

ALLEN & OVERY



The U.S.-Luxembourg Desk

2018

The U.S.-Luxembourg Desk



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The strong links between the U.S. and Luxembourg and their importance for each of the jurisdictions, in particular in the asset management sector, are undeniable. Today, Luxembourg is the #1 international fund distribution center, with the largest share of investment coming from the U.S., and the #2 fund distribution center in the world (after the U.S.), in terms of assets under management.

Providing a gateway for our U.S.-based clients on the set-up and expansion of their activities in Europe and for our European clients to access the U.S. market, we launched the U.S.-Luxembourg Desk in 2012. The Desk is headed by Ben Dumbacher who has more than ten years of extensive experience working for asset managers and investors from a law firm as well as in-house legal counsel perspective.

“Having Ben in the same time-zone as us has made access to legal advice more useful and convenient.”

New York-based Hedge Fund

The Desk has a strong focus on asset management advising U.S. managers on the establishment and operation of:

- regulated or unregulated investment funds in Luxembourg in the private equity, real estate, infrastructure, debt and hedge funds space, covering the whole fund-lifecycle from pre-marketing to the set-up of funds, regulated managers, sub-funds, compartments and successor funds, to dissolution; and
- their investment holding structures in Luxembourg complying with industry best practice on tax structuring/substance and corporate governance.

Our legal expertise, knowledge of key players and relationships with the Luxembourg and U.S. regulators provide a tangible competitive edge for our clients, whether they are raising capital, acquiring or selling businesses, restructuring for competitive reasons, looking for joint-ventures or co-investments or if they find themselves faced with regulatory issues or potential litigation.

To support our clients’ international strategies, the U.S.-Luxembourg Desk works closely with Allen & Overy’s global network which now spans 44 offices in 31 countries, including two U.S. offices located in New York and Washington DC. We have also developed strong ties with relationship law firms in over 100 countries where Allen & Overy currently does not have a presence. This network makes us one of the largest and most connected law firms in the world, with a global reach and local depth that is simply unrivalled.

LUXEMBOURG INVESTMENT PLATFORMS – RAISING CAPITAL IN THE EU AND/OR GLOBALLY

Luxembourg Investment Funds:

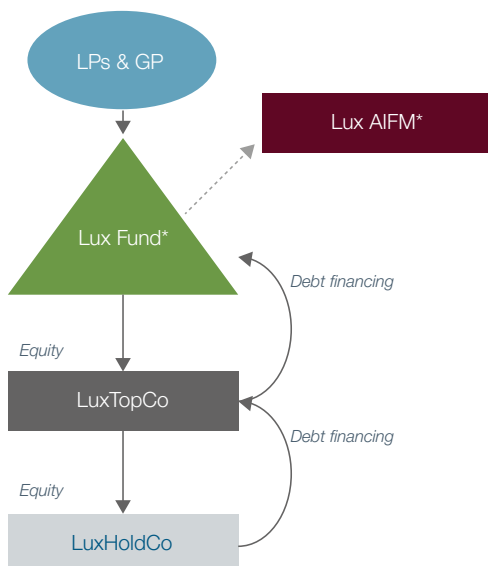
- Luxembourg investment funds are widely used by alternative asset managers (in particular RE, PE, debt, infrastructure) to raise capital in the EU and/or globally;
- Fund structuring: wide-range of different investment fund vehicles available; flexibility of Luxembourg partnership allows for assimilation to Anglo-Saxon fund structures that managers and investors are familiar with; fund vehicles may be tax opaque or tax transparent with no or limited tax exposure; and
- Fully AIFMD compliant: AIFMD marketing passport to distribute funds in the EU and access to the EU internal market (also after Brexit).

Luxembourg Holding Structures:

- Deployment of capital in the EU via Luxembourg holding structures;
- Effective liability buffer; and
- Tax efficient extraction of returns from Luxembourg platform to the fund due to high number of double-taxation treaties and EU tax directives (eg no withholding tax on dividends and interest; no CGT on exit).

Substance:

- Increase of operational activities in Luxembourg to satisfy regulatory and tax substance requirements that result from major changes in the political, regulatory and tax environment (Brexit, AIFMD, BEPS/Anti-Tax Avoidance Directives).

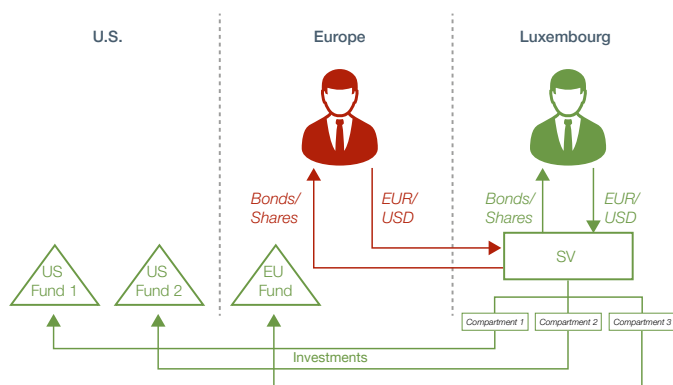


ENFORCEMENT OF COLLATERAL – A VERY LENDER-FRIENDLY JURISDICTION

- Robust protection against insolvency: provisions on annulment/claw-back applicable to payments, transfers of ownership and grants of collateral during the hardening period, following the cessation of payments or during insolvency proceedings do *not* apply (from a Luxembourg perspective) to Luxembourg financial collateral instruments and thus cannot block their enforcement;
- Safe-harbour provision applies to financial collateral governed by foreign law, provided that the collateral giver is a Luxembourg resident;
- Financial collateral arrangements are valid and enforceable even if they are concluded on the day on which winding-up proceedings are to be commenced or at the beginning of a reorganisation measure, but before the court issues its decision on the opening of such proceedings or the reorganisation measure becomes effective;
- Flexible and straightforward enforcement: parties freely choose enforcement triggers (no notice required);
- Exercise of the rights attached to financial instruments (including voting rights) are governed by the parties' agreement; and
- Pre-enforcement defences are permitted, eg replacement of the directors by the collateral-taker prior to an enforcement.

FROM RING-FENCED COMPARTMENTS TO DIRECT LENDING OR AS FEEDER FOR U.S. FUNDS – INTRODUCING THE LUXEMBOURG SECURITISATION VEHICLE

- SV can set up separate ring-fenced compartments to segregate assets or asset classes; each compartment is a separate, independent entity (but without legal personality); no recourse between compartments; low insolvency risk of SV (non-petition clauses recognised by law);
- Direct lending without need for authorization under Banking Act 1993;
- Typically unregulated unless where SV intends to issue securities to the public on an on-going basis;
- Tax benefits, eg no VAT on management services rendered to SV; if properly structured, no corporation tax on transactions entered into by SV; minimum net wealth tax;
- SV as Feeder for U.S. fund instead of a European parallel fund (thus outside AIFMD: no AIFM or custodian bank needed and remuneration rules not applicable):



LUXEMBOURG CAPITAL MARKETS – AN OPEN-MINDED APPROACH TO INNOVATIVE SOLUTIONS

- Two main markets of the Luxembourg Stock Exchange (LuxSE): (i) the EU-regulated Bourse de Luxembourg; and (ii) the LuxSE-regulated Euro MTF market;
- Global specialist in the listing of international securities with a market share of 40% of international securities listed in Europe
- Listing but not trading: listing of securities on the LuxSE Securities Official List without these securities being admitted to trading on any of the LuxSE markets: certain obligations under the EU capital market legislations (eg TD, MAR, MiFID II, MiFIR) which are triggered by an admission to trading do *not* apply to listings on the Securities Official List; information on the listed-only securities does not need to be made public;
- Luxembourg Green Exchange (LGX): 50% of green bonds worldwide are listed on the LGX platform
- Pioneer in listing new products (eg green bonds, Dim Sum bonds, Silikon, Masala bonds and global depositary receipts)

#1

international
investment funds
distribution center*

#1

investment funds
distribution center
*in Europe**

#2

investment funds
distribution center *in*
the world (after the U.S.)*



* based on assets under management

GLOBAL PRESENCE

Allen & Overy is an international legal practice with approximately 5,500 people, including some 550 partners, working in 44 offices worldwide. Allen & Overy LLP or an affiliated undertaking has an office in each of:

Abu Dhabi	Bucharest (associated office)	Ho Chi Minh City	Moscow	Seoul
Amsterdam	Budapest	Hong Kong	Munich	Shanghai
Antwerp	Casablanca	Istanbul	New York	Singapore
Bangkok	Doha	Jakarta (associated office)	Paris	Sydney
Barcelona	Dubai	Johannesburg	Perth	Tokyo
Beijing	Düsseldorf	London	Prague	Warsaw
Belfast	Frankfurt	Luxembourg	Riyadh (cooperation office)	Washington, D.C.
Bratislava	Hamburg	Madrid	Rome	Yangon
Brussels	Hanoi	Milan	São Paulo	

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