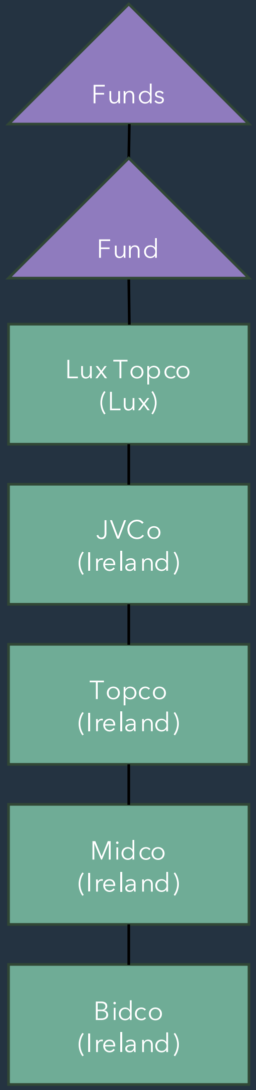
Project Charlie

The joint-venture acquisition of an Irish Target Group

Structure | Pre-Closing steps

Establishing the acquisition structure



Steps

1. The Funds establish a LP vehicle in the Caymans that pools together the investments from the Funds ("Fund Aggregator").
2. The Fund Aggregator incorporates a Luxembourg incorporated and tax resident company – Charlie S.a.r.l ("Lux Topco"), with minimum share capital of €12,000 split into 10 classes of shares of €1.2k each. Each class of shares will carry different economic rights.
3. Lux Topco incorporates four Irish incorporated and tax resident companies limited by shares - BTO Halo IVco Limited ("JV Co"), BO Halo Topco Limited ("Topco"), BTO Halo Midco Limited ("Midco"), and BTO Halo Bidco Limited ("Bidco"), with nominal share capital.
4. Lux Topco transfers its shares in Bidco to Midco.
5. Lux Topco transfers its shares in Midco to Topco.
6. Lux Topco transfers its shares in Topco to JV Co.

Notes

General

- The transfers in steps 4 to 6 will take place in exchange for nil consideration given the companies have no assets apart from minimal capital of €1, consequently, the FMV is expected to be nil or close to nil.
- We understand steps 1 to 6 will be executed prior to signing.
- Lux Topco is included in the structure as Fund has a holding company platform in Luxembourg and therefore uses Luxembourg holding companies to hold their European investments. Alphabet shares are commonly used in Luxembourg entities to provide flexibility with respect to cash extraction.

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UK

- JV Co will pool the investment of the Fund (investing through Lux Topco), the Co-Investors and participating Management.
- Topco is included in order to allow flexibility for any potential future financing purposes and structural subordination.
- Midco and Bidco are included as required by external lenders to facilitate the draw down of debt as shown later in this Report.
- Security will be granted to the secured creditors under the third-party acquisition-debt financing arrangements as a condition precedent to the availability of such financing, including by (i) Midco (on a limited recourse basis over its shares in the capital of Bidco and intercompany receivables owed to it (as lender) by Bidco (as borrower) and ii) Bidco, over its material bank accounts located in its jurisdiction of incorporation.
- Bidco is included to acquire the Target.

Luxembourg

- As the Irish entities will hold only minimal cash and share capital at the point of transfer, no adverse tax consequences should arise in relation to steps 3 - 6.
- There is a nominal fixed registration duty of €75 payable on the incorporation of a Luxembourg company and on any subsequent changes to the articles of association.
- As a Luxembourg-incorporated company, Lux Topco should be considered as a Luxembourg tax resident for Corporate Income Tax ("CIT"), Municipal Business Tax ("MBT") and Net Wealth Tax ("NWT") purposes to the extent its statutory seat and/or central administration is in Luxembourg.
- The share capital of a Luxembourg company with alphabet shares should reach at least €120k, with each class of shares having a minimum value of € 12k. In addition, based on current practice, the share capital of a Luxembourg company with alphabet shares should be commensurate to the investments made. In this respect, we usually recommend that equity be split 10% of share capital and 90% of share premium.
- The 10 classes of shares issued by Lux Topco should be carefully and properly implemented in the entity bylaws.
- We recommend reviewing the articles of incorporation of Lux Topco before execution from a Luxembourg tax point of view.
- Note that we have added comments on the updated practice related to the redemption and cancellation of a class of shares in the Post-Closing considerations.

Ireland

- No adverse tax treatment is expected in relation to steps 1 to 6.
- The newly established Irish companies will be considered Irish tax residents by virtue of their incorporation in Ireland. They should appoint an appropriate Board of Directors that will govern the companies from Ireland and carry out effective management and control from Ireland.
- Every company which is incorporated or begins a trading activity in the State must provide a Statement of Particulars to Revenue. The company must complete a Form 11F which needs to be filed with the Companies Registration Office within 30 days after the company begins trading.

Structure | Pre-Closing steps

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Ireland (continued)

- A Form TR2 will need to be filed with Irish revenue to register the Irish companies under the applicable tax heads.
- Please note that any fees paid in respect of the directorship of an Irish company are subject to Irish payroll taxes, irrespective of the tax residence of the director. Therefore, it will be important to consider the individual directors who will serve on the board of JV Co, Topco, Midco and Bidco, their relationship to the group, whether their role as director will be remunerated/unremunerated and the Irish payroll tax obligations for the Irish Stack Entities.

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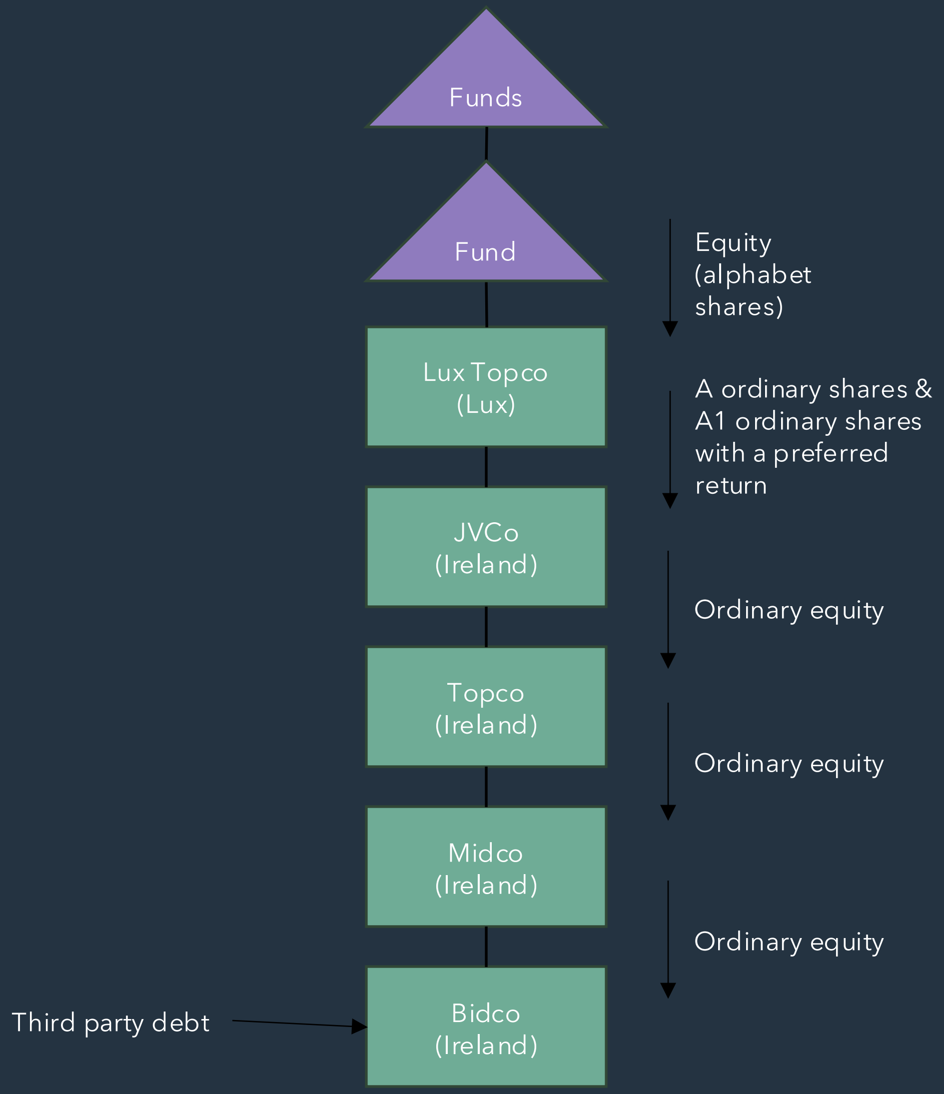
Funding the acquisition structure



Steps

7. Fund Aggregator subscribes for additional alphabet shares of €[x]m in Lux Topco.
8. Lux Topco uses the funds received in Steps 8 to:
   i. subscribe for A ordinary shares in JV Co, and
   ii. subscribe for A1 ordinary shares (carrying a preferred return) to be issued by JV Co.
9. The Co-Investors subscribe for B2 ordinary shares ("earn-out equity") in JVCo for cash consideration.
10. JV Co uses the funds received in Step 9 and 10 to subscribe for ordinary shares in Topco.
11. Topco uses the funds received in Step 11 to subscribe for ordinary shares in Midco.
12. Midco uses the funds received in Step 12 to subscribe for ordinary shares in Bidco.
13. Bidco draws down €240m of external debt.

Notes

General

- The 10 classes of shares issued by Lux Topco should be carefully and properly implemented in the bylaws of the entity.
- Third-party acquisition-debt financing arrangements made available to Bidco will include senior secured euro-denominated term debt split between tranches made available on a bullet and amortising repayment basis and a senior secured multicurrency revolving credit facility.

Structure | Pre-Closing steps
Funding the acquisition structure

General (continued)

- We understand that the Term Sheet contains an earn-out provision, which is anticipated to be implemented via the issuance of B2 Ordinary shares. The shares will be non-voting and shall carry no right to participate in any dividend or return of capital other than on an Exit, liquidation or winding up, to the extent payable. The value attributable to the B2 Ordinary shares on a future Exit, liquidation or winding up will be nil up until the MOIC threshold has been achieved per the Term Sheet.

Luxembourg

- There should be no adverse Luxembourg direct tax consequences on the subscription of the shares in JV Co.
- We refer to our previous comments on the share capital / share premium split for a company with alphabet shares such as Lux Topco.
- As Lux Topco fully finances its shareholding via equity, it should be considered adequately financed for its shareholding activity. Based on our review of the Investment Agreement, we would expect the ordinary shares with preferred returns to issued by JV Co to be considered as equity instruments from a Luxembourg tax point of view.
- On the basis that Lux Topco would only perform an exempt shareholding activity and that no debt is granted to Lux Topco, the Luxembourg interest limitation rules and the Luxembourg anti-hybrid rules are not expected to adversely impact Lux Topco.
- With respect to the Luxembourg CFC rules, the direct and indirect subsidiaries of Lux Topco which are tax residents outside Luxembourg could qualify as CFCs if their respective actual local CIT paid is lower than the CIT that would have been paid in Luxembourg if these entities were Luxembourg tax resident. However, provided the structure has genuine substance and there are no significant people functions in Luxembourg which relate to the assets / risks of the direct and indirect foreign subsidiaries of Lux Topco, no income inclusion should arise in Lux Topco under the Luxembourg CFC rules.
- Note that we have added comments on the application of the Luxembourg participation exemption regime to the shareholding held in JV Co in the Cash Flows (Repatriation) section.

Ireland

Stamp Duty

- There should be no Irish stamp duty on the subscription for ordinary shares or ordinary shares with preferred return in an Irish entity.
- Accordingly, there should be no Irish stamp duty arising on steps 9 - 13.

Tax grouping

- An Irish group relief group is formed between a parent company and its 75% subsidiaries. As such, Topco, Midco and Bidco will form a tax group with Target from Closing such that losses and excess interest expense arising in Bidco can be surrendered as group relief.

Structure | Pre-Closing steps

Funding the acquisition structure

Ireland (continued)

Interest deductibility

- Interest paid by Bidco should be deductible on a paid (rather than accruals) basis provided the conditions set out in Section 247 TCA 1997 ("S.247") are satisfied - please refer to the Appendix for relevant conditions.
- In summary, where the funds are used (immediately following drawdown) to acquire the shares of a trading group, such as that of Target, and provided that the mechanics of the funding and acquisition are carefully managed (which includes certain governance requirements such as common company directors of Bidco and Target), the interest payable on the third-party debt should be tax deductible.
- S.247 is a complex and cumbersome provision that has a number of anti-avoidance provisions contained therein and accordingly requires careful management both at day 1 drawdown and on an ongoing basis throughout the term of the loan.
- Broadly, in order to qualify for a deduction under S.247:
    - Throughout the life of the loan Bidco should have a material interest (i.e. more than 5% of the ordinary share capital) in Target;
    - Throughout the life of the loan Bidco and Target must have at least one common director from the date of acquisition of the shares (we usually recommend that two common directors are appointed); and The company acquired must be a company whose business exists wholly or mainly in holding and acquiring shares in a trading company. Alternatively, the company acquired / the company that funds are lent to must exist wholly or mainly for the purpose of carrying on a trade or the company acquired / the company that funds are lent to must be a company whose income consists wholly or mainly of rental profits.
- We understand that Bidco and Target have at least one director in common and on that basis, we would expect these conditions should be met and for it to be possible to qualify for a deduction under s.247, subject to ongoing monitoring of the relevant conditions set out in Appendix A2.
- A tax deduction is only available in respect of annual interest, therefore we recommend the third-party loan drawn down at step 14 has a term of 12 months or more. This condition is expected to be met, as the third-party debt is a long-term loan.
- Strictly Bidco should have a source of income in order to be entitled to claim a tax deduction under S.247 - this can generally be satisfied by earning deposit interest on a small sum of funds (minimal amount not prescribed) held on deposit in an interest-bearing account. The income generated must be earned in the same relevant period as when the 247 interest relief is claimed.

Structure | Pre-Closing steps

Funding the acquisition structure

Ireland (continued)

Interest deductibility (continued)

- There must be no recovery of capital by Bidco during the period of the loan or within 2 years prior to the loan being issued. Otherwise, the interest relief is disallowed/restricted in proportion to that amount. For completeness, distributions should not be considered a recovery of capital. Further details on the condition are provided in Appendix A2.
- To the extent interest paid by Bidco qualifies as a deduction under S.247, any excess interest not utilised by Bidco can be surrendered as group relief to other 75% related Irish group companies i.e. the Target Group entities.
- It is important to note that any qualifying S.247 interest not utilised in the period in which it is paid is effectively lost. Accrued interest will qualify for relief in the period in which actual payment is made.
- On the basis that Bidco will use the funds are provided by the third-party lender to acquire shares in Target, being a holding company of a trading group, and on the basis that the other necessary conditions are met, we expect the interest paid on the borrowed funds to be deductible under S.247.