

LUXEMBOURG A FINANCIAL POWERHOUSE



The Grand Duchy of Luxembourg is one of the smallest countries in Europe, in a geographical sense, ranked 175th in size of all the 194 independent countries of the world and with a population of around 500,000.

Despite this, the country packs a big punch economically, largely because of its location in the heart of Europe and its role as a gateway to the vast European market. Luxembourg is able to use its established infrastructure, educated, multilingual workforce and favourable regulatory and tax environment to its advantage.

The Luxembourg Board of Economic Development in partnership with Invest In Luxembourg has been implementing an aggressive economic development policy since the 1960s, this was designed to make the best of the country's attributes and develop industries in ICT, e-commerce, media, automotive components, logistics, health technologies and finance.

The success of the policy is evidenced by the presence of companies such as ArcelorMittal in steel, Cargolux in air freight, SES in satellites, and RTL Group in media. It is also home to big ICT companies such as AOL, Amazon, eBay and Skype.

The World Economic Forum's Enabling Trade Report recently rated Luxembourg as the thirteenth best country in the world for enabling trade, ranking its business environment ninth best in the world and its transport and communications infrastructure thirteenth best.

Figures from the Luxembourg Board of Economic Development show that the largest employer in Luxembourg is the government, while steel empire Groupe Arcelor Mittal is the second largest employer and financial services firm Groupe DEXIA BIL are in third, demonstrating the variety of the economy. The majority of Luxembourg's major employers are in the finance sector.

Luxembourg's status as a global financial centre is far greater than its physical size might suggest. It has a well developed network of professional services across banking, legal, accounting and fund administration fields.

The figures show that, in 2008, there were 152 banks in Luxembourg employing 27,000 people, holding 930 billion euros of assets on their balance sheets.

The figures show there were 1,443 investment companies in Luxembourg in 2008 holding around 990 billion euros of assets. There were also 1,910 unit trusts holding 570 billion euros of assets. There were also around 12,000 holding companies, holding around 36 billion euros in assets.

A Luxembourg holding vehicle is very often used in many investment structures that target assets in Europe, because of its array of tax treaties and innovative regulatory regime which has produced investment vehicles such as the Specialised Investment Fund (SIF).

Figures from ALFI (Association of Luxembourg Fund Industry) show that Luxembourg held around 1.7 trillion euros of net assets in various fund vehicles (both UCITS and non-UCITS) as of July 2009.

Luxembourg also has its own stock exchange to complement the thriving financial centre. The Luxembourg Stock Exchange recently celebrated its 80th anniversary and today has two markets (the regulated and the Euro MTF) with 31,000 international bond issues representing 43% of the total international bonds listed on EU markets. There are also 7,800 shares and investment fund units listed in around 20 different currencies. The exchange also lists 223 Global Depository Receipts for issuers based in emerging markets.

GDRs are particularly useful as an instrument to allow institutional investors to invest in specific shares without buying them at local level. The GDR represents shares in the underlying issuing companies and gives companies in emerging markets access to foreign capital markets.

Around 10 GDR issues have been listed on the Luxembourg Stock Exchange in 2009, including Suzlon Energy Limited, an Indian company specialised in wind energy. Its issue comprised of 14,600,000 Global Depository Receipts representing 58,400,000 equity shares of the company; allowing it to raise US\$127 million for general purposes. The Tata Power Company Limited, one of the largest private sector electricity generators in India, issued 14,838,110 Global Depository Receipts each representing one equity share of the company. The proceeds of the issue, amounting to US\$378 million, will be used to fund capital expenditure of its existing power plants and future projects.



Laurent Fisch - Partner
MOLITOR Avocats à la Cour
+ 352 297 298 1
contact@molitorlegal.lu

MOLITOR

Avocats à la Cour

MOLITOR, Avocats à la Cour – Expertise in Luxembourg structures

Luxembourg has developed a niche as a location for investment structures involving investments right across Europe. Its flexible, light touch regulation, combined with a pro-business attitude to taxation and numerous tax treaties make it a popular choice with many investors and their professional advisors. A recent trend includes the setting-up of so-called opportunistic real estate funds operating from Luxembourg. "In times of crisis, cash is king", says MOLITOR's tax partner Olivier Gaston-Braud, "and all those investors who still have funds can go out and make a killing."

Luxembourg has an advanced professional community well versed in the origination, administration and, in some cases, the liquidation and partial liquidation of structures used for investment purposes. Luxembourg offers a large number of tax and legal structures for group top holding company, intermediary holding companies, pooling of investors, or specific investment vehicle for one specific investor. The best known are the SOPARFI company, the SICAR, a private equity/venture capital flexible structure and the different kinds of investment funds.

Luxembourg Investment funds can be structured as UCITS (either investment companies or SICAV, unit trust such as FCP) which are fully EU Law compliant and may benefit from the so-called European passport. In year 2007, Luxembourg has launched the specialized investment fund (SIF) which may be used as a more flexible fund, notably for well informed or institutional investors, for real estate funds, alternative investment funds (wine, art, commodities...) or even hedge funds.

In this respect, the Luxembourg financial center offers a large scope of flexible vehicle with a strong substance in Luxembourg. The Luxembourg entities may be financed by different means, equity, bonds, convertible bonds, profit participating loans, preferred equity certificates, convertible preferred equity certificates, hybrid instruments etc. Olivier Gaston-Braud says: "In case of a doubt on the analysis of a structure, the tax authorities may be open for discussion and the exchange of ideas."

MOLITOR offers a comprehensive and integrated range of sophisticated legal services in selected areas for commercial clients doing business in Luxembourg. This involves industry sectors such as banking, insurance, investment funds, retail, hospitality, real estate and infrastructure. In these sectors, MOLITOR advises on banking and financing matters, on tax, employment, IP and IT, as well as in relation to litigation and insolvency issues.

Laurent Fisch, a real estate and restructuring, bankruptcy and insolvency (RBI) partner at MOLITOR, says that he was very active, before the downturn, in assisting investors with new real estate investment structures:

"Before the downturn we assisted investors and their advisors from the UK, Ireland and many other places to invest in commercial real estate located for instance in Germany, Poland or the Czech Republic. The investors tend to use Luxembourg entities as acquisition vehicles for the financing. We did usually not have responsibility for the real estate itself, as it mostly wasn't located in Luxembourg, but we advised on the financing and gearing of the structures, on tax and on contract issues, such as joint venture agreements."

Laurent Fisch says that much of this type of work stopped in November last year, but has recently shown a resurgence, as his team has increasingly been involved in rearranging security packages and renegotiating terms and refinancing.

He said: "Pre-insolvency audits has been and still is a hit with several of our corporate clients."

In early 2009, Laurent Fisch has been appointed by the court as one of the liquidators of Lehman Brothers' operations in Luxembourg; he says this is a big project that is currently taking quite some time to deal with. He recently spoke at an INSOL Europe conference in Stockholm to other professionals from the insolvency business:

He said: "In my presentation, I wanted to make it clear how difficult it is in practice to dismantle a 'global player' who has actually ceased to be global and is now subject to a number of insolvency and restructuring proceedings with different aims spread across various jurisdictions, with a number of suddenly competing estates and creditors. The co-operation between the receivers, administrators and all other office holders of an insolvent group is certainly key to the success of the operation. But it may

also require changes in the way global entities are run, for instance by implement so-called living wills: global banks should draft or adhere to a plan for safely dismantling themselves in the event they fail. Such living wills would need to address the financing of the liquidation, but also contain the keys to understanding the internal functioning of the bank. Up-to date book-keeping and accounting data per jurisdiction ought to be secured by all means."

Michel Molitor, as the lead banking and insurance partner at MOLITOR, has his own views on the matter:

The De Larosière Report of February 25th, 2009, commissioned by President of the European Commission in 2008, represents without any doubt an important contribution to providing a blueprint for the future global financial architecture. The report analyses in-depth the complex causes of the financial crisis. Ample liquidity, low interest rates, complex interaction of market failures, lack in the assessment of risk, global financial and monetary imbalances, weak supervision and poor macro-prudential oversight, failures in the ratings of structured products - the interconnectedness and the complexity of the major factors that amplified the crisis is striking.

He said: "At MOLITOR, we anticipate regulatory trends in the best interest of our regulated clients."

When anticipation fails, litigation is the word: the highly skilled financial insolvency litigation team at MOLITOR, co-lead by Mr Molitor and litigation partner Paulo Da Silva, is presently involved in several legal proceedings related to the Bernard Madoff Investment Securities (BLMIS) fraud affair.

MOLITOR is representing major French law firms and their clients in various legal actions against the Luxembourg-based SICAV companies and their respective custodian bank. Legal advice ranges from the analysis and construction of Luxembourg laws on investment funds, to contacts with the local supervisory body for the financial sector, and the initiating of court proceedings, to get a formal access to the SICAV's documentation and files. MOLITOR has also been representing a number of Swiss and UK law firms whose clients had invested in non-Luxembourgish investment funds which are administered by banks in Luxembourg.

"Complex litigation work has been on the increase at MOLITOR during the past 12 months or so." comments Mr Da Silva, "We have been traditionally strong at commercial and banking litigation and are understandably excited about the future of our firm."



NOBLE & SCHEIDECKER
AVOCATS À LA COUR

Gary Cywie
Noble & Scheidecker - Partner
+352 26 48 42 35 60
rosato@mnks.com

IP expertise

The protection of IP is an ever increasing concern for businesses, particularly those relying on cutting edge technology to create a competitive advantage.

The Technologies & IP department at Noble & Scheidecker offers strong multinational and multi-disciplinary expertise to clients from diverse sectors and assists them with all aspects of IP, ranging from protection and related litigation through to the exploitation of their IP rights. Its position as leader in this respect is recognised domestically and internationally and its IT and IP practice is recommended by The Legal 500 and Practical Law Company.

Gary Cywie, IP partner at Noble & Scheidecker, says it is quite easy for companies from different sectors seeking to invest in Luxembourg, to safeguard their IP.

He said: "The Luxembourg government promotes research and development (R&D) and unveiled a national plan for innovation and employment in 2005

(National Plan), establishing a package of legal measures to increase and improve investment in R&D in order to promote innovation."

He added: "One measure is the existence of a subvention for patent filing in Luxembourg. When filing a patent in Luxembourg, research for potentially existing comparable patents is carried out by the European Patent Office (EPO). Thus filing and research are done at once and thus, due to the subvention, for a price lower than if the filing is done directly with the EPO. Also, the applicant receives an opinion on the patentability of the invention free of charge."

Noble & Scheidecker's typical IP clients range from small or mid-sized local firms who wish to register a trademark, to multinational companies that need assistance in drafting all documentation relating to intellectual property assets, such as assignments and license agreements. In the context of IP and corporate group restructuring, Noble & Scheidecker's IP lawyers work in close coordination with its Corporate Finance department.

More recently, the team has been advising clients who wish to implement an IP structure to benefit from the new IP tax regime.

Implementing IP rights on a cross-border level can be difficult and experience and expertise is required to assist clients with IP-related litigation on a national and international level, plus advising on cross-border litigation strategies.

Mr Cywie said: "The complexity of IP rights enforcement on a cross-border/international scale is due to the multitude of rules applicable in the different countries. However, thanks to the European Directive 2004/48/EC on the enforcement of intellectual property rights, cross-border enforcement has been simplified for the European Union."

Recent changes to Luxembourg law are also of note for investors considering Luxembourg. In compliance with the approach reflected in the National Plan, the new Act of June 5, 2009 introduces a special grant fund from which companies engaged in R&D may benefit under certain conditions.

Mr Cywie added: "The new IP Law, which came into force for the 2008 tax year, introduced a new Article 50bis to the Income Tax Act. According to this new article, a Luxembourg taxpayer may, under certain conditions, benefit from an 80% tax exemption for income and capital gains deriving from the use, exploitation and/or disposal of copyrights, patents, trademarks, designs and models and domain names."



NOBLE & SCHEIDECKER
AVOCATS À LA COUR

Marielle Stevenot - Partner
Noble & Scheidecker
+352 26 48 42 35 55
Stevenot@mnks.com

Employment Law

Luxembourg's international exposure means that expatriations, secondments and other cross-border employment operations (e.g. salary splits) are common issues which companies must deal with.

The effective management of the international mobility of employees implies anticipating and dealing with a host of interconnected individual concerns and legal issues in relation to employment, social security, tax and immigration.

The employment team at Noble & Scheidecker, led by Marielle Stevenot, is one of the biggest on the Luxembourg market, with seven fully dedicated lawyers.

Its expertise covers a full range of national and international legal issues associated with human resources management, including benefits and pensions, international mobility and the employment-related aspects of corporate reorganisations. The firm is experienced in all legal aspects related to multinational employment situations, it advises and drafts the required contractual documentation according to

Luxembourg, European and international applicable law and best practices.

Ms. Stevenot's team can also assist companies with international social security issues and any immigration formalities, notably work permits. They can also ensure coordination with external service providers (such as tax consultants, payroll agencies and relocation service providers) in order to smooth the process of the employees' move to / from Luxembourg.

Ms Stevenot says she has experienced a change in the type of legal assistance requested from clients. She said: "We are notably more actively involved in providing legal assistance to companies facing financial difficulties, helping them with the implementation of collective redundancies. Many companies have also become much stricter than before on performance evaluation of employees and request assistance to terminate individual contracts on this ground. Not surprisingly, the activity of our litigation practice has increased a lot in the past year."

She added: "In the context of the economic downturn, we also developed a specific approach focusing on advising employers on ways to reduce personnel costs while avoiding redundancies (e.g. through the promotion of temporary part-time work, sabbaticals, etc.)."

Luxembourg is seen as a country with an attractive employment legal framework, particularly for those looking to invest. This is a result of a continuous political effort to promote economic development and to attract employers to the Grand-Duchy.

Ms Stevenot says the main advantages are a favourable social security system, with low social contributions in comparison with many European countries and a commitment of all social partners, i.e. the government, trade unions and employers, to a culture of dialogue and consensus.

In mid-2008, the government adopted a new law concerning the free movement of persons and immigration. The legislation aims to develop a global concept to include all aspects of immigration and to transpose several European directives.

Ms Stevenot said: "For European citizens, the bill reduces the administrative formalities to be fulfilled in order to stay in Luxembourg. For non-EU citizens, the new law aims to clarify and simplify the process of obtaining of a work permit, especially for highly skilled workers, in order to help Luxembourg companies to deal with the shortage of qualified personnel. The new process took some time to be implemented within the Ministry of Foreign Affairs and there is still a notable delay in the treatment of the work permit files, which hopefully should be reduced in the course of the coming months."



NOBLE & SCHEIDECKER
AVOCATS À LA COUR

Marie-Béatrice Noble - Partner
Noble & Scheidecker
+352 26 48 42 35 04
Noble@mnks.com

M&A

Raising finance is one of the main concerns for companies in the current economic climate due in part to prudence and caution on the side of funds and banking institutions as a result of the economic crisis. In addition, the decision making process in this context has slowed significantly.

In the past 12 months there has been a reduction in the number of large international M&A deals in Luxembourg, however on the flip-side there has been an increase in domestic M&A transactions, particularly in the financial and services sector.

Marie-Béatrice Noble, a partner in the M&A practice at law firm Noble & Scheidecker, has observed a number of clients, whom she has assisted in M&A transactions, either struggling to attract investors or seeing initial investors pulling out.

She said: "Where this occurs, the duration of the transaction is significantly prolonged, as further negotiations occur and prospectuses are redrafted to attract alternative investors. We have also provided assistance to young, start-up companies, created as a result of a merger and acquisition process, in implementing measures and legal strategies to keep

their companies afloat where investors are not forthcoming. We have also seen many instances of financing packages being renegotiated with banks."

Ms Noble says that MNKS has always been, and continues to be, internationally focused in terms of its client base, which is comprised of a wide range of international clients including multi-national companies (across all sectors including media, food, pharmaceutical, manufacturing, healthcare), private equity houses, and financial institutions, many of which feature on the New York and London Stock Exchanges.

Recent trends show an increase in M&A enquiries from the USA and also queries from the domestic Luxembourg market.

Luxembourg as a country has a business-friendly reputation, which when combined with its favorable tax environment and expert professional services, makes it an ideal location through which to structure groups.

Ms Noble said: "Luxembourg is party to a large network of bilateral treaties which avoid the burden of double taxation and is undoubtedly a factor influencing the decisions of international groups of companies. The stable political and economic environment, with consistent growth, low inflation and low unemployment levels also contribute to Luxembourg's attractiveness."

She added: "Luxembourg is often used in the context of acquisitions and structuring of financing operations, in particular in Private Equity fund structured (notably SICAR and SIF) and also in terms of intermediate structures (SPVs). Luxembourg's tax treaties are a definite factor in attracting M&A work to Luxembourg."

One factor of the economic downturn is a requirement for advisers to negotiate harder on behalf of clients.

Ms Noble says it is true that clauses within agreements, which would have been previously considered as a remote risk by the parties, are now receiving increased examination and scrutiny.

She said: "This is particularly so where the clauses concern insolvency aspects, with these clauses now the subject of much negotiation between the parties prior to the execution of the agreement. Also in this context, we have seen increased activity in finance related litigation and this is another important consideration to bear in mind when drafting and analysing various agreements."

Ms. Noble says it is clear that the first shoots of recovery are emerging in this market. Citing a project on which MNKS are working involving a multibillion Euro acquisition and related financing by a banking consortium, she says it is a good sign that banks and financial institutions are showing an increased willingness to lend to new clients once again.



NOBLE & SCHEIDECKER
AVOCATS À LA COUR

Gary Cywie - Partner
Noble & Scheidecker
+352 26 48 42 35 60
rosato@mnks.com

IT and Telecoms

It is essential for any business considering a cross-border expansion to ensure it has its IT and technology infrastructure in place, before it starts to transfer staff and generate business.

The Technologies and IP group at Noble & Scheidecker handles Information Technology, Media & Communications and Intellectual Property legal matters.

The convergence of these closely related but cross-disciplinary practice areas, and the IP issues inevitably raised while doing business in ever evolving and innovating technology sectors has resulted in the firm to organising them in a single group of expertise. The group's most obvious strength is probably its cutting edge understanding of the technical aspects which allow the provision of informed, comprehensive and expert legal advice.

The Technologies & IP group at Noble & Scheidecker works closely with the Private Equity,

Corporate Structuring and Employment groups to assist in multidisciplinary transactions which require multi-disciplinary cooperation, such as, for example, the financing of IT projects, the setting up of transnational corporate structures that will involve IP and dealing with the employment and corporate aspects of IT outsourcing projects.

Gary Cywie, IT and Telecoms partner at Noble & Scheidecker, says the firm is also active in providing IT advice to businesses looking to set up in Luxembourg.

He said: "We advise, for instance, on the so-called PFS statute in Luxembourg. The Luxembourg Act of 5 April 1993 provides for the concepts of operators of primary IT systems of the financial sector (i.e. those operators who are in charge of running information systems allowing the setting up of accounts and of financial statements) and operators of secondary IT systems and communication networks of the financial sector (the so called OSIP and OSIS, as defined in articles 29-3 and 29-4 of the Act)."

He added: "To obtain the benefits of the PFS statute, these IT service providers must demonstrate expertise in providing their services and fulfill reporting obligations towards the supervisory body. Thus the Luxembourg market is very attractive for both, companies interested in outsourcing all or part of their IT activities in a secure and trustful manner by ensuring high quality of service in a competitive market, and for service providers who wish to render outstanding services to a wide range of national and international clients, including financial institutions which are well represented in Luxembourg."

Noble & Scheidecker is also active in helping investors from the Far East invest into Luxembourg, particularly Indian companies.

Mr. Cywie said: "We are seeing more and more technology based investments from the Far East these days. Notably Indian-based companies from the multimedia, communications and IT markets are highly interested in investing in Luxembourg. In the course of this development, the Indian Business Chamber of Luxembourg (IBCL) was launched on 30 March 2009."

He added: "Another example is a Japanese technology-based investor 'Rakuten Ichiba', the largest online shopping mall in Japan. In Luxembourg, Rakuten plans to establish its central coordination entity (Rakuten Europe S.à r.l) that will support the future development of its online shopping mall platform 'Rakuten Ichiba' in Europe. It is anticipated that the Luxembourg entity will also serve as a central platform for logistics and R&D activities in the future."