

The Luxembourg Specialised Investment Fund – a suitable vehicle for Islamic investment

BY SAMIA RABIA

Luxembourg is the number one European financial centre in terms of the number and management of investment funds. It is also recognised as a major European hub for Islamic finance. As of 31 December 2009, 39 funds (or platforms) were located in Luxembourg. Furthermore, a large and diversified number of assets are traded via Luxembourg-based funds, such as Shari'ah compliant stocks, Islamic index, sukuk (Islamic bonds), Shari'ah compliant money markets instruments (including Commodity Murabaha and other short term placements). Indeed, Luxembourg was the first country which listed sukuk in 2002 and is also ranked second in the European Union for the listing of sukuk. Currently, 16 sukuk issued either by sovereign states (including Qatar, Dubai, Malaysia, Saudi Arabia and Pakistan), or public or private companies are listed on the Luxembourg Stock Exchange (LSE), with an aggregate value of more than \$5.5bn.

The above examples illustrate the key role that Luxembourg has had in the development of Islamic finance in Europe. Another illustration of this involvement is that a large number of national or private institutions (including the Ministry of Finance of the Grand Duchy of Luxembourg, the Luxembourg Funds Association, Luxembourg For Finance, etc.) are actively involved in several committee or working groups which aim at identifying any potential obstacles which may hinder the growth of Islamic finance and ensuring that the legal and financial environment is conducive to the expansion of Shari'ah compliant products and transactions. The Luxembourg Central Bank was the first non-Muslim organisation to become a member of the Islamic Financial Services Board (IFSB) in August 2009, once again highlighting the active involvement of the Grand Duchy in the development of Islamic finance.

Luxembourg has always sought to provide the most efficient investment vehicles to investors. With this in mind, the law, dated 13 February 2007, on Specialised Investment Funds (SIFs) was passed to enable Luxembourg to secure its position as a centre of excellence for the domiciliation of investment funds; and in particular to attract funds with an alternative strategy or investment policy such as real estate funds, private equity funds, loans funds or Islamic funds (especially for the trading of sukuk of physical commodities, which require a very flexible legal environment).

SIFs may be considered one of the most efficient vehicles for Shari'ah compliant investments and structures. They offer a great deal of flexibility, combined with an attractive tax regime, light risk diversification rules (generally a maximum of 30 percent of its investments in assets of the same issuer), the absence of restriction in eligible assets or with respect to the sector in which it is investing. It may therefore be used for the creation of transferable securities funds, money market funds, real estate funds, hedge funds or private equity funds. This is particularly remarkable because it opens the door to both conventional and Shari'ah compliant investments.

From a Shari'ah perspective, there is strong interest from Islamic fund managers in setting up funds with physical commodities as underlying assets and the use of SIFs is therefore favoured by the investors. In addition, SIFs are lightly supervised and regulated by the Commission de Surveillance du Secteur Financier (CSSF) in comparison with other funds, including UCITS, and are consequently less burdensome for the promoter. Further, SIFs may be launched without the prior approval of the CSSF – a retroactive approval within one month of the launch is sufficient.

A SIF may be set up under the form of a common contractual fund (FCP) or an investment company, mostly established with variable capital (SICAV). An FCP is a contractual vehicle without legal personality, and is therefore not subject to Luxembourg company law. However, this tax-transparent entity must be managed by a Luxembourg management company. A SICAV is entrusted with legal personality, and may be self managed or managed by a management company. SICAV-SIF may adopt the form of a partnership limited by shares (SCA) or alternatively of a joint stock company (SA), a private limited liability company (S.à r.l.) or a cooperative organised in the form of a joint stock company (Scoop).

There are numerous Shari'ah compliant Luxembourg funds, and notable among these is EFH Funds SCA SICAV SIF – European Finance House Ltd's (EFH) Luxembourg platform set up under the form of a SICAV, which launched Luxembourg's first ever sukuk fund in February 2009, the EFH Global Sukuk Plus Fund. EFH, a fully-fledged Islamic investment bank based in London, is the promoter of the fund. The assets owned by the fund consist of different private or listed sukuk traded in other jurisdictions. Further, the fund should be the first of an increasing number of sukuk funds used by Islamic promoters who wish to manage a pool of assets using a Luxembourg-based vehicle.

The Grand Duchy is determined to become a major centre for Islamic finance, which has the support of the Luxembourg financial establishment. Another important factor in Luxembourg's success is its investor-friendly tax environment. Luxembourg offers substantial tax incentives for investment funds and Islamic finance can benefit from tax advantages for investment vehicles, and the government is keen to maintain its competitiveness. This can be explained by the size of the country – it needs to attract various businesses from abroad in order to develop the national economy. Luxembourg appears to have a bright future in the area of Islamic finance thanks to adapted and favourable legislation, longstanding experience in investment funds, political stability and a multilingual workforce, all of whom have an interest in Luxembourg becoming a top player in this area. ■

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Samia Rabia is a partner in Wildgen and has been a lawyer (Avocat) in Luxembourg since 1999. Her principal areas of expertise lie in corporate law, cross-border mergers and acquisitions, joint-ventures, re-restructurings, islamic finance and general corporate law. She also has

experience in the areas of tax and fund law allowing her to have a global overview for every transaction. Samia is currently working on the acquisition of real-estate in through companies based in Luxembourg where her knowledge of commercial property is particularly useful. This

deal should complete with the creation of the largest real estate fund in Europe. Samia also has considerable experience advising on the appropriate vehicles for her diverse clients and she has been involved in many large profile transactions.