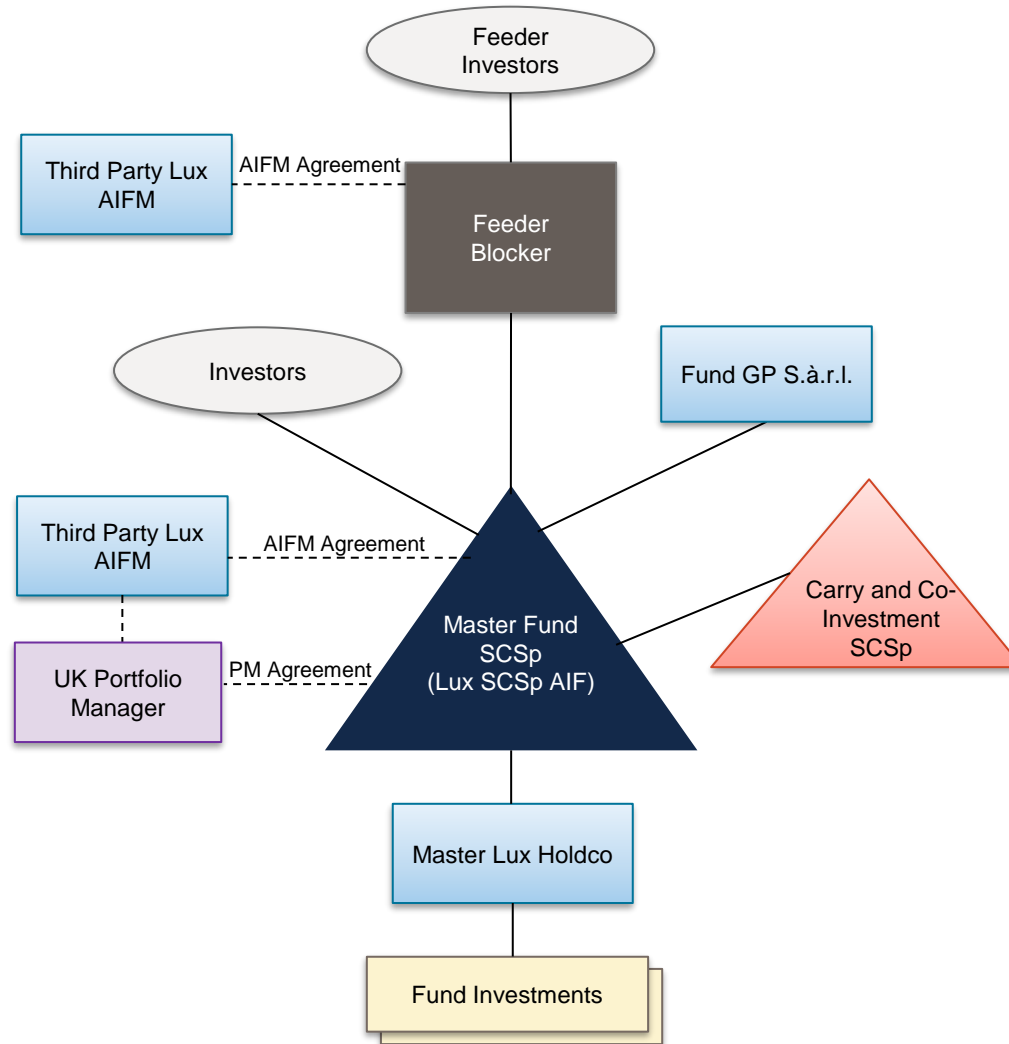


Structuring considerations

- Tax (avoid unnecessary tax leakage within fund)
- Regulation
- Target investor base (to where are you marketing)
- Location of investment manager
- Asset class / location

Best illustrated in practice...

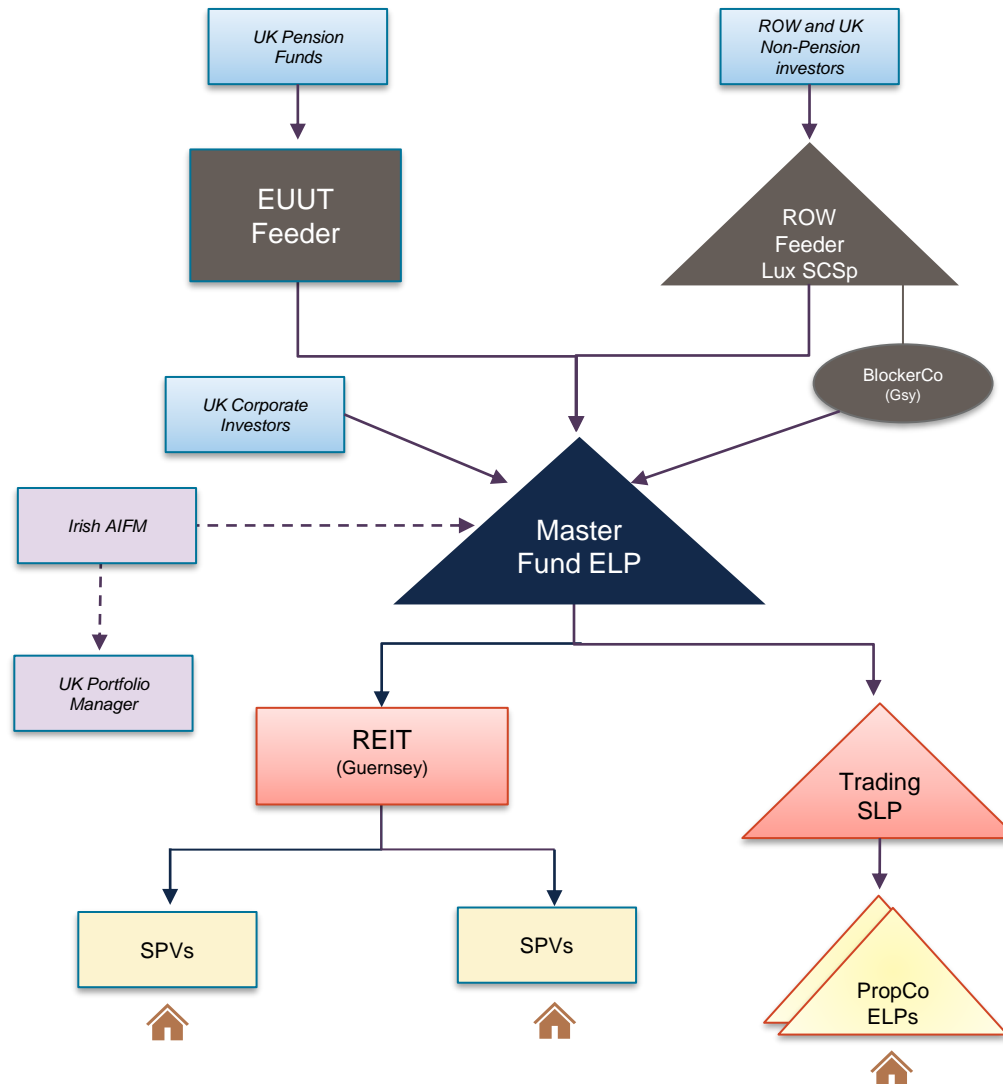
Structure 1 – Pan-European real estate fund



Closed-ended pan-European property fund. Targeting global mix of institutional investors, including EEA and US.

- UK based fund manager looking to access EEA and US investors post-Brexit.
- GP appoints third party Lux AIFM, with portfolio management delegated by the AIFM back to the UK based client.
- EEA investors are marketed to under the AIFMD marketing passport (as EEA AIF with EEA AIFM).
- Most investors invest directly into Master Fund.
- A feeder fund is offered for certain investors who require a “blocker” (i.e. tax opaque fund vehicle) for tax purposes.
- Properties are held by a number of SPV portfolio companies, all aggregated under a Master Lux Holdco.
- UK Portfolio Manager provides portfolio management services to Master Fund and portfolio companies.

Structure 2 – UK Affordable Housing Fund



Closed-ended UK affordable housing fund, undertaking both investment and development for sale activity. Targeting mix of UK and international tax-exempt and corporate institutional investors (but limited EU investors):

- Master Fund constituted as an ELP, with Guernsey GP (note not subject to AIFMD and no passport, but VAT savings on fees).
- UK tax exempts invest through the EUUT. Other non-tax exempt UK and overseas investors invest via Master Fund ELP or Lux Feeder SCSp.
- REIT (and its group) tax exempt on its underlying property investment business.
- Development trading activity subject to 25% limit in REIT, so undertaken through separate Trading LP structure.
- Trading income from Trading LP is streamed via A and B tracking units and “blocked” by BlockerCo and EUUT.



Disclaimer

CMS Law-Now™

Your free online legal information service.

A subscription service for legal articles on a variety of topics delivered by email.

cms-lawnow.com

The information held in this publication is for general purposes and guidance only and does not purport to constitute legal or professional advice.

CMS Legal Services EEIG (CMS EEIG) is a European Economic Interest Grouping that coordinates an organisation of independent law firms. CMS EEIG provides no client services. Such services are solely provided by CMS EEIG's member firms in their respective jurisdictions. CMS EEIG and each of its member firms are separate and legally distinct entities, and no such entity has any authority to bind any other. CMS EEIG and each member firm are liable only for their own acts or omissions and not those of each other. The brand name "CMS" and the term "firm" are used to refer to some or all of the member firms or their offices.

CMS locations:

Aberdeen, Abu Dhabi, Algiers, Amsterdam, Antwerp, Barcelona, Beijing, Beirut, Belgrade, Berlin, Bogotá, Bratislava, Bristol, Brussels, Bucharest, Budapest, Casablanca, Cologne, Dubai, Duesseldorf, Edinburgh, Frankfurt, Funchal, Geneva, Glasgow, Hamburg, Hong Kong, Istanbul, Johannesburg, Kyiv, Leipzig, Lima, Lisbon, Ljubljana, London, Luanda, Luxembourg, Lyon, Madrid, Manchester, Mexico City, Milan, Mombasa, Monaco, Moscow, Munich, Muscat, Nairobi, Paris, Podgorica, Poznan, Prague, Reading, Rio de Janeiro, Rome, Santiago de Chile, Sarajevo, Seville, Shanghai, Sheffield, Singapore, Skopje, Sofia, Strasbourg, Stuttgart, Tirana, Utrecht, Vienna, Warsaw, Zagreb and Zurich.

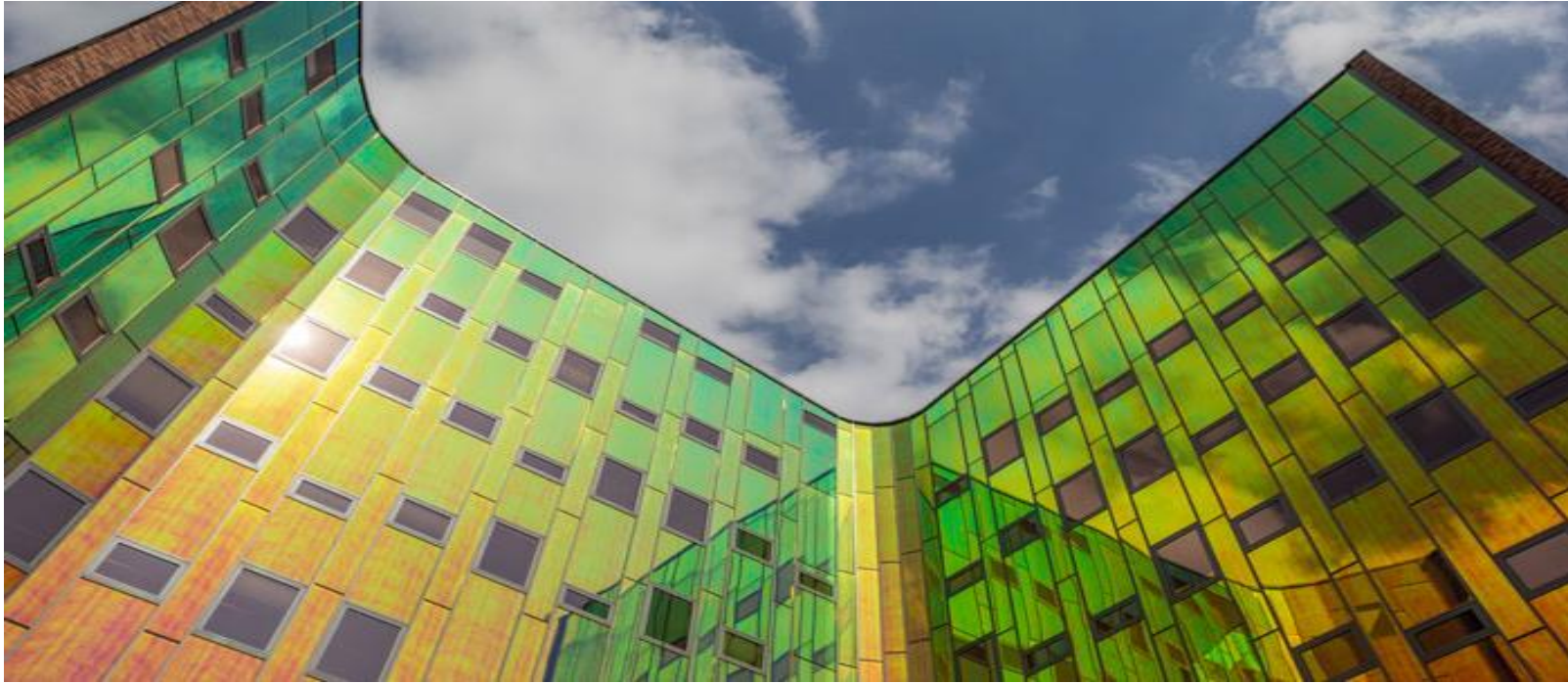
cms.law



Q&A Discussion

To ask a question to the speakers:

click the Q&A button at the bottom of your screen



Thank you