Opalesque Roundtable Series '14

LUXEMBOURG

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Editor's Note

The largest global distribution centre for investment funds

Luxembourg is a small country. Most people from abroad who are not from Europe will probably have a hard time finding it on a map. But, with more than 2.4 trillion EUR in net assets under management of UCITS and 500 bn EUR in alternative investment funds (AIFs), **Luxembourg is the largest investment fund centre in Europe and the second largest in the world after the US. It is the largest global distribution centre for investment funds, with its UCITS offered in more than 70 countries around the world.**

Luxembourg had a private banking presence for many years, but things really kicked off when it was the first country to implement the 1988 UCITS directive and the passporting of investment funds. Today, Luxembourg has a 67% market share in terms of funds authorised for cross-border distribution, with Ireland being second with 19%. Luxembourg's dominance in the fund sector reached a point, in Europe at least, where people don't ask, "Why Luxembourg?" but rather, "Why not Luxembourg?"

Not Tax, but 'Political Will"

Sometimes people would think that certain tax aspects are the reason why investment funds or other financial players are using Luxembourg.

But in fact, when you look back, you will see that **Luxembourg was the first country to implement the UCITS directive in March 1988**, France the second 6 months later and then Ireland. On the other hand, there were also countries implementing UCITS 5 years later such as Greece or Spain. When you look at the total assets of UCITS funds in the respective domiciles today, you see that Luxembourg is first with circa 3 trillions, France second with one trillion less, and then Germany and Ireland with similar amounts.

That means already in 1988 there was political will which is clearly reflected in Luxembourg's positioning even 26 years later. If you look at tax, you see exactly the same results. One major EU Directive dealing with taxation of distributions between EU entities has been voted in July 1990 and 5 months later, Luxembourg was the first country to implement it.

While the financial services sector is the biggest employer and the contributor to the domestic economy, the government has still a strong commitment to further support and develop the financial industry, but also takes strategic steps to diversifying it. There are many examples, like the free port, LuxFLAG, the Family Office legislation, or the Tax Regime for Intellectual Property.

AIFM: A way out to getting squeezed by OECD's new Base Erosion and Profit Shifting (BEPS) measures

For fund managers wishing to tap into the EU market, the unregulated space is becoming narrower and narrower, and the rules governing private placements are becoming even more restrictive (when it is not forbidden outright). Why worry about 27 different sets of rules for private placement when you only need to comply with a single set? AIFMD offers this single this single set of rules. Most of the smaller and mid-size players may not know how easy it is to market their products cross-border, if it is approached in the right way. Luxembourg is also offers a large number of call third-party fund managers, companies who have obtained the AIFM (and/or UCITS) license and are able to host foreign asset managers by launching their products and market them throughout the E.U.

Many big U.S. PE houses already operate large holding and financing platforms in Luxembourg, with staff on the ground that range between 3 or 4 to 40 persons for some players.

Up until now, those firms have never crossed the bridge and actually implemented a fund here in Europe. Their fund is usually located in Cayman or U.S. U.S. fund managers will tell you "Well, we don't really need a fund in Luxembourg, we are just fine with our U.S. or Cayman fund." **Now, with AIFMD, those managers will have to select either select a third party AIFM or set up their own AIFM in the E.U.** The forthcoming Base Erosion and Profit Shifting (BEPS) measures will notably limit the use of double tax treaties. On the same day of the Roundtable meeting, the OECD released the first seven action plans to help countries to focus on specific aspects on taxation. One these seven actions, action six actually, is about "realigning taxation and the relevant substance to restore the intended benefit of additional standards and to prevent the abuse of tax treaties".

In few words, those potential measures could potentially limit treaty benefits if the entity asking for its application has not a principal business purpose. It might therefore be beneficial to consider Luxembourg as the AIFM jurisdiction as the asset manager would increase significantly its business purpose and hence be allowed to benefit from double tax treaties. Now may be an opportune time for a gap analysis and find out how much additional investment and substance such managers would need to put into Luxembourg.

The Opalesque Luxembourg Roundtable was sponsored by Maples Fiduciary and Eurex, and took place September 16th with:

1. Valerie Tixier, Partner, PWC
2. Johan Terblanche, Partner, Dechert
3. Philippe Burgener, Counsel, Elvinger, Hoss & Prussen
4. Christophe Diricks, Partner, Deloitte
5. Tom Davies, Regional Head, Maples Fiduciary

The group also discussed:

- Will a Luxembourg ISIN code really make a difference in terms of a fund's success in distribution?
- Why Luxembourg further expects massive growth, particularly from smaller and mid-size hedge fund managers, alternative investment funds (AIFs) and private equity
- 40 years of political stability make a difference
- Why having a depository bank as part of the hedge fund structure can be a plus
- Why new Chinese and Islamic banks setting up in Europe opt for Luxembourg
- Which new Luxembourg vehicles offer the same, if not more, flexibility as Anglo-Saxon limited partnerships?
- Satellites & more: Why for many years now Luxembourg has been ahead of the curve in terms of spotting new opportunities, especially on the high-value and value-add domains.

Enjoy!
Matthias Knab
Knab@Opalesque.com

Participant Profiles

(LEFT TO RIGHT)

Tom Davies, Philippe Burgener, Matthias Knab, Valerie Tixier, Johan Terblanche, Christophe Diricks

Introduction

Valerie Tixier
PwC

I'm Valerie Tixier, Private Equity Funds Leader at PwC Luxembourg. I have been working for Coopers/PwC for more than 20 years and I am delighted to represent the largest audit firm on the market with more than 2,500 people. In Luxembourg we are the sixth largest private employer.

Christophe Diricks
Deloitte

My name is Christophe Diricks. I am a tax partner at Deloitte where I am also in charge of investment management tax advice. With over 13 years of tax experience, I started my career in the M&A tax department of Andersen and subsequently Ernst & Young on focusing on cross-border tax planning and consulting for U.S. and UK-based groups investing in Europe. From 2007 until 2009, I was on Deloitte's Luxembourg desk in New York focusing on U.S. Alternative Investment Funds.

Tom Davies
Maples Fiduciary

My name is Tom Davies,I am the European Region Head of Maples Fiduciary Services, based in Luxembourg, which is a part of the Maples group and includes Maples Fund Services and Maples and Calder, the world's largest offshore law firm. I have been in Luxembourg for 25 years and have seen some quite amazing changes over that time. Previously, I was with BNP Paribas, JPMorgan and Morgan Stanley.

Philippe Burgener
Elvinger, Hoss & Prussen

My name is Philippe Burgener and I work with Elvinger, Hoss & Prussen, an independent Luxembourg law firm founded 50 years ago. We also have an office in Hong Kong with a resident partner and senior lawyers permanently on site. By headcount we are the second-biggest law firm in Luxembourg, currently employing 140 lawyers and 110 support staff. Our main areas of practice are banking, insurance, finance, asset management and investment funds, corporate and tax law, commercial employment litigation and arbitration. We are classified as Tier 1 in our main fields of activities by major guides such as Chambers, Legal 500 or IFLR 1000. Our philosophy is a continuous and uncompromising focus on excellence in serving our clients.

I joined Elvinger, Hoss & Prussen in 2007 having trained as a lawyer in Switzerland and worked in Zurich at the Swiss Stock Exchange and then with Vontobel Asset Management before coming to Luxembourg. My main area of practice is asset management and investment funds.

Johan Terblanche
Dechert LLP

I am Johan Terblanche, a partner in the Financial Services Group at Dechert LLP. I started my legal career in 1998 and have focused almost exclusively on investment funds, management companies, collective investment and regulated financial business since 2001. Dechert is a global specialist law firm – we are a truly international firm with more than 900 lawyers practicing out of our 27 offices located across the U.S., Europe, the Middle East and Asia, acting for clients from all around the world. With approximately 180 financial services lawyers working throughout the firm, Dechert is the only law firm with offices in the key fund jurisdictions of London, Dublin and Luxembourg.


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Matthias Knab Please share with use some insights or memories about the evolution of Luxembourg as a financial marketplace, and how it could achieve such a dominance in the fund sector?

Tom Davies: To best answer, I will provide a high level introduction of where our growth originally began. Whilst we had a private banking presence for many years, what really kicked things off for Luxembourg was being the first country to implement the 1988 UCITS directive and the passporting of investment funds. I was very fortunate to relocate to Luxembourg in 1989 and to be part of the first wave of foreign employees who experienced the growth which followed.

There have been incredible changes since then. We have had multiple different products come in and new sectors have developed, but the biggest change I see is not just in the assets and the number of funds, but in the sheer number of financial service providers that now operate in Luxembourg.

In the early 1990s, we initially saw the big U.K. and U.S. promoters take the lead on growth and distribution, but increasingly, continental European providers came to see Luxembourg as their investors preferred domicile for cross-border products.

So it all started with UCITS funds, venture capital, structured finance, and a host of other sectors have developed from that initial base.

Valerie Tixier When talking about the success of the Luxembourg financial marketplace, I can't help thinking of the year 1988. Though I wasn't with Coopers in those days, our former Managing Partner contributed to the design of the first UCITS law, i.e. the transposition of the UCITS Directive by the IML (the control authority in Luxembourg). On March 30, 1988, the UCITS law was voted in Luxembourg and a young auditor, named Luc Henzig, was standing around on the stairs of the Ministry, waiting for the final announcement, He then called the office from a public telephone - no mobile at that time - to spread the news. From that moment, so instantly, our firm launched publications to the market to say, “UCITS 1 is there!” The growth story of our firm started on that day.

Christophe Diricks: This is a good question, and fact not the first time I have been asked to answer it. Sometimes people would think that certain tax aspects are the reason why investment funds or other financial players are using Luxembourg.

But in fact, when you look back a bit as Valerie has now also done, you will see that Luxembourg was the first country to implement the UCITS directive in March 1988, France the second 6 months later and then Ireland. On the other hand, there were also countries implementing UCITS 5 years later such as Greece or Spain. What's interesting is when you look at the total assets of UCITS funds in the respective domiciles, you see that Luxembourg is first with circa 3 trillions, France second with one trillion less, and then Germany and Ireland with similar amounts.

So if you look back, you will discover that already at that time there was political will which is clearly reflected in the Luxembourg's positioning even 25 or 26 years later. When I speak to foreign or non-EU clients, that is exactly what I am explaining to them: it all comes down to political will in the first place. It's not by chance that the countries ranked by UCITS assets today is exactly in the same order those

countries implemented the directive.

Now, if you look at tax, you see exactly the same results. One major EU Directive dealing with taxation of distributions between EU entities has been voted in July 1990 and 5 months later, Luxembourg was the first country to implement it. This is a key competitive advantage as it gives to the investors the certainty about the tax treatment of dividends flows received/paid by/to a Luxembourg company.

Valerie Tixier What about the Netherlands ?

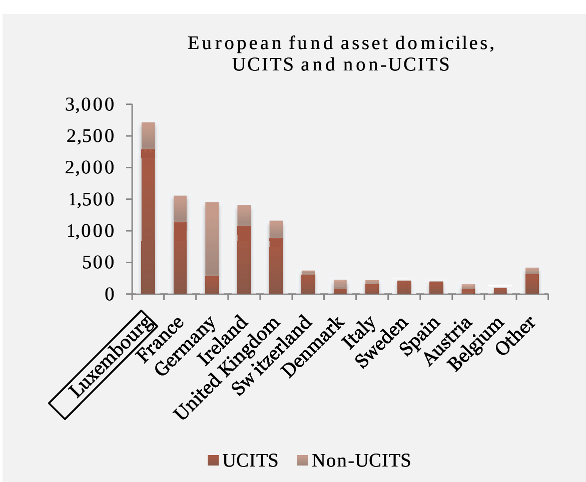
Christophe Diricks The Dutch are always within the 4-5 first movers in terms of implementation of Directives but still later than Luxembourg.

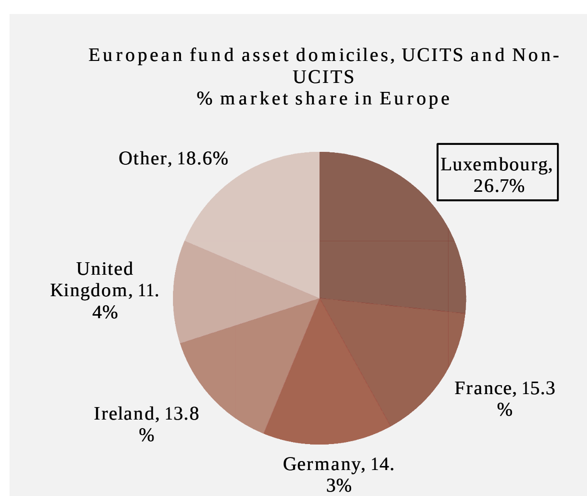
Christophe Diricks: One very important factor that drives the business is the political stability. As a tax adviser, I can observe that over the last 15 years the Netherlands had a number of government changes, from left to right, which of course can affect many things like how to spend and how to invest money. If you are coming from left and then four years later to the right side, then you have, sometimes, backwards-directed decisions in terms of tax policies.

In contrast, here in Luxembourg we have had for more than 40 years a government that was typically coming from the same direction with an uninterrupted focus on financial investments. Now we have a right-side government, so we should expect it also to be very open-minded for investors, for financial institutions and investments.

Overview of the European fund market

Luxembourg is the most popular location for Fund domiciliation



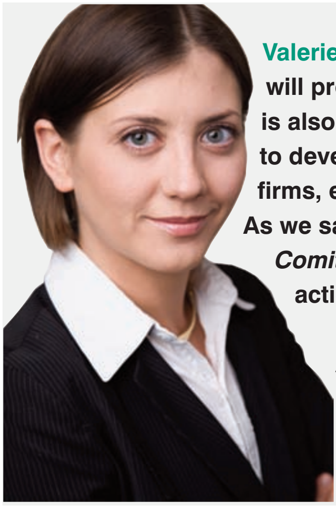


Source: EFAMA, Q1 2014

Philippe Burgener: I join Christophe in his statement in relation to the stability around Luxembourg. The last parliamentary elections resulted in the dominant party for the last decades being evicted from government, but even though we had a change of government, you could see that there is a constant position in relation to the financial

sector. Even when there are different parties in the government, be they at left, right or center of the political spectrum, they recognize the importance of the financial sector for the Luxembourg economy and they try to implement rules and regulations that are in favor of promoting Luxembourg as a financial center within the global community. Luxembourg has always been on time, if not among the first EU member states, in implementing the UCITS directives. With AIFMD, given the uncertainties surrounding several major issues, Luxembourg took a bit more time, but still managed to implement it on time.

This stability of government and adherence by all political parties to the same line in relation to the Luxembourg financial sector have resulted in the dominance of the Luxembourg financial sector as a destination of choice and a gateway for investments in Europe, be it through investment funds or other vehicles.



Valerie Tixier: Luxembourg is a small country. Most people from abroad who are not from Europe will probably have a hard time finding it on a map. Nevertheless, or maybe because it's so small, it is also very dynamic. All market players work together and have constantly been working together to develop the market. So not only the government, but also law firms, banks, fund managers, audit firms, etc. all work towards the same target, that is growing the financial market in Luxembourg. As we said, that work is continued by the new government and through institutions like the *"Haut Comité de la place financière"*, a high level committee mandated by the government to think about actions/modifications to undertake in our legislation to continue to promote the financial sector.

And despite all their achievements, they have been working hard non-stop for years to continue to develop and take actions like clarifying tax situations for certain vehicles to attract even more market players to Luxembourg.

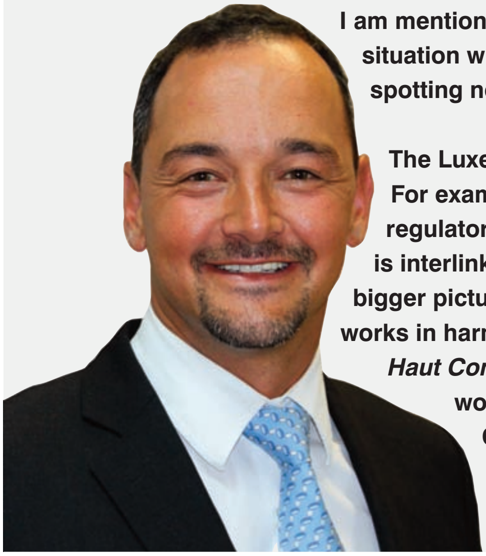
Johan Terblanche: For a number of years now, the government has also realized that they need to diversify our economy away from being so heavily dependent on financial services. However, that does not mean that the new government has abandoned the financial services sector, which is the biggest employer and the biggest contributor to the economy, but they continue to support and develop the financial industry, while also diversifying it. There are many examples of how they are trying to diversify, like the free port for instance, LuxFLAG, the Family Office legislation, the Tax Regime for Intellectual Property. There are many other examples and most of these turn into significant successes.

Tom Davies: Since the very large banks came here in the late 1980s and 1990s, they have grown enormously, adding human capital and systems, developing their own products and showing local organic growth. I think with AIFMD and a few other regulatory elements on the horizon, we are going to see a continuation of that innovation. These large banks especially need new products as they are seeing significant compression of margins in some of their traditional products. The low-interest rate environment forces them to find new services. With a stable environment and efficient legislation in Luxembourg, they are able to roll-out new funds or new products or new versions of these products very quickly, many of which may be more service-driven than asset-driven in future.

Philippe Burgener: Valerie mentioned the Haut Comité de la Place Financière which was also probably one of the driving forces behind the introduction of these new corporate forms that have now been introduced into Luxembourg law. The Société en Commandite Simple ("SCS") and the Société en Commandite Spéciale ("SCSp") are very similar to the Anglo-Saxon limited partnerships and offer the same (if not more) flexibility.

Johan pointed out, on top of the financial sector, the Luxembourg government is also strategically diversifying into high-value added sectors, notably in the IP and IT space. Luxembourg is probably one of the countries in Europe that has the best fiber optics or broadband connectivity which makes it a very attractive hub for things like cloud technology, cloud computing and related services.

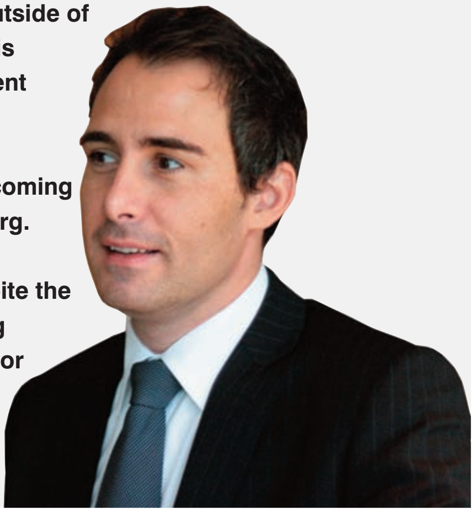
Johan Terblanche: In that respect it is also important to point out that Luxembourg had been involved with innovation for a long time now. For example, Luxembourg based SES is the world's second-largest telecommunications satellite operator by revenue and operates a fleet of 54 geostationary satellites able to reach 99% of the World's population. SES was formed on the initiative and support of the Luxembourg Government in 1985 and the Luxembourg State remains a major shareholder. In 1988, as Europe's first private satellite operator, SES launched its first satellite, Astra 1A.



I am mentioning that so that people don't think we they are looking at a "Johnny-come-lately" situation when in fact Luxembourg has for a while now been ahead of the curve in terms of spotting new opportunities, especially on the high-value and value-add side of things.

The Luxembourg *"Haut Commité de la place financière"* is a very important institution. For example, if you look at AIFMD or other developments in the fast changing regulatory environment that all of Europe and the world is facing, given that everything is interlinked these days, I believe it is crucial to have such an institution: it sees the bigger picture and does all the knock-on changes, ensuring that everything links up and works in harmony and that opportunities are exploited and pitfalls avoided. The role of the *Haut Commité* has been crucial in recent times. Even with AIFMD, there is still some work left to do, but if we didn't have this level of cooperation between the Haut Committee, which involves the government and key industry stakeholders, it wouldn't be possible to move as effectively, as quickly, or as accurately as we do in Luxembourg.

Christophe Diricks: We talked about initiatives of the Luxembourg government outside of finance, but even within the finance sector here you see a lot of development. This includes the setup of new banks, who nowadays have to comply with very stringent regulatory rules.

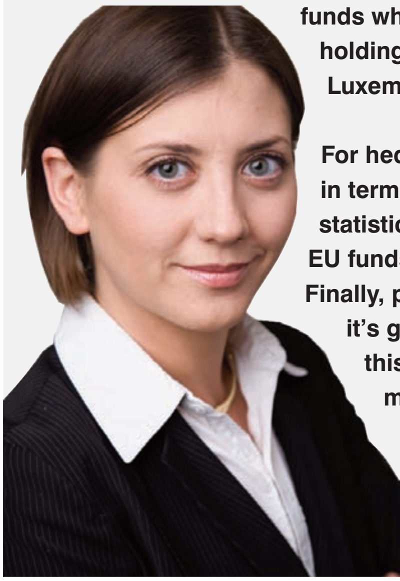


At Deloitte we have recently assisted the implementation of new Chinese banks coming to Luxembourg and of the first EU-Islamic bank which will be set up in Luxembourg.

That means we still see new players coming to Luxembourg like in banking, despite the fact that the bank business is a bit tougher these days with the European banking business facing new regulations. Still, Luxembourg is selected as the first place for those banks to set up in Europe, which is a very positive sign regarding the future. As a result, Luxembourg is increasingly becoming the European hub of choice for expanding banking groups in the EU.

Matthias Knab We have looked a bit at Luxembourg's history, where it is going and what contributed to its success in finance. Now let's add some details or statistics that help us understand how and where Luxembourg stands out in comparison to the other markets?

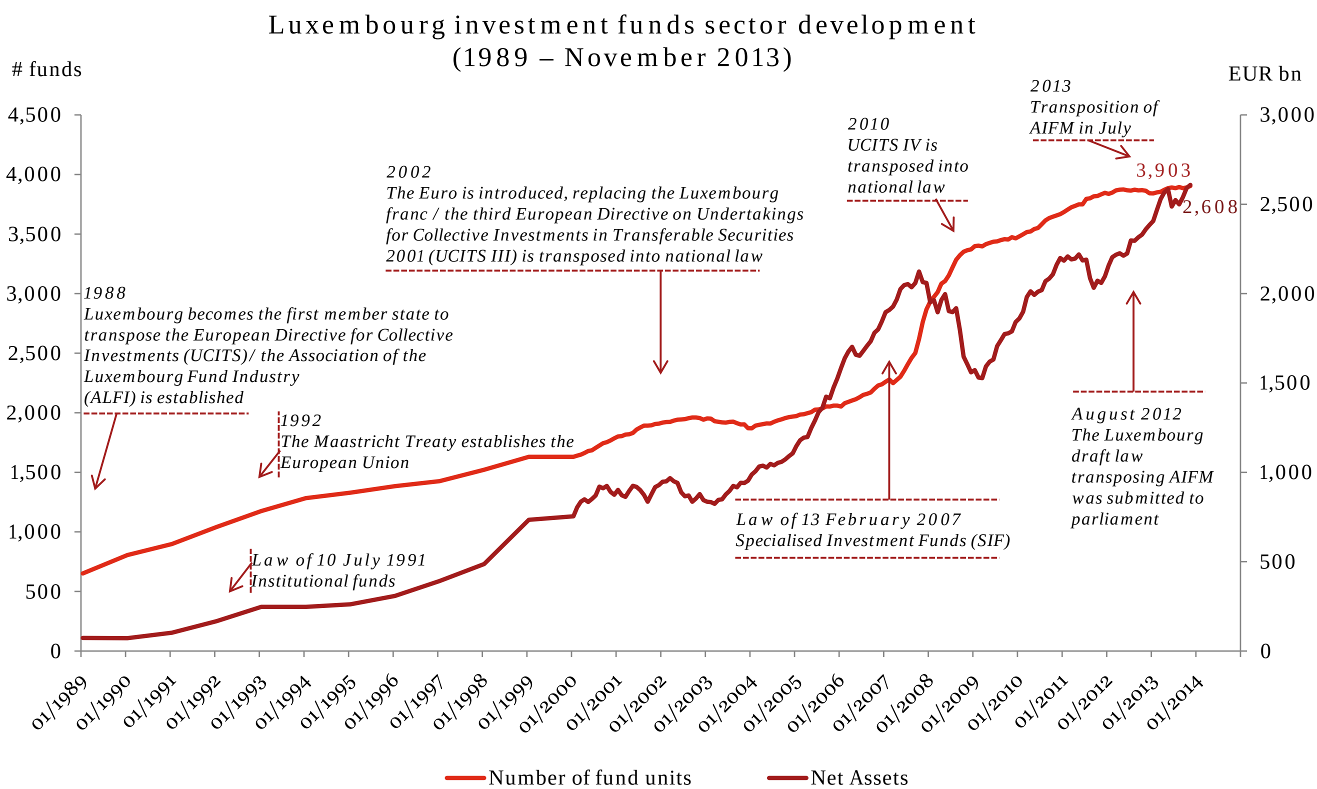
Valerie Tixier: You can draw up a very large number of statistics. Luxembourg is the European leader in terms of fund domicile in front of Ireland, which is our main European competitor in this sector.



Luxembourg stands nearly again at three trillion EUR of assets under management in terms of funds which are domiciled here. This leadership position holds true for UCITS, but is also holding true for alternative funds despite the image of Luxembourg. For instance, Luxembourg is the market leader in terms of real estate fund domicile.

For hedge funds; believe it or not, there are statistics on the market that do demonstrate that in terms of European hedge funds, Luxembourg is a dominant fund domicile. Ireland shows statistics with a very large number of hedge funds but most of them are offshore funds, not EU funds. So here again, Luxembourg was able to be successful in fund domicile. Finally, private equity is certainly the alternative segment where Luxembourg can still grow and it's growing fast with the new special limited partnership. We see a really good traction for this new vehicle (July 2013 law). Also in the whole AIFMD game, what we hear from the market, from our clients, is that Luxembourg as a fund domicile is now in the shortlist of the last two vehicles in a very large number of occasions against Scottish or U.K. partnerships and finishes first more and more often. I do foresee a bright future for the alternatives funds industry in Luxembourg even for private equity funds.

Luxembourg investment funds sector development

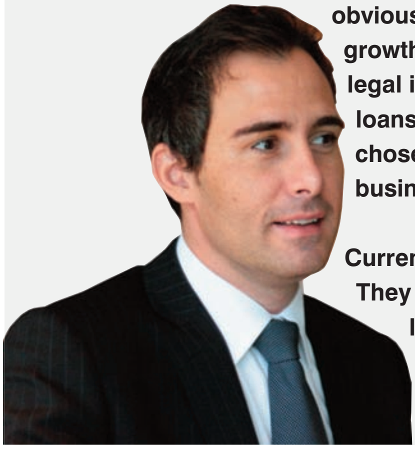


Tom Davies: **Many of the reasons why a manager or provider will come to Luxembourg are not necessarily tax-driven.**

I think about private equity in particular and our position in that market; many of these players operate with unregulated private vehicles but it is not always about tax. There is a well-established operating model for U.S. and U.K. managers with English documentation; there is also the familiarity with the jurisdiction built up over 20 years of expertise in this area.

So using Luxembourg is not about tax or any specific item; it is about buying into the brand. Even if clients operate through private companies which may not be subject to regulatory oversight, they are buying the Luxembourg brand and the stability that comes with it.

Christophe Diricks: **One very active sector is private debt. Private debt is enjoying a lot of demand from investors, obviously because it can offer quite interesting returns. SMEs are also looking for money for growth, and banks are more reluctant to lend. The key issue in private debt is actually a legal issue: do you need to have a banking license when for example you start originating loans? So let's look at the two countries, Ireland and Luxembourg, that typically are chosen for the domicile of alternative funds, and look how they cope with that new piece of business.**



Currently in Ireland, you cannot pursue loan originating activities without a banking licence. They are discussing it and maybe there is a project on the table in Ireland to change their law. In Luxembourg, the laws and policies are adequate enough so that a manager can set up his fund and do that business in Luxembourg, and of course, benefit from the double tax treaty network concluded by Luxembourg.

Johan Terblanche

The reason why people come to Luxembourg and why we are in so many pitches and why we inevitably end up being in the last two round when people consider structures for international transactions and funds, as Valerie said, and more often than not ending up being the jurisdiction of choice, is because we have everything required to effectively and efficiently conduct these types of business. More, everything works well together, is tried and tested and provides promoters and investors the required reach and comfort.

Johan Terblanche: **Our regulations are solid and investor-friendly. We have a regulator that is business-friendly, understands the differences and how to accommodate diverse business needs. We have legal vehicles of wide range, a massive menu of choices that work for different types of investors, different managers, and different strategies. The tax regime works and is tried and proven, and the government is still expanding the double tax treaty network, et cetera.**
That means we really cater for everybody, for the investors, for the managers, and for the returns, including on the tax side. Luxembourg is a very safe place with political stability and certainty from the legal and tax point of view. All these things together make our products a very solid proposition.
In fact, I believe we have reached a point, in Europe at least, where people don't ask, "Why Luxembourg?" – rather, "Why not Luxembourg?" So the discussion is upside-down now in our favor in that if you want to propose a fund promoter something other than Luxembourg, you will have to convince them in detail how and why it works better than Luxembourg. Naturally, that is a great position for us to be in.

Tom Davies: That is a very good point. Historically, U.S. managers may have preferred Ireland, however, on the other hand the investor that they are targeting will more likely be based in continental Europe and may be more accustomed to Luxembourg structures.

I was just going to touch on the point you made regarding Specialized Investment Funds ("SIF") and the growth of those funds. The law was passed in 2007 and we have now 1,500 or so SIFs out of a total of 3,900 total UCIs ("Undertakings for Collective Investment"). Fully 40% of the funds in Luxembourg are now SIF which is a big success story, particularly in private equity and real estate.

The Maples group is very prominent in both the offshore and onshore markets, we are particularly strong in hedge funds, with Maples and Calder having around 43% market share for Cayman investment funds. One of the challenges we see in Luxembourg is the ability to service those hedge funds which would traditionally opt for an offshore domicile.

In my opinion, if Luxembourg wishes to expand as a hedge fund domicile, we need to be competitive with offshore jurisdictions, which is a huge challenge. I think you are absolutely right, Ireland is a great fund location, but the majority of their hedge funds market is offshore domiciled funds and they focus on processing and servicing.

We spend a lot of time in the U.S. speaking with asset managers. As we all know, many of these managers hit the pause button about two years ago when considering the launch of a European fund, and this was primarily AIFMD related.

Our growth in the SIF has mostly come from the European manager community. Our challenge is to convince U.S. managers of the benefits of the SIF and in particular the possibility of distributing via passport, in the same ways we did with UCITS.

We particularly have an issue to convince smaller and mid-size hedge fund managers who may never have used Luxembourg before. Many of the world's leading hedge funds and private equity firms have been in Luxembourg for some time, going back to the venture capital days, but we have a challenge to convince those managers to come in from the unregulated markets into regulated products. I think the uncertainty over AIFMD is ongoing and until we fix that perception, we will continue to have an issue.

Most of the world's hedge fund managers, and in particular U.S. managers, choose the Cayman Islands as their domicile of choice due to its low cost, proven common law and so on. That model remains robust as the major hedge fund managers continue to see a ready pool of U.S. and Asian investors. With AIFMD instability, there was no need for them to distribute into Europe as a priority.

When the dust settles and there is a clear path for distributing AIFMD products from Luxembourg, I am confident we will see a large number of these smaller to mid-range managers coming to Luxembourg and that could be a big boost for our market. Although it will be a real challenge for service providers when the hedge fund market really expands in Luxembourg.

Johan Terblanche: Tom, you will agree that we also do have a number of true hedge funds and funds of hedge funds here in Luxembourg - you are very familiar with a few of them, but I have to say that I agree with you.

I think that, if you look at the success of the SIF regime specifically or alternatives generally in Luxembourg, if you consider the opportunities with AIFMD and the fact that we can leverage off that distribution or marketing capability with passporting – that is second to none worldwide, and a fantastic opportunity for Luxembourg.

There is no reason why U.S. managers shouldn't be doing their hedge funds here. In some ways, they will be "forced" to use Luxembourg more in order to access the European market, but if I look at the growth and the success stories we have already seen from here, then I have to say we can offer amazing opportunities.

But the truth is that we have been so successful in other things that we probably as a country, as a jurisdiction, haven't given the hedge fund space enough focus or enough support. I think that is changing as a lot of individual practitioners that we all know very well have now started to look at hedge funds more closely and establish a focus that is getting momentum. And I fully agree with Tom – once we get more of the small and mid-size U.S. managers, this will be a tremendous boost for Luxembourg.

Tom Davies I mentioned earlier the compression of the banking margins which also includes the ability of big fund providers to make any money out of UCITS. In my view, they are almost forced into servicing alternative products as these are higher margin and definitely a growth sector for banks and for Luxembourg.

Philippe Burgener: I think there is another reason why Luxembourg is so dominant in the funds industry. Contrary to other European countries, the home market is almost nonexistent. Therefore, in order to be successful, Luxembourg really had to jump into all these cross-border aspects, in particular in relation to distribution, which initially was possible only for UCITS.

With AIFMD, Luxembourg has the same window of opportunity to benefit from the know how that has accumulated here in Luxembourg in relation to cross-border distribution, servicing, etc. I am convinced that all of the players in the market can and will leverage on their past experiences in relation to cross-border activities in order to make alternative investment funds of all types as attractive and as successful as UCITS.

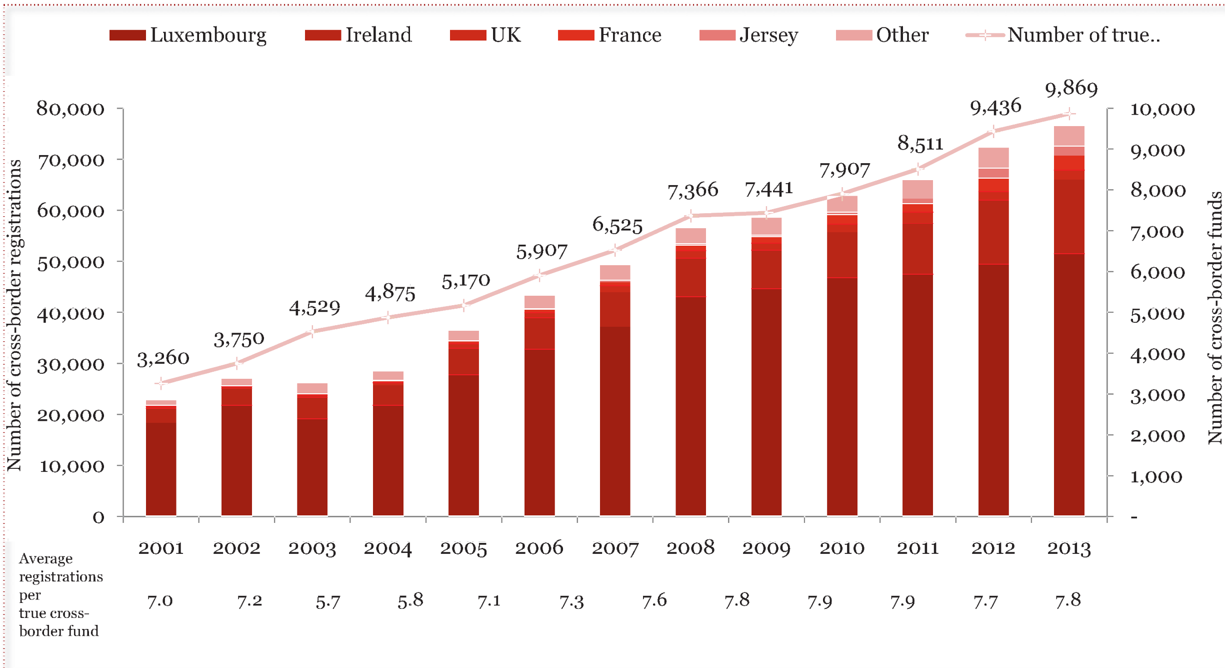
In this regard, let me share a small anecdote. We had a non-Luxembourg based client who had a non-Luxembourg UCITS. The fund had a very good performance but was only sold in the client's jurisdiction. He then wanted to passport it into other countries, but he didn't gain any traction. He came to us for advice and we told him quite bluntly, "Having a Luxembourg ISIN code will help in the distribution."

And indeed, once he had his Luxembourg ISIN code, his fund just exploded. So that is a very clear sign that there is a very strong Luxembourg brand in the fund space that people can build on. We (and I mean all Luxembourg players) need to make sure AIFs will be as successful in the alternative space as UCITS are.

I also believe that one of the bigger advantages of Luxembourg, especially when compared with Ireland, is that Ireland is essentially a servicing center where you have Fund administration and maybe custody, but not necessarily the fund's domicile. In Luxembourg, as Johan said, you have everything together. A manager can come to Luxembourg and in one day and meet all of his service providers in one go. Circling back on what Tom said, U.S. managers did hit the pause button because of the uncertainty surrounding AIFMD (in particular the rules on remuneration). However, coming closer to what we call the "intermediate period" of AIFMD (i.e. the possible opening of the EU passport to non EU AIFMs), we are seeing that those managers that had hit the pause button still haven't pushed the play button, but are cautiously advancing frame by frame. The simple fact is that, for those who wish to tap into the EU market, the unregulated space is becoming narrower and narrower and the rules governing private placements are becoming ever more restrictive (when it is not forbidden outright). Why worry about 27 different sets of rules for private placement when you only need to comply with a single set? AIFMD offers this single set of rules and Luxembourg is a destination of choice for those that wish to tap into the European investor base.

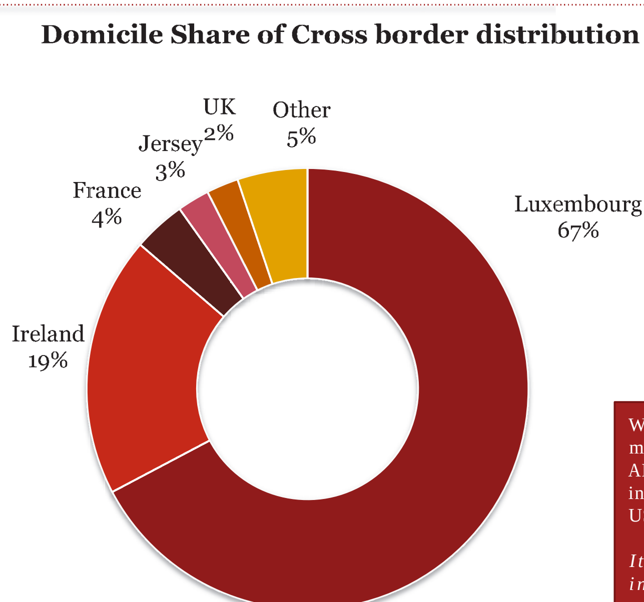
Cross-border fund distribution

Number of cross-border funds and registrations



Cross-border fund distribution

Domicile share of authorisations for cross-border distribution



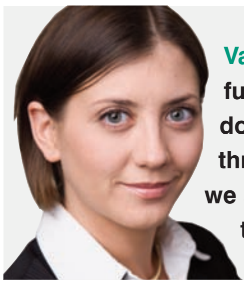
Top 5 destinations of leading fund domiciles

Luxembourg	
Registrations in:	
Germany	4,506
Switzerland	3,790
Austria	3,750
France	3,324
Netherlands	3,091

With more than 2.4 Tr EUR in net assets under management of UCITS and 500 bn EUR in AIF, Luxembourg is the largest investment fund centre in Europe and the second largest in the world after the US.

It is the largest global distribution centre for investment funds, with its UCITS offered in more than 70 countries around the world.

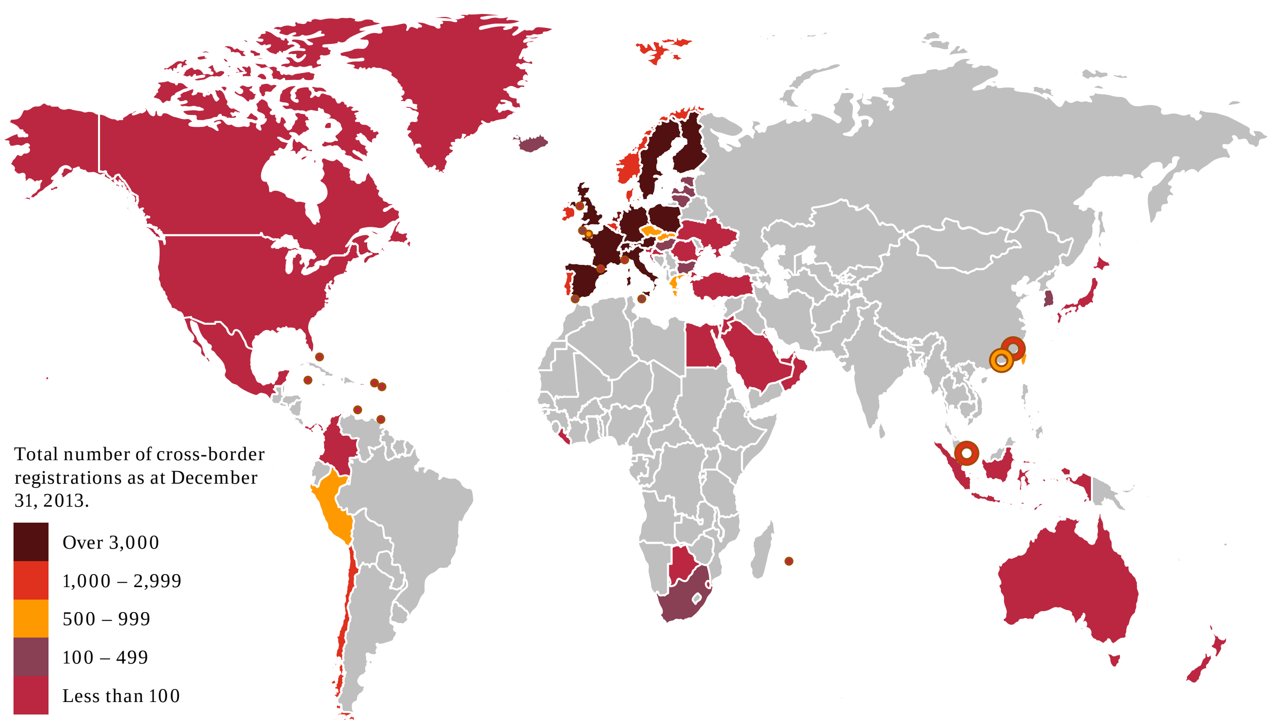
Johan Terblanche: Philippe was making a good point regarding Luxembourg's focus and strengths when it comes to cross-border distribution, and that we can leverage off that tremendously well in the context of AIFMD. We haven't mentioned it yet, but the fact that we are also multilingual and we can serve all of Continental Europe plus the Anglo funds here without any hitch in just about every organization that operates here is also a major plus, for us and in the end our clients, as it also helps with opening up markets to us that other jurisdictions simply may not be able to access that easily.



Valerie Tixier: Correct, and that is also reflected in some fund statistics. If you look at the 50 largest fund managers globally, 40 of them market and distribute UCITS cross-border out of Luxembourg. The dominant place of Luxembourg is a fact. Such managers do not only distribute theirs funds in EU through the passport, but also distribute them around the world as UCITS has become a trademark. If we are able to make the most of what was achieved with UCITS and replicate this success with AIFs, then Luxembourg will be very successful in the future.

Global fund distribution
Hotspots for distribution

The heat map indicates the number of cross-border funds registered for sale in a particular country at the end of 2013 (see table "target markets").



Source: Lipper LIM and PwC analysis, 31 December 2013.

PwC 2014

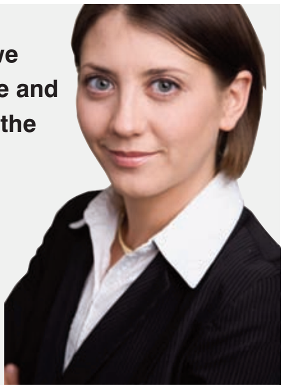
Tom Davies: On that distribution point, what is very interesting of course is that traditionally, hedge funds – at least the very large U.S. firms – typically distribute to certain segments, they pick and chose the markets they want to operate in. For example, they may target a specific group of investors, say in Switzerland or the U.K. I think once they understand that they can also passport into multiple markets relatively easily, that will be a game changer. The bigger groups already have these platforms, but the growth segment will be in the US$1-10bn tier. They will want to scale up and at the same time drive down expense ratios.

Johan Terblanche: **Let's say you decide you want to market into Germany and assuming you've got the right fund or product for your German investors, then basically all that you need under AIMFD, once you're authorized, is to send a notification to the regulator, and off you go marketing.**

That is a huge opportunity, and I agree the challenge that Tom is pointing at is that probably most of the smaller and mid-size players don't really know how easy it is to market your product cross-border, if you approach it in the right way. That is probably a job for us all, including the government and organizations like ALFI and Luxembourg for Finance to spread the gospel, and while that is certainly done already to a certain degree, the effort must continue...

Valerie Tixier: **Luxembourg is certainly also one of the countries with the largest number of what we call third-party fund managers, i.e. companies who have obtained the AIFM (and/or UCITS) licence and are able to host foreign asset managers by launching their products and market them throughout the E.U.**

I don't have recent statistics on other countries but we have over a hundred and thirty authorised AIFM in Luxembourg and there are another hundred applications being treated as we speak. A number of them are third-party fund management companies that are here to assist all these foreign fund managers to set up operations.



Tom Davies: **That is very true Valerie, I think there are around 180 management companies ("ManCos") in Luxembourg, and what is interesting is that this management model has actually moved to be the domain of the service provider. That means that the mid-tier market of hedge funds, which is where we foresee the next surge of growth, may not have an E.U. manager, but they might leverage off the service provider model to give them a turnkey solution to set up the fund in Europe and distribute through the passport.**

Valerie Tixier: **To continue on our toolbox, one really interesting new product we have in Luxembourg, and Philippe alluded to that earlier, is the special limited partnership, the so-called SCSp. For an AIFM somewhere in the E.U., this new limited partnership in Luxembourg is an extremely rapid go-to market solution because he can set it up a new fund as a non-regulated SCSp from a Luxembourg perspective, but it can still be an alternative investment fund (AIF) because of the manager's AIFM status in London, or wherever he may be. The only time to market he will encounter is the time required to write the Limited Partnership Agreement and structure his product. In such a set-up, there is no need for any Luxembourg regulator's approval.**

Philippe Burgener

What Valerie said applies basically to any non-regulated AIF which can take any of the legal forms available in Luxembourg ranging, from the traditional Société Anonyme going all the way to the SCSp. As long as you don't set it up as a fund, it can still qualify as an AIF and the only thing that you effectively need is an AIFM (generally a third-party AIFM). But if it's set up by a larger private equity or hedge fund house, they can of course use their in-house vehicles.

Valerie Tixier

When you look at the SCSps being created in the market, we really start to see some large U.S. Private Equity and Hedge Funds houses using this type of product and set-up. As of mid-September 2014, there were close to 300 SCSp in Luxembourg.

Tom Davies: **The one thing that Luxembourg needs to be careful of is cost. Particularly for our growth sector, the hedge fund community will find a very different model to running a fund in some of the offshore locations.**

The expense of running a hedge fund here will be higher than the offshore model. We cannot compete directly on cost given our requirement to have a depot bank, auditors and all the different service providers that are required. What is in favour of Luxembourg, despite being fairly high cost, is that European investors will buy the product, especially the large European institutions looking for stability, transparency and oversight.

One trend that we have seen at the Maples group, both at Maples Fiduciary, Maples Fund Services and Maples and Calder, is the trend towards managed accounts in the form of single-investor funds. This proves that these very large institutional investors are prepared to pay higher costs, particularly in regards to running a fund which they want ring-fenced from other funds. In this case, the investor is not only buying the asset manager's performance but also the wrapped product itself, which might be a little different to what you see elsewhere where the traditional hedge fund investor is primarily focused on buying the manager's performance.

Philippe Burgener Most institutional investors have allocation criteria when doing their investments. And obviously, the portion that they can allocate to unregulated vehicles is smaller than to regulated vehicles which include unregulated AIFs having appointed a full-scope AIFM.

Tom Davies And that is steadily diminishing, Philippe.

Philippe Burgener And diminishing. Of course, a manager faces costs in "on-shoring" his offshore vehicle into a regulated fund with a depository bank, auditors and so forth. But coupled with that comes the distribution possibilities from Luxembourg as a gateway to tap the institutional market in Europe and elsewhere.

Valerie Tixier I just wanted to remind you that even before AIFMD came, in Luxembourg for our SIFs and SICAVs we already had the obligation of having a custodian bank servicing and overseeing these products and their assets, whereas in all other jurisdictions in Europe you didn't have that obligation to have a custodian bank. Hence, we already have the expertise, operations, procedures and interfaces between the players. We don't need to build that up, and that is also giving us a certain advantage compared to other EU jurisdictions.

Tom Davies: **That is a good point Valerie and actually one of the single biggest cost challenges we have – explaining to hedge funds that having a depo bank as part of the hedge fund structure can actually be a plus. A typical hedge fund manager can start up offshore with a prime broker, an auditor, a board of directors and a fund administrator, and they are in business very quickly.**

If we compare that model to Europe, with the addition of a ManCo, depo bank and additional oversight these bring, this can confuse hedge fund managers looking for a simple operating model at low cost. This really concerns hedge funds and I find it a challenge to explain that this model works efficiently. European investors will pay for the additional layers of control and the cost that comes with that. The way hedge funds have traditionally worked is different; they rely primarily on their performance to sell their funds. In Europe, the convergence of AIFMD and UCITS funds in terms of an operating model means managers need to build a platform which investors want to buy, not just their historical performance.

In Luxembourg, the role of the depo bank has been made very clear these last

few years by the CSSF. It is not just about safe-keeping as a custodian may perform; it is about supervision of assets. A depo bank needs to know how an asset has been bought, where it is held and its availability. Coming from a banking background I can see the added value; your depo bank might flag investment in an asset which they perceive as being risky. I think Madoff changed this landscape massively and depo banks help ensure that what looks like a great investment will actually be available at sell time. There is definite value in the due diligence performed by depo banks and over time, hedge fund managers will recognize that, particularly fund of hedge fund managers.

Johan Terblanche: **I think you are probably seeing the same reactions from the managers as we do when they are faced with these new requirements and paradigms of doing business, which is that in such a period of uncertainty, or while the market is still undergoing such an educative push, a lot of those smaller managers will do their traditional set up with a single portal and start running money.**

And as soon as they get to a certain size and they start looking outside for money, i.e. Europe, maybe Asia, maybe Latin America, then we set up a side-by-side strategy in the form of a European fund, and the manager then runs the two in parallel.

And while probably most of these European funds that run in parallel to an offshore fund will have a slightly different performance because of the slightly higher cost base of the European fund, it does work extremely well. I think in future we might see managers thinking about consolidating their funds into one structure when they may reach a certain size where those few basis points reach a ceiling. They might decide not to because they have investors who are very comfortable with their traditional offshore structures and prefer to stay out of Europe, but I have certainly seen this happening, and I am sure that you have too.

Tom Davies Of our 1,500 SIFs, it is hard to put an exact number on those that are pure hedge funds, but of our 350 billion Euros of total assets in SIFs, it suggests the average size of a SIF in Luxembourg today is about 200 million Euros. That amount does not have the scalability to succeed as perhaps its competitor funds in offshore markets, being multi-billion dollar funds running at far lower expense ratios. What the manager is selling might be slightly different, but we need to make sure our running costs get closer.

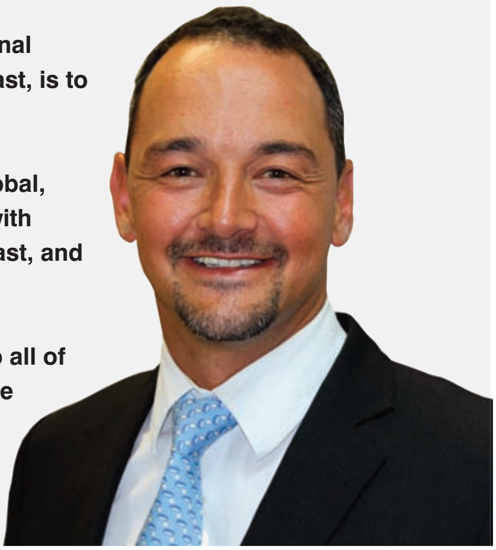
On the positive side, 200 million Euro is just an average number but when we compare that to the size of an average UCITS fund, which would be many multiples of that, then we certainly have plenty of opportunities for growth.

Matthias Knab You referred a number of times that some things still need to be resolved or settled around AIFMD. Can you elaborate more on those aspects? What needs to be done, how and by when? When will the dust settle?

Johan Terblanche: **The first point to note is that people's perception of AIFMD is different depending on the region they are located in, and I'll go back to that in just a second. Secondly, perceptions have changed from either skeptical or downright anti to becoming more in favor or at least tolerant of it, so generally perceptions have developed positively.**

European investors of course live in the E.U. and are familiar with how Europe works, so they are generally more used to accepting what governments in the E.U. tell you or impose on you from a regulatory point of view. So, when we speak to continental Europeans generally, there was maybe a resignation first but then an acceptance quite early on. When you speak to the Anglo funds in the U.K., they are somewhere in between. They were very anti and slowly but surely they are coming across as well. When you speak to the Americans, they don't like it, they don't want to see change, they want business as usual and in many ways it's too far away for them to be real, it is extraterritorial and not as easily accepted. I'm not saying that anybody is right or wrong, but you could of course argue that the U.S. actually started this sort of exportation of legal and regulatory requirements.
Looking ahead, I believe that the period until say mid-2015 will be crucial in terms of practicalities, the aspects of implementation, and so on. I believe that slowly but surely, everybody including the Americans, are coming around to the idea and realizing that you cannot ignore AIFMD, it's not going away.

In fact, a solution which is probably going to be the base solution for international managers who want to have access to European capital, in the short-term at least, is to set up a European fund. If you don't, then it's a different story altogether.



Another point to note is that, as Valerie said, the reach of European funds is global, and UCITS is a perfect example. The expectation is that the same will happen with AIFMD when it comes to alternative funds. And it is happening already in the East, and in some countries in Latin America too.

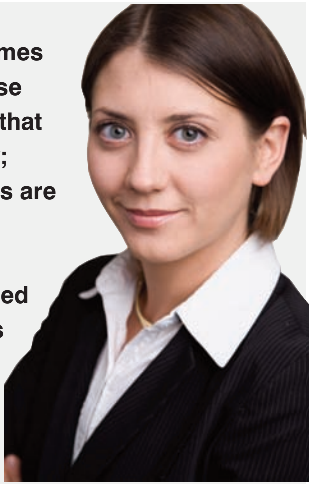
When they hear SICAV or SIF, it provides a big tick in the right place already, so all of these things are moving in the right direction. The American asset managers are coming around. As you may be aware, my firm is very strong in the U.S., we have very large American clients and we are doing more and more work for those who have decided, "We want a piece of the capital of Europe."

Philippe Burgener: Some of the things where we still need more clarification is in relation to the distribution and the selling of funds that qualify as AIFs (i.e. what exactly constitutes capital raising). Meanwhile, the obligations that are imposed on the Alternative Investment Fund Manager are relatively clear. There, the dust has settled and people are moving forward now and trying to take advantage of all the possibilities offered.

But the rules on distribution and the selling of alternative investment funds in Europe are not yet very clear in the sense that there are concurrent regimes. For example, on the one hand you have the possibility of passporting an AIF and selling such AIFs to professional investors, but on the other hand you still have national private placement regimes for selling the same AIF to other types of investors. These regimes may differ substantially from country to country.

In that regard, I can understand the alternative fund manager's confusion as to how they need to go about selling their product, but probably by 22nd of July 2015 and possibly earlier when the first set of guidance from ESMA will come out on how this issue is going to be dealt with for the period of 2015 to 2018, it should get much clearer for alternative fund managers on what they can do and what they can't do in relation to selling of alternative funds.

Valerie Tixier: Rather than referring to uncertainty, Philippe, I would refer to the diversity of regimes because, as you pointed out, the E.U. landscape for private placement distribution is very diverse and different from one country to another, and to a certain extent still evolving. Today it is clear that you can still market without having a passport on a private placement regime funds in Germany; whereas a year ago, you would have heard that it is not possible any more. However, constraints are much higher than in a pre-AIFMD world.



In my view, what will become crucial is when national private placement regimes will be abolished which may happen as early as 2018. If they are abolished, we'll then see who will be the players having made the right choices at the right point in time and will be ready to continue marketing their product into E.U. Those who will be ready will have a clear first mover advantage.

Tom Davies: Matthias asked when will the dust around AIFMD settle? I would like to make two points on that.

The first point is that we need to have a clear, established operating model understood by the manager community, who need to be more comfortable with having a ManCo, depo bank and clarity on distribution. At the moment we have competing operating models, such as setting up a European AIFM or using a ManCo. There needs to be choice, but managers do not see the most efficient set-up for their own circumstances yet. On the SIF, there have also been some clarifications needed on the updated law of last year, so I think it is been a little unclear for investors exactly how they should structure their fund.

The second point is more macro. There is an abundance of hedge fund investors out there at the moment. And even if 80% of investment goes into the top groups, the fact is that most managers can tap into non-European investor capital at the moment, be it in Asia, the U.S. or elsewhere. However, when markets calm a little, when investor interest might dry up, there will be a point where hedge fund managers will be fighting even harder for investor monies, for reasons of scale or lowering expenses. If the U.S. or Asian investor pool weakens, then passporting across all E.U. countries may be an excellent avenue to seek new investors and limit the risks of investor flight or zero growth.

Matthias Knab What is coming next? Any comments UCITS V or UCITS VI?

Philippe Burgener: The UCITS V directive has been published in the official journal so the implementation period of 18 months has started to run. UCITS V does not represent a major change and will not really impact how UCITS are managed as it does not include any new investment possibilities or investment restrictions. It's more of technical directive in the sense that it essentially clarifies the UCITS custodians' roles, duties and liabilities, bringing it in line with the AIFMD regime.

Christophe Diricks: Coming back to AIFMD again, when you talk to U.S. management firms about it, it can be painful sometimes. However, in the alternatives space, so not only hedge funds but in private equity and real estate, many U.S. players are using Luxembourg without deploying a regulated fund. Many big U.S. PE houses have large holding and financing platforms here and staff on the ground that range between 3 or 4 to 40 persons for some players.

Up until now, those firms have never crossed the bridge and actually implemented a fund here in Europe. Their fund is usually located in Cayman or U.S. U.S. fund managers will tell you “Well, we don't really need a fund in Luxembourg, we are just fine with our U.S. or Cayman fund.”

Now, with AIFMD, those managers will have to select either select a third party AIFM or set up their own AIFM in the E.U. They will usually select the country where they already have some presence. That means they will certainly apply for the AIFMD license where their manager is located, with may not be only Luxembourg, but also a place like the U.K.

But what these firms will also have to consider is the forthcoming Base Erosion and Profit Shifting (BEPS) measures which will notably limit the use of double tax treaties.

As it happens, today, as we are having this Roundtable, the OECD released the first seven action plans to help countries to focus on specific aspects on taxation. And one of these seven actions, the action six actually, is about “realigning taxation and the relevant substance to restore the intended benefit of additional standards and to prevent the abuse of tax treaties”.

In few words, those potential measures could potentially limit treaty benefits if the entity asking for its application has not a principal business purpose. It might therefore be beneficial to consider Luxembourg as the AIFM jurisdiction as you would increase significantly your business purpose and hence allow you to benefit from double tax treaties.

Tom Davies: I think you are absolutely right. What is interesting about your point is that all of these very large private equity and hedge fund names are actually present in Luxembourg but this is not publicly known. We had discussed this move from unregulated to regulated in depth earlier today.

Private companies may or may not come under the BEPS radar in the eventual roll-out, but this is very much a hot topic at the moment and it does look as if all corporations will be affected, if all countries buy-in to this process of course.

In the short term, there is a definite trend toward adding more substance in the country of tax domicile, so we are seeing private companies putting in place larger presences with tax specialists, accounting, operations and managers, even conducting officers of unregulated entities, if you like, being hired now.

This is positive for Luxembourg as these groups are mostly hedge funds or private equity managers, so we hope they will switch focus from target asset structuring and look to create funds from which to distribute products as well. I think that will be a definite trend in the coming years.

Christophe Diricks: The question for all these firms is what exactly is the gap? I think they need to do a gap analysis and find out how much additional investment and substance do they need to put into Luxembourg. They already have something here, and so the question is basically how much do they need to add to be compliant with AIFMD?

So essentially, AIFMD is a great opportunity to meet future tests regarding these BEPS measures which are more tax-driven. Therefore, I believe this is an issue that should also be raised with any player who is looking to get an AIMD license somewhere.

It is not mandatory to have an AIFM in a certain country. You can set up your AIFM can have one AIFMD in the U.K., in France, or in Luxembourg. However, people should be aware that if they want to continue to leverage their platform in Luxembourg, there would be a benefit to having an AIFM in set up Luxembourg from a tax point of view.

Having said that, players are slowly moving to Luxembourg and are more expected to come in the future.

Philippe Burgener: You are right. If someone has an AIFM duly regulated in any European jurisdiction it will probably make it hard for the authorities to claim that there is no substance, because one of the requirements to set up an AIFM is that you have sufficient substance. Having a fully licensed AIFM with the necessary substance under AIFMD may make it difficult for the tax authorities to claim that there is no substance in such an AIFM.

One of the major steps that was taken in Luxembourg back in 2012 was the CSSF Circular 12/546 in relation to substance requirements of UCITS management companies which was, as far as I understand, driven by Swiss questions as to the effectiveness of the substance in Luxembourg.

That means we have seen a great shift in the substance requirements since 2012 to today, and I believe we have reached a very good level. And I agree with Christophe in saying if in such structures you have an AIFM, then you can demonstrate substance.

Now, because of the possibility of passporting the AIFM into various jurisdictions where you would have your local AIFs, then again, the question of effective management/substance or treaty shopping would arise. Hence, the question begets itself if it would not be more efficient, also from a regulatory burden point of view on the initiator of all the structures, to have all of these structures in one country subject to the oversight of one regulator? Because if one has an AIFM in Germany, one could have an AIF in France and service providers in Ireland. In such a set up, one will be subject to the regulatory requirements of these three jurisdictions, whereas centralizing everything into one jurisdiction that has the competence to do everything will be a definitive plus.

Valerie Tixier You could indeed suggest that initiatives like BEPS, which as we mentioned originates from the OECD, is pushing the development of AIFMs and funds in EU.

Matthias Knab That was extremely insightful. Are there any other relevant aspects about Luxembourg we haven't talked about?

Johan Terblanch

One of the things I've learned since I came back to Luxembourg in 2007 is how significantly the number of people working in the alternative space has increased. Of course some of these people are imported, but this influx and building up of competence has also crossed-pollinated throughout the marketplace.

The quality and the knowledge have gone up tremendously compared to what it was even just seven years back in 2007. A big challenge for Luxembourg is always attracting the right talent and the right people, and you can see even the government has been making tremendous efforts at going as far as thinking, "Oh, there's not enough nightlife for young people" for example. I am mentioning this to show you how all-encompassing their view and approach is to make Luxembourg as attractive for young professionals as they possibly can.

There is a certain bizarreness in the fact that the more successful we are, the more people we need, which keeps compounding the problem. But again, a lot has been done to make Luxembourg a more attractive proposition for young professionals and families and people have come here from all over the world, including Ireland and other competitors, and actually stayed, realizing it's a great place to live in. It's a great place to raise a family, there's a lot of business and you can make a very successful and gratifying career in Luxembourg's financial services marketplace.

Philippe Burgener: I think one of the most common stories that you hear in Luxembourg is people who said originally that they came for maybe two or three years and then you ask them how long they have been in Luxembourg, and they answer 20. My conclusion is that Luxembourg is a great place to live in...

Christophe Diricks: Luxembourg is not London, that is true. But, as a very practical example, we have seen French asset managers looking to relocate because Europe, as it is today, is just without any borders and France is not an island, so people are moving easily from one country to another country.

I am not really shy to say, but Luxembourg has implemented some effective measures to also attract such persons, which is a very practical decision. So, within the framework of European citizenship that allows free movement of a person, why not moving and establishing yourself two hours by high speed train from Paris and be close to the operating business and assets.

Valerie Tixier: Not only are people redomiciliating here, but also funds. It is fairly easy to redomicile an offshore fund to Luxembourg. In most cases, it is just a few formalities in front of a notary, and you are here. Of course, you will have to comply with the local fund regulation, but then European Union market opens up for you.

Johan Terblanche

Valerie mentioned before the almost three trillion assets under management in regulated funds, and that number excludes the unregulated vehicles, so in fact we have a lot more assets. In 2013 the assets under management have grown in the global economy, which is certainly heating up, but not close to the 15% figure we have seen in Luxembourg.

So the proof of the pudding is in the eating, as they say, and every year more assets come into Luxembourg, actually outpacing economic growth anywhere in the world. So why is happening in Luxembourg? What is the government, the industry and associations here doing? All those activities, the servicing, client focus and thinking ahead of the game is definitely working because you can see it in the assets coming into Luxembourg. That language that those numbers speak is key to me.

Tom Davies: I think Luxembourg is like Formula One or Indycar. Every year we have a wave of new regulations which should slow us down, but we manage to do better each year. It is a very innovative and unique place to do business and as regards to alternative investments, it will keep on getting better each season.