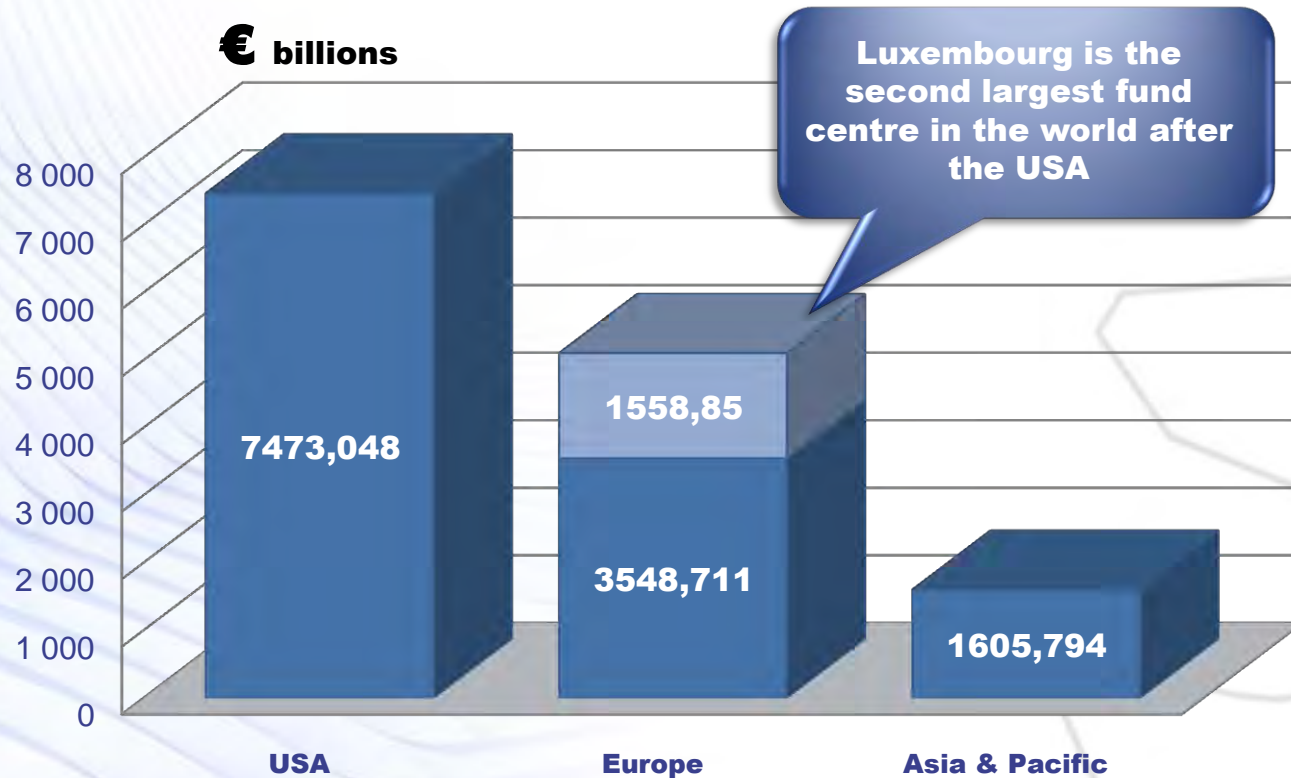


# The Luxembourg Fund Centre

■ **Daniel Dax**  
Director Legal and Tax, ALFI

# Worldwide Investment Funds

## Worldwide Mutual Funds



# European fund industry

## UCITS & NON-UCITS

COUNTRY	ASSETS € MILLIONS	MARKET SHARE
<b>Luxembourg</b>	1.559.653	25.4
<b>France</b>	1.293.265	21.4
<b>Germany</b>	911.330	14.8
<b>Ireland</b>	647.054	10.5
<b>United Kingdom</b>	458.116	7.5
<b>Italy</b>	246.981	4.0
<b>Spain</b>	203.498	3.3
<b>Switzerland</b>	157.040	2.6
<b>Austria</b>	127.729	2.1
<b>Belgium</b>	103.633	1.7
<b>Others</b>	433.404	7.1
<b>Total</b>	6.141.705	100

## UCITS

COUNTRY	ASSETS € MILLIONS	MARKET SHARE
<b>Luxembourg</b>	1.337.043	29.1
<b>France</b>	1.143.265	24.9
<b>Ireland</b>	517.702	11.3
<b>United Kingdom</b>	396.422	8.6
<b>Spain</b>	194.714	4.2
<b>Italy</b>	189.400	4.1
<b>Germany</b>	184.921	4.0
<b>Switzerland</b>	119.069	2.6
<b>Belgium</b>	97.768	2.1
<b>Sweden</b>	84.662	1.8
<b>Others</b>	328.115	7.1
<b>Total</b>	4.593.081	100

Belgian data as of end September 2008

Figures as at December 31, 2008 Source : EFAMA

# The Luxembourg investment fund sector

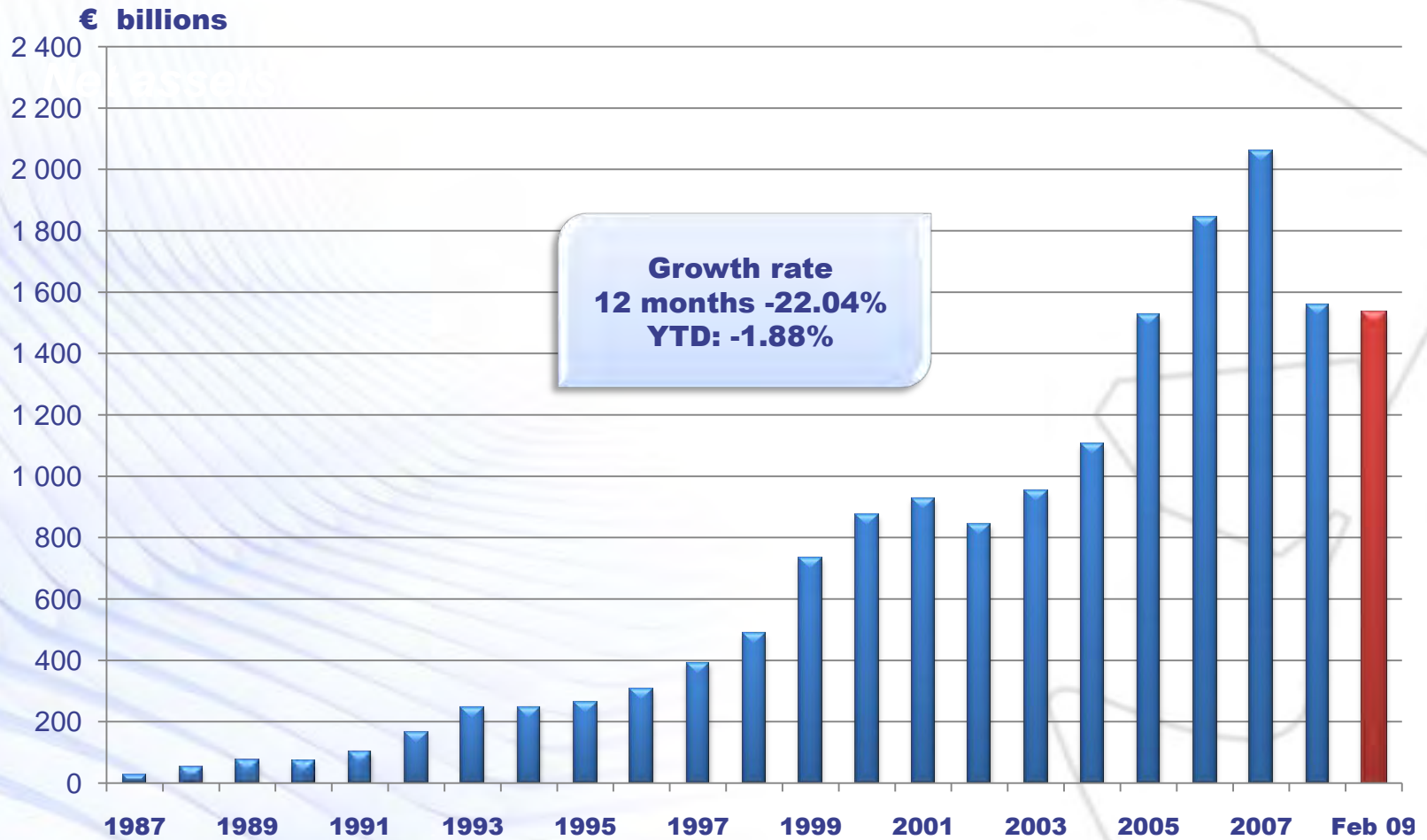
## ... at a glance:

- **3.402 investment funds**
- **12.255 fund units**
- **1530.29 billion euros in assets under management**
- **More than 37 000 distribution agreements for Luxembourg UCITS**

*Figures as at February 28, 2009*

*Source: CSSF*

# The Luxembourg Investment Fund Sector



Figures as at February 28, 2009

Source: CSSF

# The Luxembourg Investment Fund Sector

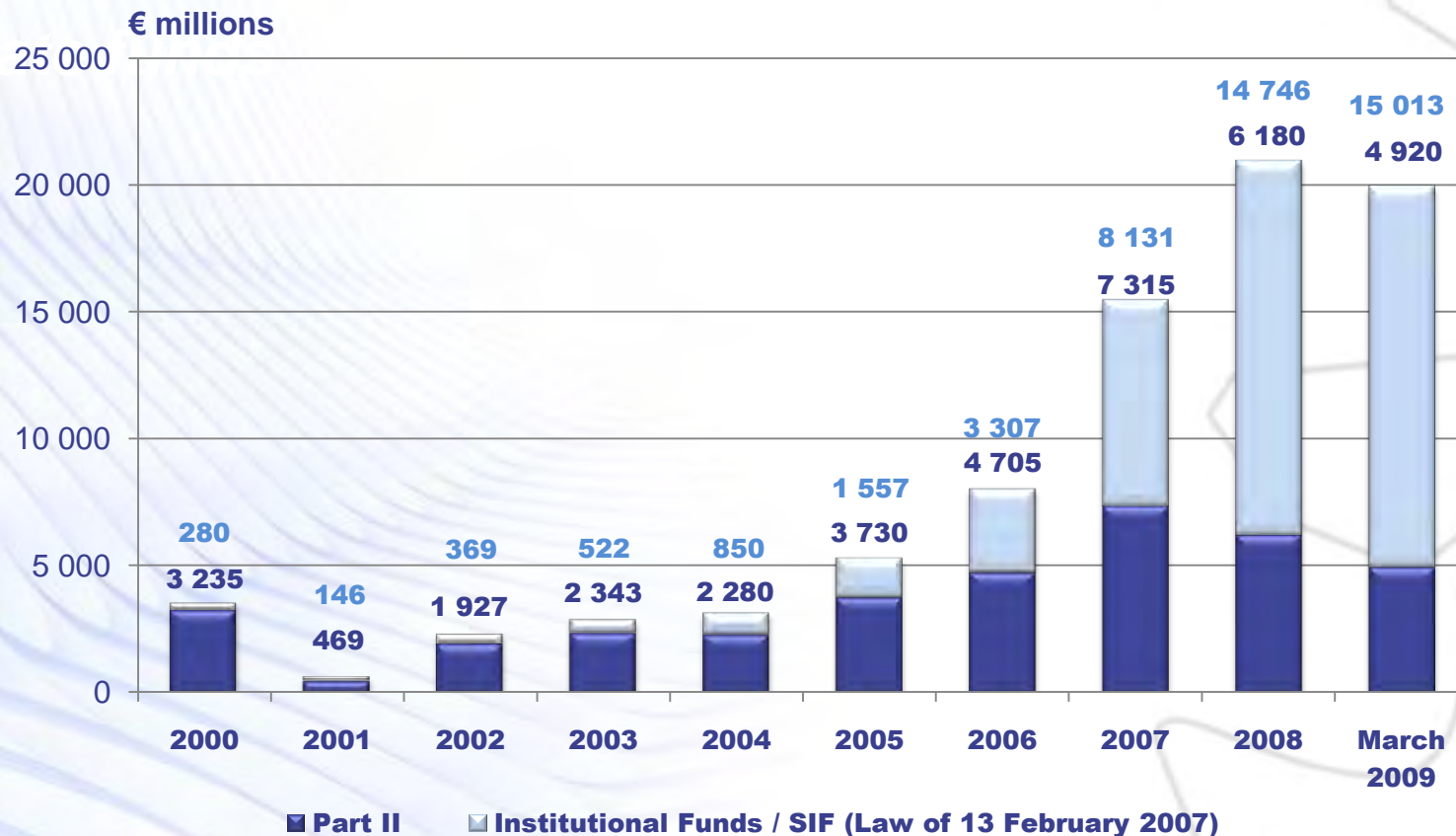


Figures as at February 28, 2009

Source: CSSF

# Luxembourg Real Estate Funds

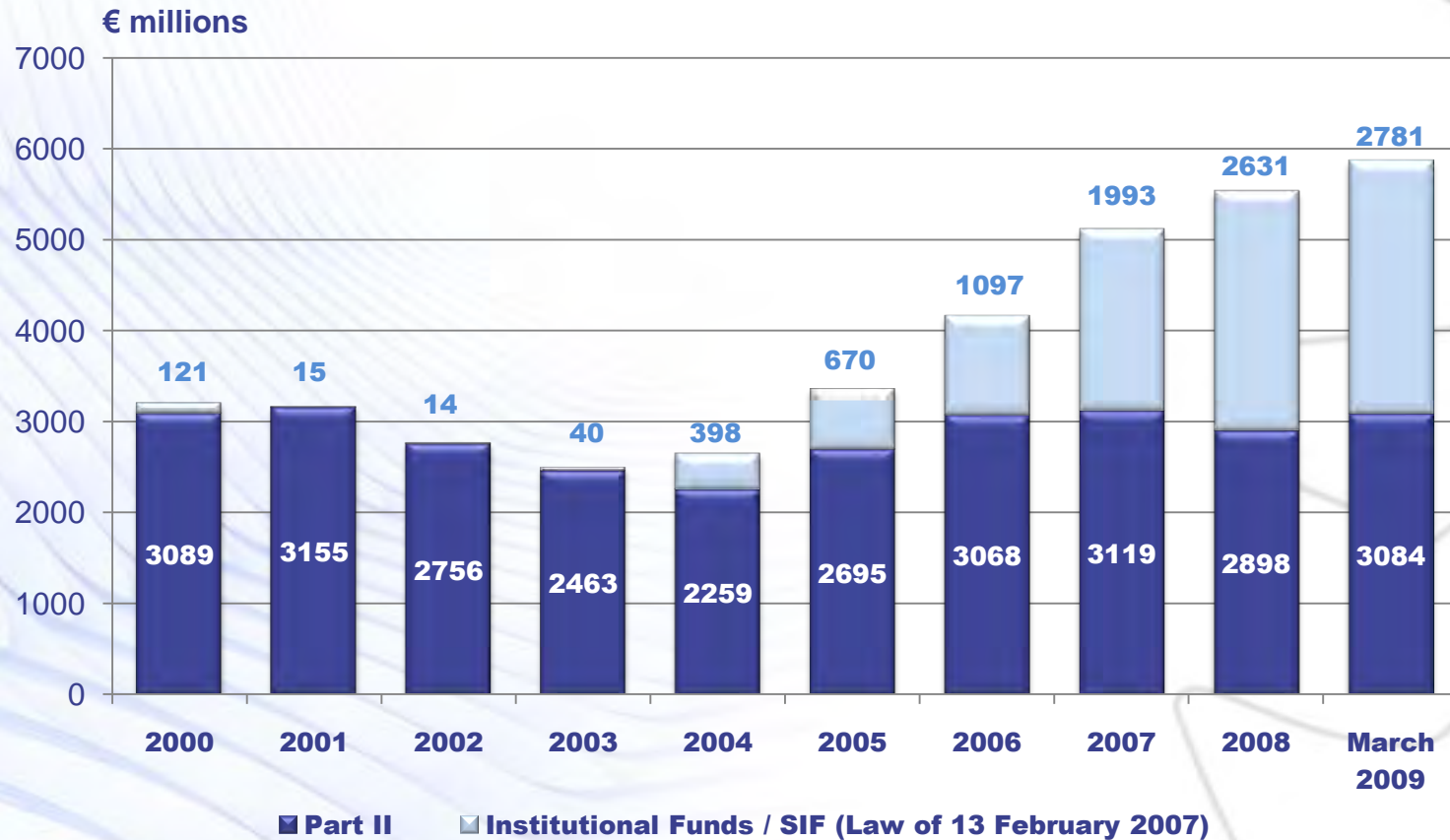
Verfassers  
est.



Sources ALFI / CSSF

# Luxembourg Private Equity Funds

*Net assets under management in Luxembourg private equity funds (\*)*



Sources ALFI / CSSF

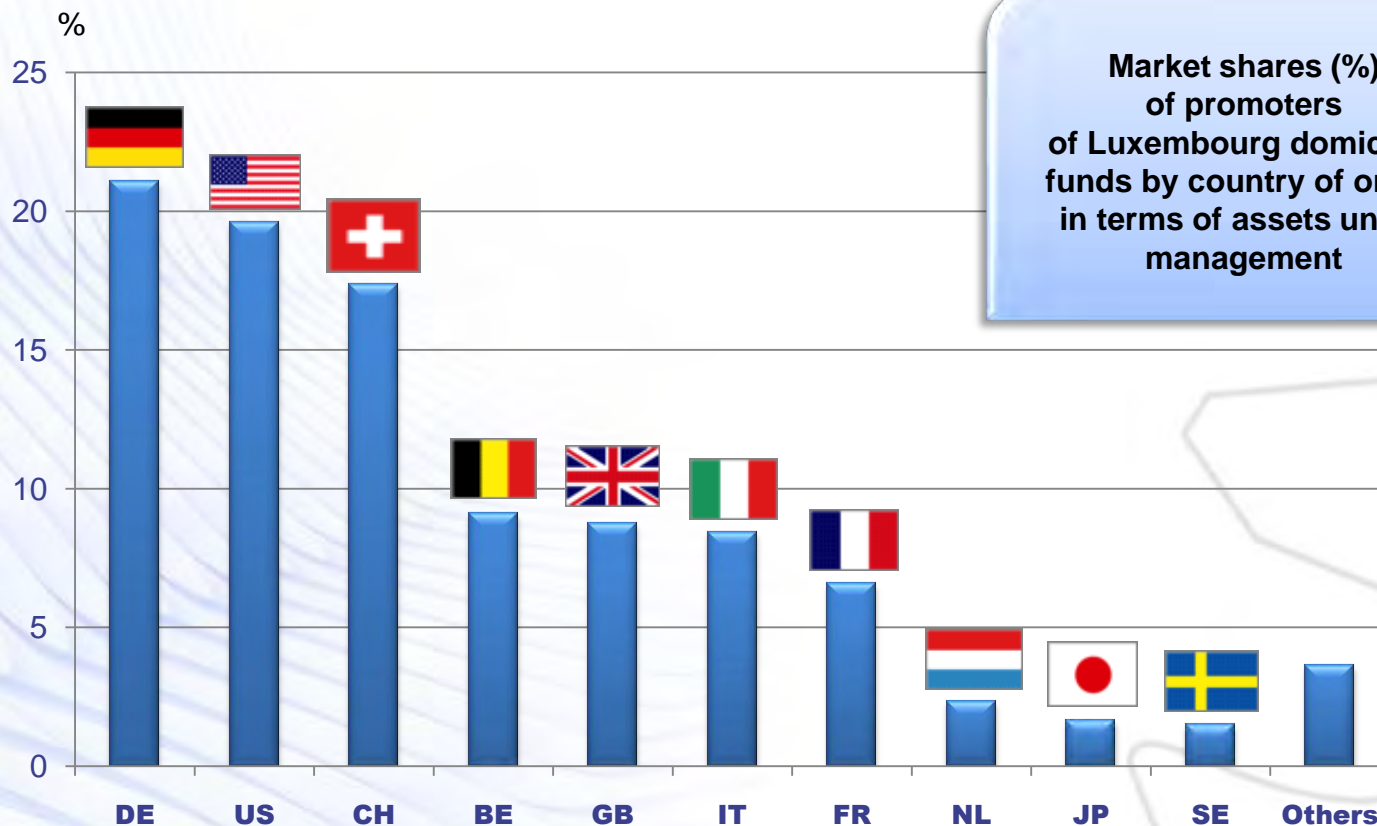
(\*) refers to net assets of venture capital and unlisted securities funds

# The Luxembourg investment fund sector

## Profile of Luxembourg Investment Funds

Key criteria	UCITS	Non-UCITS	SIF	SICAR
Investment restrictions (eligible assets)	Restricted	Flexible	Flexible	Moderate
Risk diversification	High	Medium	Low	None
Ease of public distribution	High	Medium	Low	Low
Supervisory framework	Targeted to retail investor protection	Targeted to retail investor protection	More flexible	More flexible
Time to establish	Low - Medium	Medium - High	Very low	Low
Target investors	All	All	Institutional / HNWI	Institutional / HNWI

# The Luxembourg investment fund sector



Market shares (%)  
of promoters  
of Luxembourg domiciled  
funds by country of origin  
in terms of assets under  
management

Figures as at December 31, 2008

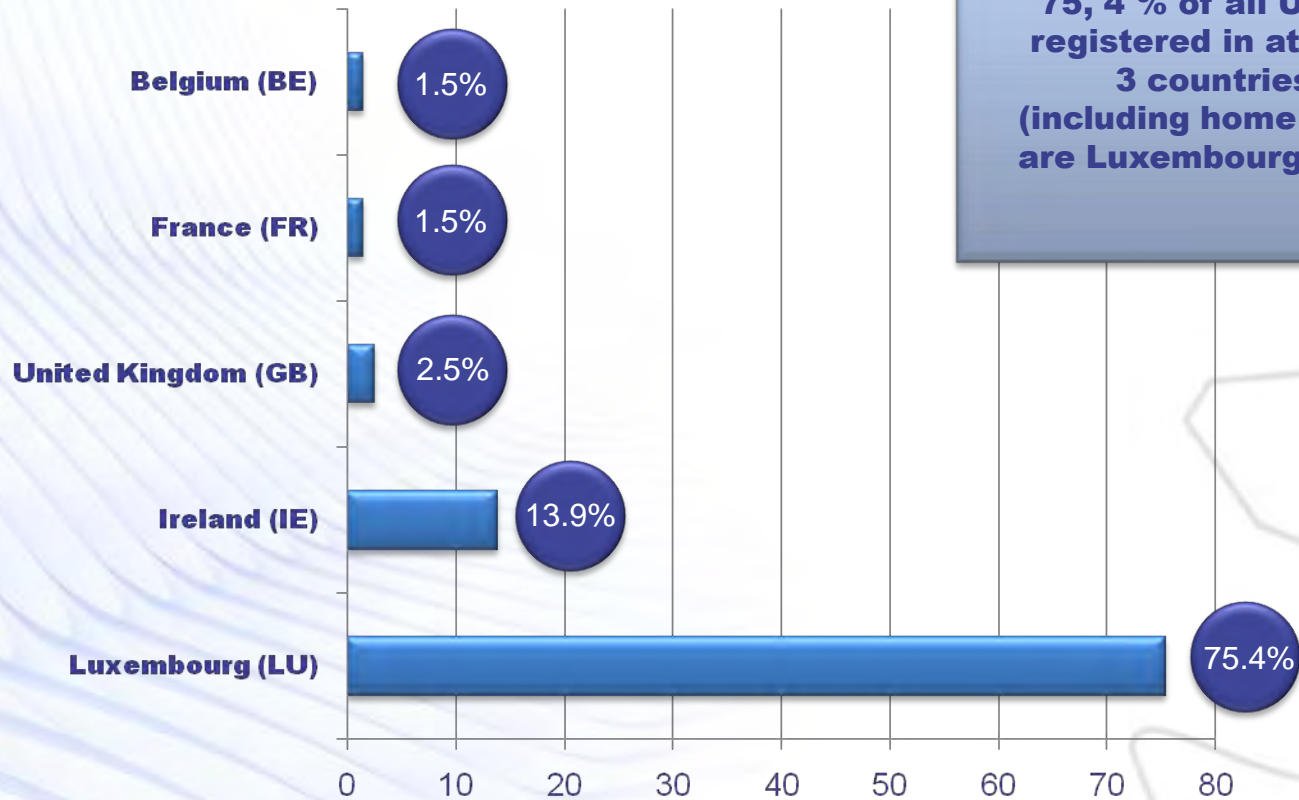
Sources: CSSF

# Leading Cross-border Fund Managers

80 % of the top 50 management groups are based in Luxembourg



# Luxembourg: centre for global distribution



**75, 4 % of all UCITS  
registered in at least  
3 countries  
(including home state)  
are Luxembourg funds**

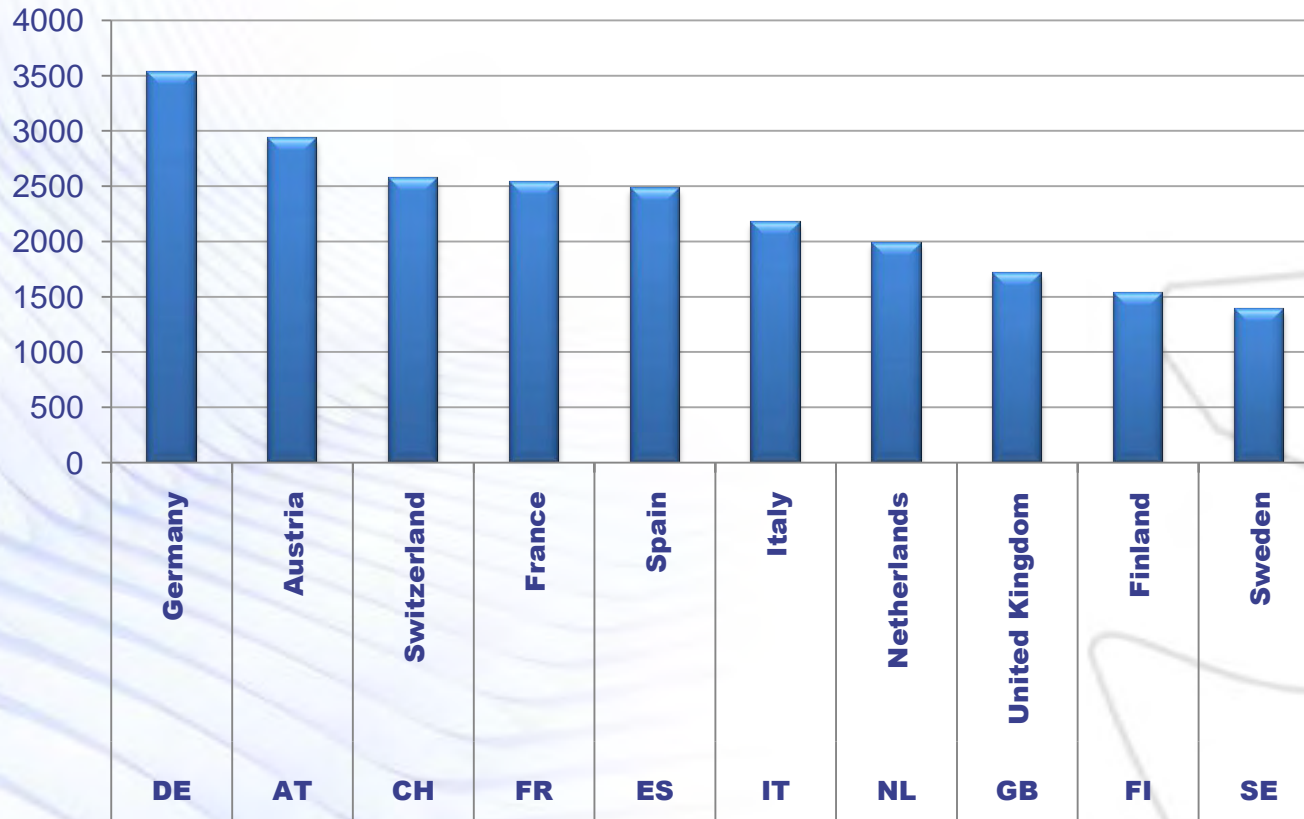
Source: Lipper Hindsight 31.12.2007, Pwc Global Fund Distribution 2008

# Fund distribution at a glance ...

	Dec 06	Dec 07	Variation 07/06
True cross-border fund registrations of which for Luxembourg funds	<b>43.304</b> <b>32.728</b>	<b>49.266</b> <b>37.161</b>	<b>14%</b> <b>14%</b>
True crodd-border funds	<b>5.907</b>	<b>6.525</b>	<b>10%</b>
Registrations per true cross-border fund	<b>7.3</b>	<b>7.6</b>	<b>4.1%</b>
Resgistration market share of Luxembourg funds	<b>75.6%</b>	<b>75.4%</b>	

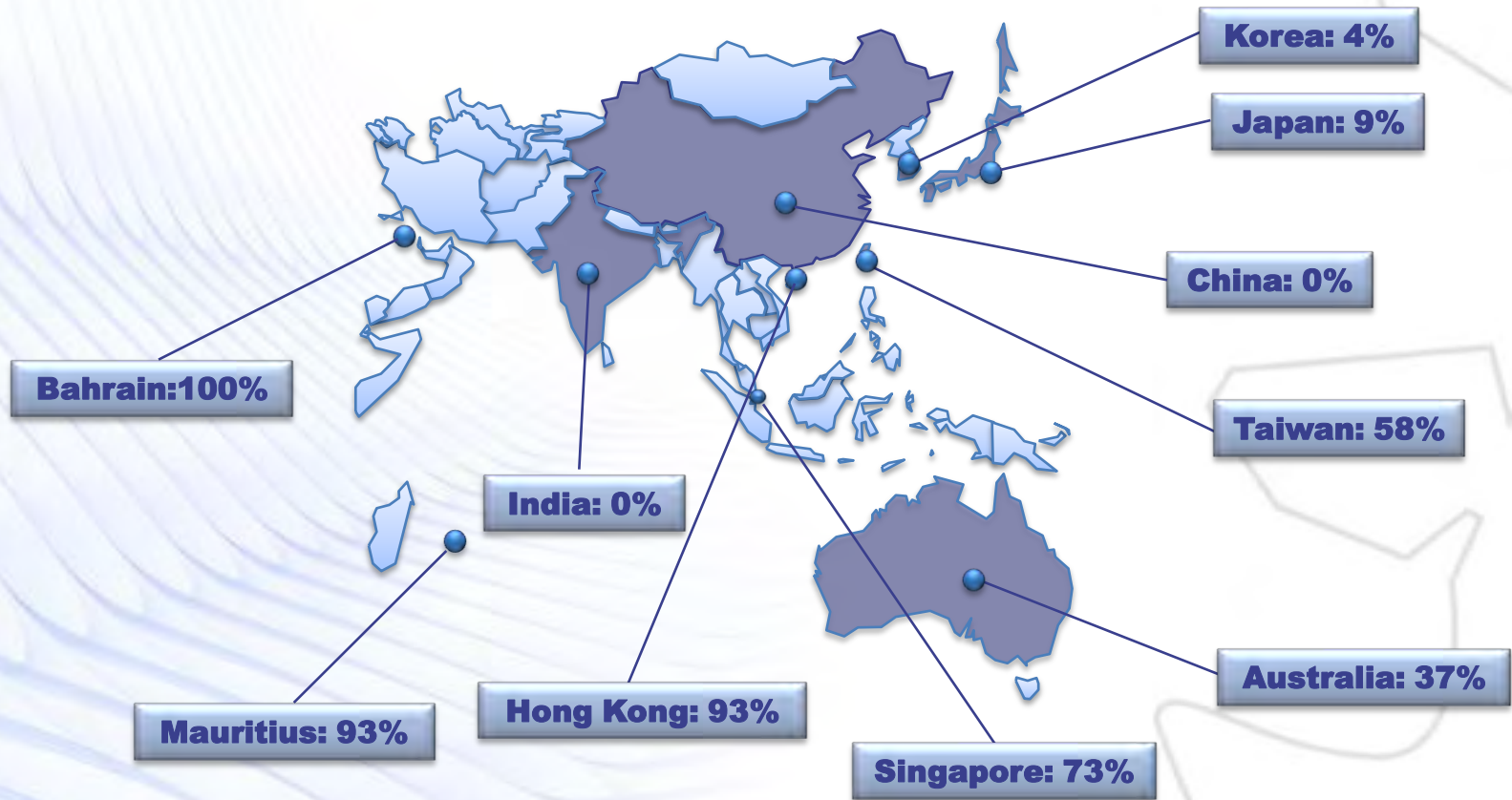
# Main European markets for distribution of Luxembourg investment funds

(in terms of number of registrations)



Source: Lipper Hindsight 31.12.2007, Pwc Global Fund Distribution 2008

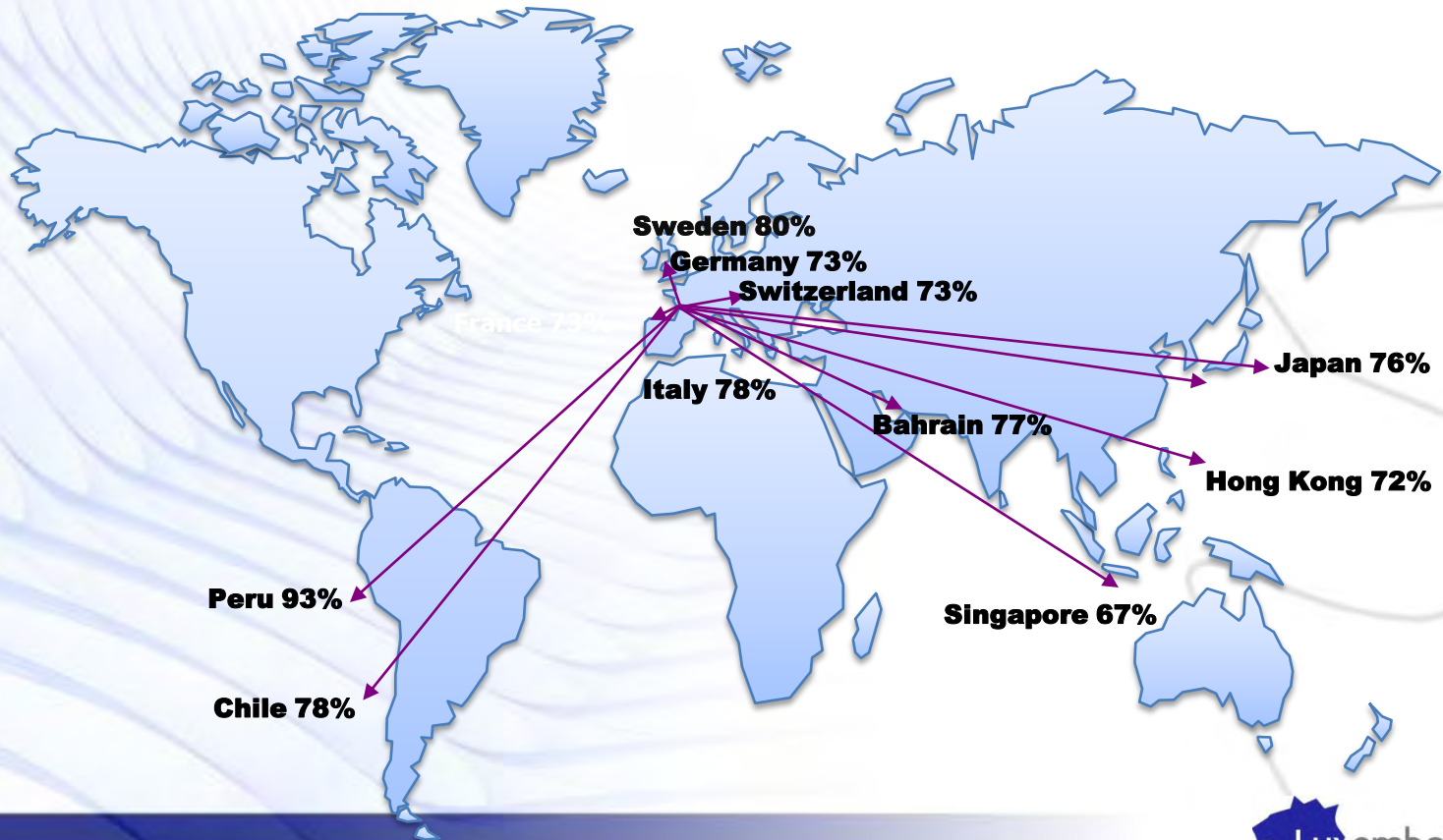
# Percentage of Offshore Funds Registered in Asia



Source : PWC

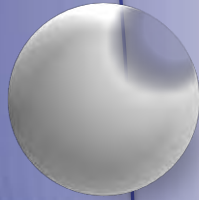
# Luxembourg: The major fund center for Global fund distribution in and outside Europe

## Luxembourg Market share of foreign funds registered for sale



# Top 16 countries of distribution outside EU

Target country	Luxembourg fund registrations
Switzerland	2.571
Singapore	1.230
Norway	1.049
Chile	950
Hong Kong	899
Bahrain	700
Taiwan	515
Liechtenstein	476
Macau	429
Jersey	317
Korea	310
Guernsey	213
Iceland	200
Gibraltar	141
Isle of Man	72
Trinidad & Tobago	70
Others	391
<b>TOTAL REGISTRATIONS</b>	<b>10.533</b>



# The Luxembourg fund industry framework

— **Josée-Lynda Denis**

Vice President, The Bank of New York Mellon

— **Francis Kass**

Partner, Arendt & Medernach

— **Raymond Krawczykowski**

Tax Partner, Deloitte

— **Matthias Pelzer**

Business Development Manager, European Fund Administration

— **Johan Terblanche**

Senior Associate, Loyens & Loeff

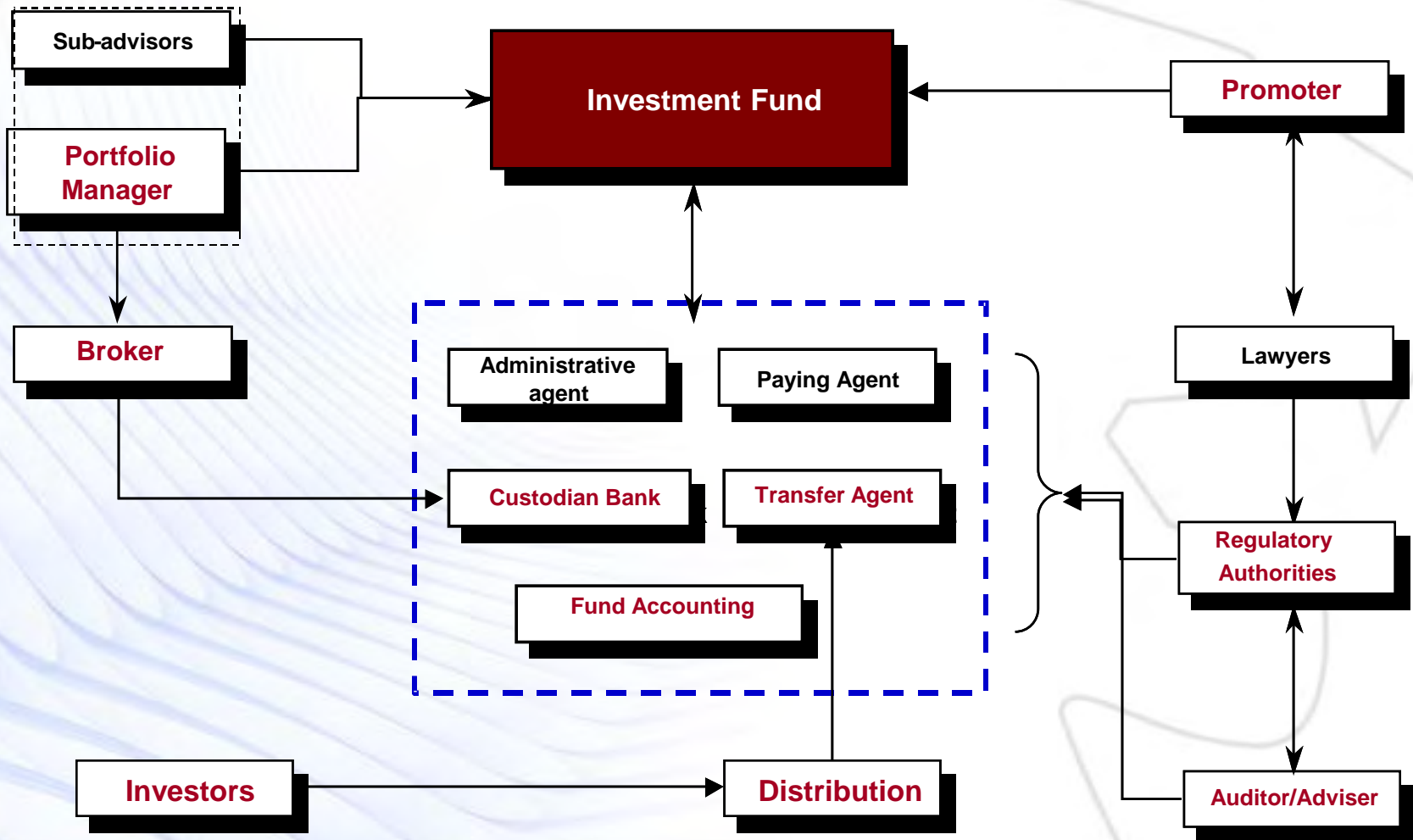


# Investment Funds

## Latest Developments

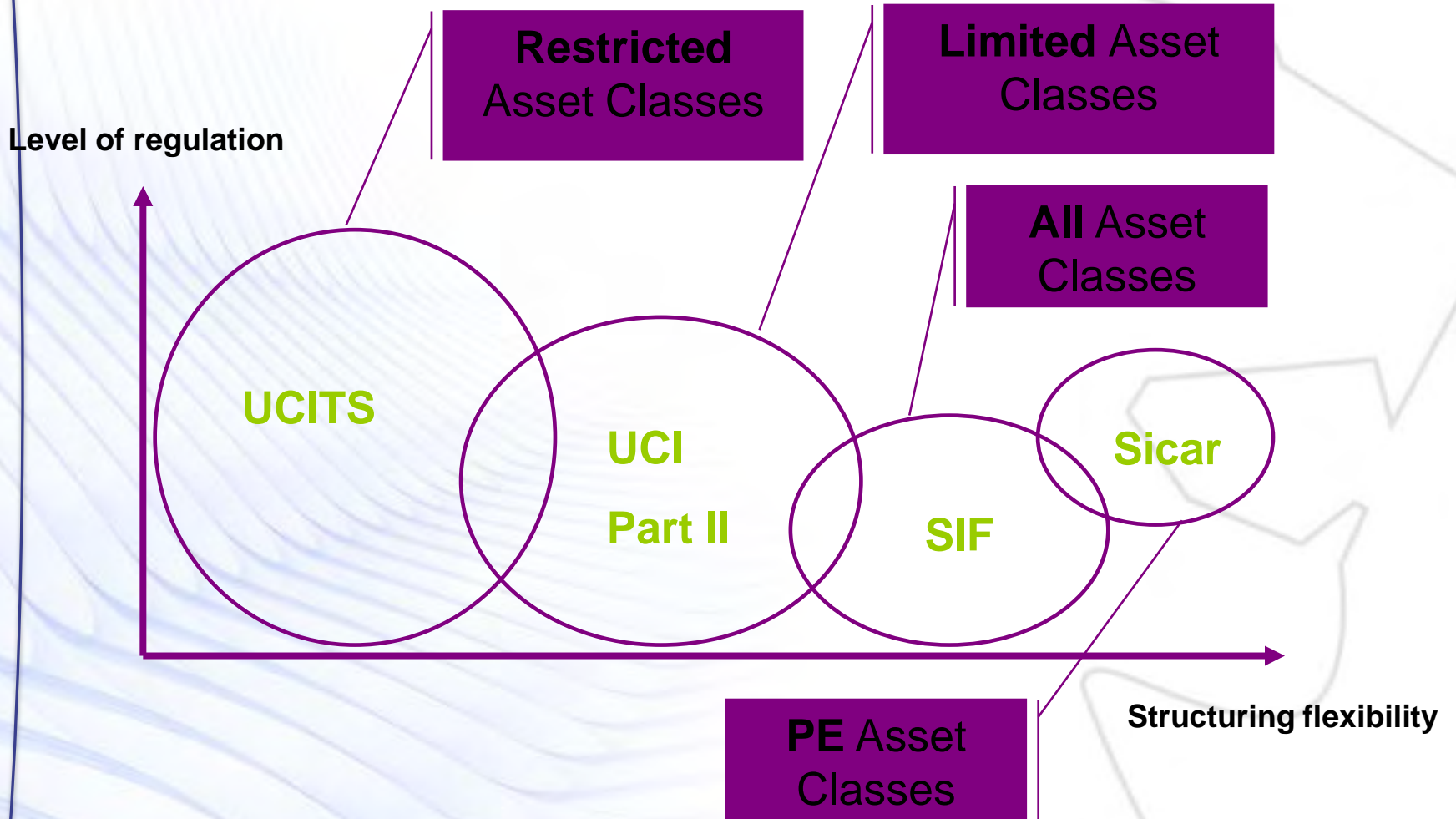
- **The Luxembourg fund industry framework**
- **Industry developments and trends**
  - Products
  - Tax
  - Infrastructure & Operations
- **The shaping of the fund industry as at 2009...**

# The Investment Management Business Model



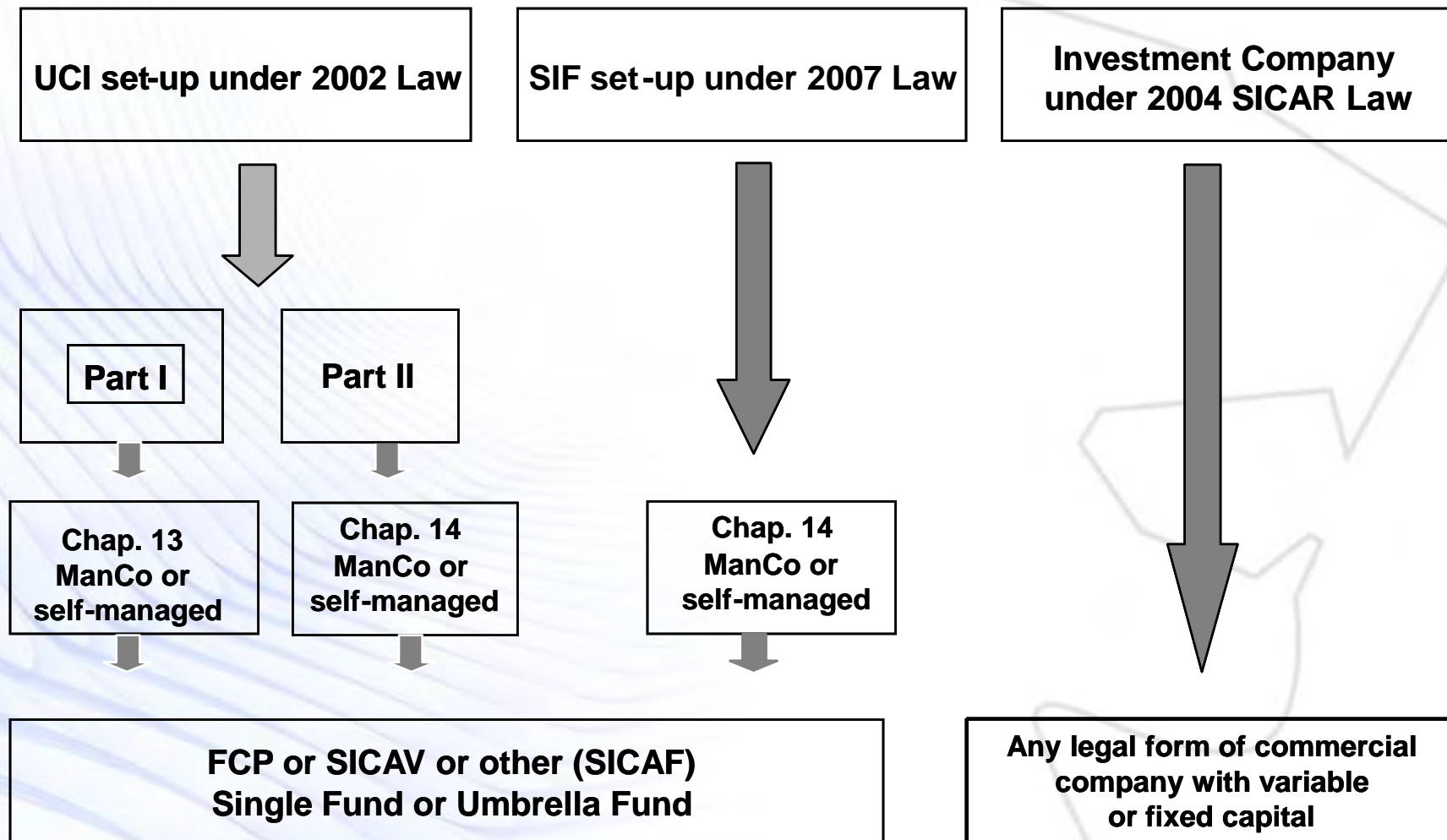
 Actors sustaining the life cycle of the fund on a daily basis - maintaining very close business relationships

# Product Overview



# How does this model translate?

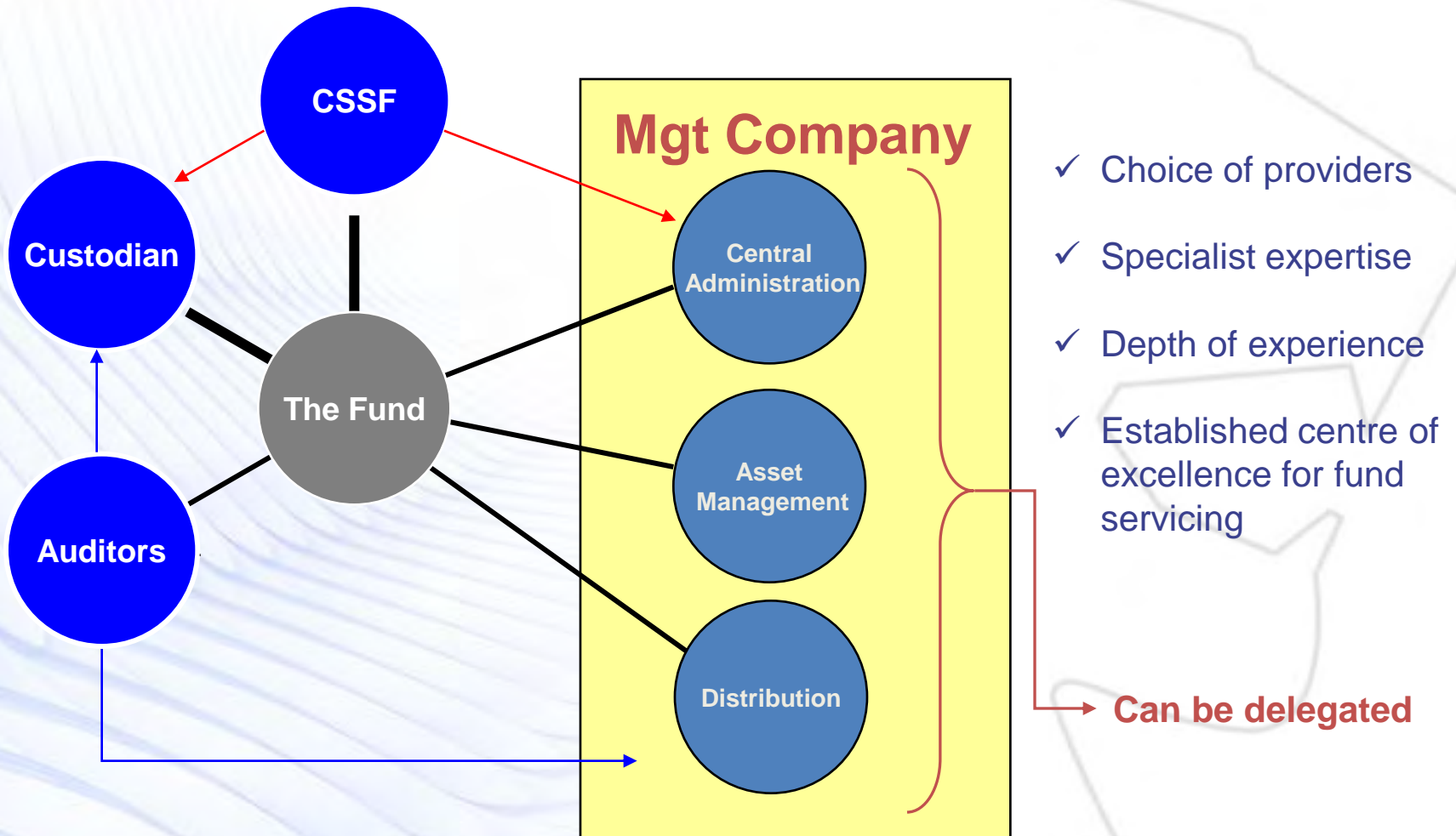
## The Legal Framework



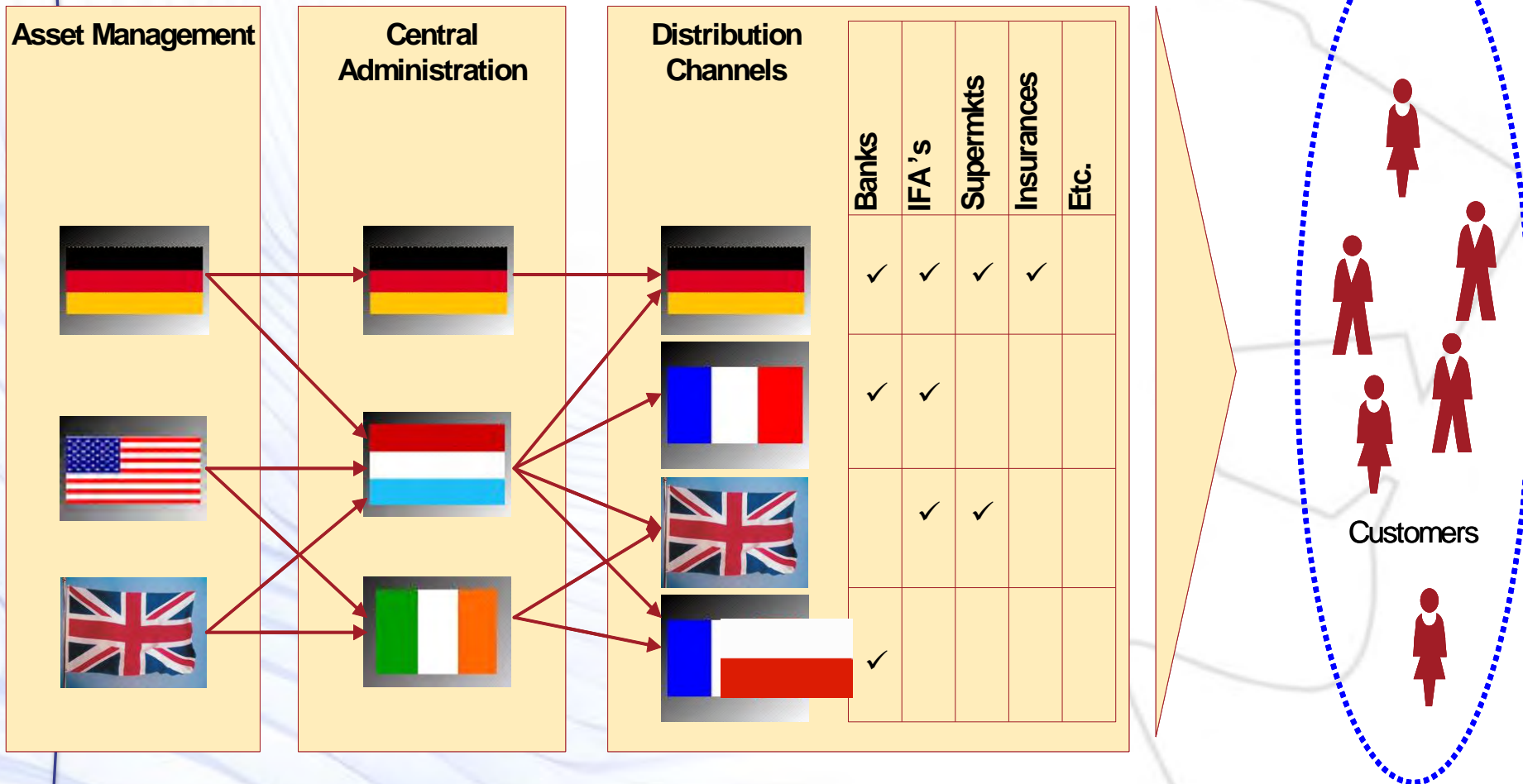
# Structuring Aspects

Private Equity & Venture Capital	Real Estate Funds	Hedge Funds & Funds of HF
<ul style="list-style-type: none"><li>- SICAR, SIF, UCI</li><li>- Any investment in non listed companies (seed, start-up, development capital, buy-out capital, ...)</li></ul>	<ul style="list-style-type: none"><li>- SIF, UCI: direct or indirect real estate investments</li><li>- SICAR: opportunistic private equity real estate</li></ul>	<ul style="list-style-type: none"><li>- UCI: CSSF Circular 02/80</li><li>- SIF: flexibility</li></ul>

# Servicing and Supervision: Specialist Providers



# From manufacturing to distribution



# Global Cross Border Distribution

## Asset Management



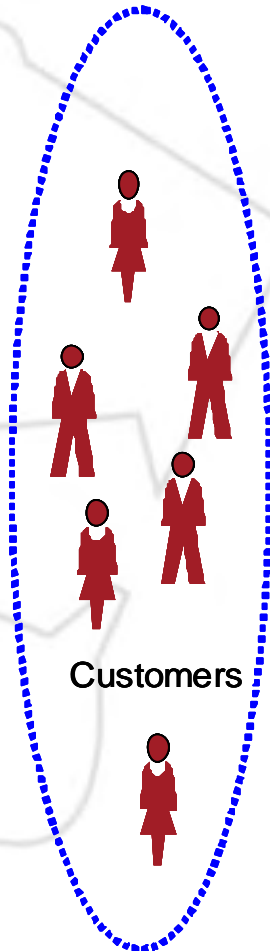
## Domicile & Central Administration



## Asia Service Centre



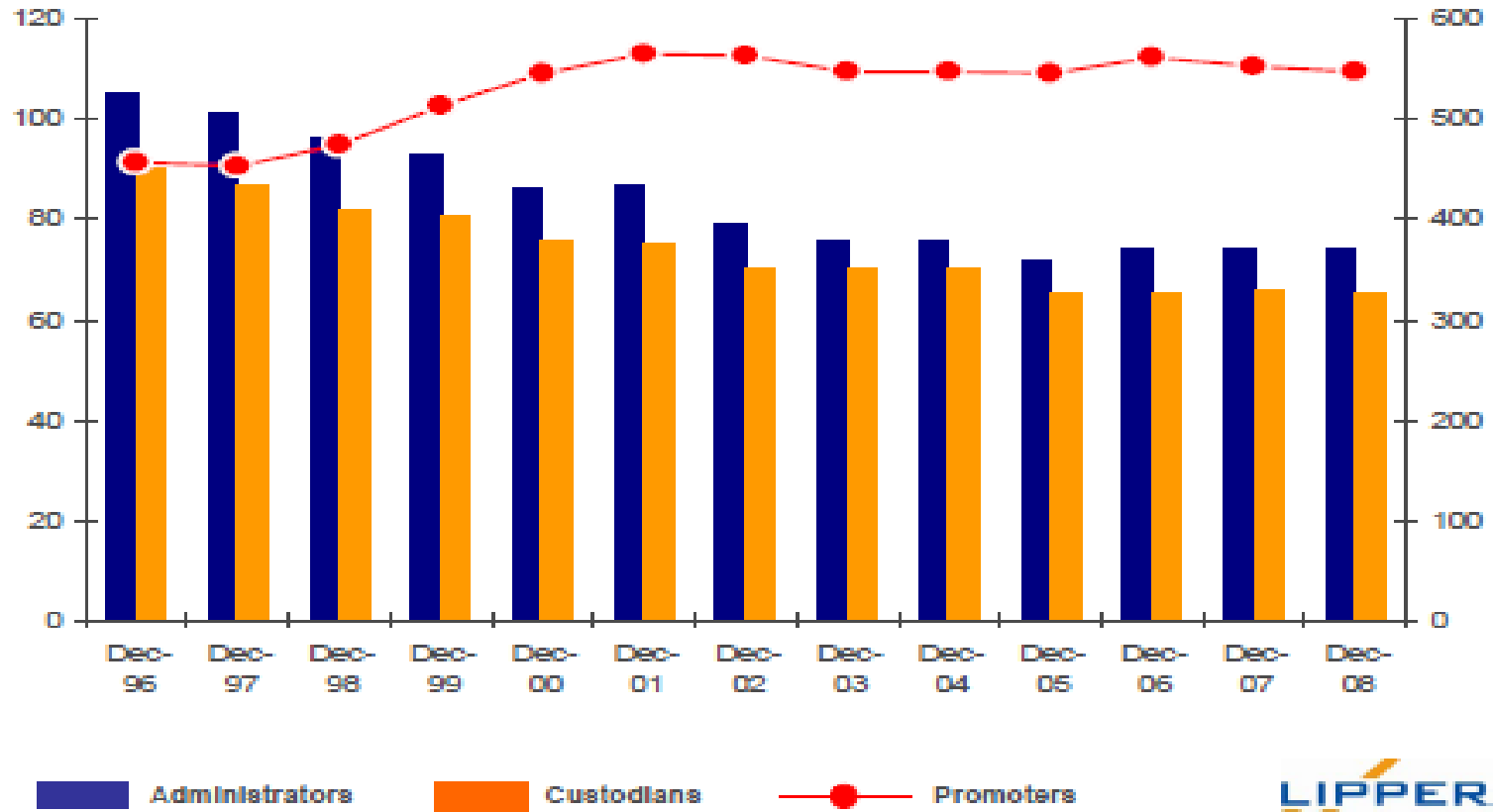
## Asia Distribution Channels



Customers

# Number of service providers

... relative to fund promoters



Source: Fund market/Lipper Luxembourg briefing – European Fund Industry, 30 April 2009

# ...relative to number of funds

## ... relative to number of schemes

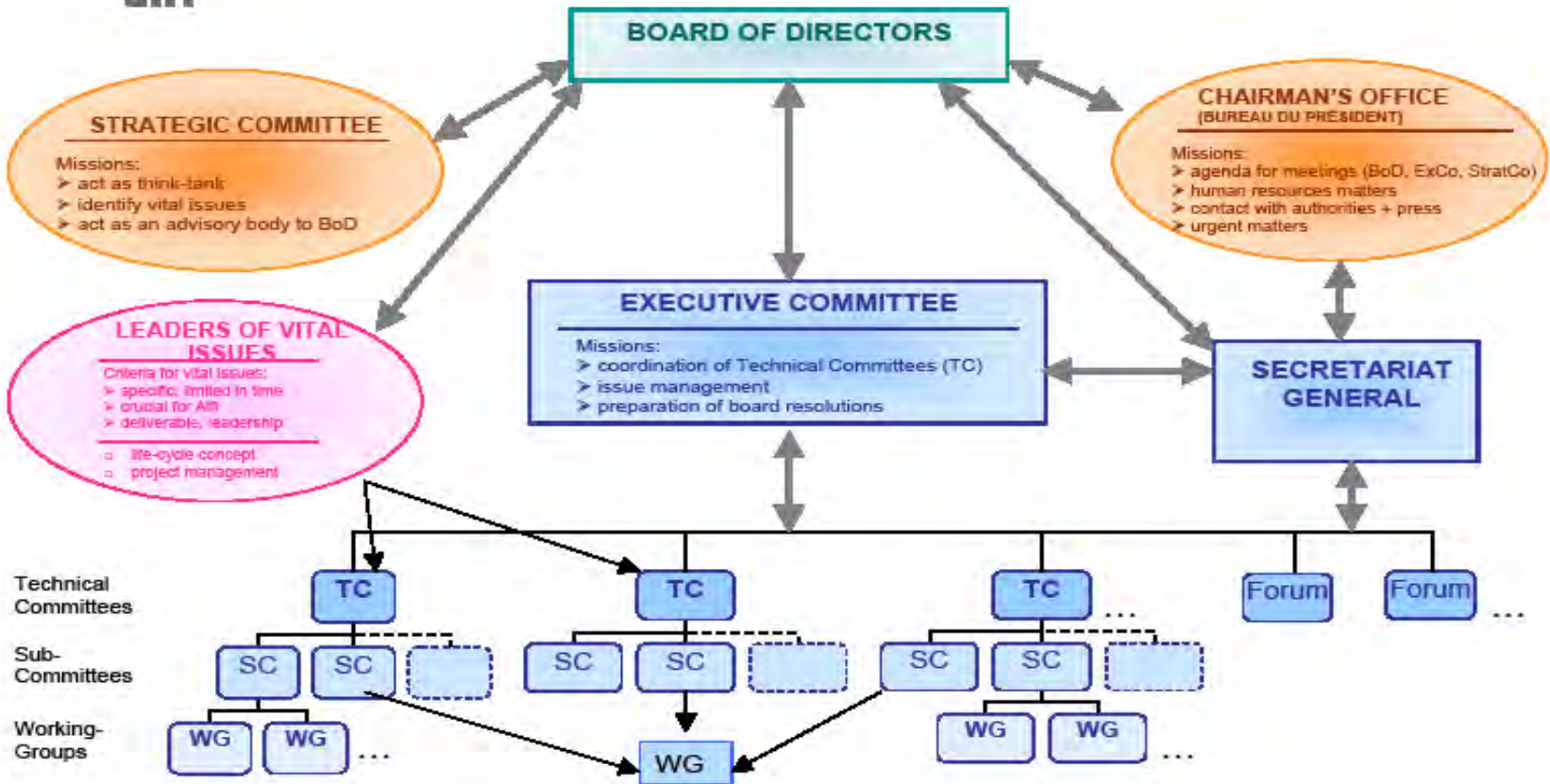


Source: Fund market/Lipper Luxembourg briefing – European Fund Industry, 30 April 2009

# Working together towards a common goal



Structure of ALFI Bodies





# ■ Industry developments and trends



## ➤ **Products**

# Products – Key developments & trends

## ■ **Sophisticated UCITS**

## ■ **Convergence of traditional funds and alternative investments**

- Evolving Alternative Investments business model from traditional to alternative investments

## ■ **Specialised Funds**

# Products – Sophisticated UCITS

- **Strong exploitation of permitted UCITS III strategies – sharp increase in use of “sophisticated” funds – helping to drive distribution expansion and convergence with alternative fund products**

- Increasing growth of sophisticated funds over the last 2-4 years

## ■ **UCITS Developments**

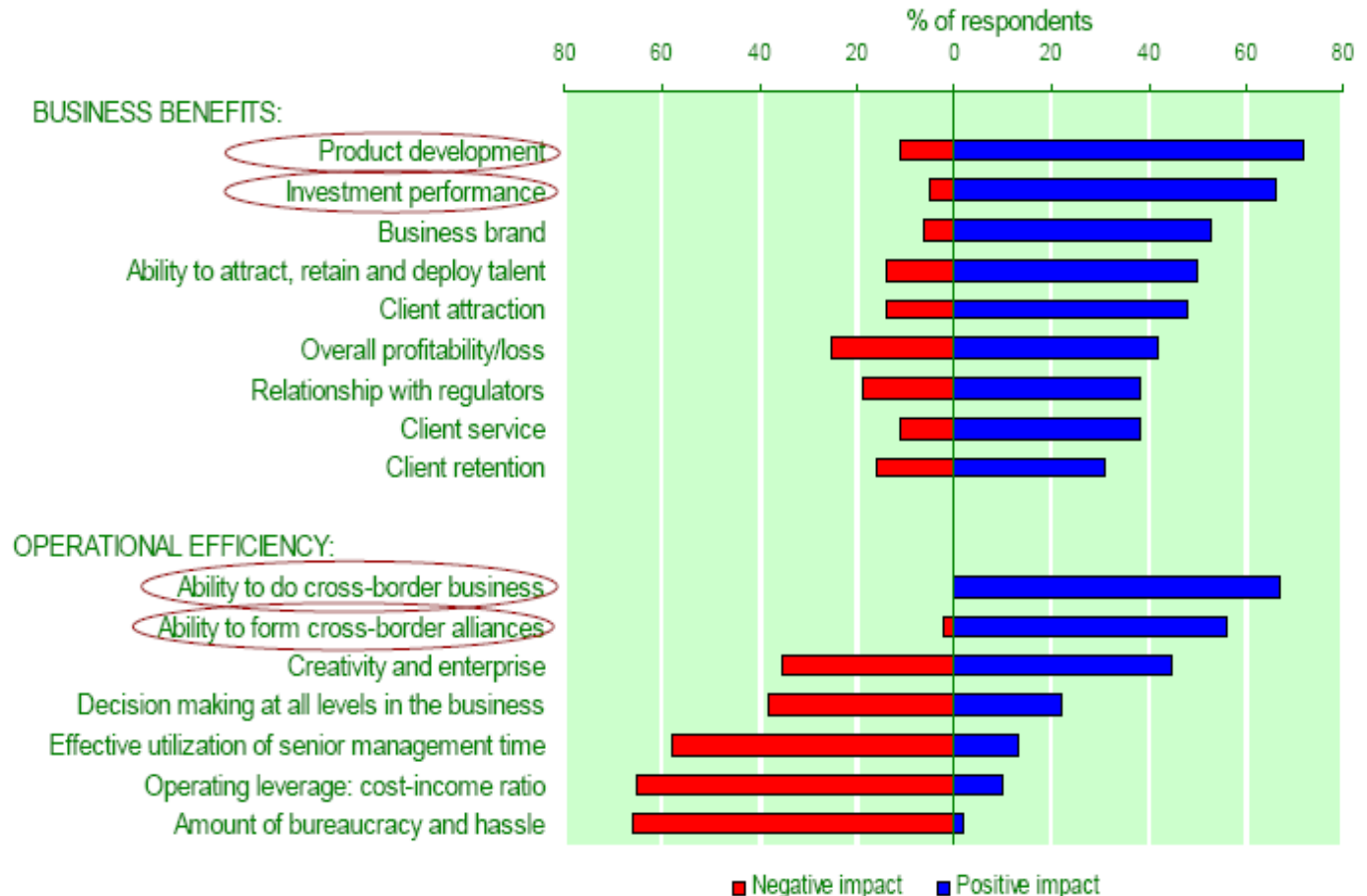
- Long/short strategies
- Commodity indices
- Hedge fund indices
- Securities Lending

# Products – Convergence

## Context of Convergence

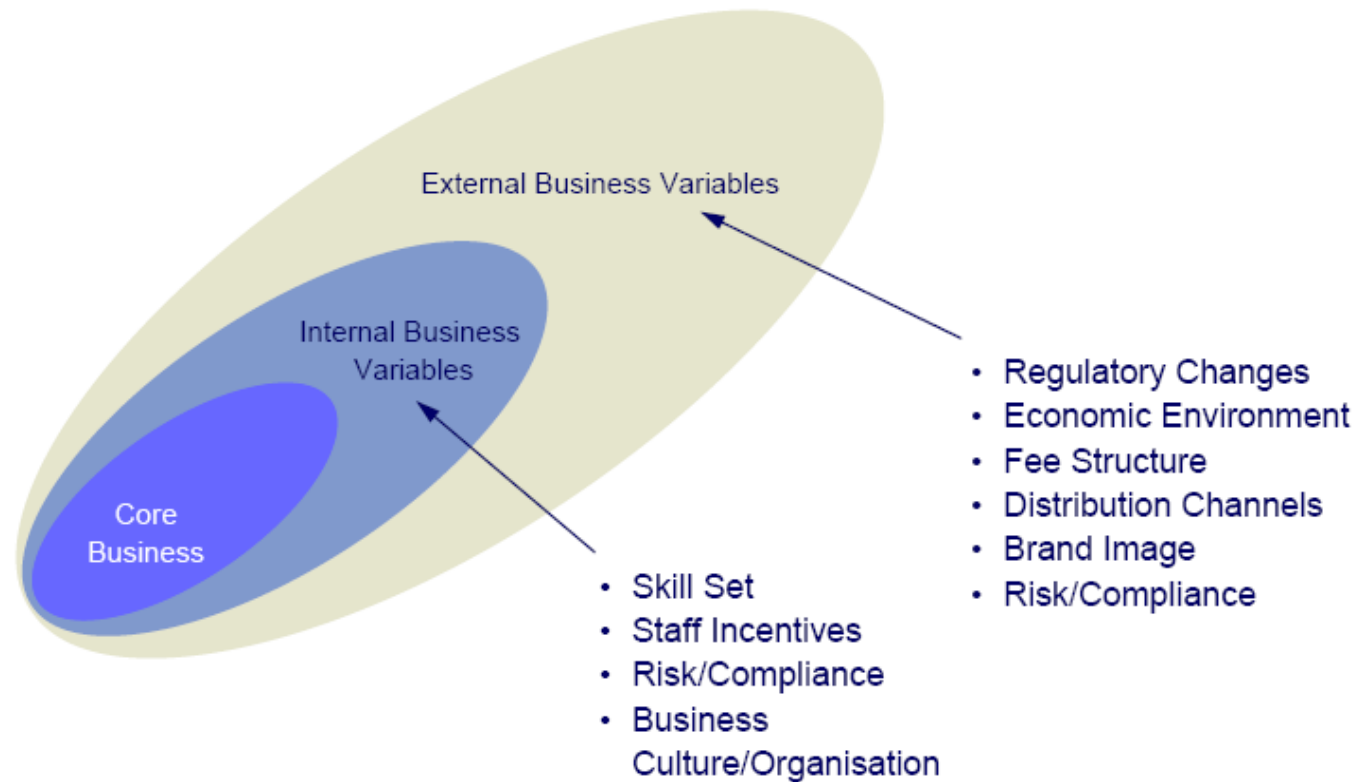
- Market returns have become a commodity
- Pension funds continue to force different fee structures for alpha/beta return products
- Larger hedge fund managers become institutionalized (since Jan 2006, there has been a listing of over 60 different hedge fund managers)
- Regulatory changes/pressures encourage the process of transparency and cross border distribution
- Pension funds have replaced high net worth individuals as major investors in hedge funds; recent market returns of traditional funds did not match the growth in outstanding liabilities.

# Drivers of convergence between hedge funds and traditional funds are defined by business benefits and operational efficiency



Source: CREATE 2008

# Convergence changes the competitive landscape: there is a strong impact on external and internal business variables



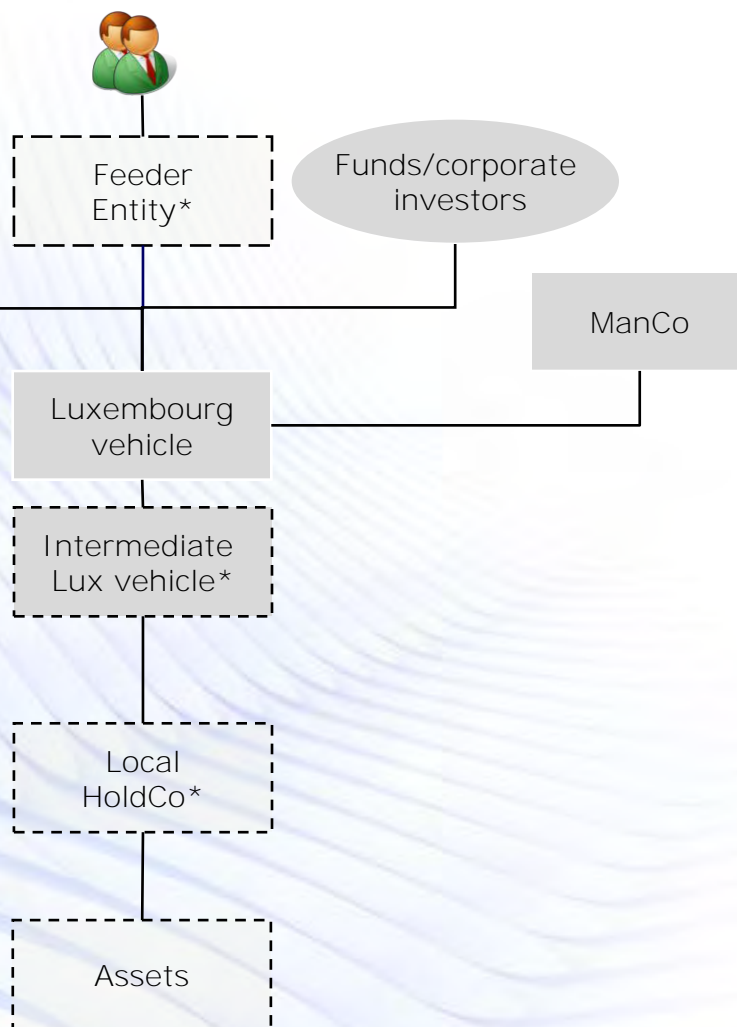
# Products – Specialised Funds

- **Additional portfolio scope including additional asset type/classes, derivatives and strategies.**
- **Adapted to the risk/reward profile of the investors**
- **Advantages: benefits of sophisticated hedge funds but with lower minimum investment amounts, transparency and greater level of regulation compared to offshore funds**
- **Possibility to invest in innovative funds:**
  - Sharia funds: the aim is to earn Halal profits in strict conformity with the precepts of Sharia law
  - Women funds: promote women's initiatives, women's rights...
  - Ethical funds: investment in environmental, social and "well" governed companies
  - Wine, Art, Biotech, Renewable Energy, etc.



➤ **Tax**

# What should you focus on?



- **Investors:** Deliver the right type of return
- **Managers:** Get the best of your managers
- **Investments:** Mitigate local tax leakage
- **Vehicles:** Ensure tax neutrality

\* If required

# Investors' considerations

## Profile

- Large investors base or not?
- Location?
- Type of investors: individual, corporate, pension funds, etc

## Taxable events

- Does the investor benefit from a favourable tax treatment ?
- Is a feeder vehicle necessary to gather single investors ?
- Does the Luxembourg vehicle need to accommodate certain investors to provide them some tax benefits (e.g. listing, redemption rights limitations, etc)?

# Investors' considerations

## Tax transparency

- Is the vehicle transparent for tax purposes in the investors country?
- When are investors taxed ?
- Do investors need specific reporting for tax purposes?

## Anti-deferral law

- CFC rules allows investors taxation even if no income are distributed by the Luxembourg vehicle
- Questions to consider:
  - Percentage of investors residing in the same jurisdiction?
  - Is it computed on the capital/voting powers held by each investor in the vehicle?
  - Is it applicable if a specific percentage by a single shareholder is reached?
  - Is the Luxembourg vehicle subject to such CFC rules?

# Managers' considerations

## Objectives

- Compensation for their expertise/knowledge
- Incentivizes managers to invest wisely

## Compensation

### Management Fees:

- 2% of assets under management
- Used by the GP to cover its overhead costs
- Ordinary income tax treatment

+

### Carried interest:

- 20% of the profit
- Hurdle rate (8% IRR)
- Tax treatment varies

## Form of investment

- Through its GP interest
- As an LP
- Through a coinvestment vehicle (« side car »)

# Investments' considerations

## Profile

- Number of assets?
- Kind of investments?
- Location?

## Financing structure

- Is there a need to maximize the interest deduction at local level?
- Is there a possibility to make a step-up in basis?

## Practical tax considerations

### ACQUISITION

- Application of transfer tax?

### HOLDING

- Leverage and thin capitalization:
- Fees
- Tax losses
- Trapped cash alternatives (if any)?

### EXIT

- Transfer tax costs?
- Capital gain taxation?

# Vehicles' considerations

## Objectives

- Interest deduction on the acquisition financing against target's profit
- Minimize tax liability for the Fund and its investors and managers
- Minimize tax costs of establishing the structure
- Optimize deduction of transaction costs
- Minimizing additional tax costs on profit/cash repatriation to the Fund
- No tax on future exit/partial exit/refinancing

# Alternative investments- Comparative table

	<b>UCIs part II</b>	<b>SIF</b>	<b>SICAR</b>
<b>Investors</b>	No limitation	Well informed investors	Well informed investors
<b>Investment restrictions</b>	<ul style="list-style-type: none"> <li>- Transferable securities, listed or not;</li> <li>- Fund of funds;</li> <li>- Instruments of the money market;</li> <li>- Risk capital;</li> <li>- Derivatives;</li> <li>- Movable property/real estate.</li> </ul> Specific rules for each investment.	No specific investment restrictions but general diversification rules should apply	<ul style="list-style-type: none"> <li>- Risk capital;</li> <li>- Venture capital;</li> <li>- Real estate (indirectly)</li> </ul>
<b>Indebtedness restrictions</b>	Real estate UCIs may only borrow up to 50% of the valuation of all their properties.	No borrowing restrictions	No borrowing restrictions
<b>Reporting</b>	Annual report certified by a registered auditor to be made available within 4 months of the end of the period to which it relates. (not for FCP) A semi-annual report is to be published within two months of the period end.	Annual report certified by a registered auditor to be made available within 6 months of the end of the period to which it relates.	Annual report certified by a registered auditor to be made available within 6 months of the end of the period to which it relates.
<b>Approval</b>	Approval by the CSSF	Approval by the CSSF (but incorporation possible prior to approval)	Approval by the CSSF (but incorporation possible prior to approval)
<b>Approval of management</b>	Required	Required	Required
<b>Promoter / initiator requirement</b>	Required	Not required	Not required

# Alternative investments - Comparative table

	<b>UCIs part II</b>	<b>SIF</b>	<b>SICAR</b>
<b>Custodian requirements</b>	Required	Required	Required
<b>Legal forms</b>	FCP, SICAV and SICAF	FCP, SICAV, SICAF and various forms of commercial companies	Various forms of commercial companies
<b>Minimum share capital</b>	EUR 1.250.000 to be reached within 6 months	EUR 1.250.000 to be reached within 12 months	EUR 1.000.000 to be reached within 12 months
<b>Corporate income tax and municipal business tax</b>	Corporate: exempt  FCP: tax transparent	Corporate: exempt  FCP: tax transparent	Corporate: fully taxable (28,59%) but exemption for qualifying assets.  Partnership: tax transparent
<b>Net Wealth Tax</b>	Exempt	Exempt	Exempt
<b>WHT on dividends distribution, interest and liquidation proceeds</b>	No WHT (potential EU Savings Directive implications)	No WHT (potential EU Savings Directive implications)	No WHT (potential EU Savings Directive implications)
<b>Subscription tax</b>	Annual subscription tax of 0,05% or 0,01% of the NAV but exemption can apply	Annual subscription tax of 0,01% of the NAV but exemption can apply	No subscription tax
<b>Access to DTT</b>	Limited access	Limited access	In principle should benefit from the DTTs



# ➤ **Infrastructure & Operations**

# Trends

- **Global Distribution Support: Luxembourg-domiciled funds are distributed directly in over 55 countries in the world**
- **Global cross-border fund administration (Custody, Fund Accounting, Transfer Agency, Reporting, ...) supporting global distribution to/from Luxembourg**
  - The shaping of a global giant: Prime TA™, Global TA, Distribution Support,...
  - Global cross-border fund administration “service centres” or “hubs”
- **Traditional funds to specialised and sophisticated fund administration model**
  - Tailor-made solutions: One size does not fit all!
  - Specialist administrators to support sophisticated UCITS and specialised funds administration

# Developments - Operational considerations

Investor Profile	Service Requirements
<ul style="list-style-type: none"><li>– Specialised Investor, “Initiators”, mainly institutional</li><li>– <b>BUT</b> increasing demand for alternative fund structures – SICAR, SIF, PE, RE) by specialist/sophisticated shareholders</li><li>– New structures initiated from Private Banking for High Net Worth Individuals (HNWI)</li><li>– Managed account: more regulated structure (safety)</li><li>– Private Placement: Increasing small/medium size dedicated funds initiated by single individuals</li></ul>	<ul style="list-style-type: none"><li>– Risk and performance reports</li><li>– Equalization features</li><li>– Client reporting</li><li>– Fee structures</li><li>– Regulatory support and reporting</li><li>– 3rd Party ManCo`s enabling “initiators” from abroad to access the Luxembourg fund market</li><li>– Domiciliation Services = Demand for smaller structures/ initiators</li><li>– Fiscal Reporting Services</li><li>– Etc.</li></ul>

# Developments - Operational considerations

Infrastructure/Operational Aspects	Distribution
<ul style="list-style-type: none"><li>- Segregation of administration between traditional, sophisticated UCITS and specialised funds</li><li>- Specialist Administrators: TA, FA, etc.</li><li>- Compliance: monitoring</li><li>- Internal controls and procedures</li><li>- Portfolio pricing:<ul style="list-style-type: none"><li>• valuation transparency</li><li>• price consistency</li><li>• independent valuation process</li></ul></li><li>- Service providers: Niche boutiques or all-in administration</li><li>- Added-value services: Fiscal reporting, tax structuring, ...</li></ul>	<ul style="list-style-type: none"><li>- Distribution landscape and framework differs from a UCI cross-border distribution<ul style="list-style-type: none"><li>➤ sophisticated distributor</li><li>➤ sophisticated investors (SICAR, SIF)</li></ul></li><li>- Private vs. public distribution<ul style="list-style-type: none"><li>➤ selling restrictions</li><li>➤ Fund sales offices</li></ul></li><li>- ...</li></ul>

# Regulatory & Industry Developments

- **Anti-Money Laundering/KYC:** New AML Directive
- **Cash Management/Settlement:** Payment Services Directive, T2S, etc.
- **Automation and Standardisation *Fund transaction processing* :**  
EFAMA FPSG, Eurofi, SWIFT, AFAC, Findel Group, ALFI TA Forum  
(Standardisation WG, HF Automation WG Ireland/Luxbg, ALMUS, etc.)
  - Fund Processing Passport (FPP), Order Routing & Settlement recommendations, etc.
  - Industry standards e.g. ISO 20022
  - *Dematerialised Mutual Funds Sales Agreement*  
“DMFSA”, Transfers, ...
- **UCITS IV infrastructure/operational considerations and “operational readiness”** of the Luxembourg practitioners: ManCo Passport, Cross-border mergers, etc....



➤ **The shaping of the fund industry as at 2009...**

# Luxembourg shaping itself from 2009...

- **Alternative Investment Fund Managers Directive**
- **Moving to a new UCITS Directive in 2011**
- **Crisis Impact?**

# Alternative Investment Fund Managers Directive

## ■ Timing, entry into force

## ■ Type of manager

## ■ Main Requirements:

- Authorisation
- Business conduct
- Regulatory Capital
- Valuation and Administration
- Depositary
- Disclosure

## ■ Marketing of funds

# Moving to a new UCITS Directive in 2011

## From the 1985 UCITS Directive to UCITS IV

### > UCITS I

Principles of Harmonisation

### > UCITS II

Did not happen because of a lack of common understanding

### > UCITS III

Broadening of investment possibilities, Management Company  
& Simplified Prospectus

### > UCITS IV

Completing the Single Market and Increasing Efficiency



# UCITS IV

- **Simplification of the notification process**
- **Key Investor Information**
- **The « Management Company Passport » - MCP**
- **Facilitation of cross-border mergers**
- **Provisions of « master/feeder » structures**

# Crisis Impact?

## ■ Liquidity/Valuation issues - Legal means available to Luxembourg-domiciled funds

- Deferral of redemption requests,
- NAV: Suspension, adjustment
- Decrease of liquidity
- Side Pockets

## ■ Current “temperature” of fund industry’s business development

## ■ Looking ahead



# Questions & Answers



**Thank you!**

**[www.lff.lu](http://www.lff.lu)**