

Luxembourg funds market

**Where do we stand in the current
Brexit environment?**

London
4 October 2018

Agenda

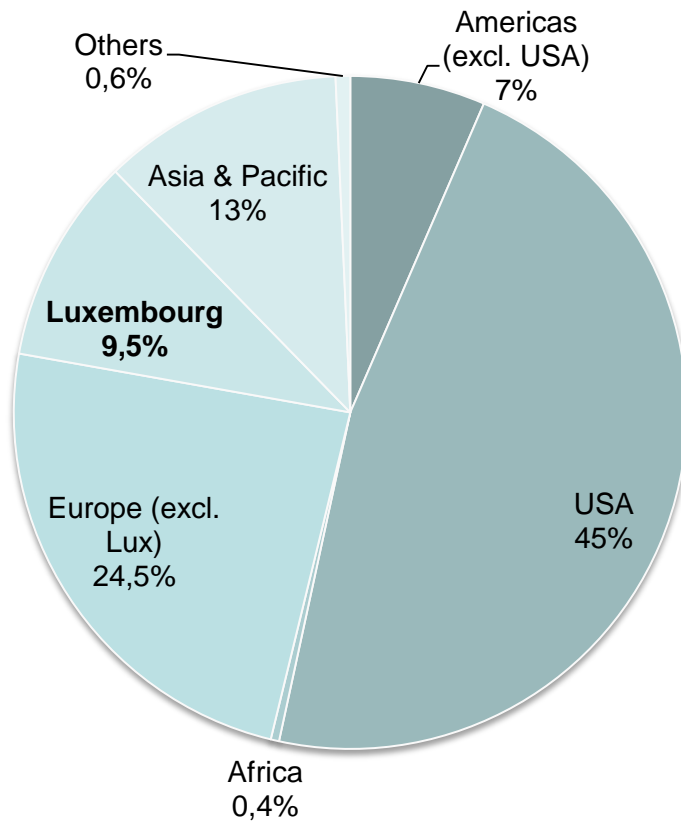
- Helicopter view on the current funds environment in Luxembourg
- Recurrent governance considerations
- Clarification by the CSSF re: substance requirements
- Post-Brexit passporting considerations

Helicopter view

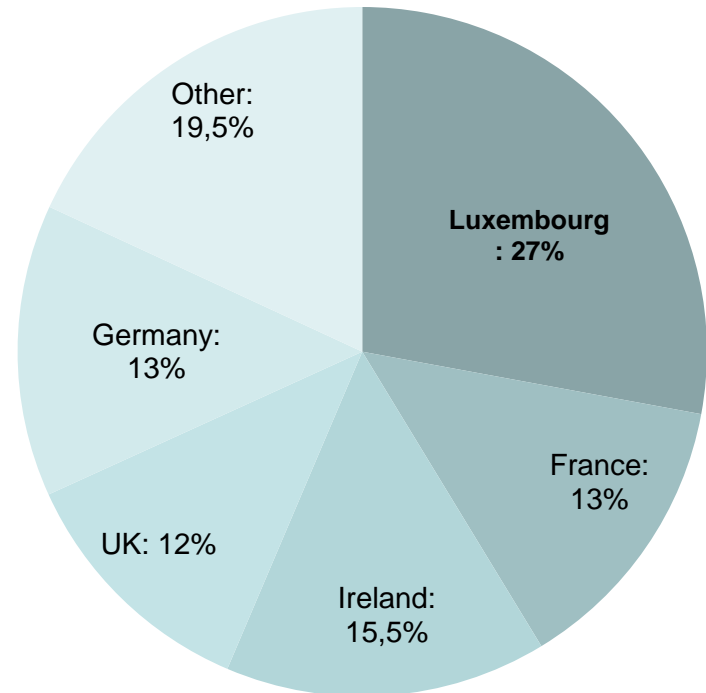
Worldwide vs. European AuMs: Luxembourg's position

arendt

Worldwide investment funds:
€43.74 trillion AuM



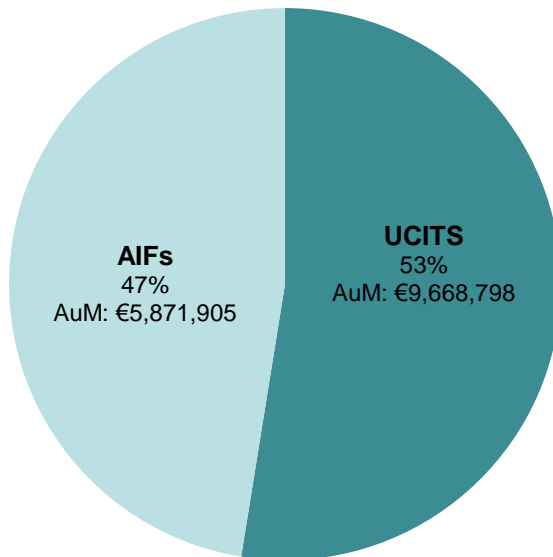
European investment funds:
€15,54 trillion AuM



Luxembourg in the European investment funds' market

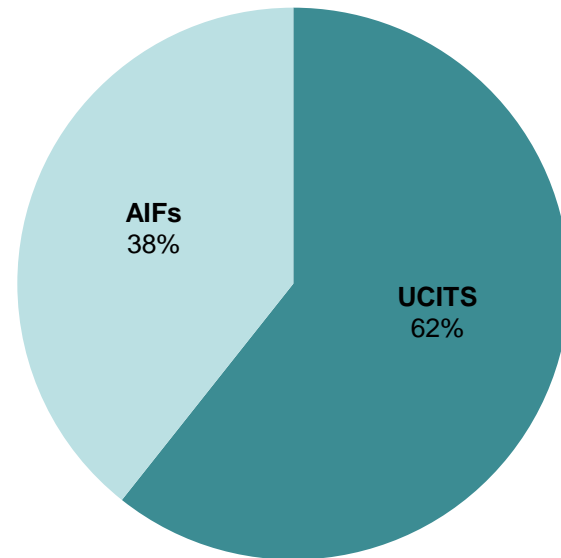
arendt

Net AuM in Lux (in €millions)



Total AuM: €15,54 bn

Lux market share



Luxembourg unregulated funds:

- 463 RAIFs
- 469 LPs*

(*only shows LPs with an authorised AIFM)

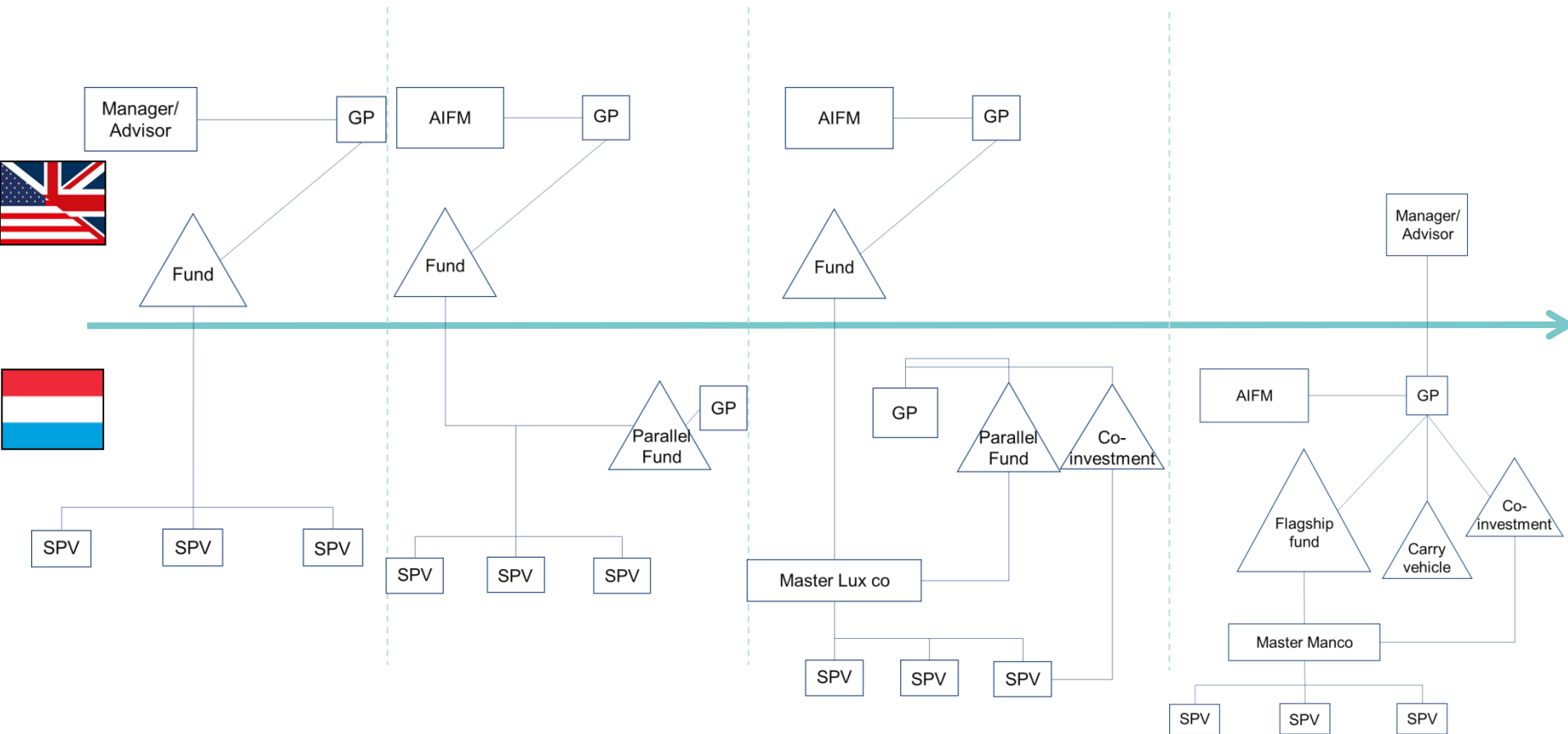
Luxembourg regulated funds:

- 1,557 SIF
- 283 SICAR
- 304 Part II
- 1,843 Part I

The funds centre in key numbers

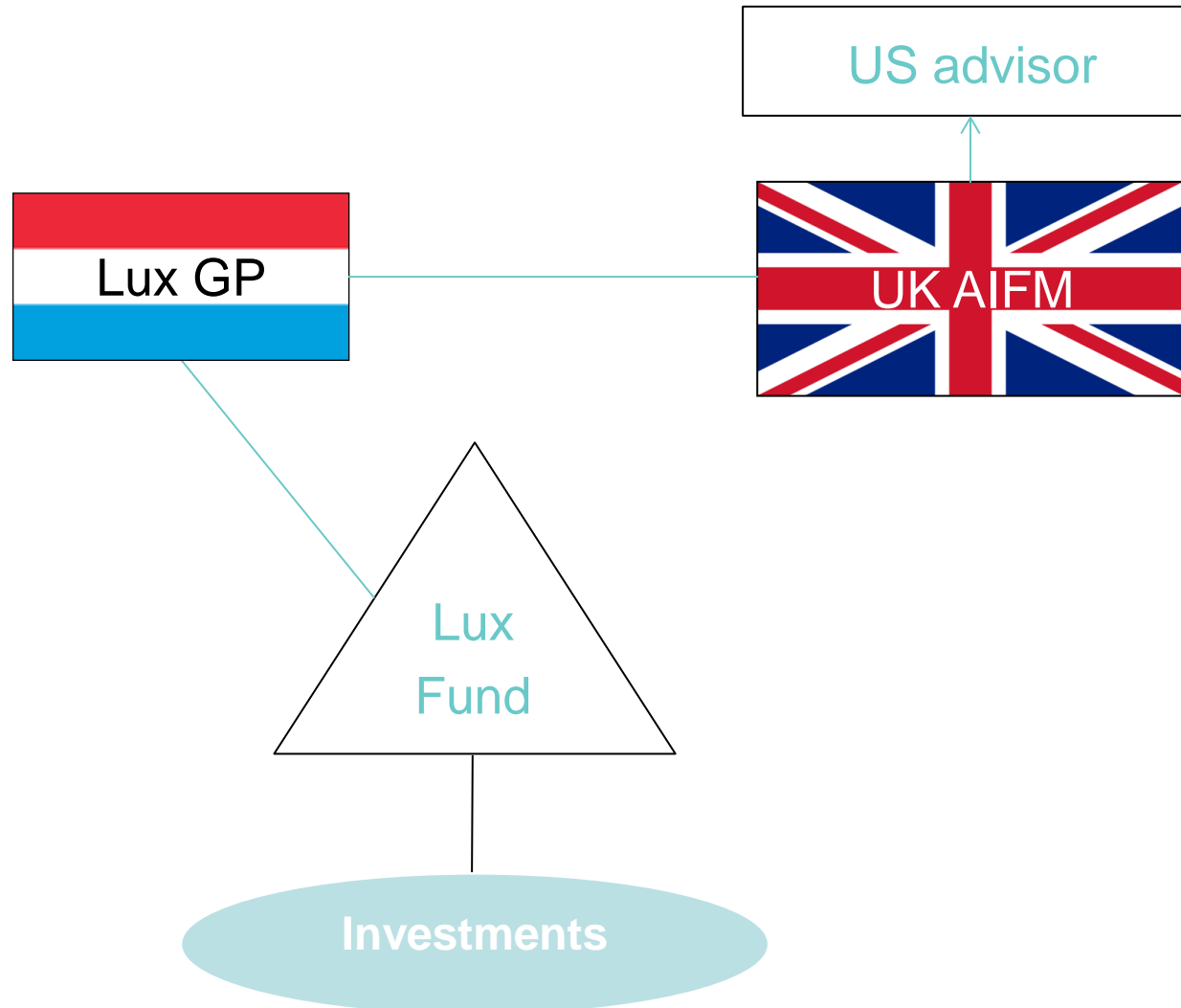
- AIFM: **245**
- Registered (below-threshold) AIFMs: **605**
- Depositaries: **67**
- Central administrators: **149**
- Professional service firms (PSFs) – (balance sheet total: € 8.28 bn): **286**
- Cross-border fund distribution to **67** countries

Ever-growing appetite for Luxembourg in the alternative space



Recurrent governance considerations

Common set-up (1) – Lux GP with UK AIFM



Common set-up (1) – Lux GP with UK AIFM (*cont'd*)

How to proceed practically?	Where should this governance be reflected?
<ul style="list-style-type: none"> ▪ List all of the tasks required in the investment decision-making process ▪ Identify: <ul style="list-style-type: none"> ➤ Governing bodies ➤ Reserved matters ➤ Nature of the decision required: veto, endorsement, ratification,...) 	<ul style="list-style-type: none"> ▪ Constitutive documents ▪ Agreements between GP, Fund, UK AIFM, US advisor and service providers ▪ In separate internal policies / memos: <ul style="list-style-type: none"> ➤ Governance policy ➤ Board delegation guidelines ➤ Delegation of authority,...

➤ Will differ depending on delegation vs advisory model

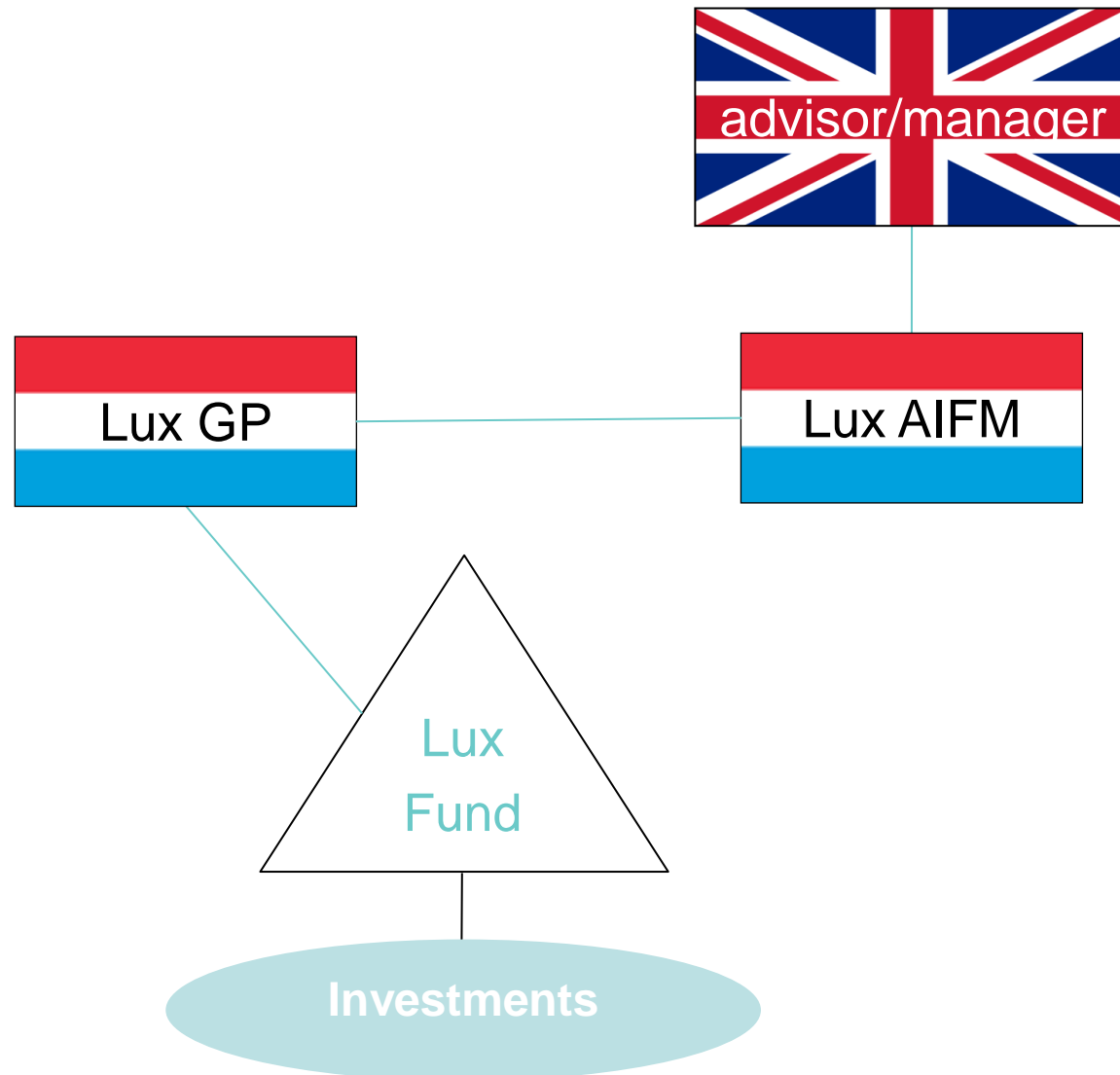
Lux GP with UK AIFM: sample allocation

	Power on behalf of the Fund	Assigned to the Lux GP	Assigned to the AIFM
1	Maintain the Partnership register (containing a certified copy of the current version of the limited partnership agreement, a list of all the partners and a list of all transfers of partnership interests)	X	
2	Provide or procure the provision of office facilities and office and executive staff and office equipment	X	
3	Provide Fund accounting services	X	
4	Maintain records and books of account of and in the name of the Partnership at the Partnership's or its own principal place of business	X	
5	Organise (quarterly) board of managers meeting of the general partner ratifying investments and considering all relevant business	X	
6	Convene and organise Partners meetings	X	
7	Organise meetings of the managing board of the AIFM		X
8	Sign a management agreement with the AIFM	X	
9	Sign agreements with the service providers (excl. the depositary)	X	
10	Appoint a depositary under AIFMD of the Partnership assets		X
11	Decision to open bank or other accounts, for and in the name of the Partnership, maintain such accounts, give payment and other instructions to banks or custodians		X
12	Complete administration necessary to open bank or other accounts, for and in the name of the Partnership, maintain such accounts, give payment and other instructions to banks or custodians	X	X
13	Execute and deliver any document which the General Partner may determine is necessary under the Fund's limited partnership agreement	X	
14	Execute and deliver any document which the AIFM may require the General Partner to execute	X	
15	Admit prospective Limited Partners and issue Contribution Notices and accept Capital Contributions from the Partners and to receive all income and other funds	X	
16	Admit additional Limited Partners and transferees to the Partnership	X	

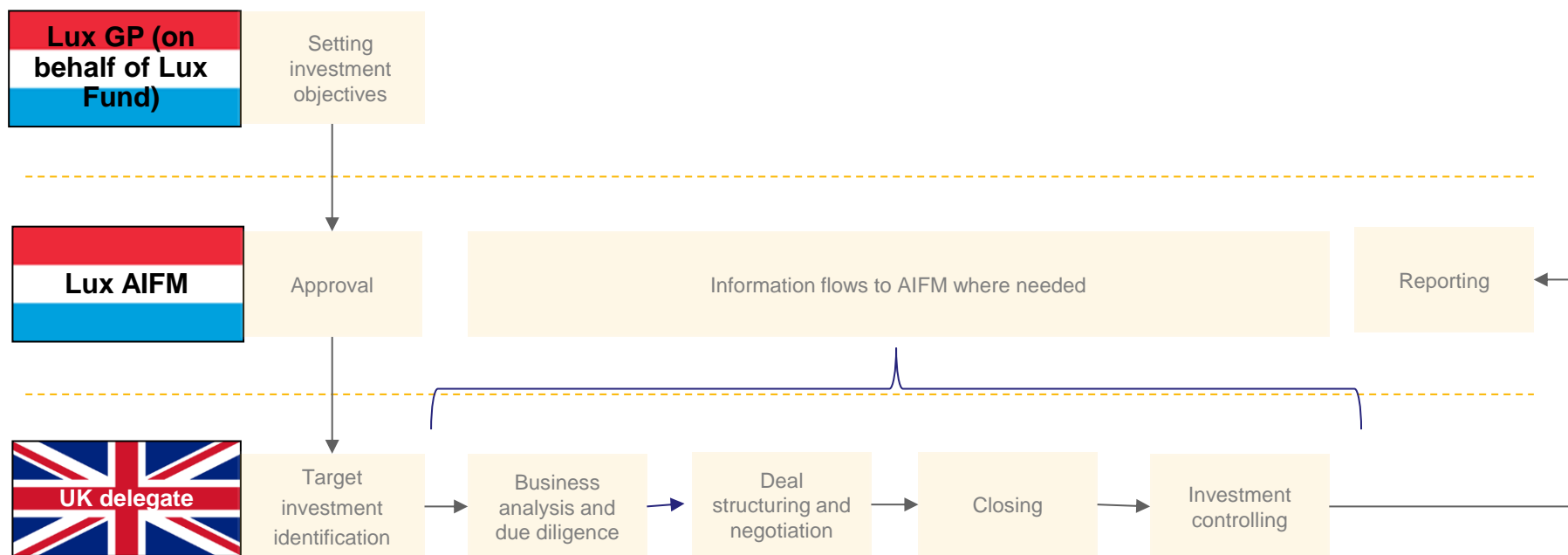
Lux GP with UK AIFM: sample allocation

	Power on behalf of the Fund	Assigned to the Lux GP	Assigned to the AIFM
17	Perform risk and portfolio management functions of the Partnership		X
18	Take decisions to make or dispose of Investments.		X
19	Decision to establish acquire, and/or own any special purpose vehicle or alternative investment vehicle		X
20	Identify, evaluate and negotiate investment opportunities, and to sell, exchange or otherwise dispose of Investments		X
21	Enter into underwriting commitments, to acquire Investments in a syndicate with other investors and to invest in currency or currency futures or currency options or other instruments with a view to hedging Investments		X
22	Monitor the performance of the Partnership		X
23	Enter into one or more bridging credit facilities (the decision to do so should be taken by the AIFM)	X	
24	Make Distributions to the Partners	X	X
25	Prepare and file all U.S. federal, state and local and, if appropriate, non-U.S. tax returns required to be filed for the Partnership	X	X
26	Make payments in respect of expenses of the Partnership	X	X
27	Carry out periodic valuations of the Partnership assets and to furnish reports and valuations to the Partners		X
28	Engage independent agents, lawyers, accountants and financial and other advisers and consultants as it may deem necessary or advisable in relation to the affairs of the Partnership	X	X
29	Subscribe insurances	X	X
30	Do all or any other acts as are required of the AIFMD or as are necessary or desirable in the opinion of the AIFM consistent with the terms of the Fund's limited partnership agreement		X
31	Generally communicate with the Partners	X	X
32	Register and publish (or cause the AIFM to register and publish) notices pursuant to the Fund's limited partnership agreement	X	
33	Generally represent the Partnership in its dealings with the AIFM	X	
34	The General Partner shall do all things and discharge all duties or requirements of or imposed on a the general partner by the Luxembourg Company's law	X	
35	Commence or defend litigation relating to the Fund	X	
36	Commence or defend litigation relating to Fund Investments		X

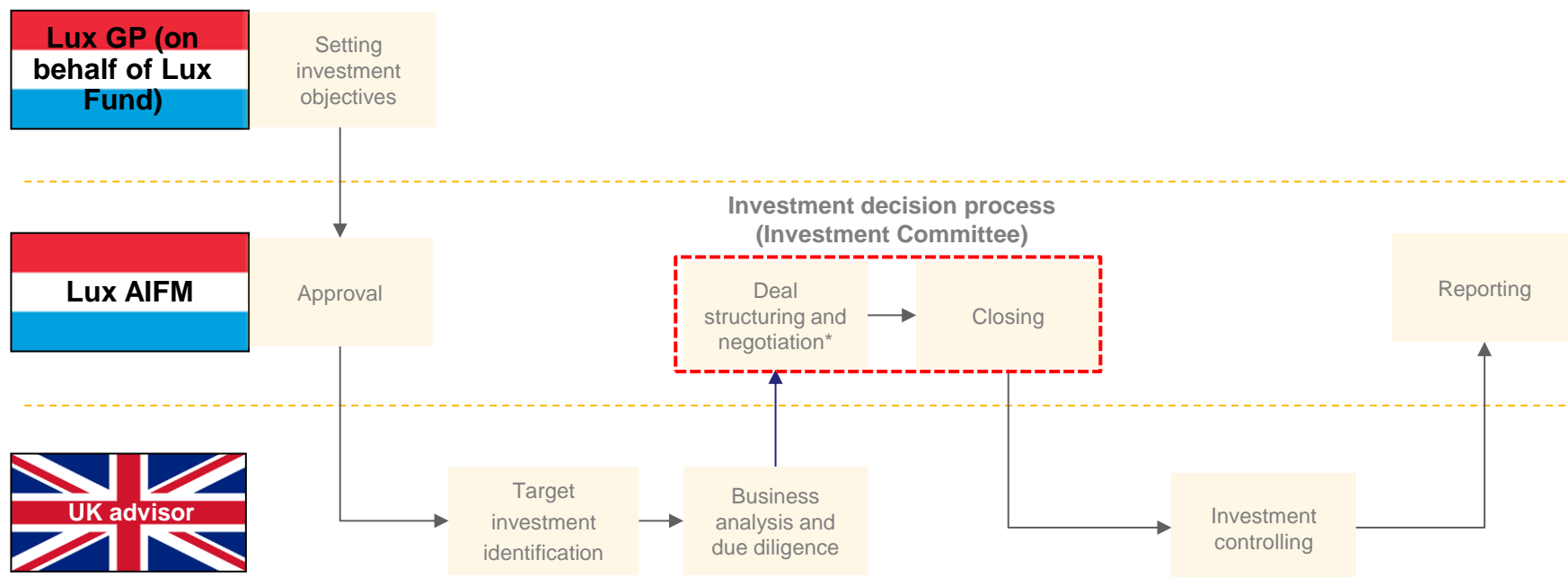
Common set-up (2): Lux GP with Lux AIFM and UK advisor/manager



Portfolio management – delegation model

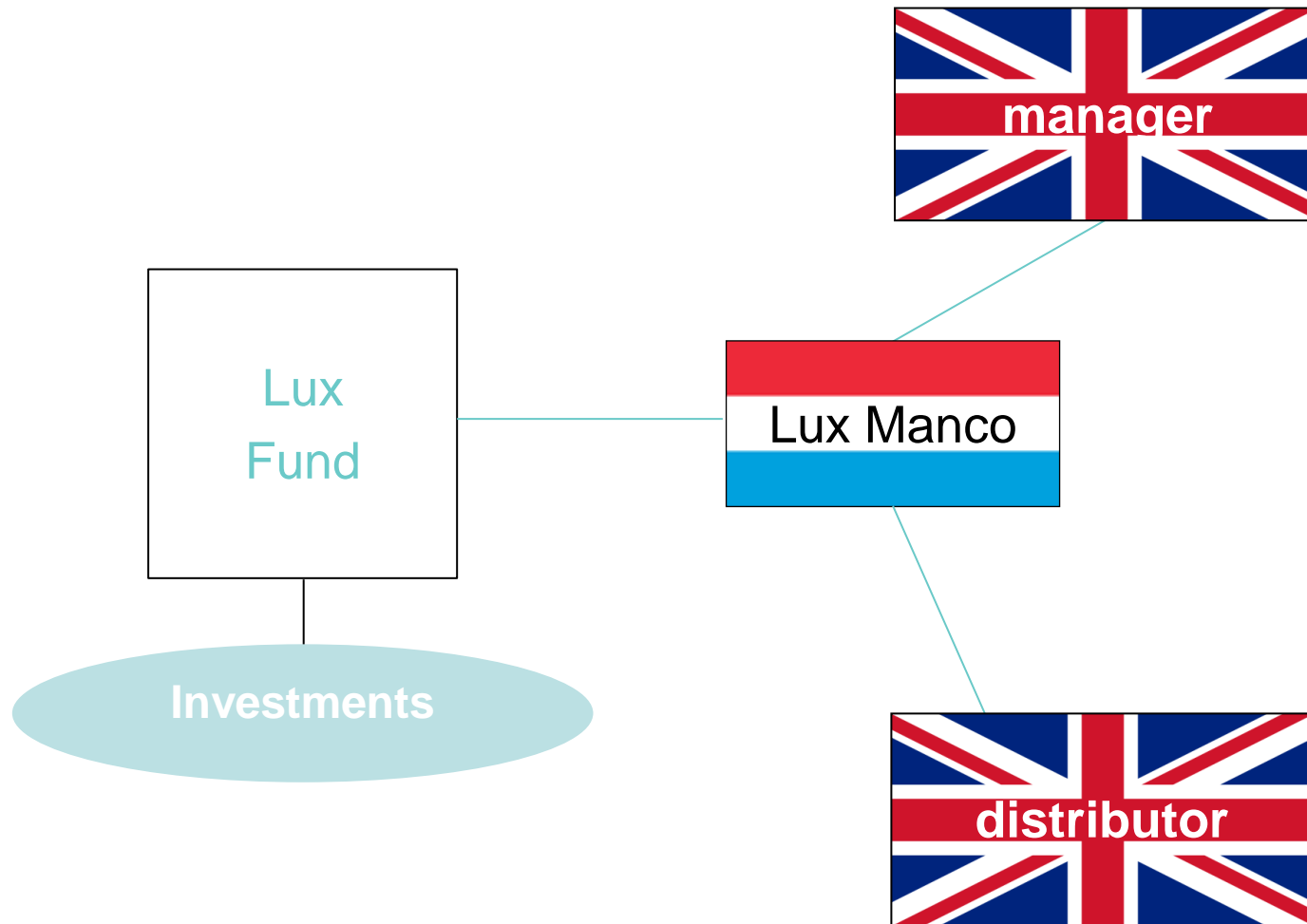


Portfolio management – advisory model



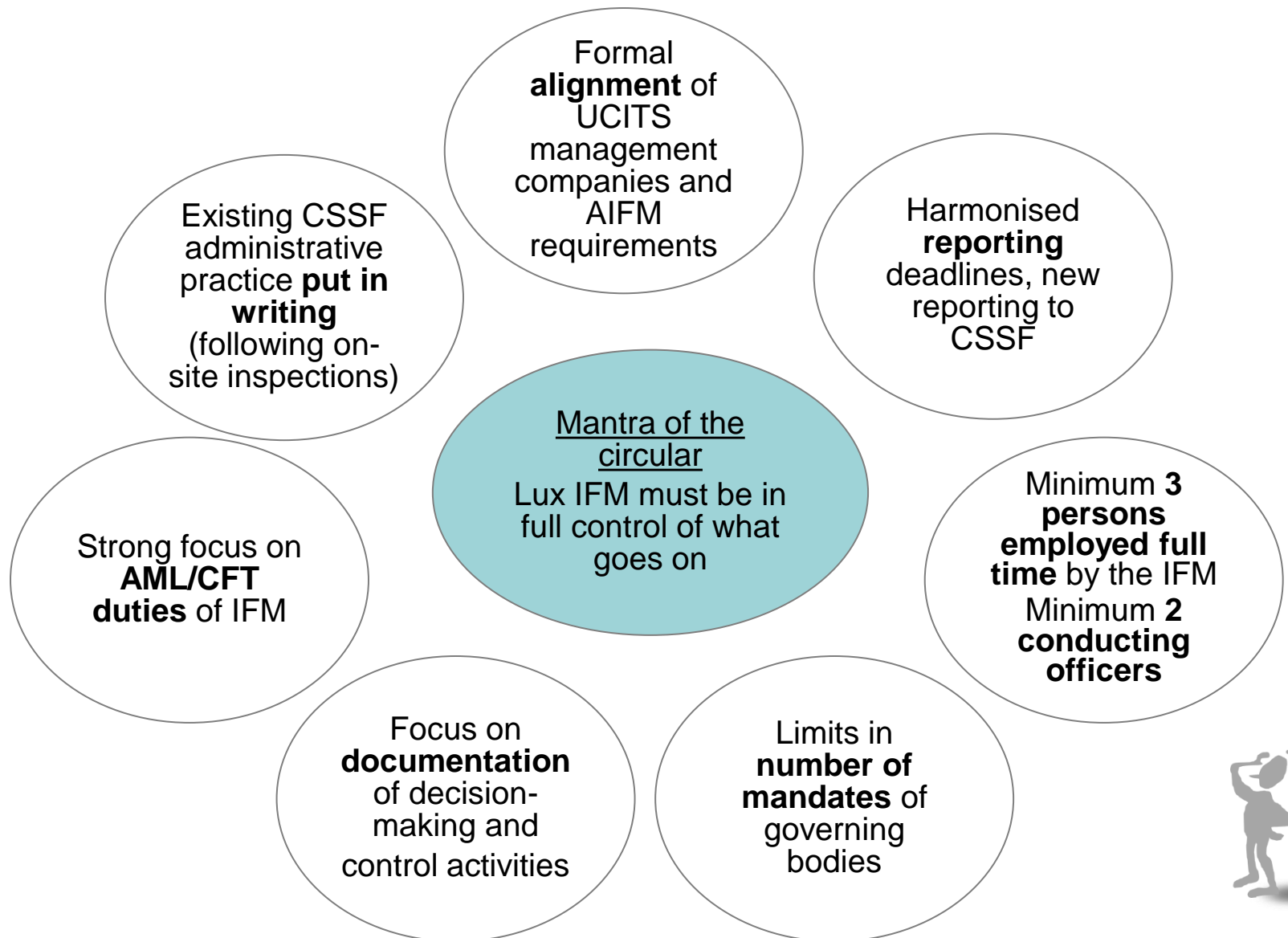
*Can potentially be allocated to advisor, however always subject to final approval at AIFM level.

Common set-up (3): Lux Manco with UK distributor and UK manager

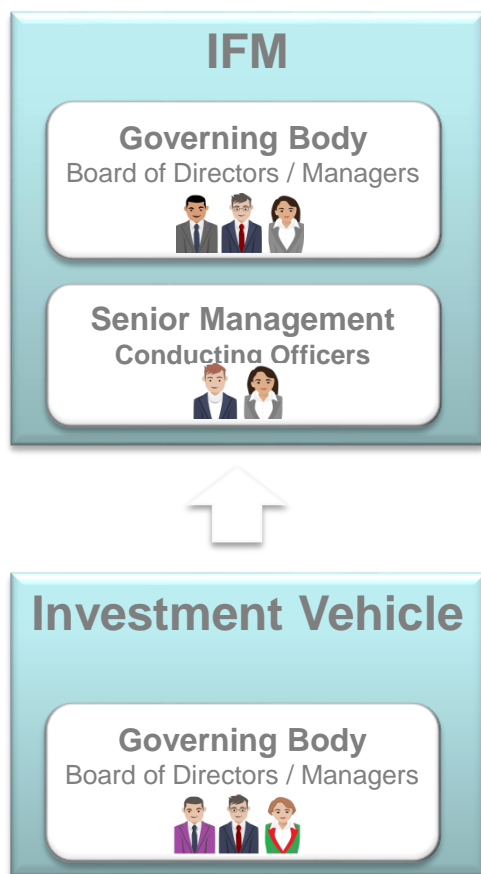


Clarification by the CSSF re: substance requirements

New CSSF circular 18/698



Selected topic: staffing / personnel





- Skills & experience re: type of UCI managed and their investment strategies
- Governing body cannot be composed by majority of executive persons
- Governing body of IFM and governing body of investment vehicle should not be predominantly composed of same persons
- New limits in terms of number of mandates (no more than 20) and of working time spent (1,920 hours/year) for GB members*
- Quarterly meetings of governing body as a minimum
- 2 full-time conducting officers on the IFM payroll located in Luxembourg (flexibility if AuM ≤ 1.5 bn EUR)
- Duties & activities of the management committee (composed of conducting officers)

*Derogation at the discretion of the CSSF upon appropriate justification

Selected topic: compatibility of key functions

Allocation of functions between conducting officers

Senior Management
Conducting Officers

+1, 2,

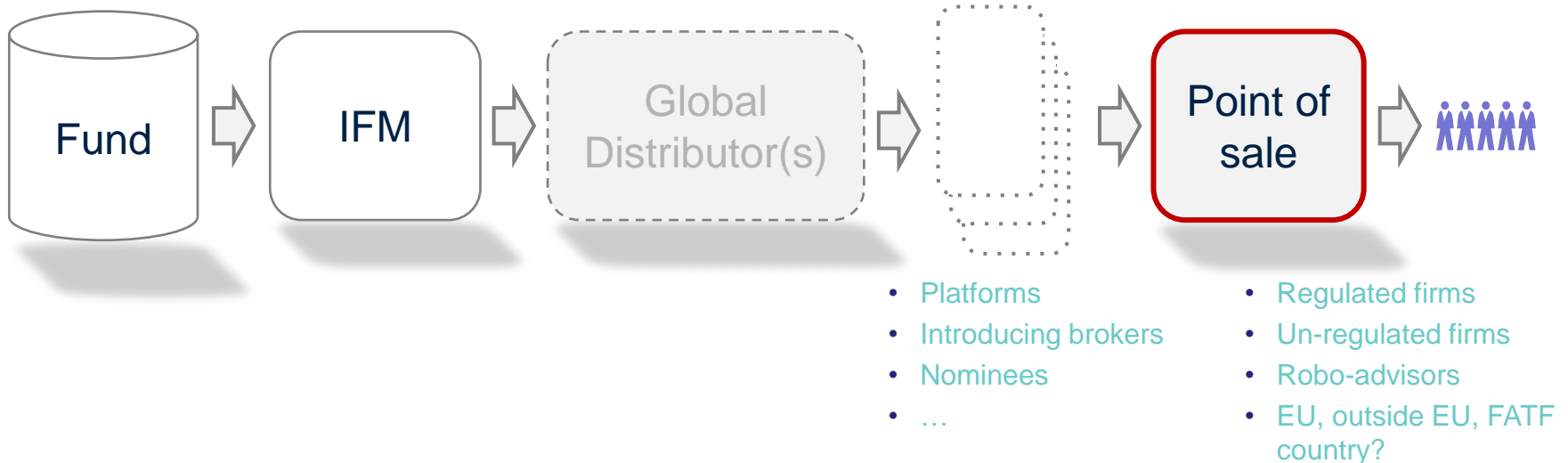
Investment management	<input checked="" type="checkbox"/>		
Risk management		<input checked="" type="checkbox"/>	
Administration of UCIs	<input checked="" type="checkbox"/>		
Marketing	<input checked="" type="checkbox"/>		
Compliance		<input checked="" type="checkbox"/>	
Internal audit	? (<input checked="" type="checkbox"/>)		?
Handling of complaints and claims		<input checked="" type="checkbox"/>	
Fight against money laundering and terrorist financing		<input checked="" type="checkbox"/>	
Valuation		<input checked="" type="checkbox"/>	
IT function	<input checked="" type="checkbox"/>		
Accounting function	<input checked="" type="checkbox"/>		



Allocation must take into consideration incompatibilities and available staff in key functions

Selected topic: marketing

Distribution cascade



- IFM must put in place a marketing procedure
- The procedure must cover elements of the MIFID 2 product governance rules (target market) for UCIs distributed in the EU
- The procedure must cover the due diligences (incl. AML DD) and the ongoing monitoring on intermediaries which carry out marketing and with which the IFM is in direct relationship
- Ongoing monitoring includes (non-exhaustive): the follow-up of distribution incidents, distribution countries, compliance of intermediaries with MIFID 2 (target market, inducements), complaints analysis, follow-up of sub/red per UCI

Selected topic: reporting

Changed or new IFM reports to the CSSF

- Compliance report
- Internal audit report
- Complaints' report (now indicating who is in charge of handling complaints has)
- Risk Management Procedure ("RMP") (which is one element of the Risk Management Policy and is a synthetic communication tool with the CSSF)
- Risk report on financial instruments in portfolio (only for Chapter 15 Mancos)
- Report on risk management adequacy and effectiveness

- Annual report on **branches activities, organisation and financial situation**
- Annual communication for each member of the governing body and conducting officer of the **professional activities and updated mandates**
- Annual record of all **delegates** re: collective portfolio management activities (incl. valuation)
- Annual report of the list of direct relationship between IFM and intermediaries
- Annual report on **AML/CFT**
- Final calculation of own funds (only for IFMs having discretionary PM license)

- **Half-year consolidated financial statement** of the IFM, its subsidiaries and its qualifying holdings

- Quarterly reporting on capital requirement ratio **own funds calculation** to the CSSF (only for IFMs having discretionary PM license)

New deadline



5 months after the financial year



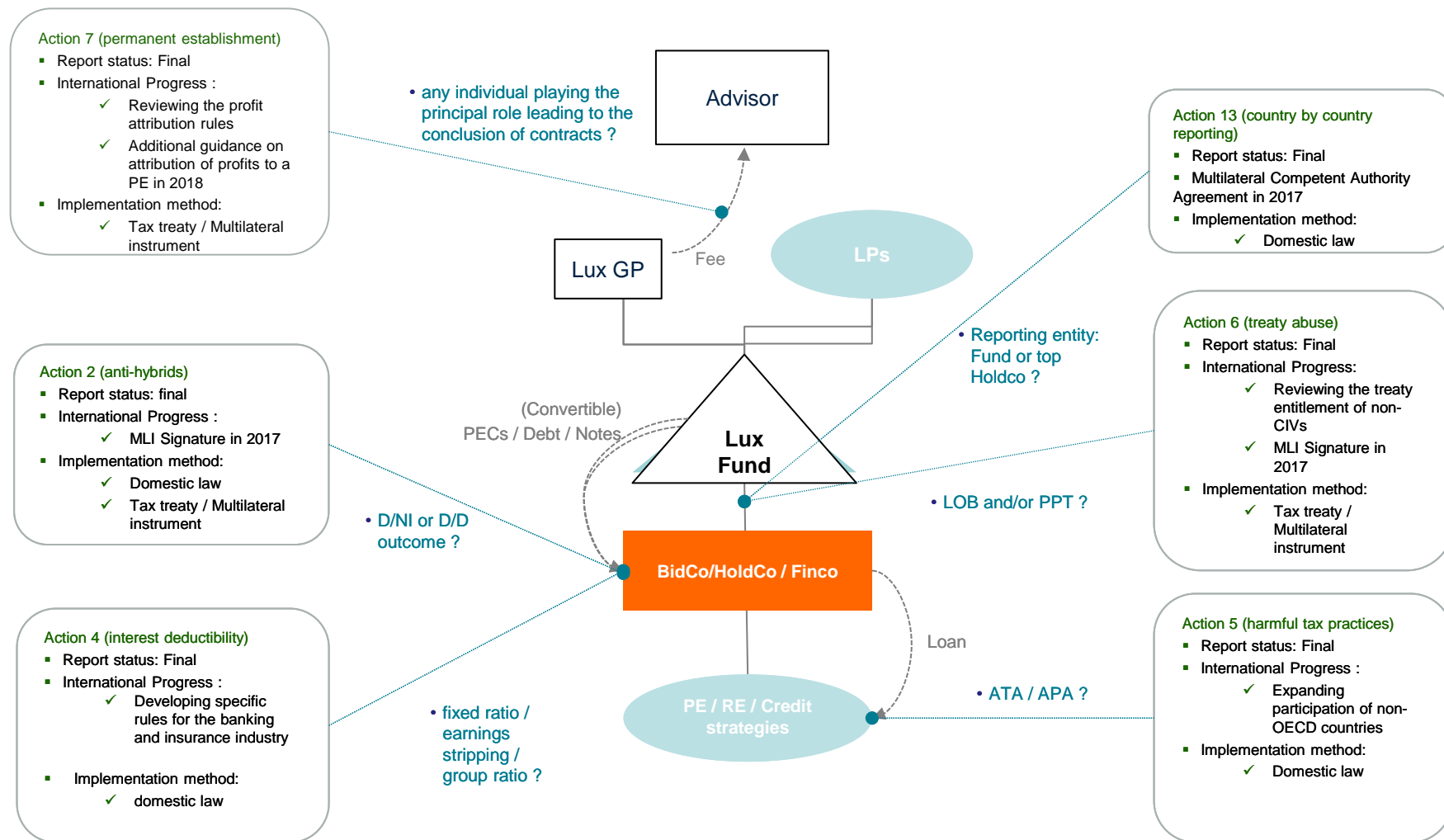
2 months after the calendar half-year



20 days after the end of the calendar quarter

NEW

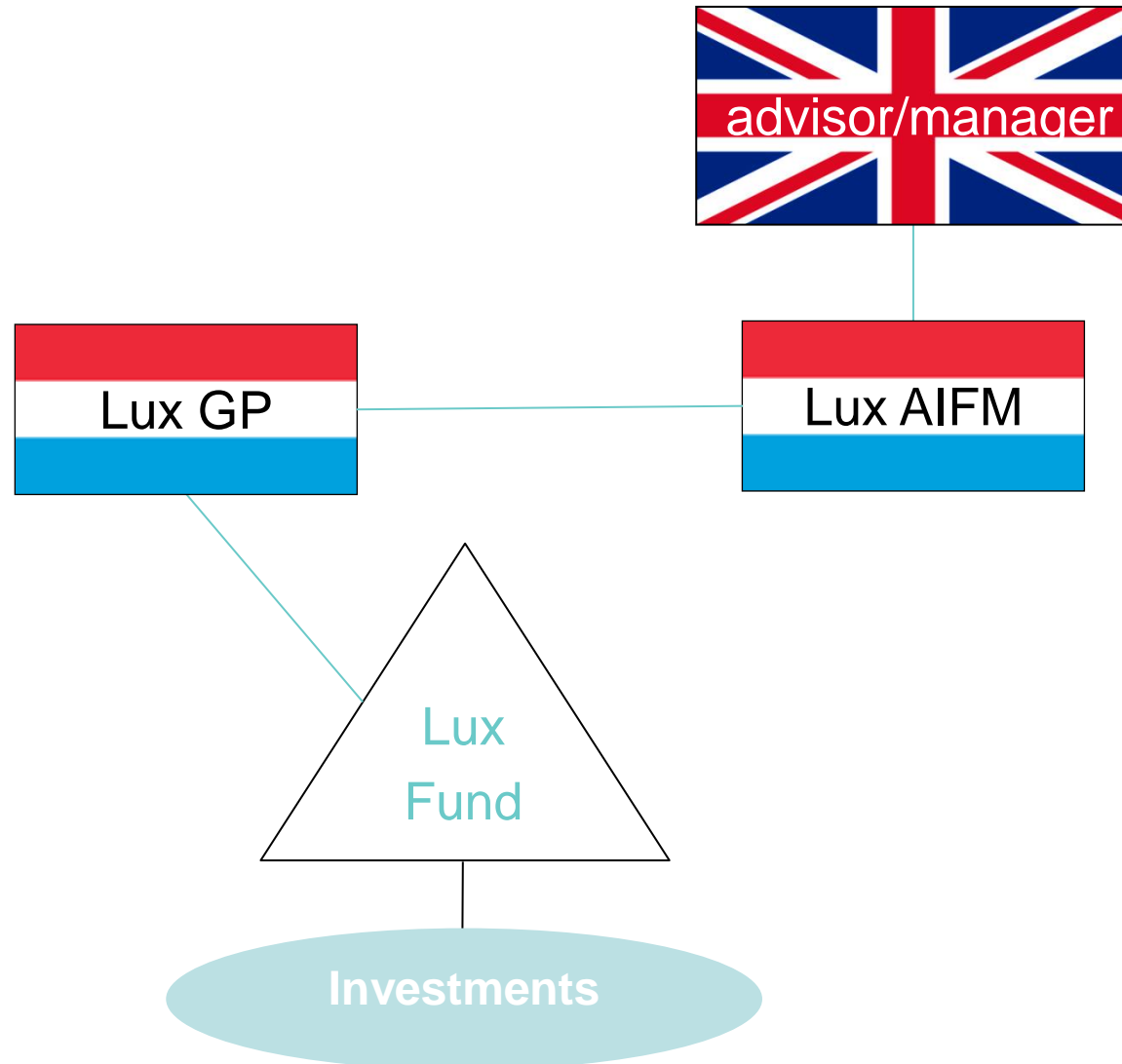
Impact of BEPS actions on a typical fund structure



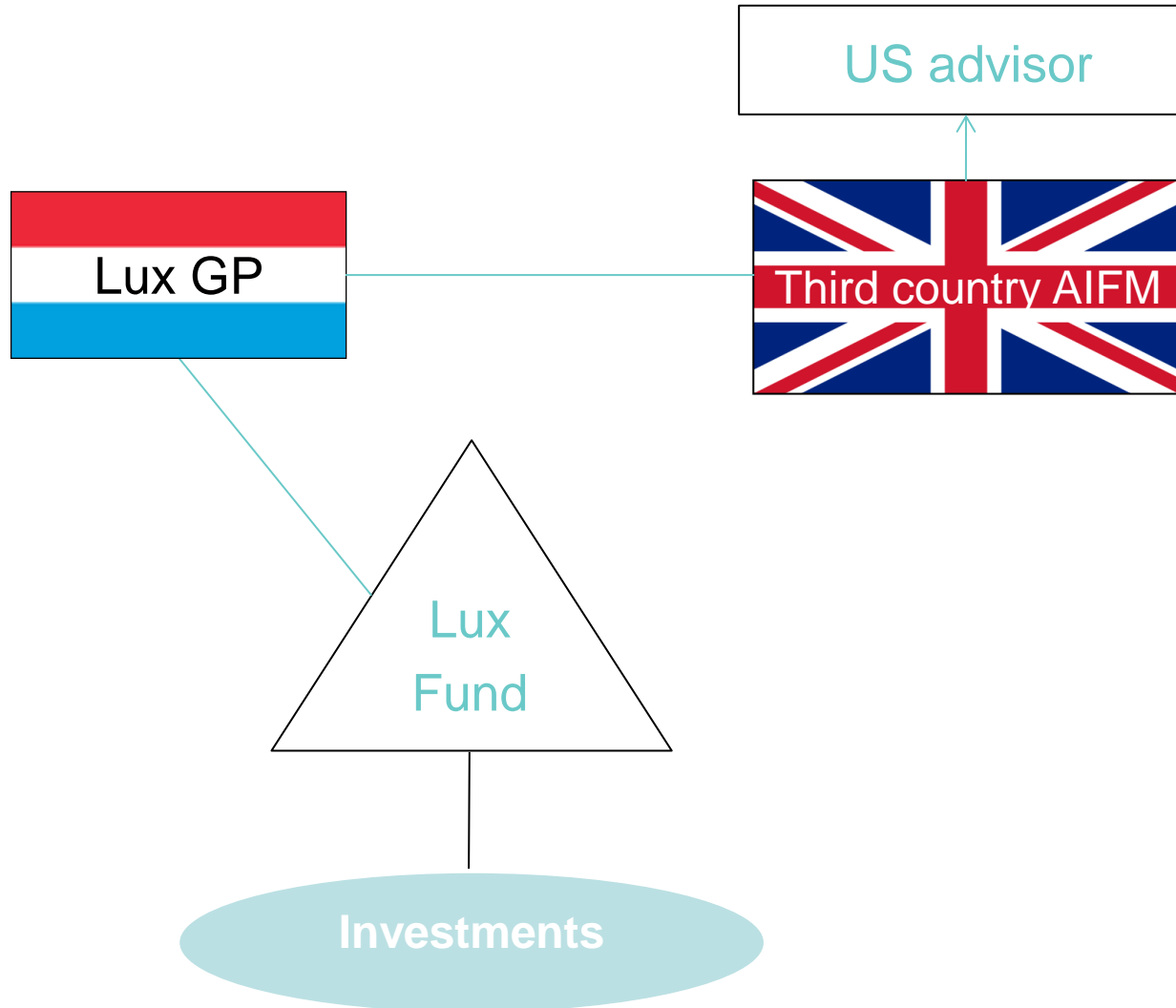


Post-Brexit “passporting” issues

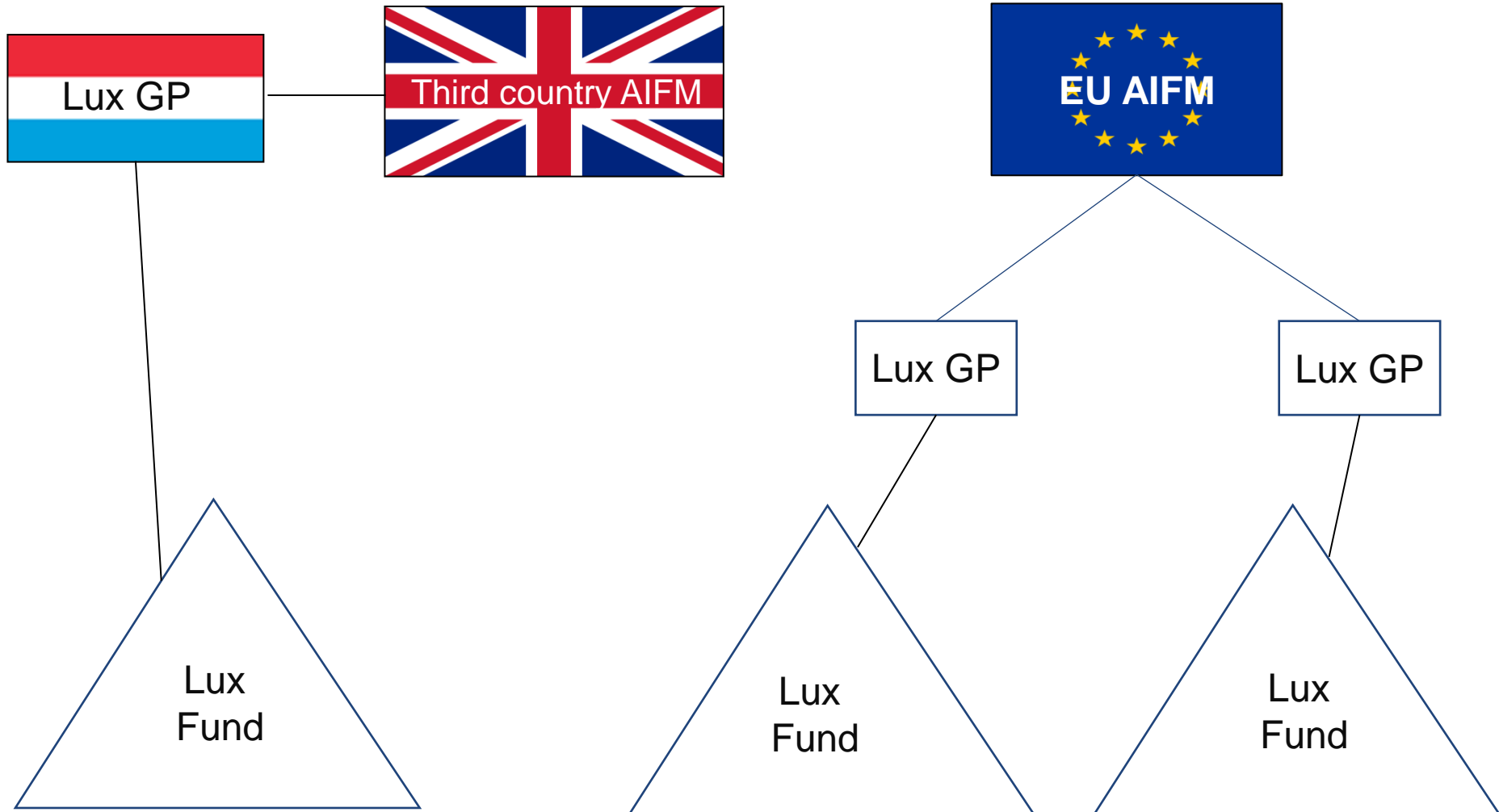
Management passport: Lux GP with Lux AIFM and UK advisor/manager



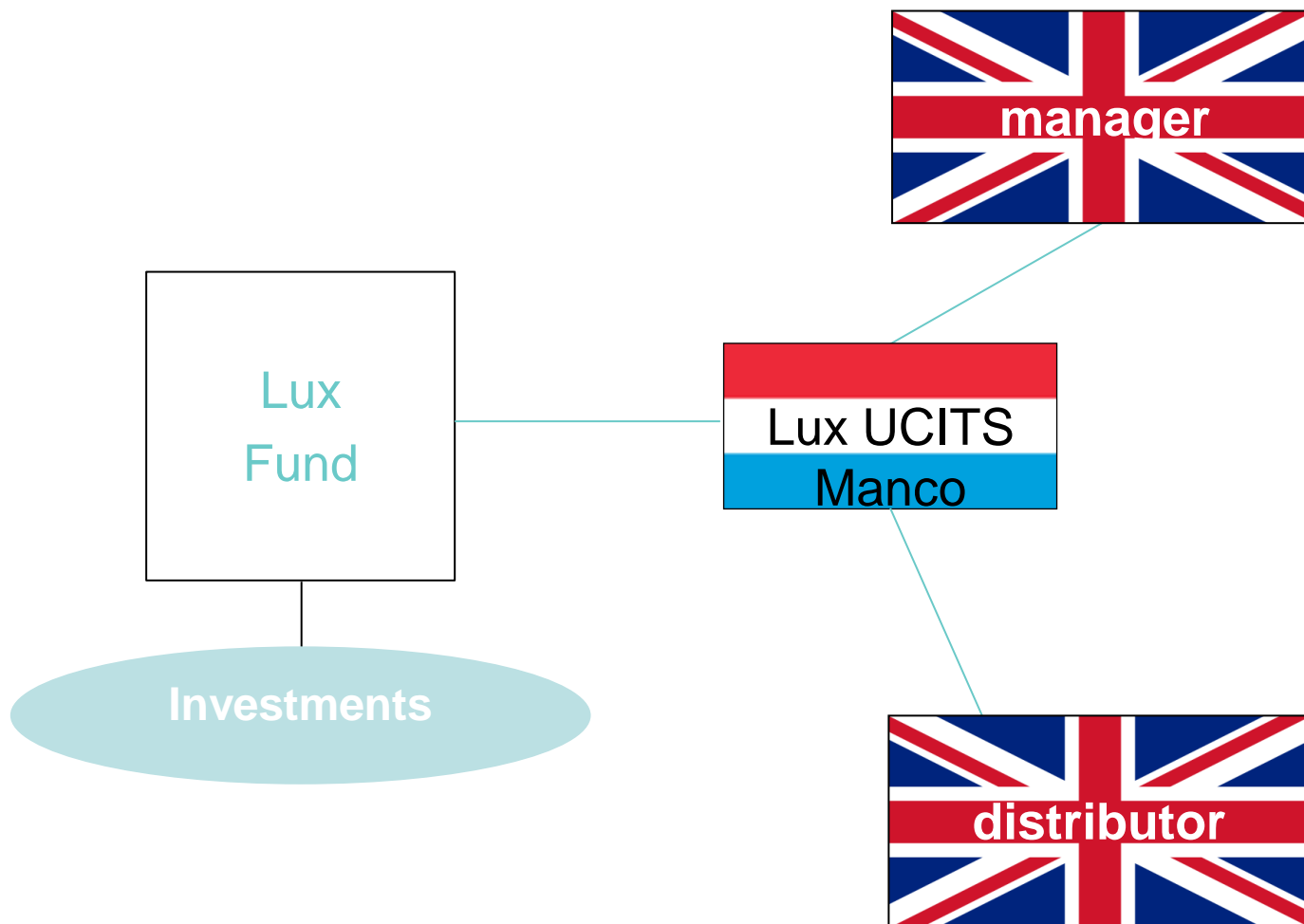
Management passport: Lux GP with UK/Third Country AIFM and UK advisor/manager



Management passport: combination of EU and non-EU AIFMs



Management passport for UCITS Manco



What about the **marketing passport**?

- Marketing activity?
- Relying on the MiFID passport?
- Efficiently marketing your fund in the UK/EU: options
 - Use of a UK branch?
 - UK team member touring EU investors?
 - What else?

What is the appetite for a third party AIFM?

- Smaller manager
- Transitional basis / timing constraints
- Preferred operating model? Delegation vs advisory



Any questions?

Arendt: a single global fund offer

Project Coordination across all services

Legal, Regulatory and Tax Structuring

- Discussion on the structure to be used
- Tax/VAT analysis of the chosen option
- Collect information/documents regarding the governing body
- Drafting of constitutive documents
- Draft of investment advisory agreement
- Review of contractual documentation from a direct and indirect tax perspective
- Assistance with the incorporation of the Fund and ancillary publications

Central administration services

- Domiciliation of legal structure
- Corporate services
- Fund accounting and NAV calculation
- Transfer and registrar services
- Preparation of annual accounts including audit support
- Tax compliance

Depository services

- Oversight function
- Cash monitoring
- Supervision of assets registration
- Custody of Financial Instruments
- Control of every single transaction to monitor safety of assets

AIFM services

- Portfolio management
- Risk management (4M)
- Valuation services
- Compliance checks

Fund distribution services

- Registration in EU and non-EU countries
- Maintenance of the registration
- Regulatory advice on marketing rules

Arendt Legal

Arendt Services

CBP Quilvest
(partnership)

Quamvest

Arendt Regulatory
& Consulting

Luxembourg



Gilles Dusemon – Partner
Private Equity / Real Estate
gilles.dusemon@arendt.com
Tel: (352) 40 78 78 986



Alain Goebel – Partner
Tax
alain.goebel@arendt.com
Tel: (352) 40 78 78 512



Florence Stainier – Partner
Investment Management
florence.stainier@arendt.com
Tel: (352) 40 78 78 657

London



Camille Bourke – Partner
Private Equity / Real Estate
Head of London Office
camille.bourke@arendt.com
Tel: (44) 207 456 9803

This presentation does not constitute legal advice and is merely intended to raise awareness on specific topics. This presentation however is not a substitute for seeking appropriate commercial and legal advice and should not be relied on in this manner.

Copyright © 2018 Arendt & Medernach SA