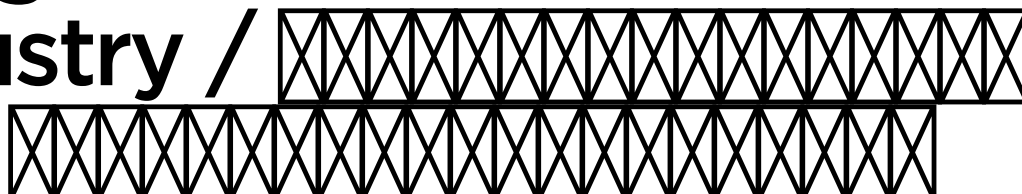


Luxembourg as a gateway to the global investment fund industry /



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Chinese asset managers need certainty to further sustain their international growth. In a context of political turbulences, time has come to seek for enduring solution and their onshore investment platform.

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With a strong track record in the servicing of public funds, Luxembourg has already been chosen by a large number of Chinese asset managers of all sizes for establishing fund platforms and providing continuity in their access to the European market. The passporting of funds is further complemented by efficient Luxembourg fund structuring and financing capabilities. These advantages explain a strong demand for Luxembourg entities originated from Greater China and beyond.

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1. The strong “marketability” of Luxembourg funds/



Luxembourg funds managed or advised by Chinese and other Asian sponsors can access investors established or resident within the European Union. The ability to market a Luxembourg fund within 28 countries - and 27 post completion of Brexit - usually comes as a complement to pre-existing

parallel structures established in offshore jurisdictions, such as Caymans Island. Access to European professional investors is operated through the appointment by the sponsor's wholly owned general partner or the board of the fund of a Luxembourg (or another EU) Alternative Investment Fund Manager (**AIFM**) subject to the Alternative Fund Managers Directive of 2011 (**AIFMD**). The AIFMD was implemented in Luxembourg by the eponymous Law of 12 July 2013. Although initially perceived as a major disruption to the industry, some substantial merits are now recognised, notably at the level of the funds' AIFMs, whose passport appears as the most efficient solution when marketing shares and units of Luxembourg alternative investment funds (**AIF**) throughout the EU, while approaching limited partners in Europe through private placement regime or reverse solicitation has now become very problematic for European larger pension funds and insurance companies, which represent around 50% of all capital raised and committed or invested in private equity, venture capital or real estate funds.

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2011AIFMDAIFM
2013712AIFMD
50%AIFM

Despite the provisions in the AIFMD providing for the possible extension of a passport outside the European Union¹, the opening of the passport to third-country managers remains uncertain. Even though some countries have been positively assessed by the European Securities and Markets Authority², this extension of the passport to third-country managers seems very theoretical in the current context of Brexit.

AIFMD,12

The marketability of its fund structures has permitted Luxembourg to gradually establish its position as the jurisdiction of choice for Chinese and other Asian managers that use its structures, management and administration capacities to enter into the European market. The long and globally well-recognised experience in servicing public and private funds is further supported by the efficiency of its structures and the protective regime offered to lenders in the financing part of the funds' underlying investments.

2. An efficient fund structuring and financing legislation /

The investment fund toolbox was extensively modernised in 2013 by creating two additional structures, namely the special limited partnership and the RAIF, which can both be passported and marketed to professional investors and which are very similar to traditional offshore partnerships and SPC structures, respectively.

2013年，卢森堡对投资工具进行了广泛现代化——通过创建两种新的结构（SPC和RAIF），这两种结构都可以被护照化并面向专业投资者营销，且与传统离岸合伙结构和SPC结构非常相似。

Limited Partnerships refer to a category of investment vehicles governed by the amended Luxembourg Law of 10 August 1915 on commercial companies, and which comprises both Luxembourg common limited partnership (*société en commandite simple*) and special limited partnership (*société en commandite spéciale*). Unless otherwise decided by the fund sponsor, neither of them is supervised by the Luxembourg supervisory authority (**CSSF**) and can be formed very rapidly. These vehicles, similarly to the well-known Cayman partnership or other Anglo-Saxon models, are used for their flexibility and characterised by the contractual freedom in structuring. Asian sponsors who are used to such structures but willing to open to Europe and onshore part of their activity, have chosen to set up parallel funds under the form of Luxembourg limited partnerships which seek exposure to the same assets alongside the offshore fund. Luxembourg partnerships are also used on a stand-alone basis to bring aboard any investors, irrespective of their status (regulated or not) or geographical establishment, and is largely seen as an optimised solution for Asian managers. Limited Partnerships offer a competitive tax environment and may benefit from the AIFMD marketing passport described above.

2013年8月10日，卢森堡对商业公司法律进行了修订，创建了两种新的结构，即普通有限合伙（*société en commandite simple*）和特殊有限合伙（*société en commandite spéciale*）。除非基金发起人另有决定，否则这两种结构均不受卢森堡监管机构（CSSF）的监督，且可以快速设立。这些结构类似于众所周知的开曼群岛合伙或其他盎格鲁-撒克逊模式，因其灵活性而被广泛使用，且在结构设计上享有合同自由。亚洲发起人习惯于此类结构，但愿意在欧洲和陆地上开展部分业务，因此选择在卢森堡设立有限合伙，以寻求与离岸基金共同投资于同一资产。此外，有限合伙还可作为独立实体引入任何投资者，无论其是否受监管或地理位置如何，这被视为亚洲基金经理的优化解决方案。有限合伙提供具有竞争力的税收环境，并可受益于上述AIFMD营销护照。

The second successful structure created in Luxembourg is the reserved alternative investment funds (**RAIF**) which is governed by the Luxembourg Law of 23 July 2016 (**RAIF Law**). To the same extent as most of the partnerships formed since 2013, the RAIF is not subject to authorisation or supervision by the CSSF. The RAIF must designate a licensed AIFM, thus benefiting from the AIFMD passport and protection of the AIFMD framework. The possibility to have sub-funds such as in an SPC-type of vehicle is one of the key features of the RAIF, making it an alternative to the above partnership.

RAIF是卢森堡创造的另一种成功结构，受2016年7月23日通过的“RAIF法律”（**RAIF Law**）管辖。与2013年以来形成的大多数合伙结构一样，RAIF同样不受CSSF的授权或监督。RAIF必须指定一家持牌AIFM，从而受益于AIFMD护照和AIFMD框架的保护。类似于SPC型实体的子基金可能性是RAIF的关键特征之一，使其成为上述合伙结构的替代选择。

Finally, Luxembourg special purpose vehicles (**SPVs**), generally incorporated as ordinary taxable

private limited company (société à responsabilité limitée; S.à.r.l.), generally known as “Soparfi”, are largely used in financial transactions as required by credit institutions and other major lenders, given the protection offered by Luxembourg financial collateral arrangements which creates a favourable environment to such entities. This results from the provisions of the Luxembourg Law of 5 August 2005 on financial collateral arrangements and case law.

2005年8月5日，卢森堡通过了《金融抵押安排法》，旨在为金融抵押安排提供法律保护，从而为使用SPVs（特殊目的车辆）的金融交易创造有利环境。Soparfi

Corporate fund structures, despite being tax exempt, may benefit from access to about 45 double tax treaties (**DTT**) out of 81 concluded by Luxembourg (including 38 with countries and regions that are part of the One Belt One Road (**OBOR**) initiative). Corporate fund structures have notably access to treaty benefits under the treaties concluded by Luxembourg with China and Hong Kong. Where a fund does not benefit from treaty access, in particular where the fund is set-up as tax transparent partnership, the use of SPVs may secure treaty access. The participation exemption regime through the use of a Luxembourg SPV as the holding entity in an acquisition structure provides for an exemption from income and capital gains for qualifying investments held by qualifying entities. The access to DTT and the application of the participation exemption, however, are to be analysed under the new rules introduced by the OECD which aim at avoiding artificial and tax-motivated base erosion and profit shifting (**BEPS**). BEPS, which will enter into force on 1 July 2018, is in the process of implementation in all prime investment fund centres, including Hong Kong, Singapore, the PRC and Luxembourg through the two EU Anti-Tax Avoidance directives (**ATAD**). BEPS purports to put an end to business malpractices that artificially segregate taxable income from the activities that generated it. In practice BEPS and AIFMD converge in the same achievement where the principal purpose of setting up a structure cannot be driven by a tax avoidance objective but must also rely on other factors such as economic substance. The increase of activity in the fund jurisdiction, e.g. through the appointment of the AIFM, proper head office, board members' involvement and administration, partly fulfils the objective. Using SPVs for financing purpose is another strong demonstration of the intention to concentrate the operating substance in Luxembourg. In this regard, AIFMD, BEPS and Brexit have accelerated the growth of activity taking place in Luxembourg and assisted this jurisdiction to comply with these rules, as shown on a recent survey and recently echoed in terms of job searches³ in the press and social media.

45个双重征税协定（DTT）中，卢森堡已与38个国家和地区（包括“一带一路”（OBOR）倡议的一部分）签订了双重征税协定。企业基金结构可以特别享受卢森堡与中国和香港签订的条约带来的好处。如果基金不能从条约中获得访问权，特别是在基金作为税务透明合伙企业设立的情况下，使用SPVs可以确保条约访问权。通过收购结构使用卢森堡SPV作为控股实体，为符合条件的投资提供收入免税和资本利得免税。然而，访问DTT和应用参与豁免，将根据OECD引入的新规则进行分析，旨在避免人为和税收动机的税基侵蚀和利润转移（BEPS）。BEPS将于2018年7月1日生效，正在所有主要投资中心，包括香港、新加坡、中国和美国通过两项欧盟反避税指令（ATAD）实施。BEPS旨在结束人为地将应税收入从产生该收入的活动中的业务 malpractices 分离。在实践中，BEPS和AIFMD在实现同一目标方面收敛，即设立结构的主要目的不能是避税，还必须依赖其他因素，如经济实质。基金管辖权内活动的增加，例如通过任命AIFM、设立适当的总部、董事会成员的参与和行政管理，部分实现了这一目标。使用SPVs进行融资是另一个强烈表明意图将经营实质集中在卢森堡的强有力证明。在这方面，AIFMD、BEPS和Brexit已经加速了卢森堡活动的增长，并协助该管辖权遵守这些规则，正如最近的调查和在新闻和社交媒体上最近提到的工作搜索³所示。

Luxembourg, as one of the founding Member States of the European Union, provides an element of stability and neutrality in this evolving environment that is very suitable in a capital-raising environment. With full access to the market and the capacity to levy funds within the EU and far beyond in Asia, a very comprehensive fund toolbox and financing and structuring capabilities through the use of SPVs, Luxembourg is perceived by the Asian asset management industry as a competitive and highly skilled jurisdiction. The impact of the new quotas, QDII and QDLP, decided by China in April 2018 has already been felt in Luxembourg and there is no doubt that the two re-opened Chinese programmes will further foster activity between the two countries.

SPVs 2018 4 (QDII) (QDLP)

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Article 67 of the AIFMD, referring to the regime applicable to third country managers as set out in Article 35 of the AIFMD. AIFMD 67 35

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ESMA final advice on AIFMD passport of 12 September 2016 relating to Australia, Bermuda, Canada, Cayman Islands, Guernsey, Hong Kong, Japan, Jersey, Isle of Man, Singapore, Switzerland and the United States. AIFMD

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<https://www.ft.com/content/e608f14e-44b1-11e8-803a-295c97e6fd0b>

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