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Memorandum
Van Campen Liem

From: Maurits Tausk, Piet Boonstra, Sanne Mans, Anna van Emde Boas

To: Mark Morris (East West Management dd)

CC: Gerben Oldekamp, Lisette van Gils (Circle Partners)

Date: March 31, 2017

Re: CRS features of a Dutch fund for joint account

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1. Introduction

At your request, we summarize certain general legal and Common Reporting Standard (hereafter referred to as "**CRS**") aspects of a fund for joint account (*fonds voor gemene rekening*, an "**FGR**") with the features described below, established under Dutch law.

2. Intended Structure

We understand from yourself that:

(i) your clients intend to be Participants in new funds established in the form of tax transparent FGRs, under the laws of the Netherlands;

(ii) these FGRs are not umbrella funds;

(iii) these FGRs may only hold private equity previously owned by the Participants, namely private entities;

(iv) the objective of the funds is long-term capital appreciation, and so the private equity entities will not distribute dividends to the FGR Participants;

(v) these FGRs will each have at least two professional investors, and are not intended for the retail market;

(vi) the FGRs will be closed-end;

(vii) the manager of these FGRs (defined below, the "**Fund Manager**") will be East West Management dd (hereafter referred to as "**EWM**"), an existing entity incorporated under the laws of Montenegro which will have a fund management license in Montenegro; and

(viii) the holders of legal title the FGR assets (defined below, the "**Depositary Custodian**")[1] will be one of two Depositary Custodians elected by the Participant, managed from either Montenegro or the United States;

(ix) the FGR will not be marketed in the EU, nor to EU residents.

3. Key aspects of an FGR

An FGR is a pooled investment vehicle offering a substantial flexibility to the user. An FGR is not a corporate body and does not have separate legal personality. It is a contractual agreement (often referred to as its "**Terms and Conditions**") between a manager (the "**Fund Manager**") and its investors (the "**Participants**") obliging the Fund Manager to invest and manage for joint account of the Participants' assets contributed by the Participants. Generally, the legal ownership of an FGR assets is held by a separate custodian or depositary, usually in the form of a Dutch foundation (*stichting*) (a "**Depositary Custodian**").

An FGR is not dealt with in Dutch corporate law. Parties are in fact free in determining the financial and governance structure of an FGR and as such, the term refers to a commercial understanding and a tax qualification rather than a legal qualification. An FGR is established by the execution of a notarial deed setting out its Terms and Conditions. The parties involved are the Fund Manager, the Depositary Custodian and at least one Participant. Terms and Conditions typically include, the name, purpose, dissolution and liquidation and seat of an FGR, admittance of new Participants, allocation of the investment profits of an FGR and substitution of the Fund Manager and Depositary Custodian. The terms under which the Fund Manager and the Depositary Custodian provide their services on behalf of an FGR are either set out in the Terms and Conditions or included in a separate investment management agreement. If desirable, there can be a custody agreement between the Depositary Custodian and the Fund Manager.

The Depositary Custodian is managed by a board of directors. Acting as custodian of an FGR, the Depositary Custodian holds the legal title to all the investments of the fund. Participants do not have a proprietary interest in the investments. They only have contractual rights against the Depositary Custodian and hold beneficial title to the investments.

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1 The sole purpose of this entity is to hold legal ownership of FGR assets and liabilities, and is not to be confused with a "depositary" under the AIFMD.

Each Participant signs a subscription agreement with the Fund Manager (and, often, the Depositary Custodian and the administrator of the FGR (the "**Administrator**")) that describes the size of its investment and makes the Terms and Conditions for investing in the fund applicable. There is normally no liability of the Participants other than the contractual liability to pay up the contribution as set forth in the subscription agreement. Participants are entitled to the profits of the fund and the assets of the Depositary Custodian pro rata their contribution.

4. Dutch regulatory considerations

The FGRs may qualify as "investment funds" (*beleggingsinstellingen*) under the Dutch Act on Financial Supervision (*Wet op het financieel toezicht*, the "**AFS**"). An investment fund can be a corporate entity or an unincorporated or contractual entity (such as an FGR) which, as a collective investment undertaking, including investment compartments thereof:

(i) raises capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and

(ii) does not require authorization pursuant to section 5 of Directive 2009/65/EC (i.e.: as an Undertaking for Collective Investment in Transferable Securities – the EU harmonized UCITS funds regime),

being the definition from the Alternative Investment Fund Managers Directive (the "**AIFMD**") implemented in Dutch law.[2]

It is possible that the FGRs, where they do not "raise capital", or do not have a "defined investment policy", do not qualify as investment funds under the definition, but the Dutch Financial Markets Authority (*Autoriteit Financiële Markten*, the "**AFM**") employs a broad application of the investment fund concept.

If the FGRs qualify as funds under the AFS, a Fund Manager is required to be in possession of a license issued by the AFM to manage a Dutch fund or to offer participations to investors in the Netherlands. An exemption pursuant to article 1:13b subparagraphs 1 and 2 AFS (the implementation of article 42 of the AIFMD) from this license requirement is available for certain types of Fund Managers with a seat in a country that is not a Member State of the European Union (third country Fund Managers); Fund Managers that are registered with their home state regulators and are under some level of

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2 Section 4 AIFMD, section 1:1 FMSA in fact cross refers to the AIFMD definition, for its own definition of *beleggingsinstelling*.

supervision, where the regulator of the home state and the AFM have entered into an information sharing Memorandum of Understanding under the AIFMD.[3]

Such a Fund Manager must notify the AFM that it intends to manage a fund in the Netherlands (or offer a fund to investors in the Netherlands) under the exemption on the basis of section 1:13b subparagraphs 1 and 2 AFS by providing the AFM with a specific notification form (the "**Notification**"). The Notification attaches an attestation of the competent home state authority of the Fund Manager in which it confirms that it is able to effectively comply with the cooperation agreement between that competent authority and the AFM as set out section 1:13b subparagraph 1 under (c) AFS (the "**Attestation**"). No formal requirements exist as to the format of the Attestation. The Notification is for informational purposes only and the Fund Manager is responsible for ensuring that the requirements for using the exemption of section 1:13b subparagraph 1 and 2 AFS are met.[4]

Upon filing of the Notification form, the Fund Manager must fulfill, on an ongoing basis, all requirements as laid down in section 1:13b subparagraphs 1 and 2 AFS and applicable requirements in rules and regulations based thereon. As part of these requirements, the Fund Manager shall:

(i) comply with reporting obligations to the Dutch Central Bank (*De Nederlandsche Bank*, the "**DNB**") regarding the principal markets and instruments in which the Fund Manager trades on behalf of an FGR[5];

(ii) provide investors with a prospectus of an FGR including at least the information stated in article 23 subparagraph 1 and subparagraph 2 (first sentence) of the AIFMD[6];

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3 The Securities Commission of the Republic of Montenegro Financial Supervision Authority has concluded a Memorandum of Understanding (MoU) regarding mutual assistance in the supervision and oversight of Managers of alternative investment funds, their delegates and depositaries that operate on a cross-border basis in the jurisdictions of the signatories on 22 July 2013.

4 Under the exemption included in section 1:13b subparagraphs 1 and 2 FSA, non-EU fund managers may market or manage funds in the Netherlands if the following conditions are met:

i. participations are only offered to "qualified investors", c.q. "professional investors" (as such terms are defined in article 1:1 FSA);
ii. the third country where the non-EU fund manager is established is not listed as a Non-Cooperative Country and Territory by the Financial Action Task Force; and
iii. the AFM and the supervisory authority of the non-EU fund manager entered into a cooperation agreement that at least ensures an efficient exchange of information and allows the AFM to carry out its duties in accordance with the FSA.

5 Section 3:74 subparagraph (c) FSA.

6 Section 4:37l FSA in conjunction with section 115j of the Dutch Decree on Conduct of Business Supervision of Financial Undertakings under the FSA (*Besluit Gedragstoezicht financiële ondernemingen Wft*).

(iii) provide the AFM with the annual accounts and the annual report of an FGR within six months of the end of the financial year of an FGR[7]; and

(iv) comply with certain information requirements regarding the control of (non-) listed issuing institutions[8].

and the Attestation of the competent authority in Montenegro is obtained in respect of EMW, EWM will need to notify its exemption by sending the Notification to the AFM.

5. Dutch CRS considerations of the setup

Generally, an FGR which has been established under Dutch law would qualify as a financial institution ("**Financial Institution**"[9]) if it would be used as:

(i) a true fund which invests collectively for multiple owners (with third party management);

(ii) an investment entity ("**Investment Entity**"[10]) with multiple non-family owners (without third party management); or

(iii) an Investment Entity with a single owner, managed by a professional third party.

Based on a Decree of the State Secretary of Finance in the Netherlands, in case the FGR would be managed by a third party professional Administrator / Fund Manager, also the Fund Manager and Depositary Custodian would qualify as a Financial Institution for Dutch CRS purposes. As we understand EWM would be a professional manager of the FGR and therefore the FGR, the Fund Manager and Depositary Custodian would all qualify as Financial Institutions from a Dutch CRS perspective.

5.1 *FGRs*

In general, an FGR should report on its financial accounts ("**Financial Accounts**" [11]), being the Equity (and Debt) Interests in the FGR held by the Participants / the account holders ("**Account Holders**"[12]).

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7 Section 4:37o FSA.
8 Section 4:37q up to and including section 4:37z FSA.
9 CRS Section VIII.A.3 – Defined Terms – Financial Institution – page 44.
10 CRS Section VIII.A.6 – Defined Terms – Investment Entity – page 44.
11 CRS Section VIII.C.1.a– Defined Terms – Financial Account – page 50.
12 CRS Section VIII.E.1 – Defined Terms – Account Holder – page 60.

A Financial Institution is resident in a participating jurisdiction ("**Participating Jurisdiction**"[13]) if it is subject to the jurisdiction of such Participating Jurisdiction. In general, where a Financial Institution is resident for tax purposes in a Participating Jurisdiction, it is subject to the jurisdiction of such Participating Jurisdiction. However, where a Financial Institution does not have a residence for tax purposes (e.g. if it is tax transparent) it is considered to be subject to the jurisdiction of a Participating Jurisdiction if:

(i) it is incorporated under the laws of the Participating Jurisdiction;

(ii) it has its place of management in the Participating Jurisdiction; or

(iii) it is subject to financial supervision on the Participating Jurisdiction.

A tax transparent Financial Institution would qualify as a Dutch tax resident for CRS purposes if the place of effective management of the Financial Institution would be in the Netherlands[14]. As the setup FGRs are tax transparent, and would be managed by EWM in Montenegro, the FGRs would not qualify as tax resident in the Netherlands for CRS purposes. In case the FGRs would be treated as tax resident in Montenegro there would be no CRS reporting obligation for the FGRs since Montenegro has not implemented CRS, i.e. the FGRs would not be Participating Jurisdiction Financial Institutions[15].

However, if the FGRs would not qualify as tax resident in Montenegro, they would be considered to be subject to CRS in the Netherlands, since the FGRs have been incorporated under Dutch law. In that case, the FGRs would report on its Equity and Debt Interests held by the Participants.

5.2 *Depositary Custodians*

The two Depositary Custodians would hold the legal ownership of the assets of many FGRs. Hence, the FGRs would be the sole Account Holders of the Depositary Custodians. The Depositary Custodians' only income are custody fees it charges for the custody of assets. As a Depositary Custodian is an entity, which maintains assets for others and more than 20% of its income is custody fees, the Depositary Custodian would be classified as a custodial institution ("**Custodial Institution**" [16]) for CRS purposes. [17] In the described setup, the Depositary Custodians earns 100% of their income

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13 CRS Section VIII.D.5 – Defined Terms – Participating Jurisdiction - page 57.
14 Article 4 of the *Algemene wet inzake rijksbelastingen*.
15 CRS Section VIII.A.2 – Defined Terms – Participating Jurisdiction Financial Institution - page 44.
16 CRS Section VIII - Defined Terms – Custodial Institution - page 44 par 4.
17 CRS Commentary on Section VIII – Defined Terms - Custodial Institution - page 160 par 10.

from custody fees. A Custodial Institution is a Financial Institution for CRS purposes. It is important to note in the setup; the Depositary Custodian would not be classified as an Investment Entity.

Moreover, it is our understanding that the Depositary Custodians would be Dutch foundations managed from either the United States or Montenegro, and provided those countries consider the Depositary Custodian as its tax resident, the Depositary Custodian would be a non-Participating Jurisdiction Financial Institution. This means that the Depositary Custodian would not have CRS reporting obligations.

5.3 *Fund Manager*

An Equity Interest in an Entity that is an Investment Entity solely because it is an investment manager would not qualify as Financial Account.[18] Therefore, the Fund Manager itself would not have anything to report under CRS.

Nevertheless, the Fund Manager would be responsible for the CRS reporting of the FGR in case there would be a reporting obligation of the FGR. However, if Montenegro considers the FGR as its tax resident, there would be no CRS reporting obligation for the FGRs.

5.4 *CRS reporting by target companies*

5.4.1 Reporting if target company is an Investment Entity

A Financial Institution holding a Financial Account for the benefit or account of another person would qualify as Account Holder.[19]

Therefore, in case the FGR would invest in a target company being an Investment Entity, which is a Financial Institution, this Investment Entity would be obligated to report under CRS. Such target company as Investment Entity should regard the Depositary Custodian as Account Holder. If the Depositary Custodian is tax resident in a non-Reportable Jurisdiction, the Account Holder is a non-reportable person ("**Reportable Person**"[20]) as it is not a Reportable Jurisdiction Person[21]. Furthermore, the Depositary Custodian would not be an

18 CRS Commentaries on Section VIII.C.1.a – Defined Terms – Financial Account - page 175 par 60.
19 CRS Commentaries on Section VIII.E.1 - Miscellaneous – Account Holder - page 200 par 138.
20 CRS Section VIII.D.2. – Defined Terms – Reportable Person – page 57.
21 CRS Section VIII.D.3. – Defined Terms – Reportable Jurisdiction Person – page 57.

Investment Entity and thus would not be regarded as a passive non-financial institution ("**Passive NFE**"[22]) by the reporting Investment Entity target company.

Even if the Depositary Custodian were a Reportable Jurisdiction Person, the Depositary Custodian as a Financial Institution would qualify as a non-Reportable Person[23] and hence there would be nothing to report by the reporting Investment Entity target company.

5.4.2 Reporting if target company is a Passive NFE

In the case the target company would qualify as Passive NFE, the bank (or any other Financial Institution) maintaining the assets of the target company should disclose the controlling persons ("**Controlling Persons**"[24]) of the Passive NFE. As the owner of the Passive NFE is the Depositary Custodian, the bank would disclose the Controlling Persons of the Depositary Custodian. As the Depositary Custodian is maintaining the assets for many FGRs, there would be no individual considered the Controlling Person who has the right to more than 25% of the Depositary Custodian's assets. In such case, the Controlling Person would be the senior managing officials of the Depositary Custodian[25] (i.e. Dutch foundation) which would be the Montenegro or USA directors of the Depositary Custodians. These are non-Reportable Jurisdiction Persons.

5.5 *Administrator*

The Administrator would be considered a manager Investment Entity for CRS purposes[26]. However, the Administrator does not maintain any assets for Account Holders. Therefore, the Administrator would not have a CRS reporting obligation.

5.6 *CRS Summary*

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22 CRS Section VIII – Defined Terms – Reportable Account – page 58 par 8 - Passive NFE -means any: (i) NFE that is not an Active NFE; or (ii) an Investment Entity described in subparagraph A(6)(b) that is not a Participating Jurisdiction Financial Institution.

23 CRS Commentary on Section VIII - Reportable Persons –page 192 par 111 - A reportable jurisdiction Person other than (i) Regularly Traded Corporations, (ii)) Governmental Entities, (iii) International Organisations, (iv) Central Banks, and (v) Financial Institutions.

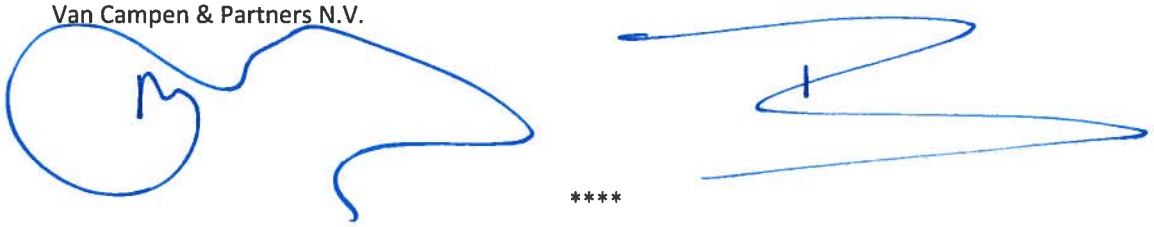
24 CRS Section VIII.D.6. – Defined Terms – Controlling Persons – page 57.

25 CRS Commentaries on Section VIII – Defined Terms - Controlling Persons – page 198 par 133 - Where no natural person(s) exercises control through ownership interests, the Controlling Person(s) of the Entity will be the natural person(s) who exercises control of the Entity through other means. Where no natural person(s) is identified as exercising control of the Entity, the Controlling Person(s) of the Entity will be the natural person(s) who holds the position of senior managing official.

26 CRS Section VIII – Defined Terms – Investment Entity – page 44 par 6.a.iii - otherwise investing, **administering**, or managing Financial Assets or money on behalf of other persons.

If the FGRs and the Depositary Custodians are tax resident in jurisdictions not participating in the CRS, and the Depositary Custodian qualifies to be categorized as a Custodial Institution for CRS purpose, then there would be no CRS reporting from the FGR setup.

Van Campen & Partners N.V.



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