

Permanent capital

INNOVATIVE AND COMPREHENSIVE
STRATEGIES

Dechert
LLP





Navigating new frontiers to diversify product offerings, access new types of investors and raise capital.

Powerful trends are driving asset managers to explore and introduce new products, including permanent capital vehicles, to diversify their businesses. From the investor's perspective, institutional and retail investors seek alternative investment products that offer attractive yields and non-correlated returns, while retirement plans continue to shift from defined benefit to defined contribution models. From the investment adviser's perspective, asset managers seek to diversify the array of capital solutions they can offer to their middle market company clients and to expand the range of companies to which they can provide capital solutions. The private fund and the registered fund worlds have been converging for some time. We believe permanent capital vehicles enable asset managers to address and profit from these important trends.

Achieving your goals in this new terrain requires a law firm that is as sophisticated and innovative in its approach as you are.



CASE STUDY

Using management vehicles to satisfy changes in risk retention rules

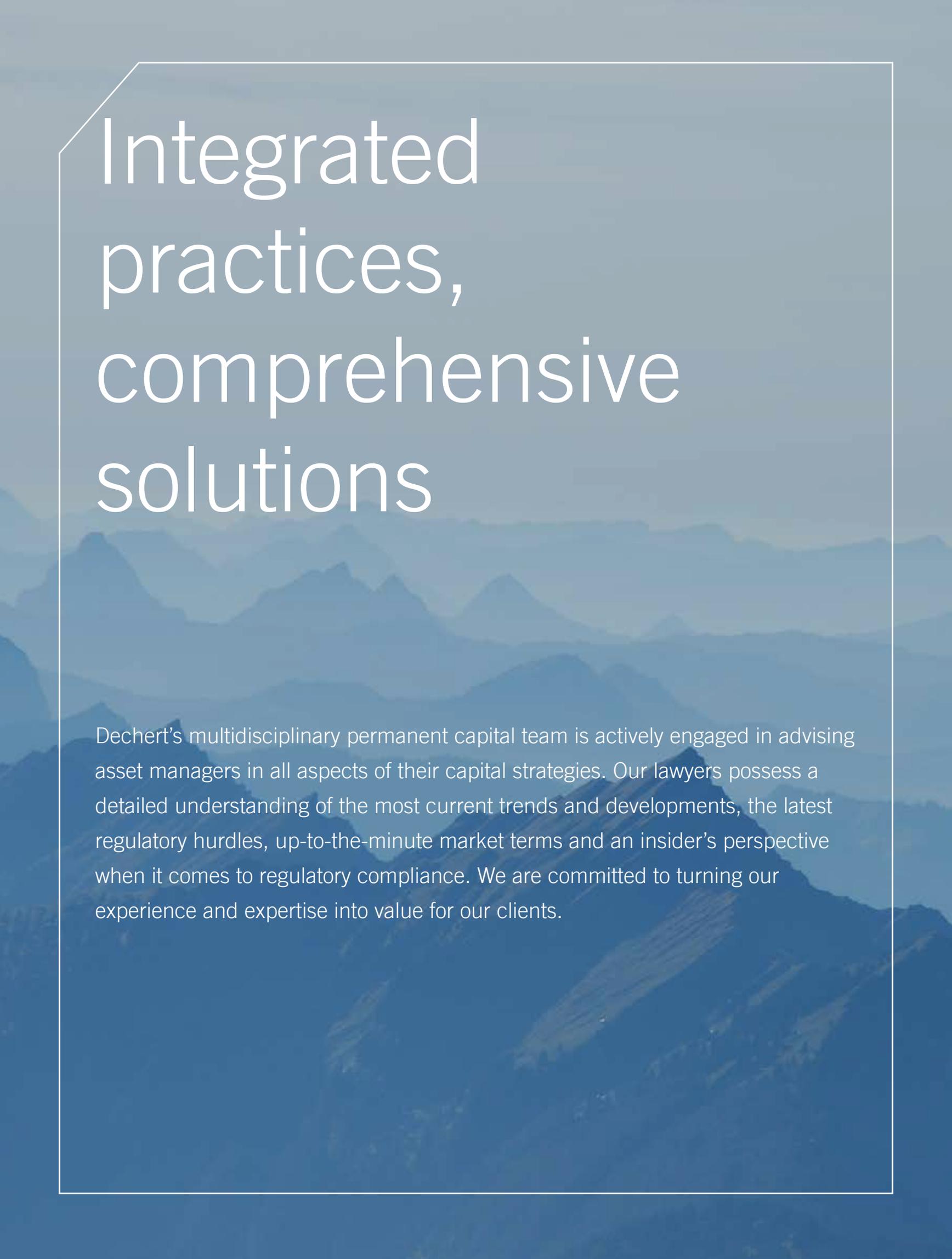
Firms that manage CLOs must handle new risk retention rules. The Dodd-Frank Act's risk retention requirements came into force in December 2016, requiring firms to own at least 5% of each CLO they manage. Dechert has developed a structure that allows BDCs and other permanent capital firms to raise new capital without falling afoul of these new requirements. The new structure is simpler, less expensive and less vulnerable to market risk than other existing proposals.

Dechert's solution was to create a capitalized management vehicle (CMV) – an independent, SEC-registered investment adviser, which acts as sponsor and manager during the life of the CLO. As funds raised from third parties are invested into the new vehicle, rather than into its underlying deals, the mandates surrounding the quantum of risk retention securities required to be purchased in each applicable deal are eased.

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Acting for a leading BDC specializing in middle-market bridge, debt and mezzanine financing for small and mid-sized companies, Dechert established a management vehicle to act as the BDC's CLO manager. Great care was taken to ensure the new vehicle was adequately ring-fenced – while the BDC may share employees with the new vehicle and even handle some of its administrative tasks, the CMV must be a real, independent entity with its own employees and management.

Once successfully established, the Dechert CMV structure is an effective long-term solution to the task of financing a sophisticated CLO platform without tripping Dodd-Frank's risk retention requirements. ■



Integrated practices, comprehensive solutions

Dechert's multidisciplinary permanent capital team is actively engaged in advising asset managers in all aspects of their capital strategies. Our lawyers possess a detailed understanding of the most current trends and developments, the latest regulatory hurdles, up-to-the-minute market terms and an insider's perspective when it comes to regulatory compliance. We are committed to turning our experience and expertise into value for our clients.

Our services



INVESTMENT MANAGEMENT

Dechert is a preeminent adviser to the financial services industry, representing 18 of the top 20 global asset managers worldwide. Our investment management lawyers, many of whom are former in-house counsel and regulators, guide clients on all aspects of organization and registration, and the development and implementation of compliance and supervisory oversight procedures.



FUND FORMATION

Dechert advises sponsors and institutional investors in the formation of funds across all major asset classes, domiciles and structures, with attention to tax efficiency and market terms. We advise on both formation and ongoing operational matters, including those concerning allocation, co-investment and compliance matters.



GLOBAL FINANCE

Dechert's global finance lawyers advise on complex financings to alternative capital lenders, such as BDCs and other alternative capital clients (including, in connection with CLOs, risk retention capital formation, term and structured term facilities, ABL revolving facilities, total return swaps and prime brokerage facilities). In addition, we represent many of the same BDC and alternative capital clients when they make debt investments (including first tier loans, second tier loans, mezzanine loans, unitranche financings and ABL financings). Our diverse finance capabilities give us the ability to service all of our clients' financing needs.



PRIVATE EQUITY/MERGERS AND ACQUISITIONS

Dechert regularly represents strategic and financial buyers and sellers in planning, negotiating and executing complex transactions in the asset management sector. We focus on structuring successful deals, ensuring speed-to-market execution and protecting our clients' interests in all phases of the transaction.



CAPITAL MARKETS

Permanent capital clients (and their underwriters) rely on us to handle all of their capital markets transactions, including IPOs and follow-on offerings, rights offerings, preferred share offerings and liability management transactions. We have a proven track record of advising permanent capital clients on creative, sophisticated transactions that give them the flexibility to access assets that might otherwise be unavailable to them.



CROSS-BORDER REGISTRATION AND DISTRIBUTION

We have a team of 60 experienced lawyers who focus on the structuring, establishment, approval, taxation and management of European-domiciled funds, including UCITS. We represent more than 60 UCITS fund complexes comprising more than 600 funds with respect to cross-border registration and distribution matters, including public registration in more than 30 countries and private placement in more than 120 countries.



FUND REGULATORY ENFORCEMENT AND LITIGATION

When situations turn adversarial, Dechert provides permanent capital clients with comprehensive representation, ranging from counsel on global regulatory investigations by the SEC and FCA to defense in high-stakes class actions, securities and derivative litigation and commercial disputes.



TAX AND ERISA

Our lawyers advise on complex tax issues that confront BDCs, investment trusts, open and closed-end funds, ETFs, ETPs, variable insurance funds and other alternative investment funds, as well as their investment advisers and boards of directors/trustees. We also handle ERISA issues and projects for a number of investment advisers and fund complexes, and provide extensive ERISA advice to sponsors of alternative investment products.

CASE STUDY

Replicating a proven fund strategy for the European market

Our client is a specialist asset manager with a broad platform in the United States that includes BDCs and other investment funds. The company was seeking to take an investment strategy that had been highly successful in the U.S. and to make it available to investors in Europe.

The asset manager chose to work with Dechert because we are among only a few law firms with experience in CLOs, corporate credit strategies and EU law governing such financial matters.

The legal issues involved in such a move are complex, involving a myriad of European Union (EU) rules governing alternative investment vehicles. Additionally, the non-bank financial sector in Europe is not as developed as it is in the U.S., making it more challenging to raise capital.

The asset manager chose to work with Dechert because we are among only a few law firms with experience in CLOs, corporate credit strategies and EU law governing such financial matters. In fact, *Asset-Backed Alert* (2016) ranked Dechert the #1 CLO law firm on the manager side and noted our great depth in all of the key issues on the '40 Act side as well.

Dechert helped the client forge partnerships that would be critical to moving forward – with a major Asian bank that was interested in investing in the credit space, and with a well-known boutique investment bank. We then helped them execute the steps necessary to organize an entity outside of the EU to allow them to build a fund track record before pursuing a broader offering.

Already, the client has raised a significant amount of capital from investors. Their ultimate goal is to list their strategy on a major European exchange, making it available to a broad range of investors on the Continent. ■

CASE STUDY

Executing consolidations of business development companies to increase scale

Dechert's extensive history of involvement with BDCs has put us at the forefront of the recent BDC consolidation trend. We are thought leaders in this arena, having advised on a number of consolidations, and we foresee continued activity on this front in the coming years.

Recently, we helped our client in its successful bid for the assets of a BDC operated by a major bank. The bank had formed the BDC years before, building initial scale by transferring loans it already had on its books. But, subsequently, it had achieved far less than the scale needed to operate the BDC profitably.

Dechert's lawyers drew on their deep experience to accelerate the deal. The bank issued a tender offer for shares at net asset value, which minority shareholders accepted. The target then withdrew its BDC election, making it possible for the deal to proceed as a private transaction, avoiding regulatory hurdles with the SEC. Subsequently, the assets were placed in a Delaware LLC, which our client acquired in a transaction that was completed in weeks – rather than the months it might have taken with a more traditional approach. ■

A globally recognized leader in key disciplines

Winner for “Law Firm of the Year” for the Americas, Europe and Asia-Pacific – the first time a single firm has won in all three categories.

PRIVATE DEBT INVESTOR, 2017

Ranked in Tier 1 (Nationally) for Banking and Finance Law, Corporate Law, Employee Benefits (ERISA) Law, Mergers and Acquisitions Law, Mutual Funds Law, Securities/Capital Markets Law Private/Hedge Fund Law and Securitization and Structured Finance Law.

U.S. NEWS – BEST LAWYERS, 2018

Recognized among the top law firms for investment funds globally and for the Asia-Pacific region, China, Ireland, Luxembourg, the Middle East and the United States.

CHAMBERS GLOBAL, 2018

Ranked #1 issuer’s counsel for U.S. CLO by deal value and volume.

ASSET-BACKED ALERT, 2017

“Leading player in the alternative asset management space and a well-established and active participant in the hedge fund area.”

CHAMBERS UK, 2018

“A leading law firm in private debt fund formation.”

THE PREQIN GLOBAL PRIVATE DEBT REPORT, 2016-2018

“Best Law Firm Overall.”

ALT CREDIT INTELLIGENCE’S EUROPEAN SERVICES AWARDS, 2017

ALT CREDIT INTELLIGENCE’S U.S. SERVICES AWARDS, 2016



CASE STUDY

Determining the right role for traditional closed-end funds

Dechert has been working with clients to create BDCs since enabling legislation for this investment vehicle was passed in 1980. We are a long-time leader in this area, as well as in the formation and representation of traditional closed-end funds (CEFs), private debt funds, offshore listed funds and specialty finance companies.

Clients frequently call upon us to advise them on an appropriate fund structure to address their particular business needs, such as whether a BDC, a traditional CEF or a private or offshore private structure would be most effective to advance their capital-raising goals. In some cases, the decision can be straightforward, such as when a prospect outside the United States sought advice on forming a BDC. We quickly determined that a BDC would not be suitable, as the proposed portfolio would not satisfy certain criterion for a BDC.

Far more often, however, such structuring decisions require a nuanced strategic analysis of multiple factors, including securities and corporate law, taxation, ERISA and commercial considerations. With one particular client, the use of debt would be a significant, but not a fundamental concern, suggesting that the more restrictive leverage limitations of a traditional CEF would not be an impediment to the client's strategy, although the greater permitted leverage of a BDC would be slightly preferred. We then considered the eligible portfolio company limitations applicable to a BDC. We learned that the client intended to invest a significant proportion of its assets in unregistered investment companies that would not be suitable for a BDC. We discussed the client's desired level of involvement in managing portfolio companies, because CEFs typically take a hands-off approach, which can impede an interventionist management strategy. Finally, we helped the client consider a long-term liquidity strategy for the fund's investors – carefully weighing the advantages of offering the new fund solely to institutional investors or listing on a securities exchange.

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Ultimately, the client chose a traditional CEF structure based on its specific objectives and the characteristics of a CEF. We formalized the client's strategy, assisted with every aspect of the formation and initial offering transactions, drafted appropriate contracts, including a bespoke investment advisory contract, as well as organizational board materials, assisted with SEC registration and arranged for a stock exchange listing. Subsequently, and on a continuing basis, we have advised the client on governance, financing and M&A as well as a range of other matters. ■

About Dechert

Dechert is a global law firm focused on sectors with the greatest complexities and highest regulatory demands. We deliver practical commercial judgment and deep legal expertise to our clients' most important matters.

