

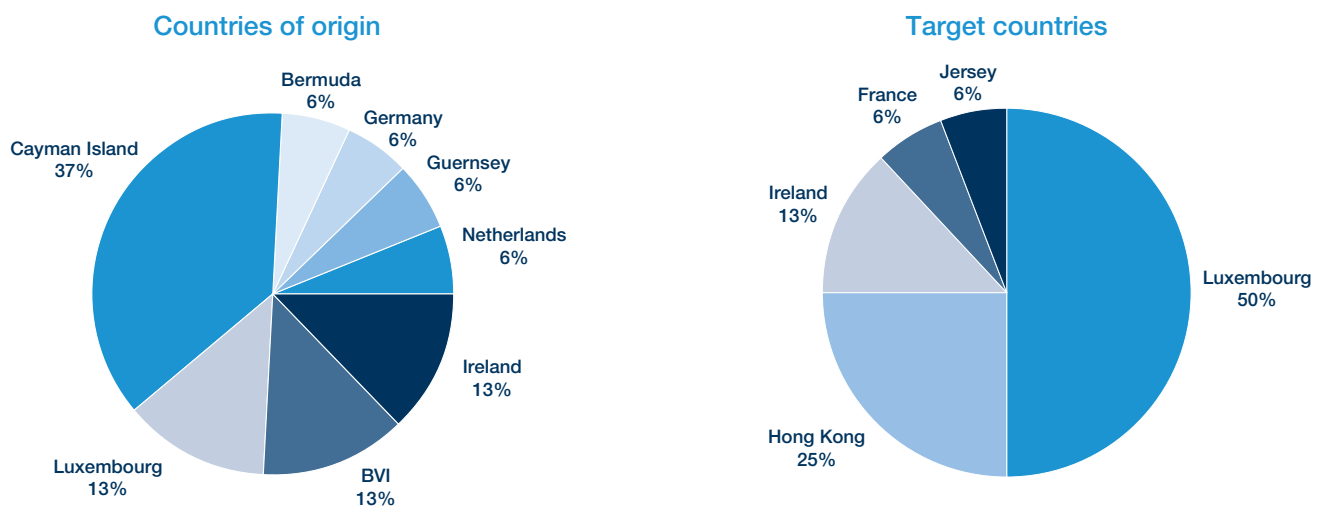
Luxembourg: Where else?

How to re-domicile an offshore fund in Luxembourg in practice?

Thanks to the Circular 02/80 issued by the CSSF in 2002, which set specific rules for Luxembourg alternative investment funds and to the UCITS III Directive, which enlarged the range of eligible assets and strategies for UCITS vehicles, some offshore promoters decided to re-domicile their existing funds to Luxembourg or to launch new fund ranges in Luxembourg. The current fund market turmoil and the new proposed European Directive on Alternative Investment Fund Managers are two additional factors influencing this trend.



Re-domiciliation of funds (incl. UCITS) from end 2007 to September 2009



Source : Lipper, data represents 16 UCIs belonging to 15 different promoters

Definition

A re-domiciliation of a fund to Luxembourg is an operation whereby the registered office of a fund incorporated in a given country (e.g. some offshore centers) under the form of a company is transferred to Luxembourg (the fund consequently becoming subject to Luxembourg laws) without interruption of its legal personality.

Regulatory process for re-domiciliation of a fund to Luxembourg

(To be adapted to the specific local requirements of the country of origin of the fund)





Step 1

Step 1: Initialisation of the re-domiciliation process by the management body¹ of the fund

The management body decides to convene the general meeting of shareholders of the fund in order to transfer the seat of the offshore fund to Luxembourg.

Depending on the local practice, the regulator in the country of origin may be approached for prior approval.



Step 2

Step 2: Preparation of the re-domiciliation

The “Luxembourg fund documents” must be drafted (articles of incorporation, prospectus, agreements, etc.) and the Luxembourg regulator (the “CSSF²”) must be approached in order to get its approval on the re-domiciliation project, the draft fund documents and the transfer process (although such a prior approval is not required in the case of Specialised Investment Funds (SIF), it is highly recommended).

The management body must also liaise with the existing and the newly-appointed service providers in order to put in place agreed upon procedures and operating memorandum so as to ensure a smooth transfer of the assets and investors on the re-domiciliation day.



Step 3

Step 3: Holding of a general meeting of the shareholders of the offshore fund in the country of origin

The existing investors must decide to transfer the statutory seat and effective place of management of the fund, to submit it to Luxembourg laws with continuation of its legal personality and to amend its articles of incorporation accordingly.



Step 4

Step 4: Approval of the authority of the country of origin

The management body of the fund must send a complete re-domiciliation file to the offshore regulator for final approval and must accomplish relevant formalities with tax and administrative authorities in the country of origin.



Step 5

Step 5: Holding of a general meeting of the shareholders of the fund before a Notary in Luxembourg

Lastly, a general meeting of shareholders of the fund is held in Luxembourg before a Notary in order to ratify the re-domiciliation in Luxembourg and to enforce the amended articles of incorporation of the fund.

Practical implications

At the investors' level:

- Investors' number of shares may remain unchanged (through making sure that the net asset value (NAV) per share remains unchanged at the time of re-domiciliation);
- The fund's ID will be changed (ISIN codes, etc.);
- Dealing arrangements will be modified (new registrar and transfer agent to be appointed) but payment flows may remain unchanged;
- It may be a taxable event for the investors in their home country. A review on a case by case basis, country by country, is needed;
- Taxation treatment at investors' level might be more beneficial (investment into a regulated European fund).

At the fund's level:

- The fund will be subject to the regulatory supervision of the CSSF;
- The legal personality of the fund is not interrupted: some existing agreements may remain in force (no re-negotiation impacts);
- New service providers must be appointed to comply with Luxembourg requirements: Luxembourg domiciliary agent, administrator, registrar and transfer agent, depositary and auditor;
- Investment policies and restrictions may remain unchanged (unless the fund takes the form of a UCITS in which case amendments to the investment policies and restrictions are likely to occur);

¹ E.g. the Board of Directors or the General Partner

² Commission de Surveillance du Secteur Financier

- Fees may remain globally unchanged even if fee arrangements will be different (new service providers appointed);
- The fund’s name may remain unchanged and performance track record may be kept for marketing purposes;
- Existing marketing arrangements may remain applicable (to be reviewed however country by country);
- Taxes withheld by underlying assets’ countries may be reduced or eliminated as 28 Double Tax Treaties may apply to Luxembourg funds incorporated under a corporate form (SICAV);
- Tax transparency of Luxembourg funds incorporated under a contractual form (FCP) might lead to the beneficial application of the Double Tax Treaty between underlying investments’ country and investors’ country;
- An in-depth VAT analysis of providers’ and fund’s positions should be performed upon re-domiciliation.

Focus on the Luxembourg depositary’s role:

- The custody of the assets of each Luxembourg investment fund must be entrusted to a Luxembourg depositary;
- The concept of custody should not be understood in the sense of “safekeeping” but in the sense of “supervision” which implies that the depositary must have knowledge at all times of how the assets of the fund have been invested and where and how these assets are available;
- The physical deposit of all or part of the assets of the fund may be made either by the depositary itself or with any professional designated by the fund and/or the depositary.

Focus on the Luxembourg administrator and registrar and transfer agent:

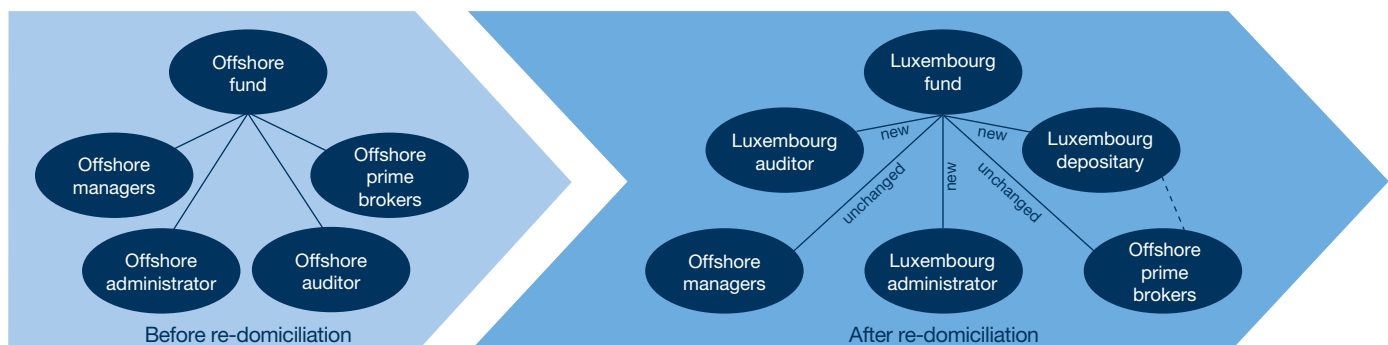
- The central administration of any Luxembourg fund must be situated in Luxembourg;
- However, Luxembourg adopted a pragmatic approach allowing delegation/outsourcing arrangements.

Country	LU ⇒ abroad	
Which administrative functions can be legally delegated abroad?	Accounting	😊 ¹
	Valuation/Pricing	😊 ¹
	NAV oversight	😞
	Compliance monitoring	😊 ¹
	Customer inquiries	😊 ¹
	TA functions	😞 ²
	Record keeping	😞
Are Luxembourg funds allowed to outsource all investment management functions abroad?	😊 ¹	
Are Luxembourg funds allowed to outsource all distribution functions abroad?	😊 ¹	

¹ Subject to the monitoring and ultimate responsibility of the fund/management company
² Nominee agreements are possible

Focus on prime brokers in the context of Luxembourg SIF adopting hedge fund strategies:

- The duty of “supervision” of the Luxembourg depositary is fulfilled if the depositary approves the choice of the prime brokers and is in a position to know the composition of the SIF’s assets;
- Prime brokerage contracts could be either entered into between the SIF and the prime brokers or between the depositary and the prime brokers;
- Existing prime brokerage agreements could remain unchanged provided however, that appropriate instructions are given by the SIF to the prime brokers.



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With the help of our Re-domiciliation Leadership Team composed of highly qualified and experienced professionals in Luxembourg and our PwC network throughout the world, PricewaterhouseCoopers offers:

- assistance in the form of ad hoc advice or analyses;
- organisation of training sessions and bespoke workshops;
- integrated fund restructuring advisory and tax services (operating model definition, business, regulatory and tax analysis, project management, operational support);
- fund re-domiciliation and migration services (operating model definition, business, regulatory and tax analysis, project management, operational support, contributions in kind);
- offshoring and outsourcing strategies;
- global fund distribution solutions;
- tax impact analysis and tax management (of both the management company and investors).

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