

# WAGENER & ASSOCIÉS

## AVOCATS

**CONFIDENTIAL**

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From: **Donald Venkatapen**, partner at the law firm **Wagener & Associés**  
Date: 13 August 2020  
Re: **Primatum FCP SICAV-SIF S.A. and Primatum Fund Management S.à.r.l.**  
Our ref: Legal update case 2018548

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Dear Madam, dear Sir,

This legal update is issued on behalf of PRIMATUM FUND MANAGEMENT S.à.r.l. (hereinafter “**PRIMATUM Management Company**” or the “**Company**”), in charge of the management of the specialized investment fund PRIMATUM FCP SPECIALIZED INVESTMENT FUND (hereinafter “**PRIMATUM FCP**”).

This is a summary of facts and legal issues we reviewed since our engagement of 25 July 2018.

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### **I. Background information and facts**

- 12 August 2008: registration of PRIMATUM Fund Management on the official list of authorized management companies.
- 13 October 2008: registration of PRIMATUM FCP on the official list of specialized investment funds.
- 12 December 2012: execution of the “*Administration Agency and Registrar and Transfer Agreement*” and the “*Domiciliation, Administrative and accounting Agreement*” between PRIMATUM Management Company and the service provider Alter Domus Alternative Asset Fund Administration Sàrl (hereinafter “**Alter Domus**”).
- 15 June 2018: termination by Alter Domus of the two above-mentioned agreements dated 12 December 2012.
- 27 June 2018: granting of a deadline until 30 June 2018 by the supervisory Luxembourg financial authority, *the Commission for the Supervision of the Financial Sector* (hereinafter the “**CSSF**”) for issuing new agreements with new service providers.

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- 4 July 2018: decision of the CSSF to withdraw PRIMATUM FCP of the official list of investment funds and to withdraw PRIMATUM Management Company of the list of authorized management companies.
- 3 August 2018: issuance of two administrative claims against the decisions of the CSSF of 4 July 2018 concerning the withdrawals of these entities of the official list of investment funds and of the list of authorized management companies.
- 23 August 2018: signature of a new Domiciliation Agreement and of a new Central Administration Agreement with the company Halsey Group S.à.r.l. (hereinafter “**Halsey Group**”).
- 22 October 2018: CSSF decisions rejecting our administrative claims dated 3 August 2018.
- 22 November 2018: legal claims issued before the Luxembourg Administrative Court to annul the decisions of the CSSF of 4 July 2018.
- 8 January 2019: extraordinary general meeting (hereinafter “**EGM**”) of PRIMATUM Fund Management before the Notary Hellinckx in Luxembourg and decision to postpone the meeting based on Mr. Tamàs Gyula Varga’s request for information.
- 8 January 2019: convening notice to the EGM of 23 January 2019 and attachments sent by registered letter and email to Mr. Varga.
- 23 January 2019: EGM of PRIMATUM Fund Management before the Notary Hellinckx in Luxembourg and impossibility to proceed to the transfer of the registered seat in the absence of Mr. Varga, himself or represented.
- 15 February 2019: general meeting of PRIMATUM Fund Management (hereinafter “**GM**”) at the registered seat, resolutions to revoke Mr. Varga from his position of manager and appointing Ms. Bathory as manager of the Company.
- 23 August 2019: legal claim before the Summary Judge of the District Court for the appointment of an external receiver to substitute for Mr. Varga during an extraordinary general meeting of the Company.
- 3 January 2020: ruling of the Summary Judge of the District Court of Luxembourg appointing an external receiver to substitute Mr. Varga during the next extraordinary general meeting having the change of the registered seat of the Company on the agenda;
- 21 January 2020: oral pleadings before Luxembourg Administrative Court of the case against the CSSF regarding the withdrawal from the official list of investment funds and of the list of authorized management companies.

## II. The pending procedure before the Administrative Court

### 1) The decisions of the CSSF

The decisions of the CSSF of 4 July 2018 are individual decisions, by which an administrative authority provides its conclusion on a specific and individual case. In order to reform such an individual decision, our law firm issued administrative claims in the form of a “*recours gracieux*”. Such an administrative claim was followed by a formal decision of the CSSF issued on 22 October, which rejected the administrative claims issued on 3 August 2018.

### 2) The procedural timeframe

The decisions of the CSSF are subject to a legal claim before the Luxembourg Administrative Court within a period of one month of their notification.

The administrative claims suspended this deadline and a new timeframe did start as of the notification of the new decisions of the administration, as foreseen by article 13 (2) of the Law of 21 June 1999 regulating the procedure before Administrative Courts. A new timeframe of one month started as of the receipt of the CSSF decisions of 22 October 2018.

### 3) The procedure before the Administrative Court

In view of the adverse decisions issued by the CSSF, we received instructions from our client to lodge legal claims before the Administrative Court requesting the cancellation or the rectification of these decisions. The case will be heard further to a written procedure before the Administrative Court.

We have formally notified the claims to the CSSF on 7 December 2019. The CSSF’s legal counsel notified his written pleadings on 7 March 2019, and we have notified on 8 April 2019 our written pleadings in response and our supplementary inventories of documentary evidence to the Administrative Court and to the CSSF. In response, the CSSF has submitted their last written pleadings on 8 May 2019.

Following the notification of these written pleadings by the CSSF, the Administrative Court declared closed the phase of exchange of written pleadings.

On 21 January 2020, we pleaded before the Administrative Court the two claims against the decisions of the CSSF of withdrawal of Primatum Fund Management S.à.r.l. from the official list of authorized management companies and of Primatum FCP from the official list of investment funds.

Due to the Covid-19 sanitary crisis, the activity of the Administrative Court has been greatly restricted and the decisions have not been issued yet.

### **III. The purported liquidation of PRIMATUM FCP**

The decisions of the CSSF dated 4 July 2018 notify that a formal request of liquidation of PRIMATUM FCP will be filed before the State lawyer on the basis of article 47 (1) of the Law of 13 February 2007 and on the basis of article 142 (3) of the Law of 17 December 2010.

According to the abovementioned articles, the CSSF may issue such requests of dissolution and liquidation to the State lawyer only if the decisions of withdrawal from the respective lists are final.

At this stage of the procedure, there is a pending litigation before the Administrative Court against these decisions issued on behalf of PRIMATUM FCP and PRIMATUM Management Company and we have not been informed of any liquidation procedure against PRIMATUM FCP.

### **IV. Issues relating to the transfer of the registered office of the Company**

It must be noted that the main reason for the withdrawal of the Company from the list of authorized management companies by the CSSF was the termination by Alter Domus of the Domiciliation Agreement with a notice of 15 days instead of 90 days, as foreseen by the Agreement.

As a result, the Company could be considered as not having a relevant seat anymore, whereas the legal provisions under Luxembourg law require for a limited liability company (an S.à.r.l.), as well as for an authorized management company to have a registered office (article 125-1 of Chapter 16 of the amended Law of 17 December 2010 relating to undertakings for collective investment and article 710-10 of the amended Law of 10 August 1915 on commercial companies). A temporary solution has however been found by our law firm.

On 23 August 2018, a new Domiciliation and Services Agreement has been signed between PRIMATUM Fund Management and the service provider Halsey Group S.à.r.l.

Given that the new registered office with Halsey Group is located in a different municipality, the amendment of the Articles of Association of the Company is required in order for this transfer to be valid.

According to article 15 of the Articles of Association of the Company, such amendment is subject to the requirement of the unanimous vote of the shareholders, as an even more stringent obligation

with respect to the legal requirement of a qualified majority of 3/4 of the share capital according to article 710-26 of the amended law of 10 August 1915 on Commercial Companies.

1) The EGM of 8 January 2019

As a consequence of the above-mentioned facts, an EGM has been convened for 8 January 2019, with the following agenda:

1. *Transfer of the corporate seat to the following address: 153-155, rue du Kiem, L-8030 Strassen.*
2. *Amendment to article 4 of the Articles of Association further to the change of registered seat.*
3. *Miscellaneous.*

These resolutions are in the interest of PRIMATUM FCP and of PRIMATUM Management Company, and further in the interest of the investors and their investments.

By email sent on 7 January 2019, Mr. Varga announced his refusal to vote the transfer of the corporate seat, indicating that his vote would require the receipt of a multitude of documents related to the new Domiciliation Agreement and to the financial situation of PRIMATUM Management Company and of PRIMATUM FCP.

During the EGM of PRIMATUM Fund Management held on 8 January 2019 before the notary Hellinckx, Mr. Varga did not attend in person and was not validly represented by virtue of proxy to the EGM.

As the quorum requirements for voting the points of the agenda were not attained, the shareholders have decided to convene a new EGM with the same agenda and to bring to Dr. Varga's attention the importance of this decision for the Company.

The essential issue is that, in the absence of a decision of the shareholders to transfer the registered office to the new domiciliation agent, the Company finds itself without a relevant registered office despite a signed and valid domiciliary agreement and in breach of the above-mentioned legal provisions. Furthermore, the lack of a registered office represents a serious risk for the pending administrative proceedings against the CSSF and for PRIMATUM FCP in general.

Therefore, along with the Convening Notice to the new EGM of 23 January 2019, Mr. Varga was informed that the approval of all shareholders of the transfer of the corporate seat of the Company was required and that it is a crucial decision for the Company.

According to Mr. Varga's requirements, a copy of the Domiciliation Agreement with Halsey Group has been attached to the Convening Notice, as well as the legal provisions under Luxembourg Law concerning the requirement for a management company to have a registered office.

## 2) The EGM of 23 January 2019

The following EGM of PRIMATUM Fund Management was held on 23 January 2019, and, despite having been validly convened by registered letter received on 11 January 2019 and by email of 9 January 2019, Mr. Varga did not attend in person and was not validly represented by virtue of proxy to the EGM.

By email sent to the Notary Hellinckx on 23 January 2019, Mr. Varga claimed that he had received the Convening Notice only that day and that the EGM had thus not been validly convened, since he did not receive such notice 8 days in advance.

However, this claim was clearly made in bad faith as the track and trace report of the registered letter indicates that he had been informed of the arrival of the registered letter on 11 January 2019, but failed to collect such letter until 22 January 2019. Also, the Convening Notice had been sent on 9 January 2019 to the same email address ([tamas.varga@primatum.com](mailto:tamas.varga@primatum.com)) that Mr. Varga used on 7 January 2019 and on 23 January 2019.

Since Mr. Varga had been informed of the arrival of the Convening Notice with relevant notice before the date of the EGM, the EGM of 23 January 2019 had been validly convened and cannot be disputed. Such a behaviour confirms the refusal of Mr. Varga to act in the Company's interests.

In this context, the shareholders present at the EGM – Mr. Thomas Diosi and Mr. Csaba Nemes, representing 67,2 % of the share capital – have validly adopted the following resolutions:

### ***a) The first resolution***

The unanimous vote of the shareholders being necessary to the approval of the transfer of corporate seat, the EGM has resolved that the Company shall reserve all rights to hold Mr. Varga liable for his inactions, as such absence and omission to vote is detrimental to the interests of PRIMATUM FCP and PRIMATUM Fund Management.

### ***b) The second resolution***

The EGM has furthermore resolved by unanimous vote that the Board of Managers shall instruct, as soon as possible, the law firm Wagener & Associés to take legal actions in the name of the PRIMATUM Fund Management by way of summary proceedings before the District Court, in order to get an ad-hoc agent appointed by Court order, who would be empowered to act and to vote within an EGM in place of the absent shareholder.

The appointed ad-hoc agent will be responsible for voting within the next EGM on the basis of the following agenda:

1. *Transfer of the corporate seat to the following address: 153-155, rue du Kiem, L-8030 Strassen.*
2. *Amendment to article 4 of the Articles of Association further to the change of registered seat.*
3. *Amendment to article 12 of the Articles of Association in order to allow for the written resolutions of the Board of Managers to be validly passed by the vote and by the signature of the simple majority of the members of the Board.*
4. *Amendment to article 15 of the Articles of Association in order to allow for the decisions of the General Meetings to be validly passed by the approval of the shareholders representing more than half of the social parts of the shareholders present or represented at the meeting, under reserve of the legal provisions concerning the commercial companies.*

The reason for the amendment of article 12 is to facilitate the operations of the Board of Managers, while the amendment of article 15 is necessary in order to insure relevant operations within the Company, as well as to allow the appointment, the revocation *ad nutum* (which is of public policy) and the replacement of any member of the Board of Managers.

## **V. The revocation of Mr. Varga from his position as manager and the nomination of Ms. Bathory as manager of the Company**

### 1) The right of the shareholders to revoke a manager

Taking into account that the right to revoke a manager is of public policy under Luxembourg Law (“*ad nutum*” principle) and therefore cannot be restricted by any provision of the articles of association of the Company (hereinafter the “**Articles of Association**”). A vote within an ordinary general meeting of the associates representing more than 50% of the share capital is deemed relevant for the revocation of a manager of a S.à.r.l. and these requirements of quorum and majority cannot be strengthened by the Articles of Association.

### 2) The legitimate causes for the revocation of Mr. Varga

The causes for the revocation of Mr. Varga result from his actions, which endangered the corporate interest and the operations of the Company.

In July 2017, Mr. Varga has introduced to the other two members of the Board of Managers a proposal for two start-ups investments that appeared as involving enormous risks of losses further to a due-diligence.

Following Mr. Diosi and Mr. Nemes's refusal to approve such high-risk investment during a meeting of the Board of Managers of 3 January 2018, Mr. Varga ceased to perform his duties as compliance officer and manager of the Company. This absence has been noted in the Minutes of the meetings of the Board of 20 March 2018 and of 16 May 2018 for which Mr. Varga has been duly convened. His absence rendered the activities very difficult and even blocked the operations of the Board and of the Company.

Mr. Varga's unwillingness to cooperate with the Board in order to facilitate the operations of the Company has also been demonstrated by his refusal to attend two Extraordinary General Meetings with an agenda related to the transfer of the corporate seat of the Company.

Furthermore, Mr. Varga has sent several letters with letterhead of PRIMATUM to the CSSF, to the BIL as depositary bank of the Company, to Alter Domus, the former service provider and to the new domiciliation agent of Primatum Fund Management S.à.r.l., Halsey Group S.à.r.l., containing false statements and slanderous accusations infringing on the corporate interest of the Company.

The letters were sent by Mr. Varga in the name of Primatum, even though he had not been authorized by the Board of Managers to represent the Company to this end, which constitutes a violation of the Articles of Association, and signed in his quality of compliance officer, although he does not hold that capacity since 16 May 2018.

In this context, a General Meeting of the Company has been convened for 15 February 2019, with the following agenda:

1. Revocation of Mr. Tamàs Gyula Varga from his position as manager of the Company.
2. Review of the acts committed by Mr. Varga in the course of his mandate as manager towards the Company and decision on legal actions to be issued on the basis of these acts.
3. Miscellaneous.

Mr. Varga had been informed with relevant notice before the date of the GM of 15 February 2019, but failed to attend in person or represented by virtue of proxy.

The shareholders attending the GM – Mr. Thomas Diosi and Mr. Csaba Nemes, representing 67,2 % of the share capital – have validly adopted the following resolutions by unanimous vote:

***a) The first resolution***

The shareholders resolved to revoke Mr. Tamàs Gyula Varga from his position of manager of Primatum Fund Management S.à.r.l.

***b) The second resolution***

The shareholders resolved that, as a consequence of his damageable actions to the interests of the Company in his quality of manager, the discharge shall not be given to Mr. Varga.

Also, the Company has reserved its right to engage Mr. Varga's liability through civil or criminal legal actions.

***c) The third resolution***

The shareholders resolve to appoint Ms. Katalin BATHORY, born on 25 May 1972, who is the compliance officer of the Company since her appointment on 16 May 2018, as manager of the Company.

Subsequently, Mr. Varga's revocation and Ms. Bathory's nomination as member of the Board of Managers of the Company have been registered with the Register of Trade and of Companies of Luxembourg and the CSSF has been also be duly informed of his change of managers.

**3) The approval by the CSSF of Ms. Bathory's nomination as manager of the Company**

We have submitted to the CSSF Ms. Bathory's request for approval of her nomination as member of the Board of the Company, as well as the supporting documents.

**VII. The claim before the Summary Judge of the District Court for the nomination of an ad-hoc mandatary**

On 23 August 2019, as previously decided by the EGM of the Company, we have submitted before the Summary Judge of the District Court of Luxembourg a claim for the nomination of an ad-hoc mandatary who will substitute for Mr. Varga's and vote at the next extraordinary general meeting of the Company. Such vote will allow the completion of the transfer of the registered office, as well as the transfer to the new service provider, Halsey Group. By this claim, we have summoned Mr. Varga to appear before the Summary Judge during a hearing on 14 October 2019.

By ruling of the Summary Judge of 3 January 2020, our claim relating to the appointment of an external receiver has been approved and Maître Luc TECQMENNE has been appointed to replace Mr. Varga at the next extraordinary general meeting of Primatum with the agenda related to the transfer of the registered seat.

Further updates will be issued concerning the legal actions that will be taken before the District Court by PRIMATUM Management Company against Mr. Varga.

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**This legal update is issued for information purposes only and refers to pending litigations and disputes. It cannot be considered as a comprehensive analysis of the case.**

We draw your attention to the fact that all other aspects of this case are covered by confidentiality principles and attorney-client privilege and cannot be disclosed to any third party without our client's consent.

Any breach of confidentiality and/or any interference in this case would allow our client to seek for damages against the individual or the entity committing such breach.

Yours sincerely,

Donald VENKATAPEN