association of the luxembourg fund industry

RE-DOMICILE YOUR FUND ONSHORE

Take the road to Luxembourg

The advantages offered by Luxembourg makes it the domicile of choice for traditional investment funds

There are many competitive advantages to be achieved by domiciling funds in the right country, including but not limited to reputation, tax efficiency, cost competitiveness, the availability of an experienced workforce and, most importantly, a business-oriented regulatory environment.
One of the key factors in Luxembourg's success as a domicile of choice lies in its history: Luxembourg was the first EU member state to transpose the 1985 UCITS Directive and since then has always been a first mover in implementing the subsequent UCITS reforms, reinforcing each time its status as the leading cross-border fund distribution hub in Europe.

That lead continues today, with Luxembourg domiciled funds distributed in 70 countries worldwide:

- In 2015, 3477 UCITS and 1758 AIFs domiciled in Luxembourg were notified in other Member States in accordance with the procedures defined respectively in the UCITS and AIFM Directives.
- 65% of funds distributed world wide on a cross-border basis are Luxembourg domiciled funds.

Nowhere in the world can be found a greater concentration of professional expertise and focus around the fund industry in a business environment so conducive to its development.

UCITS, but not only...

Luxembourg is also a leading centre for alternative investment funds

Luxembourg has always been a pioneer in creating a well-adapted legal framework for both UCITS and non-UCITS funds. This is reflected in the country's highly diversified product offering, ranging from equity, bond, money market and exchange-traded funds to more complex alternative investment vehicles including private equity funds, venture capital funds, real estate investment funds, infrastructure, debt, hedge funds and funds of hedge funds.

The legal and regulatory framework for alternative investment funds and their managers was significantly redefined by the adoption of the AIFM Directive in 2011. In return for more regulation, authorised managers now benefit from a passport enabling them to offer their management services and market their alternative investment funds throughout the EU based on the AIFM passport. In Luxembourg, smaller specialised managers are also given the opportunity to opt for specific passport regimes (such as the so called EuVECA and EuSEF labels which are based on EU Regulations) while abiding to lighter regulatory frameworks.

Luxembourg alternative investment funds may take varied legal forms and may elect for different regimes according to the specific needs of the project.

Available regimes are:

For regulated vehicles:

- SIF, SICAR or Part II funds;

For unregulated or manager-regulated fund products:

- The Special Limited Partnership (SLP) and the innovative Reserved Alternative Investment Fund (RAIF).

The RAIF regime was voted in July 2016. It provides unrivalled flexibility for unregulated products, while also benefiting from the AIFM passporting facilities, offering investors the full protection of the AIFM regime.

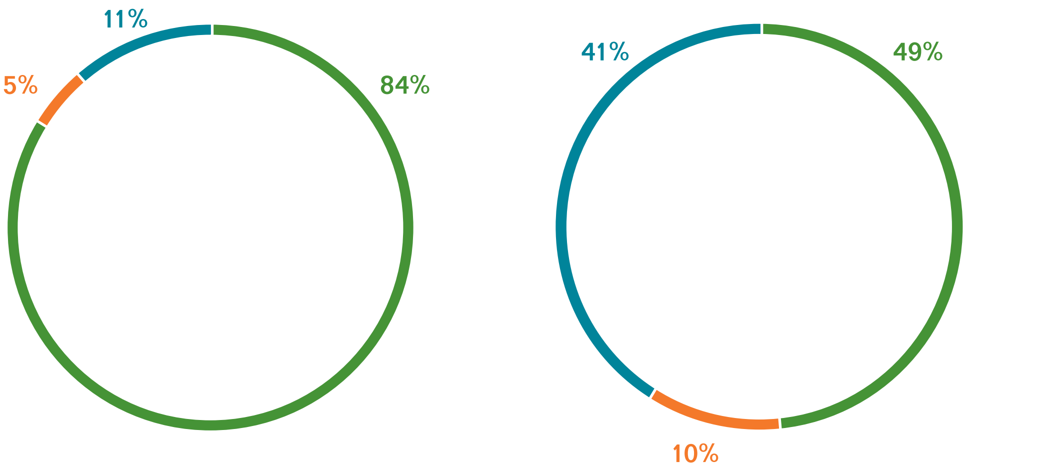
It is also worth mentioning the European long-term investment fund (ELTIF) which is a pan-European regulated fund vehicle dedicated to long-term investments in the EU real economy.

- UCITS
- UCI Part II
- SIFs

Source: CSSF
as per 31 May 2016

Breakdown in % by net assets

Breakdown in % by Luxembourg fund type



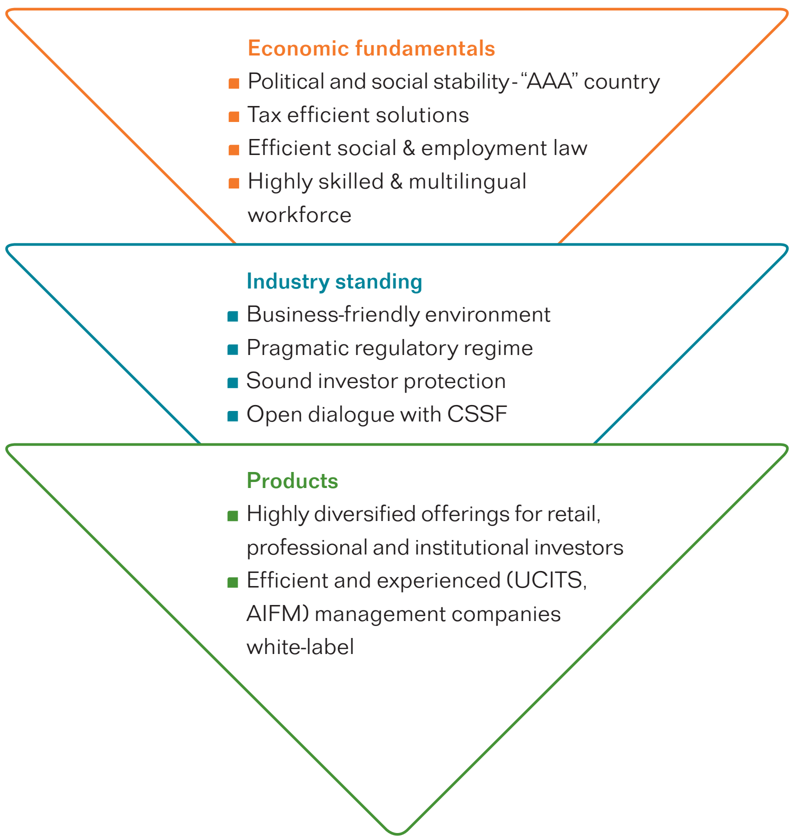
1. Why Luxembourg?

All of the industry's major initiators and service providers are based in Luxembourg

- Over 370 management companies from a variety of backgrounds;
- Over 140 credit institutions.

Luxembourg's success is underpinned by three key areas:

- Economic fundamentals;
- Industry standing;
- Product.



Economic fundamentals

- Luxembourg is a stable, politically neutral financial centre with superior infrastructure and efficient tax solutions with low regulatory and country risk. The country manages one of the world's lowest debt-to-GDP ratios;
- With its central geographical position, Luxembourg's highly skilled and multilingual talent pool is further strengthened by personnel from Belgium, France, Germany and many other countries in a thriving and dynamic expatriate community;
- In addition to its rich match of skills, this also offers a pool of experience when working with comparative business practices, and facilitates a greater understanding of business transitioning to the Grand-Duchy;
- Luxembourg's favourable VAT rate combined with an attractive tax and employment environment makes it a more than viable option for initiators, fund and asset management service provider.

Industry standing

- Luxembourg offers a business-friendly environment;
- The technology and expertise supporting the Luxembourg fund industry constantly evolve to accommodate new products and techniques, including pooling, anti-dilution mechanisms as well as innovative outsourcing arrangements;
- The innovative regulatory status of Support PSF allows actors of the financial sector to outsource their critical operations to supervised actors which are subject to equivalent rules and standards;
- Outsourced services include assistance with cross-border fund registration services and associated services. Luxembourg is emerging as the centre for the outsourcing of foreign tax certifications for a multitude of Irish, UK and French domiciled funds. It furthermore offers prime transfer agency services to many foreign domiciled products;
- The unrivalled familiarity with distribution worldwide is of key assistance as the phases of the AIFM Directive come to fruition in assisting initiators and investment managers to navigate through the co-existence of passport and private placement regimes, and make that all important link to how retail distribution of alternative products, where allowed by national law, can be articulated from a central hub;
- The Luxembourg Stock Exchange has a long tradition in facilitating the listing of all types of securities, frequently leading innovation in this field and opening the way for institutional investment in an asset class where listing is a prerequisite;
- Listing funds on the Luxembourg Stock Exchange is a straightforward process, with 533 Luxembourg entities currently listed (as of 18 July 2016).

Product

- Luxembourg has steadily established itself as a market leader in product innovation for traditional and alternative investment funds;
- Luxembourg legislation offers an extensive array of investment vehicles, ranging from highly regulated UCITS, more lightly regulated fund products such as SICARs and SIFs, to non-regulated vehicles such as the SLP and the RAIF which are vehicles regulated indirectly through their AIFM;
- Luxembourg recognises the diversity of legal structures worldwide and is probably unique in the world in embracing within its legal system concepts from different legal "cultures". In this way, the subtleties of the limited partnership and the trust structure well-known in the Anglo-Saxon world have been added alongside traditional continental frameworks;
- Status as an international platform for the distribution of cross-border funds means that Luxembourg-domiciled funds are more readily accepted by financial regulators in other parts of the world, especially in Asia, Latin America and the Middle East;
- Over the last years, numerous management companies were set-up in Luxembourg, bringing the necessary substance to monitor risk and delegated activities as well as demonstrating the ability of Luxembourg to attract asset managers.

2. Re-domiciliation to Luxembourg

A well rehearsed process

Luxembourg offers a simple, straightforward process for the re-domiciliation of investment funds. Re-domiciliation is the process whereby a fund migrates from one jurisdiction to another.

All types of investment vehicles can be re-domiciled – including trusts, which can be merged into Luxembourg-domiciled structures even though they are not legal persons.

During the past three years (2013-2015), 236 fund structures from European jurisdictions merged into a Luxembourg domiciled fund.

a) The choice of structure is yours

Luxembourg offers a broad range of investment structures to accommodate different investor profiles and investment strategies, which represent valuable onshore alternatives to consider when deciding to relocate a fund. In addition, Luxembourg has an extensive network of tax treaties, which creates a competitive tax and corporate environment compared with other jurisdictions.

A wide variety of investment structures are available in Luxembourg:

1. Regulated UCITS

Undertakings for Collective Investments in Transferable Securities (UCITS) offer retail and institutional investors alike the advantage of a European passport for cross-border distribution and investor protection through the supervision of the CSSF. A UCITS can be incorporated with a separate legal personality with variable or fixed share capital (SICAV or SICAF), or it can be structured in contractual form as a *fonds commun de placement* (FCP).

It may have exposure to long/short equity and other assets, as well as to exchange-traded derivatives, OTC derivatives, commodities, hedge funds indices and other asset classes.

The annual tax duty, or *taxe d'abonnement*, is 0.05% of net assets (reduced to 0.01% for sub-funds or classes dedicated to institutional investors), subject to some exemptions.

2. Regulated AIF

The Specialised Investment Fund (SIF) is a particularly attractive vehicle reserved for well-informed investors. Highly flexible in terms of eligible assets (hedge funds, real estate funds, funds of funds, private equity funds, etc.), SIFs are subject to authorisation and supervision by the *Commission de Surveillance du Secteur Financier* (the CSSF). Initiators have the choice between the contractual or different corporate forms.

A SIF may be set up as umbrella structures unbedding multiple (segregated) sub-fund.
A SIF is not under any obligation to calculate and publish the asset value of its shares or units on a regular basis. The annual tax duty, or *taxe d'abonnement*, is 0.01% of net assets. Moreover, the SIF benefits from the wealth of expertise and specific techniques developed to serve the industry as a whole, including co-management, pooling and cross-investments to make it as operationally efficient as it is economically.

3. Unregulated or manager-regulated AIF products

- RAIF

A new law was voted in July 2016 introducing the Reserved Alternative Investment Fund (RAIF) regime which significantly widens the options for private equity, real estate or hedge funds managers in Luxembourg. It is largely modelled on the SIF regime (multiple sub-funds, variability of capital etc.).
This alternative investment vehicle is not subject to the CSSF approval. A RAIF can therefore be set up within a very short timeframe. The RAIF must appoint a fully authorised AIFM.

- Special Limited Partnership

Special Limited Partnerships may be created under Luxembourg common law to operate as AIFs. For these vehicles, there is no obligation to appoint a fully authorised AIFM, however they would have to do so in order to benefit from the EU passport.

b) How to relocate

Luxembourg offers various options enabling foreign companies and funds to relocate and benefit from a regulated environment.
The most common are:

- Transfer of a fund's registered office to Luxembourg;
- Merger with a Luxembourg fund or investment company (both hereinafter referred to as "Luxembourg entity"); or
- Contribution by a fund of all assets and liabilities.

Moreover, Luxembourg master-feeder structures can be set up as suitable investment structures.

Transfer of registered offices

- Other financial marketplaces may have amended their regulations to include similar provisions, whereas the concept of the continuity of legal personalities provided for in the Law of 10th August 1915 on commercial companies, as amended, is particularly well established in Luxembourg, underpinning its place as a market leader for redomiciliation;
- Any type of company or fund can transfer its registered office or its main place of management to Luxembourg and become a Luxembourg entity;
- The legal personality, in the case of an investment company, can be maintained, provided that the law of the home country authorises the transfer without its discontinuation;
- Corporate decisions must be taken by the board and/or shareholders in both the home country and Luxembourg;
- The constitutional documents must be amended to comply with Luxembourg law;
- The CSSF reviews and approves all corporate and investment documents.

Cross-border merger

Under this arrangement, the foreign offshore fund is merged into a Luxembourg investment company against the issuance of shares or units to the shareholders of the offshore merging fund, which is then dissolved.

- Subject to specific conditions and procedures, the merger results in a "universal transfer" of assets and liabilities, i.e. all assets and liabilities of the offshore merging fund are automatically transferred to the Luxembourg investment company without any formalities (except as regards property and intellectual property rights);
- The terms of the merger and the method used to calculate the ratio for the share exchange are controlled by an auditor;
- Corporate decisions must be taken by the board and/or shareholders in both the offshore jurisdiction and Luxembourg;
- The constitutional documents of the Luxembourg investment company are amended. The CSSF reviews and approves all corporate and investment documents;
- The UCITS Directive provides a framework which facilitates cross-border merger and domestic merger of UCITS funds.

The contribution in kind of all assets and liabilities

- The foreign existing offshore fund contributes all its assets and liabilities to a Luxembourg entity against shares of the Luxembourg entity and is then wound up. On liquidation, the shares of the Luxembourg entity are distributed to the investors;
- In the case of funds incorporated as investment companies, the transfer of assets and liabilities may, subject to specific conditions and procedures, benefit from the effects of a "universal transfer" which is further explained in the section above on cross-border mergers;
- In the case of funds with no legal personality or investment companies unable to apply a universal transfer procedure, the assignment of the assets and liabilities is on a case-by-case basis, in accordance with applicable law. The net value of the contributed assets must be confirmed by an auditor;
- Corporate decisions must be taken by the board and/or shareholders in both the offshore country and Luxembourg;
- The constitutional documents of the Luxembourg entity are amended;
- The CSSF verifies the compliance of the contributed assets with investment policy and approves corporate documents.

Setting up a master-feeder structure

- A Luxembourg feeder fund is set up, subject to CSSF approval, which will act as a feeder into the offshore foreign master fund – enabling then an easier distribution process;
- Either new investors or existing investors of the foreign fund invest in the Luxembourg feeder;
- The Luxembourg feeder invests in the foreign master fund.

Conclusion

The choice between these options – and others – depend on various criteria, including the size of the fund, the number, the type and residency of the investors, the objectives, the investments and exit strategies of the fund, and more.
Whatever the impact and respective importance of those criteria for a given fund, Luxembourg offers the matching investment structures.

Longstanding expertise in structuring, setting up and relocating investment structures, and a robust yet flexible regulatory environment, combined with extensive fund servicing infrastructure and a high reputation all argue in favour of Luxembourg as the new jurisdiction for your UCITS, alternative UCITS and other traditional and alternative investments.

Luxembourg Regulatory Framework

UCITS Universe

UCITS, including funds employing more sophisticated strategies

Alternative Investments

- REIFs
- Infrastructure Funds
- Venture Capital
- Private Equity
- Hedge Funds
- Fund of Hedge Funds

Luxembourg has a modern fund industry

Regulatory

- Pragmatic regulatory regime
- Responsiveness of regulators
- Choice between different legal regimes

Products

- Anti-dilution mechanism
- Pooling structures
- Investor protection

Services

- Key players from different origins
- All asset management value chain is covered
- Unique service for tax certification and registration
- Global Transfer Agent services

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