

Fund formation and trends

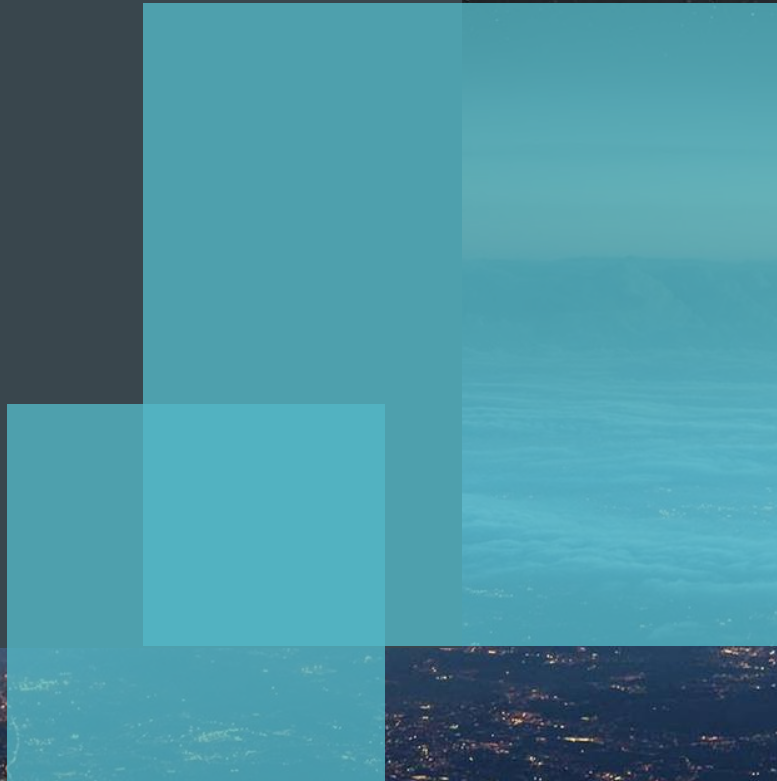
The basics of fund
structuring in the
Netherlands

Minke Hoekstra

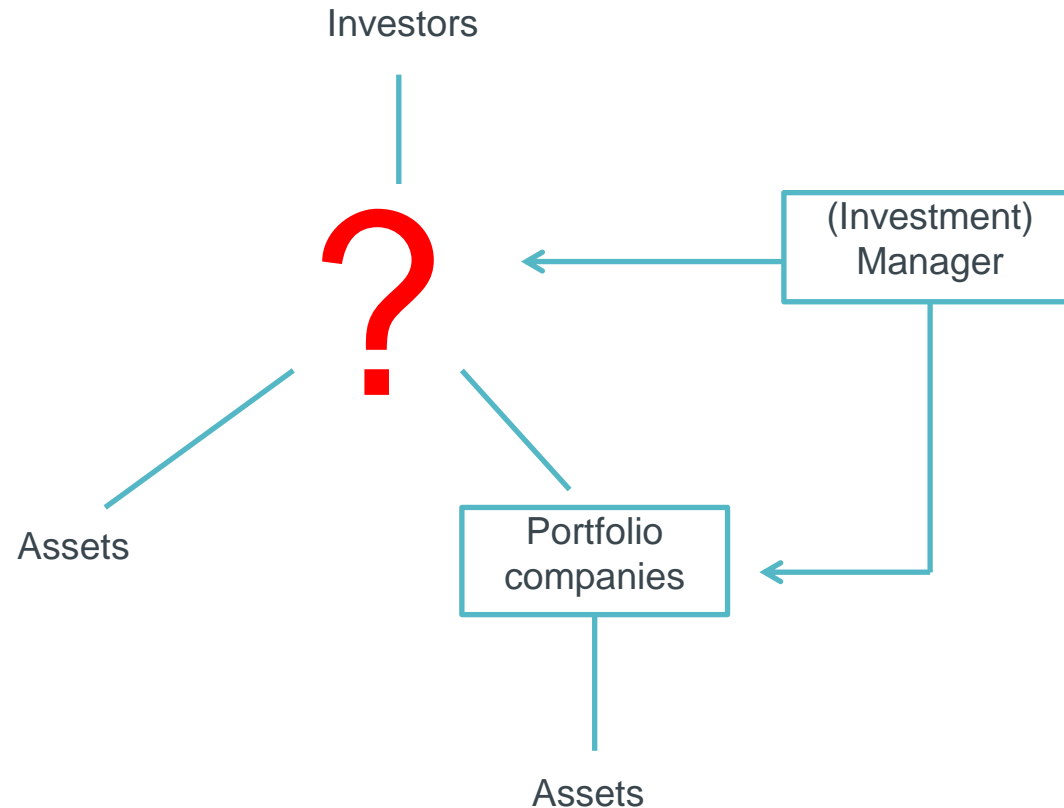
Content

- Fund formation: a legal perspective
- Fund formation: a regulatory perspective
- Stages of fund formation
- Trends and developments in the (private) funds industry

Fund formation: a legal perspective

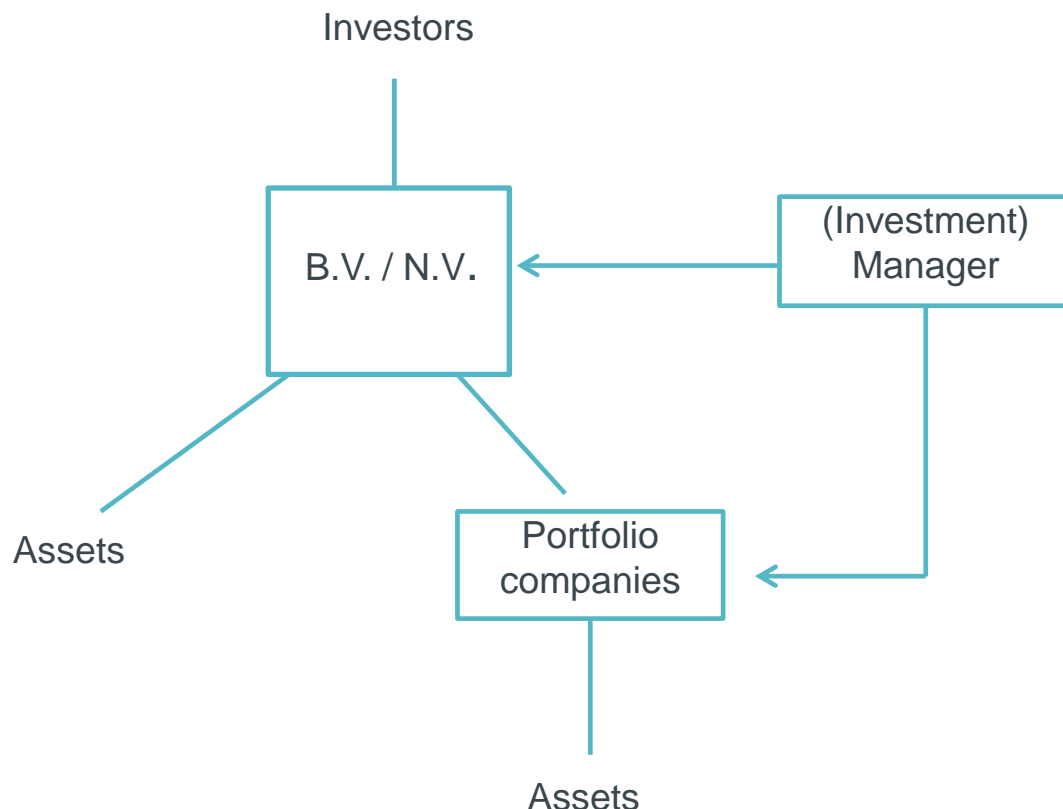


Fund formation – Initial set up



Typical Dutch fund structures

B.V. and N.V.



Legal personality

Limited liability
for investors

Capital protection

Contribution in
cash or kind

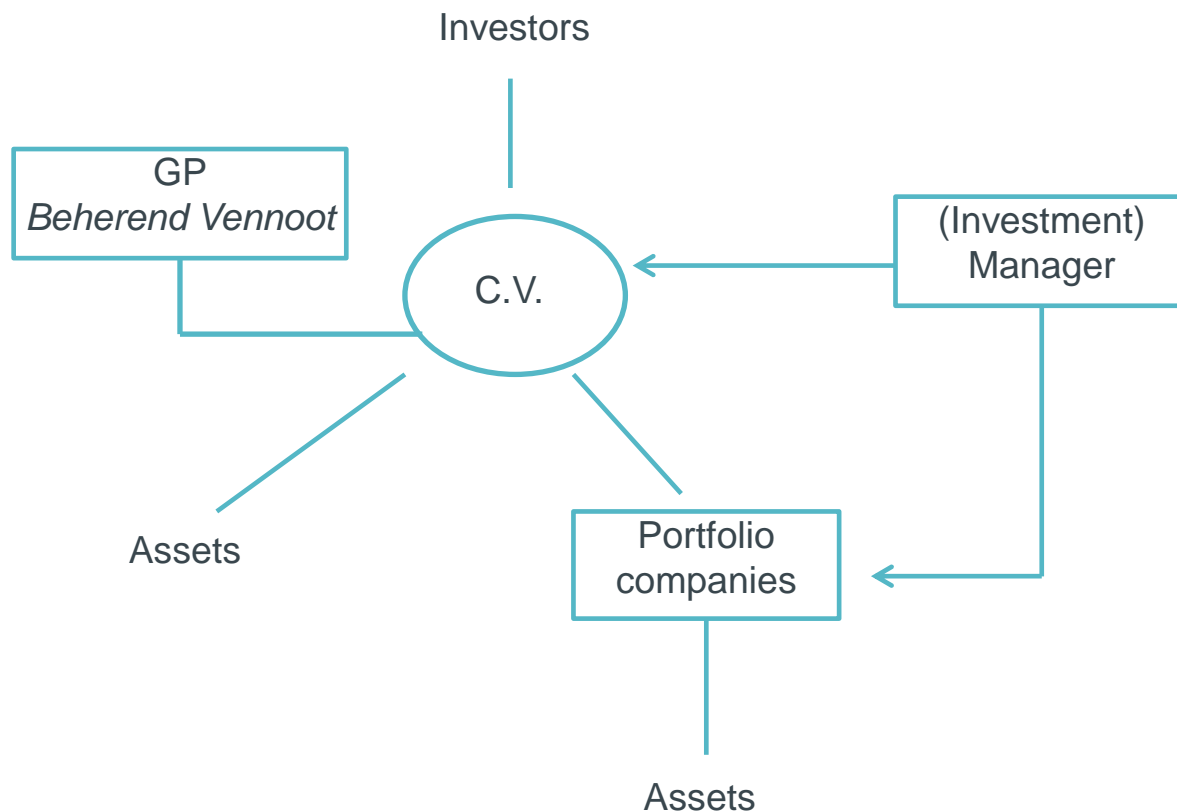
Formation
requirements

Capital
requirements

Less flexible on
T&C

Typical Dutch fund structures

C.V.



Limited liability of investors

Flexibility in T&C

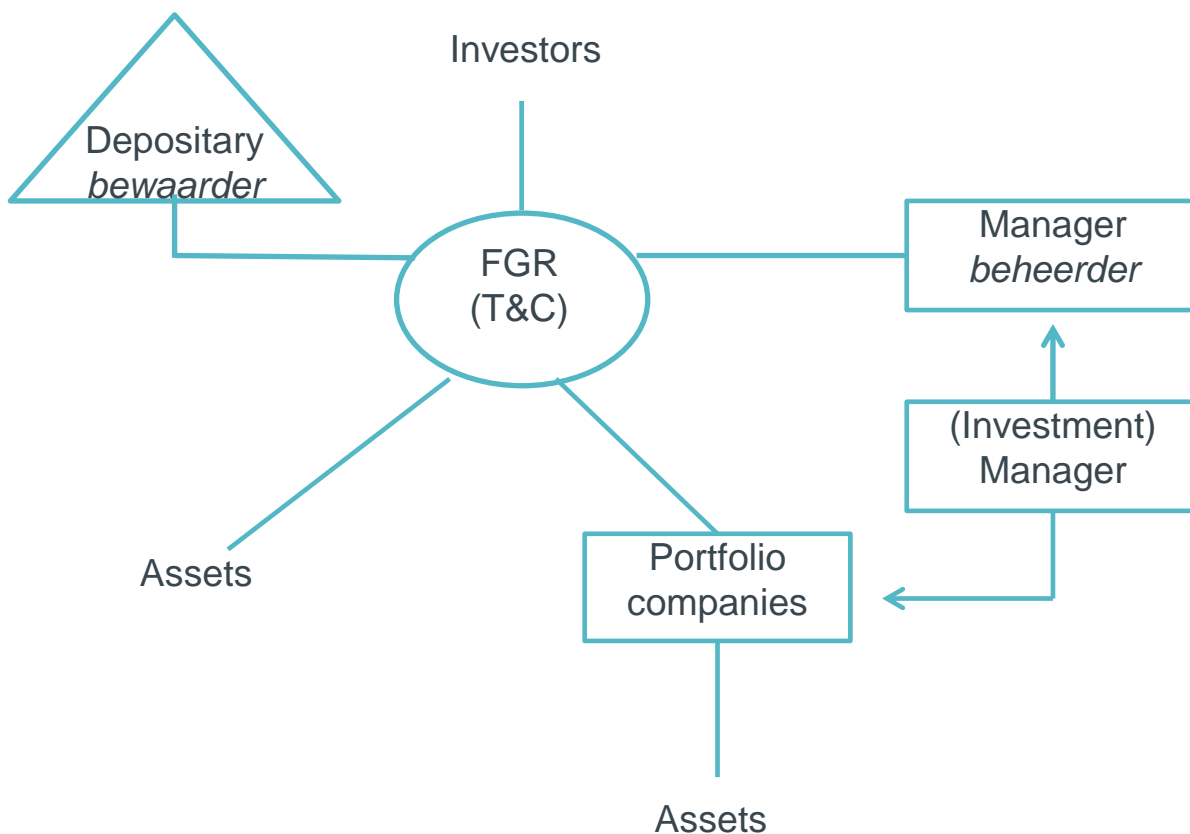
LP confidentiality

Codification?

Lack of legal personality

Typical Dutch fund structures

FGR



Freedom of contract

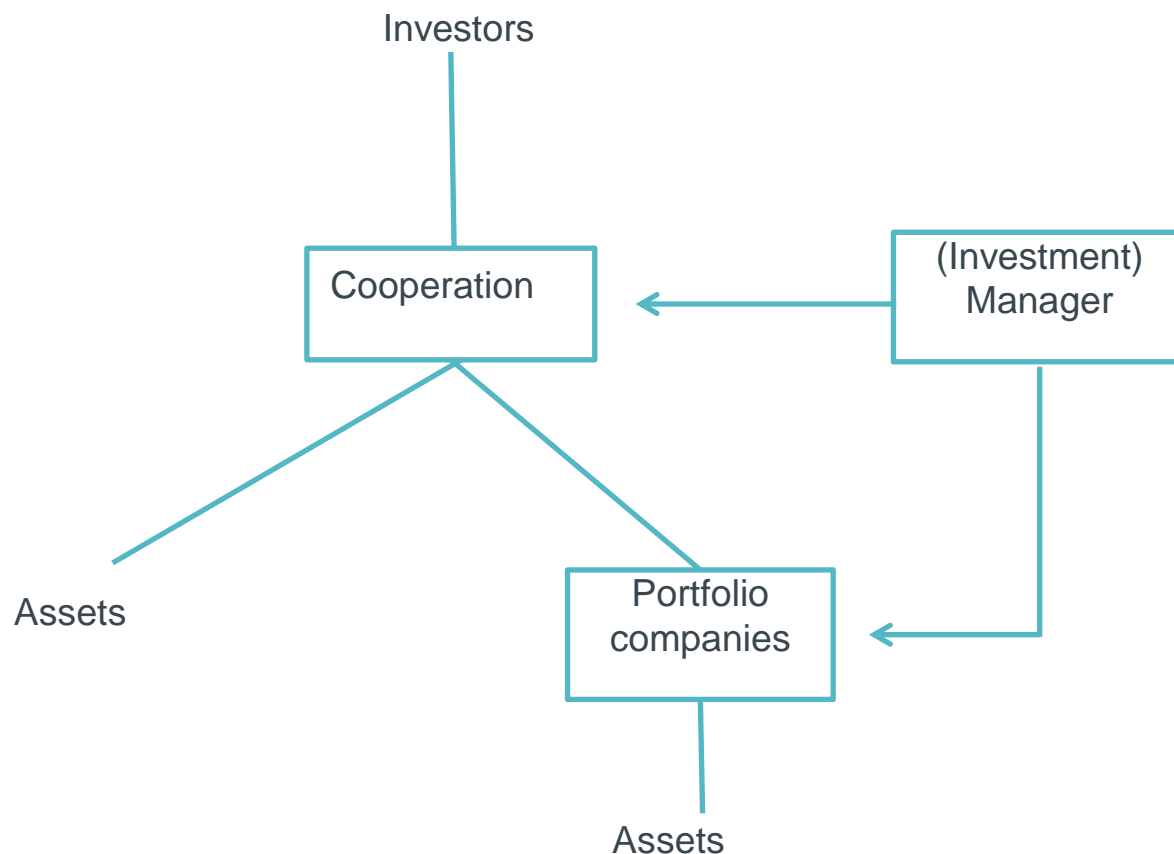
Limited liability

Sui generis

Marketability

Typical Dutch fund structures

Cooperation



Legal personality

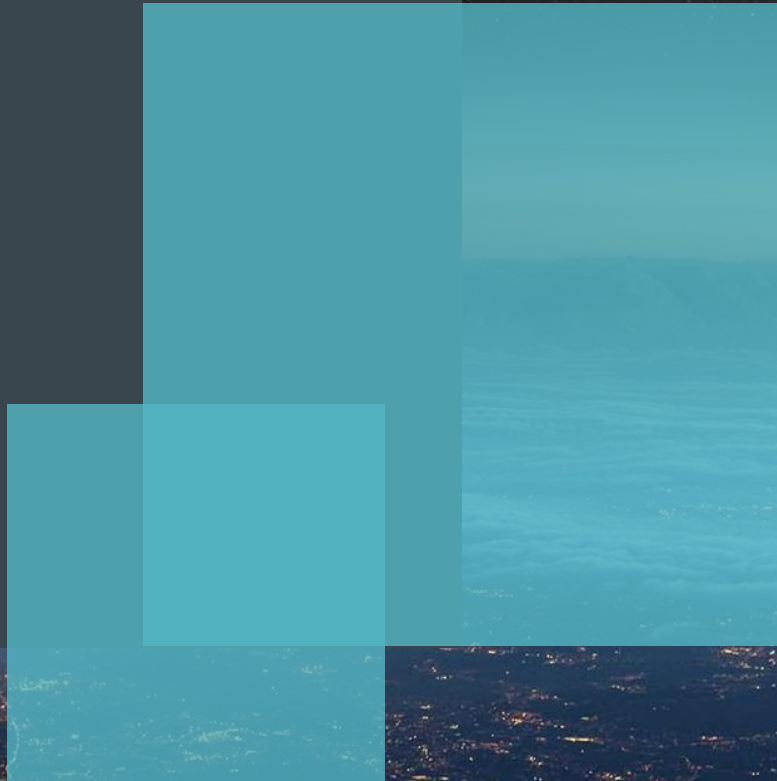
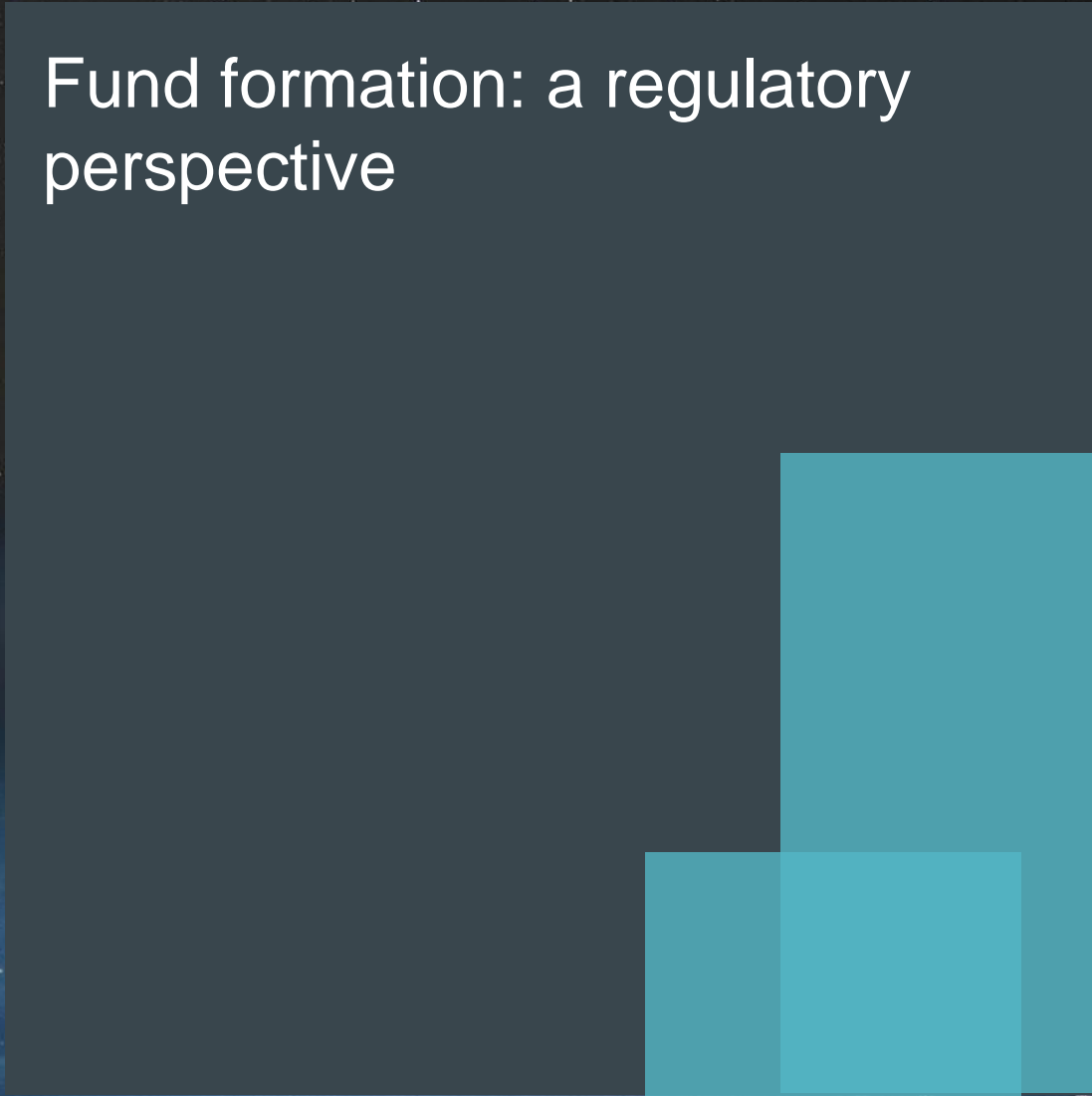
Limited liability
for investors

Allocation of
profit

Flexibility in T&C

Tax benefits have
fallen away (see
trends)

Fund formation: a regulatory perspective



Licensing requirements

AIFMD

Licence requirement when:

- Managing a Dutch AIF(s);
- Offering EU and or non-EU AIF(s) in the Netherlands;
- Dutch based manager managing or offering AIF(s).

Exemptions:

- *Limitative list (national central banks etc);*
- *De minimus* exemption;
- Pass porting and equivalent supervision;
- Grandfathering.

AIFMD

Professional
clients

Light regime

UCITS

Retail clients

Risk
diversification

AIFMD cont'd

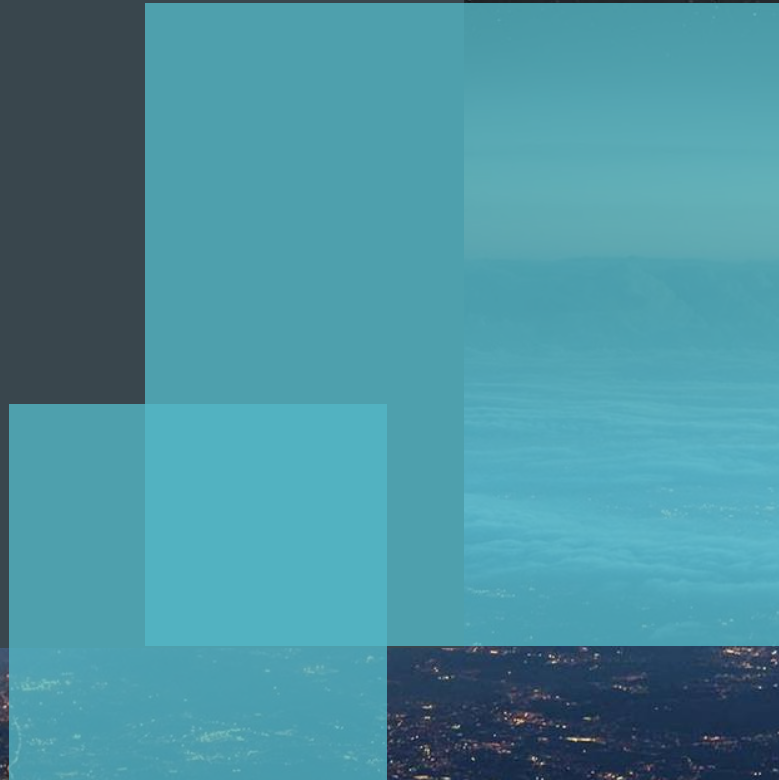
Supervision

Authority for the Financial Markets (AFM) and the Dutch Central Bank (DNB) – Twin peak model

AIFMD licence triggers:

- Reporting requirements;
- Governance requirements;
- AIFMD depositary;
- Remuneration requirements;
- Capital requirements.

Stages in fund formation and standard terms



Stages in fund formation

A legal view

Structuring

- Product development and target market;
- Legal structure and jurisdiction.

Marketing

- (Private) Placement Memorandum;
- Term sheet.

Negotiations and (first) Closing

- Execution of various agreements with service providers and investors.

Standard terms

Key themes

- Investment objectives and restrictions;
- Co-investments/Commitments;
- Key Persons/Change of Control;
- Defaults/Excuse provisions;
- Successor funds;
- Fees/Distribution of profits;
- Removal GP/Manager;
- Governance (Advisory Committee/resolutions/liquidation etc)
- Transfer of participations (closed end/open end);
- Confidentiality.

Trends and industry developments



Trends

Regulatory

- AIFMD Review
- Strengthening EU supervision
- Brexit

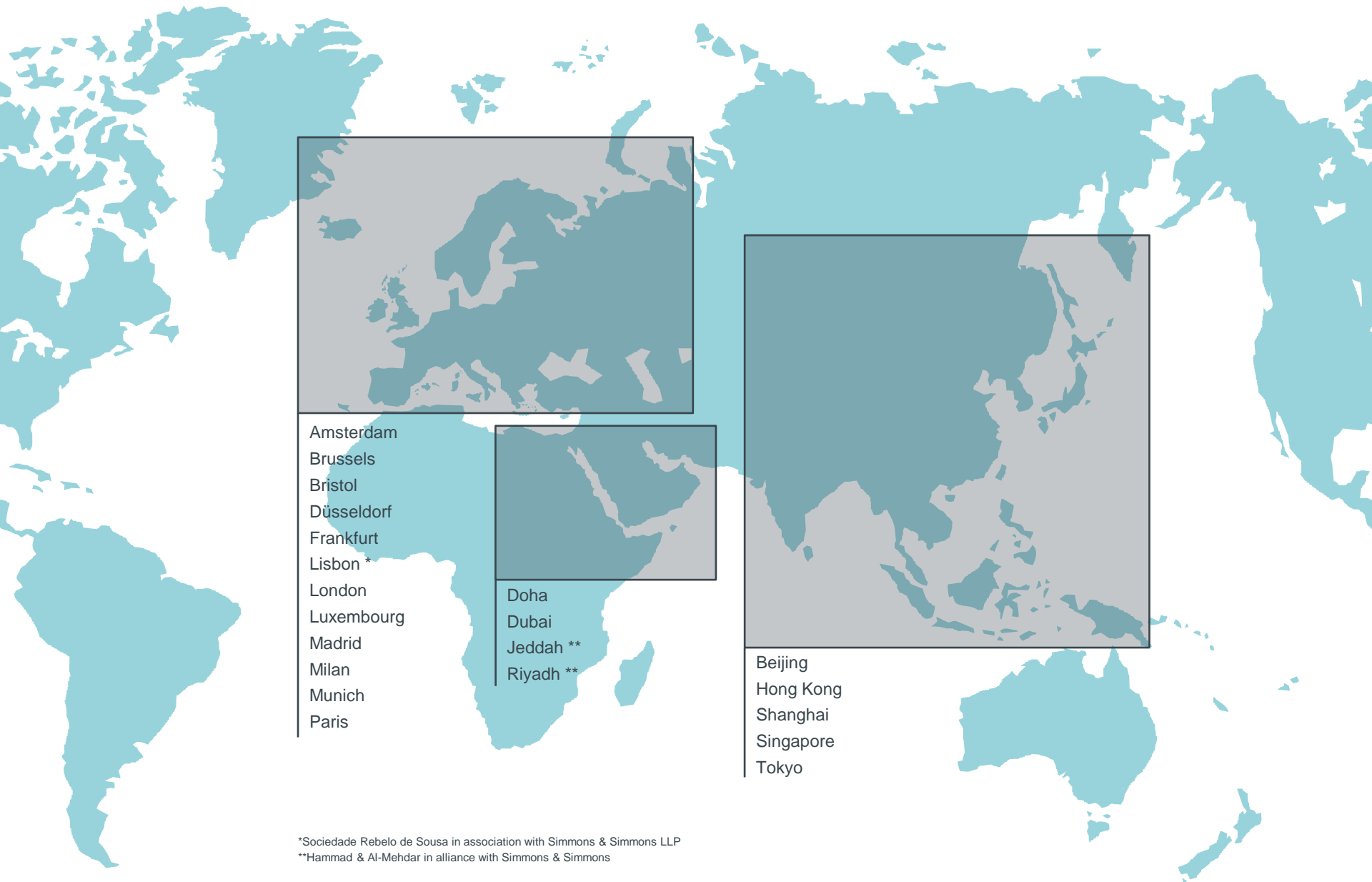
Public opinion

- National: *Regeerakkoord*, PE sector review, remuneration
- International: Panama papers, BEPS
- EU: Lux gate?

Investment momentum

- Debt funds
- High tech and Crypto funds
- ESG (B Corp?)





*Sociedade Rebelo de Sousa in association with Simmons & Simmons LLP

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