



THIRD-PARTY MANAGEMENT COMPANY AND AIFM: THE FUNDS' COUCH-SURFING SOLUTION!

Newsletter 3rd of April 2017



Summary

To non-EU based managers, especially the soon to be UK-based ones, EU based third-party management companies or AIFM offer them a realistic and pragmatic solution for creating and distributing their funds within the EU borders, and is a faster, simpler and more economical option than setting-up a management company or AFIM of its own.

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Third-Party Management Company and AIFM: the Funds' couch-surfing solution!

Luxembourg, 3rd of April 2017

In light of the Brexit and its potential aftermath, EU-based third-party management companies (for the purpose of this article, management companies shall mean UCITS management companies and/or AIFM) seem to be able to offer a solution to non-EU based asset managers (and soon to be for the UK-based ones) for being domiciliated and distributed within the EU borders.

Throughout our last newsletter (*EU Registered Fund: to be or not to be...? That cannot be a question!*, 21 March 2017) we outlined the interest for non-Luxembourg based asset managers in domiciliating and registering their funds in Luxembourg. Being the biggest place for funds domiciliation in the World after the US and the main one in the EU, Luxembourg is the best option for those wishing to operate and distribute their funds in the EU.

1. Third-party management companies: a one-stop-shop solution

Third-party management companies, when authorised accordingly, can manage either UCITS and/or AIFs and serve as the EU management company on behalf of the non-EU based asset manager.

For the latter, after determining its needs with the third-party management company, the process is rather simple, time-efficient and cost-effective. The third-party management company handles the entire process from negotiating with the fund's service providers to registering the fund with the Luxembourg financial regulator, the *Commission de Surveillance du Secteur Financier* (the "CSSF").

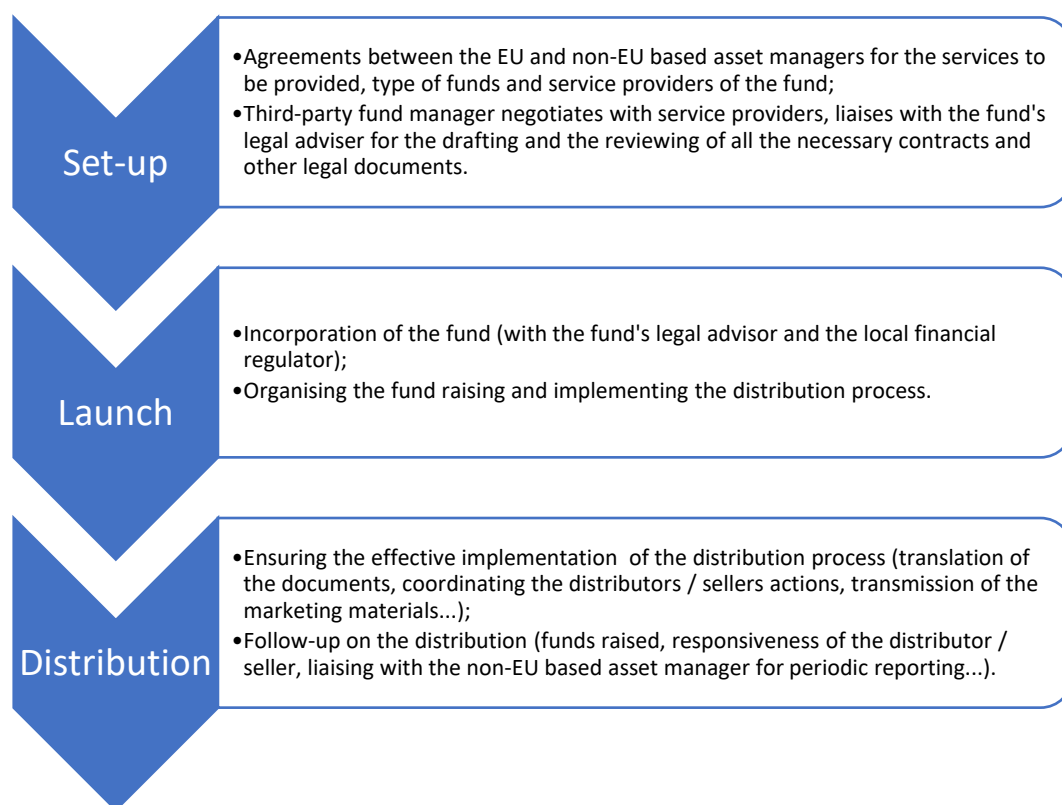
For a non-EU based asset manager, the interests of the use of the services of an EU-based third party management company are numerous: it is cost-effective as its services are less expensive than setting-up its own management company or AIFM; it is time-efficient as it is much faster for the incorporation and launch of funds if handled by it, rather than to subordinate the latter to the creation of a management company or an AIFM; choosing a Luxembourg-based third party management company also offers the best and most effective option for being distributed or placed in the EU; and, last but not least, it takes the headache out of the mind of the non-EU based asset manager by transferring the burden of

negotiating with service providers, complying with the regulatory and compliance obligations and the day-to-day maintenance of the fund to the third-party management companies, while keeping control of the investment vehicle, the assets and the investment policy of the fund.

Once the EU-based management company and the non-EU based asset manager agree upon the terms of their relationship in a memorandum of understanding (or any other contract or legal document shaping the outline of the set-up, maintenance and/or distribution/placement of the fund), the whole process is handled by the third-party management company.

As a result, the non-EU based asset manager, like any client of any company, has nothing to do but overseeing and controlling the appropriate assessment of the terms of the aforementioned memorandum of understanding by its only service provider (i.e. the third-party management company).

2. Steps to be taken by the third-party management company (if offering the full range of services from the setting-up to the distribution of a fund)



As a matter of fact, some third-party fund managers may not perform this full range of services. Indeed, many of them do not offer a distribution or placement service and handle exclusively the set-up of funds. In this case, the non-EU based asset

manager should then ensure by itself the distribution of its fund(s), either by its own means or by using the services of a company specialised in the distribution or placement of funds. When starting the process of setting-up its new investment vehicle, the non-EU based asset manager should pay close attention to that key point.

The whole purpose of the operation being the successful distribution or placement of the fund in the EU, transferring the burden of organising and overseeing it may be the best option for the non-EU based asset manager, especially if the latter does not have privileged partnerships with distributors or the adequate team to ensure the distribution / placement within the EU borders.

3. Luxembourg-based third-party management company: a fast-track solution for being domiciliated and cross-distributed in (and outside) the EU

Even though the EU offers a harmonised legal and regulatory framework, local financial regulators do not necessarily undertake the same approach and may edict particular rules and obligations affecting the incorporation and the distribution or placement of funds.

Non-EU based asset managers should keep a close eye on those discrepancies as they may impact how the distribution or placement can be organised, the obligations they have to comply with vis-à-vis the investors and the local financial regulator.

For instance, the Belgium regulator (i.e. the FSMA – Financial Services and Markets Authority) imposes specific obligations such as the translation of the KIID in at least one of the official languages of Belgium (i.e. French, German or Dutch) or submit to its approval the marketing materials used in the advertising and the offering to the public of a UCITS.

In addition to those compliance and regulatory matters, non-EU based asset managers should also be aware of the specificities of each market when it comes to approaching distributors and sellers.

Considering the Belgian market again, the French FCP (i.e. *Fond Commun de Placement*) which used to be a very well chosen investment vehicle is now being replaced by Luxembourg - SICAV (i.e. *Société d'Investissement à Capital Variable*) and the Dutch and French speaking parts of Belgium intend to interact and conduct their businesses in their own languages.

Another country which can be an example of the importance of registering an investment vehicle in Luxembourg is Germany, where more than 50 % (fifty

percent) of the assets under management of the funds' shares are entrenched in Luxembourg funds.

Last but not least, Luxembourg represents 64 % (sixty-four percent) of the authorisations for cross-border distribution, making Luxembourg the biggest hub in Europe for this (before Ireland with 24 % (twenty-four percent))¹. As a consequence, many non-Luxembourg asset managers already undertook to create their Luxembourg funds to benefit from the solid reputation of Luxembourg and facilitating the distribution of their funds in the European Union and outside.

Hence, using the services of specialised service providers or delegating in full the process to a third-party management company may be the simplest for who does not know the European markets, and the best choice would be doing so in Luxembourg.

Using the services of a third-party management company is mostly like couch-surfing abroad: it is cheap, fast and go straight to the point! Instead of bringing a bottle of wine (which would nonetheless be much appreciated!), one brings its project and its host shall take care of the rest....!

Say "Hello" to Luxembourg and make yourself at home!

Gilles Corlier
Fund Structurer

A handwritten signature in black ink, appearing to read 'G Corlier'.

Guillaume Raby
Relationship Manager

A handwritten signature in black ink, appearing to read 'Guillaume Raby'.

1. Source: Global Fund Distribution 2017, PwC

GETTING IN TOUCH WITH US

Guillaume Raby

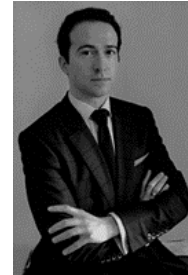
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MC Square also offers services for the fundraising, distribution and placement of funds in and outside the EU. As an independent Management Company and AIFM, we undertake a tailor-made and creative approach when helping our clients so as to offer them the most adapted solutions.

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