FUND FINANCE
LUXEMBOURG

DEBROISE LEGAL
Luxembourg Law Firm

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CLIENT BRIEFING

NAV FINANCING – LUXEMBOURG STRUCTURING CONSIDERA-TIONS

This briefing explores key structural considerations when implementing NAV financing involving Luxembourg entities, with a focus on security package design and the complexities introduced by co-investment vehicles.

INNOVATIVE FINANCING FOR MATURE FUNDS

NAV-based financing has emerged as a strategic solution allowing managers to access capital by leveraging the residual value of their portfolios, even in the later stages of a fund's life cycle.

At its core, NAV financing enables sponsors to continue creating value without diluting equity or burdening underlying portfolio companies with additional debt. Whether used for liquidity management, GP-led secondaries, follow-on investments, or fund restructuring, NAV facilities offer a flexible alternative to more conventional tools.

HOW DOES NAV FINANCING WORK?

NAV financing is typically extended at the fund or SPV level, where the loan is secured against the value of the fund's portfolio of investments. Unlike subscription lines - which are backed by uncalled investor commitments - NAV facilities are secured by the fund's net asset value, representing a more complex risk profile for lenders.

KEY BENEFITS FOR FUND MANAGERS

- liquidity without dilution: access capital without issuing new equity or undertaking capital calls
- strategic optionality: support follow-on investments, opportunistic acquisitions, or provide distributions to LPs
- portfolio optimization: de-risk portfolios by enabling recycling or secondary transactions
- extend the "bankability" of a fund: provide bridging liquidity for maturing funds pending portfolio realisations

TYPICAL COLLATERAL STRUCTURE

NAV financing requires a bespoke collateral package tailored to the fund's structure and strategy, jurisdiction, and asset profile (loans, PE, infrastructure...).

Whilst some strong sponsors may obtain unsecured NAV financing, most financings are secured. Common security elements include:

- pledge over holding company interests – with Luxembourg being used as single point of enforcement
- pledge over receivables/distributions (dividend distributions, exit or liquidation proceeds, and other distributions flowing from the portfolio to the fund)
- pledge over bank accounts into which distributions from underlying investments are received
- equity commitment letter from the fund

The structure is usually non-recourse to the fund manager and limited recourse to the fund, with enforcement rights confined to the pledged assets and/or secured cash flows.

DUE DILIGENCE CHALLENGES IN NAV FINANCING

NAV financing involves substantially more complex due diligence compared to subscription facilities. This stems from the need to assess both the legal structure and commercial performance of the portfolio.

Key due diligence considerations include:

LEGAL OWNERSHIP AND TITLE VERIFICATION

It is essential to map ownership chains and verify:

- which entity actually holds the collateral
- whether the fund or the co-investor vehicle owns the shares (or if they are held jointly)

CO-INVESTMENT AND CONSENT CONSIDERATIONS

A frequently underestimated aspect of NAV facility structuring is the potential impact of co-investment arrangements and side letters, which may impose restrictions on:

- pledging of interests: co-investors or LPs may need to consent to the pledge or may have rights of first refusal (ROFR) or transfer restrictions that limit enforcement
- change of control: some agreements treat enforcement of a security interest as a change of control event, potentially triggering cross-default or consent requirements
- information sharing: lenders often require detailed information on the underlying assets - co-investors may object to such disclosure absent a waiver or carve-out. This can delay or complicate due diligence and underwriting
- transfers and exit rights: certain co-invest arrangements grant veto rights; right of first refusal or drag-along/tag-along provisions that could complicate enforcement scenarios

Navigating these complexities requires thorough review of all fund and asset-level documentation – including LPAs, co-investment agreements, side letters, and intercreditor arrangements – to identify any restrictions and ensure proper structuring.

ASSET-LEVEL REVIEW

Lenders often require visibility into the portfolio companies' financials, debt structures, and performance forecasts.

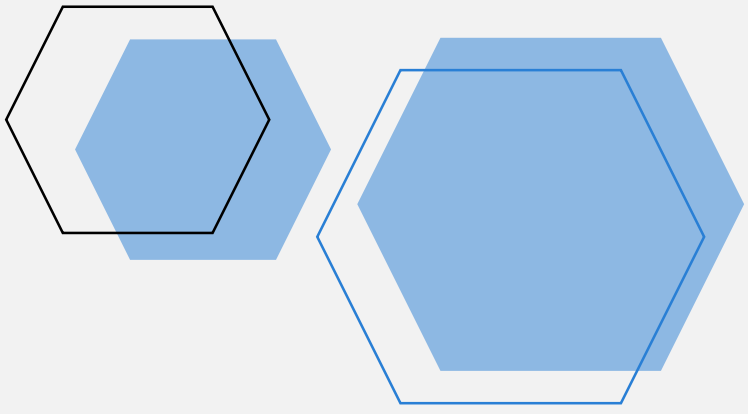
UNDERLYING DEBT AND STRUCTURAL SUBORDINATION

Many portfolio companies may have existing debt that ranks senior to NAV facility claims, requiring detailed analysis. If existing leverage exists at portfolio company level, lenders must consider intercreditor arrangements.

Waterfall arrangements must also be carefully documented to address priority of repayment, especially in multi-layered SPV structures.

VALUATION

Reliance on sponsor-provided NAV requires scrutiny of valuation methodologies and assumptions, often supplemented by third-party valuation agents.



BEST PRACTICES FOR NAVIGATING THESE ISSUES

KEY BEST PRACTICES

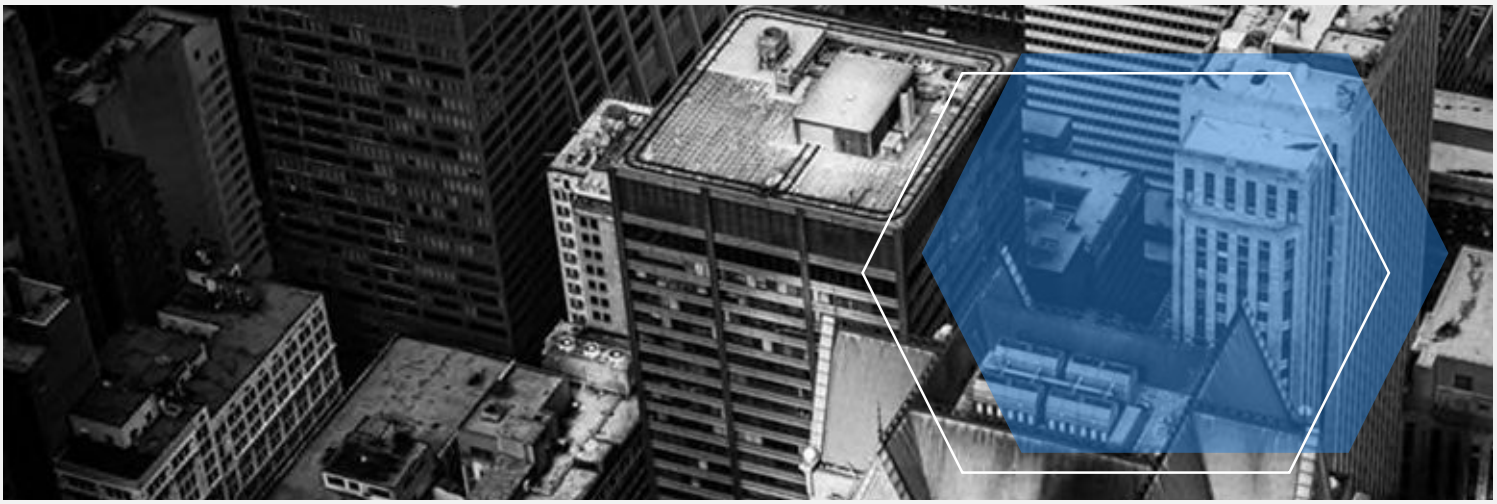
Best practices for navigating these issues include:

- fund documentation: incorporate explicit language in LPAs defining NAV facilities, setting clear limits on leverage, and outlining permissible uses. This helps prevent ambiguities and ensures all parties have a shared understanding
- SPV structuring: utilise a Special Purpose Vehicle (SPV) to hold the assets against which the financing is provided. This approach simplifies legal arrangements and can offer tax and regulatory benefits
- early legal review of LPA, side letters, and co-invest agreements (to the extent not confidential) to flag consent and transfer issues
- clean security structuring: use clean pledges over Lux SPVs and accounts, and avoid shared ownership where possible
- consents and waivers: obtain lender-specific waivers or consents from co-investors where needed
- collateral carve-outs: tailor security only around assets with clean enforceability and transferability

HOW WE SUPPORT YOU

Debroise Legal supports both borrowers and lenders in NAV financing transactions by providing:

- full-spectrum structuring advice tailored to the fund's investment strategy and jurisdiction
- due diligence coordination, including review of fund documents, co-investment agreements, and portfolio-level documentation
- drafting and negotiation of loan and security documentation
- strategic input on regulatory and enforcement considerations



Luxembourg Law Firm

ABOUT US

Debroise Legal is a Luxembourg-based boutique law firm dedicated to providing expert legal services in the realm of corporate, financing and restructuring transactions.

Founded by a seasoned lawyer with over 20 years of experience in the Luxembourg legal market, our firm is committed to delivering tailored solutions that meet the specific needs of our clients.

We take pride in being commercial, pragmatic and to the point.

WE ARE HERE TO MAKE IT HAPPEN.

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Corporate governance
Shareholder agreements
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