

Interview with Hervé LECLERCQ (picture), Partner and Julie THAI, Counsel, Luther S.A.

«In Luxembourg, we aim at becoming a natural choice for entrepreneurs»

Could you please introduce your firm and summarize your activities?

Luther S.A. is the Luxembourg office of the Luther Rechtsanwalt GmbH group, a law firm network operating from Germany and other locations in Europe, as well as in Asia.

In Luxembourg, our activities are centered on corporate/M&A, investment management, banking and capital markets, real estate and litigation. Our investment management team assists both sponsors in the launch of their fund vehicles and investors in the conduct of fund reviews and due diligences. We also actively assist local fund providers, namely asset managers and depositaries, in their day-to-day activities.

How would you position yourselves in Luxembourg and Europe?

In Luxembourg, we aim at becoming a natural choice for entrepreneurs by understanding their business needs and assisting them in every aspect of their activities. On a European scale, we leverage on the strength of our network in Germany which has built over the past decades an unrivalled reputation for legal expertise and client dedication.

What have been your main challenges over the past few months?

Lately, we have had to cope – like every player in the financial market – with an avalanche of regulations. So we have had to factor such requirements in our service offering for prospective clients and bring these new regulations to the attention of our existing clients. Throughout this process, we have advised our clients that adequate resources should be allocated to ensure compliance with the applicable regulations.

Tell us about your approach towards clients. What are your target clients?

As external counsel, we do not manage funds ourselves but help promoters launch them. Therefore, given our close involvement in our clients' projects, we do feel the challenges associated with a fund launch especially if the sponsor is a "first timer".

Conversely, we also share the satisfaction of a successful launch with them as a reward for our contribution. Much like our clients, we are striving to gain visibility but also to maintain a standard of quality - reputation being key in a competitive market. Our client segment is rather mid-market and at this point of time, we primarily focus on alternative asset classes (e.g. private equity, debt and real estate). When

representing investors, we adopt the same mindset as our clients and advise them as if we were investing our own monies. In doing so, we carefully identify every potential drawback and always take into account their commercial objectives.

What are the latest fund industry developments?

At the fund operational level, traditional business models are now challenged, as they need to comply with stricter rules on inter alia substance, oversight, and data protection. In particular, the global data protection regulation (GDPR) will have substantial impact on digitalisation strategies.

When dealing with new asset classes, we tend to be risk adverse and would not accompany fund sponsors on "unexplored" territories where we would not necessarily feel comfortable ourselves (such as crypto currency).

In terms of fund structures, the reserved alternative investment fund (RAIF) which is not subject to CSSF authorization/supervision has not yet achieved its full potential, as some investors still prefer to have a "regulated label" such as the specialised investment fund (SIF) to meet regulatory requirements in their home jurisdiction.

Lastly, we note that board members tend to become more professionalised within the fund sector. For regulatory purposes, independent directors must demonstrate sufficient technical expertise in specific areas.

How does digitalisation impact the fund industry?

Support on which data is being recorded and circulated is undeniably in a revolution phase, both at the level of technical service providers and fund managers. The digitalisation process is on a fast track mode to cope with new substantial reporting obligations and investors' requirements to obtain information in a timely manner. In line with our entrepreneurial mind-

set, we pride ourselves for accompanying successful fintech firms. By helping them to grow, we too benefit from their expertise. From a legal perspective, digitalisation is critical as it will facilitate the requirements of asset managers and service providers as regards regulatory reporting or reconciliation.

It shall also allow - when implemented properly - the same entities to demonstrate their due compliance with other ancillary obligations (e.g. proper oversight on delegates, sound due diligence on investment strategies, etc.).

These duties are not necessarily envisaged in the first stage of a digitalisation project. We have however witnessed how practitioners can deftly leverage on an obligation to transform it into an asset.

What is the influence of fintechs on the investment fund industry?

Fintechs have very early in the process spotted the gap between then existing standards and new regulatory obligations and positioned themselves as a tool to fill such gap. Therefore, we have seen over the past two years an intense activity on the front of fintech startups and business proposals towards more established professionals.

However, procurement and onboarding into institutions have proven to be quite challenging. After a few years of existence, it seems that only fintech companies with solid business models will remain to properly serve the investment fund industry.

What are your perspectives for 2017 and 2018?

For us, 2017 has been a positive year for real estate, debt and infrastructure sectors. On the geographical front, we have noted a strong interest in the Iberian and Nordic regions. We also assist US promoters launch a pan European platform from Luxembourg. 2018 may consolidate these trends or alternatively bring a "new flavor of the month". As fund lawyers, we should in any event be able to accommodate any specific investment strategy.

Denise VOSS, Chairman of ALFI :

«Commission Proposals Could Adversely Impact Investors»

ALFI comments on the European Commission's proposition to give more supervising authority to the European Supervisory Authorities (ESAs)

Following the publication of the European Commission's proposed amendment to the ESA Regulation to give more supervising authority to ESMA, EBA and EIOPA, ALFI expresses its surprise and concern about the new role for ESMA in the authorisation procedure of delegation arrangements.

Denise Voss, Chairman of ALFI, says: "We question this proposed additional layer in the authorisation procedure, required when a fund wants to delegate part of its activities to third countries. This is increased bureaucracy, it lengthens time to market and it increases costs. This will undoubtedly have a negative effect on the competitiveness of EU funds as a whole, and ultimately on the investor. We see no added value in this as the local regulators, being close to the asset managers and the market, remain best placed to authorise and oversee funds and their operations."

She continues: "The stipulations in the Commission proposal on the authorisation procedure of delegation arrangements are a new element since the initial consultation, which closed in June and to which ALFI responded. These provisions do not prohibit delegation to third countries and ESMA will not directly supervise UCITS funds and AIFs which delegate, amongst other activities, portfolio management to third countries, but the involvement of ESMA will add an additional layer to fund authorisation process and, as such, time to market will be affected. Costs will increase because the proposal would require additional resources at ESMA. These costs would be borne by the industry, on top of the industry's current financing of the local financial supervisors. Ultimately these costs are likely to be passed on to the investor."

"Delegation is a tried and tested business model that gives investors in funds – including millions of European investors - access to expert portfolio management from managers based around the globe. This model has worked well over the last 3 decades since the introduction of UCITS, and is applied in financial centres throughout Europe".

Explaining how the delegation model works, she says: "Delegation of certain functions back to a company's headquarters, to other parts of a group or to specialist third party asset managers, while effective decision making and oversight of risks remains in the country from which delegation takes place, is a time-honoured practice not only in Europe but across the globe. It is part and parcel of the global financial system and it is an inherent feature of the European fund model which, in turn, is recognised as a success story worldwide."

Similarly, in order to give investors access to expert portfolio management skills and experience delegation enables a fund manager in the EU to outsource some portfolio management to a specialist in, for example, Japan or Hong Kong, who knows the local market. Equally a fund management company can delegate to a portfolio manager in e.g. London – whether the UK is in or outside the EU makes absolutely no difference in this context.

She said: "This proposal risks initiators from third countries turning their back on using European UCITS or AIFs to raise capital in Europe or offer investment solutions to a European client base. It could have a significant impact on the competitiveness of European financial services and products as a whole. UCITS in particular are a European success story, with UCITS investors resident in over 70 countries – in and outside of Europe. The delegation model has been both good for European investors – in terms of investment choice - and for Europe, in terms of jobs created in the financial centres throughout Europe."

"It is difficult to understand the rationale for the Commission's proposals, which impact not only asset managers and investment funds, but also banks, investment firms and insurance companies, especially given the goals of the Capital Markets Union – which ALFI strongly supports - that seeks to facilitate additional sources of financing economic growth and jobs in Europe."

ALFI continues to examine the nearly 300 page text and has set up a high-level task force to look into the current proposal for a regulation to amend the ESA Regulation and other sector actors and to coordinate ALFI's response.

Source : ALFI



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grow your
business**

Choosing and structuring the proper investment vehicle in permanent respect of investors take in-depth technical and market expertise. It requires a unique combination of regulatory, compliance and transaction know-how.

The Investment Funds practice of Luther Luxembourg provides a distinctive "one-stop-shop" as well as particular experience and strength in creating innovative structures for regulated and alternative investments.



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