

Luxembourg International Pension Vehicles



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Luxembourg as a financial centre

Today Luxembourg is the home to over 155 banks, just under 60 life insurance companies and more than 2,500 investment funds with assets under management of over 2,000 billion euros. Luxembourg is the largest financial centre in the European Union for cross-border distribution of individual and collective savings and pension products.

Luxembourg has long held the ambition of positioning itself as a centre for the management and administration of cross-border pension vehicles, as it believes in the future development of pan European pension funds which present major advantages for multinational companies, such as

- greater consistency in quality of asset management and performance;
- increased performance through securities lending, trailer fees and other commission mechanisms;
- better control and oversight on a range of pension schemes with respect to management and administration;
- reduction in transaction costs and asset management fees;
- outsourcing of administrative and routine tasks;
- simplified reporting from a single global custodian and administrator.

In 1999, the Luxembourg parliament passed a law on international pension fund vehicles which anticipated the 2003 European Directive on pension funds (or "IORPs" as they are technically called). As the legislation aspires to attract foreign employers/sponsors, the characteristics of the law allow a high degree of flexibility in plan design and the investment of plan assets. In 2005, parliament enacted a law implementing the IORP directive, which amended the 1999 law.

The pan-European pension funds envisaged by this law are also appropriate to fund employee benefit programmes in countries outside the EU.

Multiple recent regulatory changes both at EU level and in individual Member States make the cross-border management of pensions and the various advantages they trigger more worthwhile than ever before. Luxembourg offers unique advantages in this field, due to its qualities and experience as financial centre and to the appropriateness of the various solutions available.

Luxembourg has a stable legal and political environment and, as a sovereign state, is a full member of the European Union and other international organisations like the United Nations and the OECD.

Luxembourg has been highly rated in international competitiveness surveys and can boast an entrepreneur-friendly environment. Government entities are business minded and the supervisory authorities are known for their competency and responsive attitude to business needs.

Luxembourg companies can rely on multilingual staff, most of whom are fluent in English, French and German. Due to the international communities living in Luxembourg, knowledge of other languages such as Italian, Spanish or Dutch is widespread. The supervisory authorities accept legal documentation drafted in French, German or English, the most widely used languages in the EU.

In the area of employee benefits, Luxembourg based advisors and actuaries are accustomed to working in an international environment as more than 50% of Luxembourg's workforce is composed of foreign nationals many of whom have acquired vested pension rights in foreign jurisdictions.

Extensive experience of cross-border business has made Luxembourg based professionals familiar with foreign regulations and business practices. For instance today, in the field of life-insurance, more than 95% of premium income is derived from cross-border business.

This brochure introduces the various structures available in Luxembourg to meet cross border pension needs.

Luxembourg

- offers European companies two funding vehicles able to cover most common retirement programmes;
- offers multinational companies operating several retirement plans one single platform with a common currency;
- enables sponsors to take advantage of the world class investment fund structure in Luxembourg.

Institutions for Occupational Retirement Provision (IORPs)

Pension fund solutions in Luxembourg

Legal framework

Pension legislation in Luxembourg gives it the lead on many other EU countries where pension provision is considered from a purely domestic perspective.

The Luxembourg pension laws were introduced in 1999 and 2000 to create a flexible and secure environment for domestic and pan-European pensions. The legislation has focused on the establishment of three pension funding vehicles within a robust regulatory environment to provide security to beneficiaries and sponsors. This regulatory environment fulfills all the OECD Pension Fund Corporate Governance Principles, while offering sufficient flexibility to meet specific requirements (such as social committees, etc.).

Luxembourg's cost effective pension framework is based on the overall need to ensure sound prudential supervision and protection to future beneficiaries of the pension scheme. Economic, tax and political stability combined with an appropriate regulatory framework make

the Grand Duchy an attractive European pension centre.

Pension funds regulated by the financial supervisory authority (CSSF)

Building on the success and regulatory expertise of Luxembourg investment funds, the Law creates two pension savings vehicles under the prudential supervision of the regulator for banks and investment funds, the Commission de Surveillance du Secteur Financier (CSSF).

The Pension Savings Company with Variable Capital (SEPCAV) has a similar philosophy to a SICAV investment fund, being a company with limited liability where the value of the benefits is equal to the number of shares multiplied by the value of the shares. The SEPCAV can only be used for defined contribution (DC) schemes.

The Pension Savings Association (ASSEP) is a vehicle with an associative structure that can be used for both DC and defined benefit (DB) schemes. Its features are similar to those of non-profit making associations ("association sans but lucratif") outlined in the Law of April 21, 1928. An ASSEP is able to pay out a lump sum or an annuity and may also

pay ancillary benefits such as death in service, disability pensions and payments to widows and orphans.

These pension vehicles are flexible as to the definition of legal and corporate structure. The Law establishes a framework of pension scheme rules and regulations without significantly reducing the flexibility to tailor individual schemes to the needs of the sponsoring company and to asset and taxation rules of individual EU Member States.

Security is provided through the requirement to have approval from the CSSF of directors, managers, asset managers, liability managers, and the scheme rules. In addition, the assets must be entrusted to a bank established in Luxembourg or in another EU Member State.

After this initial control at the setting up of the fund, the CSSF provides ongoing supervision of the procedures and operations of the pension vehicle.

Both the SEPCAV and the ASSEP enjoy attractive tax regimes (with respect to taxation of income, capital gains, net assets, VAT, benefit of double taxation treaties, etc.).

Pension funds regulated by the insurance supervisory authority (CAA)

The third option for a pension savings vehicle lies within the framework of insurance legislation. These funds are supervised by the Commissariat aux Assurances and referred to as CAA pension funds.

The CAA pension fund offers flexibility in the form of a vehicle for defined contributions, defined benefits and/or supplemental benefits in case of death or disability of members. Security is provided by an ongoing guarantee of the sponsoring employer. As a consequence of this guarantee the requirements applied to insurance companies, such as choice of a technical interest rate or the solvency requirements, are able to be reduced to a minimum. The rules applied to CAA pension funds therefore combine security and flexibility.

Legal entities

SEPCAV

In contrast to the Anglo-Saxon trust structure, a SEPCAV is a company in its own right with a board and an annual shareholders' meeting. Its features are comparable to an investment fund ("SICAV" type, a company with limited liability, where the value of the benefits is equal to the number of shares multiplied by the value of the shares). Income flowing into the SEPCAV would not be considered as "flowing through" (it is not a transparent entity from a Luxembourg legal and tax perspective).

The minimum capital is one million euros, a figure that has to be reached within two years from authorisation of the fund.

Beneficiaries are shareholders of the fund. For the contributions paid into

the fund, beneficiaries are credited with a certain number of shares according to a net asset value per share which is calculated on a regular basis. Contributions can be paid by the employer and/or the employee. All shares are registered shares and have to be held, in principle, until retirement unless a transfer to a new pension plan is arranged. In the case of departure from the company, vested rights can be maintained in the fund.

As beneficiaries are shareholders of the fund, this type of vehicle is appropriate for defined contribution pension benefits.

A SEPCAV is a cooperative company organised as a corporate entity. It is managed by a board of directors on which the employer can be represented.

SEPCAV – in a nutshell

- Société d'épargne-pension à capital variable
- corporate form of an IORP
- supervised by the Luxembourg financial supervisory authority, the CSSF
- suitable for defined contribution (DC) plans
- umbrella structure allows share classes for different nationalities and employers
- flexible business solutions
- competitive tax environment both for the IORP and the sponsor

The benefit would be a lump sum, a temporary annuity or a life annuity. However, for life annuities a special arrangement with an insurance company has to be considered.

The Luxembourg legislator has provided an attractive tax regime for SEPCAVs. While it is a taxable entity, investment income and capital gains "from securities" are tax free. This should allow SEPCAVs to benefit from double tax treaties while bearing a very low tax burden in Luxembourg.

With regard to the beneficiary (= shareholder), the tax treatment depends on the jurisdiction of each individual participant.

ASSEP

An ASSEP is not a company but an association. In contrast to the SEPCAV, the main bodies are the general meeting of associated members and the Board of Directors. Associates are typically representatives of the sponsor of the fund or the employer and representatives of staff and beneficiaries.

Beneficiaries are creditors of the fund. The technical reserves of the fund, representing the affiliated members' rights, should reach a minimum of five million euros after a start up period of up to ten years. As for the SEPCAV, contributions can be paid by the employer and/or the employee.

An ASSEP can fund either a defined contribution or a defined benefit plan.

It can also be used to finance both types of plans within a single legal entity ("multi compartment" concept). An ASSEP can also fund survivors and disability benefits. Appropriate reserves need to be set aside in this case. If the ASSEP has no own funds to amortise potential losses, part of the risk can also be transferred to an insurer or reinsurer.

For defined benefit plans, the following rules apply:

- Technical reserves need to be valued by a recognised actuarial method, be it prospective benefit methods or accrued benefit methods. Only the ABO (accumulated benefit obligation), based on current salaries, needs to be funded.

ASSEP – in a nutshell

- Association d'épargne-pension
- associative form of an IORP
- supervised by the Luxembourg financial supervisory authority, the CSSF
- suitable for defined benefit (DB) and defined contribution (DC) plans
- umbrella structure allows share classes for different nationalities and employers
- flexible business solutions
- competitive tax environment both for the IORP and the sponsor



- For cross-border plans, the ABO should be funded on a permanent basis.
- Financial and demographic assumptions are not prescribed but they should be reasonable.
- An additional buffer is only required if the sponsor does not undertake to cover a deficit in the fund.
- For Luxembourg based plans (i.e. for Luxembourg employers), the minimum funding requirement is based on a discount rate of 5% and Luxembourg mortality tables. For foreign plans, the discount rate could be fixed or variable. It should either reflect the expected return on assets or the long term bond yield of high quality corporates in the funding currency.
- Retirement benefits paid could be a lump sum, a temporary annuity or a life annuity.

ASSEPs are taxable entities but profits will be offset by transfers to technical reserves. If profits exceed the amount required for the allocation to the technical reserves, an ASSEP could set up a tax free "pre-financing reserve" to carry forward the profits of the year. ASSEPs

are in principle eligible for the benefit of Luxembourg tax treaties.

Points common to the SEPCAV and the ASSEP

SEPCAVs and ASSEPs are supervised by the CSSF. This is also the supervisory authority for banks, asset managers, investment funds and securities markets. The supervisor has a strong reputation in international markets but nevertheless demonstrates a responsive attitude towards innovative solutions.

Both pension vehicles comply fully with "state of the art" corporate governance best practices.

Each pension plan needs to be documented by pension rules. These rules have to be made available to scheme members.

Both types of fund have to appoint a custodian bank responsible for the safekeeping of assets. The custodian bank also has a supervisory duty with regard to investment policy. An external auditor has to approve the annual accounts.

SEPCAVs and ASSEPs can be organised as a "multi-employer" pension fund. A professional organisation of employers

could, for example, set up a pension fund for its members. A multinational company could organise the funding of several pension plans of its subsidiaries in a single SEPCAV or ASSEP. A financial services company could set up a pension fund for its corporate customers.

The investment policy is very flexible. The Law only states that the investment policy should be diversified in accordance with the "prudent man" principle. In practice, the supervisory authority would among other things compare the investment policy proposed with the maturity of the pension liabilities.

For defined contribution plans, Luxembourg pension funds could be organised as umbrella funds with, for example, compartments with different investment risk-reward profiles ranging from dynamic to conservative. This allows pension money to be invested according to the "life cycle" model: while young affiliated members would typically go for equity investments, staff members who are closer to the age of retirement might typically look for a bond or cash portfolio. Capital as well as minimum return guarantees could be provided but are not mandatory.

The Law obliges the pension fund to open its books to local tax authorities which could forward this information to foreign tax administrations. This means that Luxembourg financial privacy rules do not apply to pension funds.

CAA pension funds

Four legal forms can be chosen: a mutual insurance association (*association d'assurances mutuelles*), a cooperative company (*société coopérative*), a cooperative company organised as a public limited company (*société coopérative organisée comme une société anonyme – SCoSA*) and a non-profit making association (*association sans but lucratif – asbl*). Public entities are allowed. In practice, the asbl is the most commonly used as the rules applied to this legal form are simple and flexible.

The pension fund could either finance DB or DC schemes. For DB schemes, actuarial methods and assumptions must be appropriate to the pension scheme and the financial possibilities of the sponsoring employer. The approach taken by the legislation is qualitative in nature and there are no fixed quantitative limits.

The pension commitment is documented by pension rules, which have to be given to the affiliated members.

The financial supervision of CAA pension funds falls within the exclusive competence of the Commissariat aux Assurances. As for Luxembourg insurance companies, the Commissariat aux Assurances ensures that CAA pension funds comply with the prudential principles laid down by law.

The CAA pension fund must have sufficient technical provisions in relation to its commitments; the minimum amount of such technical provisions shall be sufficient for the continuation of payment of pensions and benefits to the beneficiaries. They must reflect the commitments arising from the pension entitlements accrued to members.

Due to the fact that sponsoring companies assume a residual financial guarantee, constraints imposed on life insurance companies (in regard to the rules applicable for technical provisions) could be eased for CAA pension funds without taking excessive risks. They are always required to act in accordance with the principle of the “prudent man”.

This sort of pension fund can be “multi-employer” and can therefore administer several pension plans. Sponsoring companies should, however, be aware that the several liability rule is in principle applicable for the funding of all pension plans.

The tax regime is similar to that of the ASSEP.

CAA pension fund – in a nutshell

- Choice of four legal structures
- supervised by the Luxembourg Insurance Authority, the CAA
- suitable for defined benefit (DB) and defined contribution (DC) plans
- umbrella structure allows multiple share classes
- flexible business solutions
- competitive tax environment both for the IORP and the sponsor

Actors in the pension business

Supervision

Luxembourg professionals have been involved in providing cross-border pension products for individual clients since the early 1960s. Banks and insurance companies have accumulated valuable expertise in providing pension products and services to their clients. A strong advantage in Luxembourg is that pension funds are rigorously but appropriately regulated by the financial supervisory authorities.

SEPCAVs and ASSEPs

Sponsors and beneficiaries enjoy large freedom in defining internal rules governing pension funds: by-laws, management agreements between sponsor(s) and fund, funding plans, statement of investment principles (SIP), etc. Fund structures can, for instance, organise representation of beneficiaries in addition to sponsors, social committees specific to individual countries, and so forth.

Prior to starting its activities, a pension fund (SEPCAV or ASSEP) must apply for authorisation from the CSSF. Directors, managers, asset managers, liability

managers and the scheme rules must be approved by the CSSF in order to ensure compliance with the rules that govern the functioning of the pension fund, be they of legal, regulatory, statutory or contractual nature.

Besides control of constitutive documents, the CSSF verifies, when delivering authorisation, whether the organisational, human and material means of the entity concerned are such as to properly and professionally perform its activities (initial control upon setting up of the fund).

Furthermore, the CSSF is responsible for ongoing supervision of entities under its supervision. Any change to the constitutive documents and to the managing bodies is subject to prior approval by the CSSF (ongoing control of the activities of the fund).

The supervision of the financial situation of pension funds is based on the examination of the closing documents, as well as on the reports issued in this context by external auditors. Furthermore, the prudential supervision of pension funds is based on the analysis of quarterly financial reporting submitted by the pension fund, as well as on the actuarial reports submitted, where applicable, by the liability manager.

CAA pension funds

The third pension savings vehicle created within the framework of insurance legislation has to meet four conditions:

- specialisation: the object of the CAA pension fund is to be limited to the funding of retirement benefits and the coverage of disability and death benefits;
- the central administration of the pension fund must be located in the Grand Duchy of Luxembourg to enable the CAA to carry out its role of prudential supervision with full effectiveness;
- the principle of financial responsibility of the employer must be listed in the pension fund's incorporation articles;
- the pension fund must be managed by a person or entity that satisfies the competence and reputation criteria. This management may also be provided by a professional fund manager. If the fund manager is a legal entity, it must be established in the Grand Duchy of Luxembourg and have the adequate internal organisation for the proper exercise of its mandate.



Like an insurance company, the CAA pension fund is subject to an external audit to be carried out annually by an independent auditor.

The assets must be deposited with a financial institution approved by the CAA.

Custody

Apart from fulfilling the obligations defined by law, the custodian will be in charge of the safekeeping and current administration of the assets of the pension fund. The functions of custodian bank for a pension fund are similar to those that custodian banks fulfill for an investment fund. One major difference consists in the fact that the custodian of a pension fund has to verify that the contributing companies proceed punctually to the payment of contributions in conformity with the pension regulations/funding plans. Similarly, it is expected that the custodian oversee the payment of capital or pensions to scheme beneficiaries.

This implies putting into place a structured communication between the entity in charge of the central administration and the custodian.

Asset management

A SEPCAV or ASSEP can delegate asset management to one or more asset managers with the approval of the CSSF. Where asset management is delegated to an external asset manager, in Luxembourg or abroad, this entity is nominated by the Board of Directors. The decision whether or not to delegate asset management to an external asset manager can be motivated by arguments of independence or specific expertise required by the employer. Although some or all asset decisions can be delegated to an external party, the Board of Directors is still responsible for the investment principles in general and the specific practices of Asset and Liability Management (ALM) applicable to the fund.

Frequently, the employer organises a tender in order to select the asset managers best suited in terms of track record, specific expertise and pricing.

The Board of Directors will define the investment objectives and the asset allocation. The asset manager must comply with the investment principles and restrictions defined in the pension regulations and the funding plan. In the case of a defined benefit plan, the strategic asset allocation of the portfolio

will usually be based on an ALM study, in order to link the portfolio to the characteristics of the corresponding liabilities.

Liability management

Mostly, the management of pension and biometric benefits are outsourced to a third party. This third party is either an insurance company having experience in administering affiliated members' pension plan entitlements or a specialised pension administrator. The liability management includes the valuation of liabilities, the actuarial reporting to the supervisory authorities and other actuarial services (e.g. IAS19 valuation), the issuing of certificates to affiliated members and handling right transfers and redemptions. It can also include the whole coordination with the actors involved: custodians, asset managers, auditors and insurers.

Some providers offer global web-driven secure IT platforms to access one's pension rights, death and disability features etc., or to facilitate the management of "unit-linked" type DC plans where affiliated members can, for instance, choose among different investment profiles to invest their pension assets.

Administration

SEPCAVs and ASSEPs may be managed by the administrative agent under the supervision of the board of the company or association and as approved by the contributing companies and the supervisory authority.

The administrative agent fulfills the following tasks:

- keeping of the accounts of the SEPCAV or ASSEP,
- preparation of the annual accounts and periodic financial statements,
- calculation of the Net Asset Value for SEPCAVs,

- CSSF regulatory reporting and establishment of tax returns and tax provisions,
- provision of transfer agency and registrar services,
- provision of domiciliary agent services.

Depending on the plan design and the organisation of the pension fund, the administrative agent can also provide the affiliates with information regarding benefit entitlement and arrange for payment of the benefits in accordance with legal and regulatory provisions and as foreseen in the pension plan rules.

Summary table: Luxembourg pension funds

Due to the impact of fixed costs, insurance solutions are generally preferable for pension funds with assets that do not exceed ten million euros.

It is important to mention that Luxembourg has, from the beginning, separated its legislation on pension funds from the legislation on occupational pension plans for Luxembourg employers. For this reason there are no prescriptions on labour law, social security or taxation in the pension fund Law.

	ASSEP	SEPCAV	CAA PENSION FUND
Supervisor of the vehicle	Financial supervisory authority (CSSF)	Financial supervisory authority (CSSF)	Insurance supervisory authority (CAA)
Rights of affiliated members	Affiliated members are creditors of the pension fund	Affiliated members are shareholders of the pension fund	Affiliated members are creditors of the pension fund
Type of plan design	Defined benefit, cash-balance, defined contribution	Defined contribution	Defined benefit, cash-balance, defined contribution
Tax status	Taxable entity and eligible for double tax treaties; however tax base is in practice zero. Possibility of setting up a "fluctuation reserve"	Taxable entity and eligible for double tax treaties; however, in practice the tax base is very limited.	Taxable entity and eligible for double tax treaties; however tax base is in practice zero. Possibility of setting up a "fluctuation reserve"
Multi-employer structure	Allowed	Allowed	Allowed

How to comply with host country social and labour legislation (IORP)

The Luxembourg legislation on pension funds, and in particular the Law of 13 July 2005 on SEPCAV and ASSEP, has been specifically designed for cross-border activities. As a result, Luxembourg offers a working tool of great flexibility enabling the specific needs of multinational pension schemes to be taken into account and centralised in a single financing vehicle. This vehicle does not impose any constraints of its own, but makes it possible to introduce any restrictions that either the initiator of the pension fund or, as the case may be, the local law of the employer, might impose. This is particularly true in the framework of the IORP Directive, where the host Member State (i.e. the State of establishment of the employer) rules apply regarding social and labour law provisions as well as rules on information to be provided to the affiliated members and beneficiaries.

A major aspect of the flexibility offered by Luxembourg pension funds lies in the possibility of setting up a pension fund

as an umbrella structure, comprising different sub-funds. Although the pension fund constitutes one single legal entity, each sub-fund within such entity represents a separated portfolio of assets and liabilities. The sub-funds within the pension fund are in principle ring-fenced, which means that each sub-fund is only responsible for its own liabilities. No cross-liability between sub-funds applies. Since each sub-fund is allowed to operate according to its own rules, Luxembourg pension funds can adapt to the needs of multinational companies that intend to provide different pension schemes to their employees. Sub-funds can be established to meet specific requirements in terms of benefits (DC and/or DB schemes), in terms of investment policy or in order to comply with specific requirements imposed by the legal provisions applying to a given host State employer.

Luxembourg pension funds have to establish pension rules. These can comprise a general set of rules applying to the pension fund as a whole and specific parts that target individual sub-funds. For employers sharing the same sub-fund, it is permissible to establish pension rules per employer and thus to

take into account each employer's legal requirements, such as, for instance, the waiting period before rights are vested.

Representation of employees, as affiliated members and beneficiaries, at the level of the governing bodies of the pension fund, is stipulated in the Luxembourg legislation on pension funds and particularly in the Law of 13 July 2005 on SEPCAVs and ASSEPs. However the Law allows the employer to keep control of the vehicle.

General meetings of shareholders or associated members can be organised at the level of the sub-funds for matters relating to such sub-funds only.

If needed or required under the local legislation of the employer, special committees can be set up either at the level of a pension fund or at the level of a sub-fund. The Luxembourg legislation provides a maximum of flexibility in terms of creation, membership and powers of such committees. For a CAA pension fund, usually established under the form of a non-profit making association, a mixed representation of employees and the employer is not necessary.



Luxembourg pension funds are secure vehicles able to meet any requirements imposed either by host State legislation or by the principles of adequate governance, making them a perfect tool for multinationals or multi-employer structures in organising an integrated financing of supplementary retirement schemes.

Prudential framework

Conditions of operation

The only condition for operating a pension fund is to be authorised by the CSSF/CAA.

Under Luxembourg legislation, a sponsoring undertaking that sets up a pension fund is not required to have any activity in Luxembourg.

Corporate governance rules are very pragmatic. Pension funds should be well organised in terms of administration, accountancy and internal control procedures. The central administration must be based in Luxembourg.

An IORP is audited by a certified auditor, who makes an annual report. The pension

fund has to send the annual report to the supervisory authority. The supervisory authority may ask the auditor to investigate certain specific areas. The pension fund itself has to inform the supervisory authority about any changes incurred regarding the statutes, the pension rules and the technical provisions.

Qualitative rather than quantitative rules

Luxembourg has a qualitative approach rather than a quantitative approach with regard to corporate governance, technical provisions and investments; the “prudent person rule” applies, without further specification.

Investments

The statement of investment principles (SIP) must be in accordance with the financing plan and is reviewed every three years.

The prudent person rule applies: assets must be invested in the best interest of the members and beneficiaries and in such a way as to ensure the security, quality, liquidity and profitability of the

portfolio as a whole. The assets must be appropriate to the nature and duration of the pension benefits. Alternative investments and non regulated assets must be used with care. The assets must be diversified.

Financing

The fund’s assets should at any time be at least equal to its liabilities. However, the ASSEP is authorised to be underfunded, on condition that a recovery plan has been established.

Technical provisions

The ASSEP must be able at any time to establish that the level of its assets is sufficient to meet its liabilities, reflecting the pension benefits. The minimum technical provisions correspond to the vested rights. The technical provisions of the ASSEP should exceed five million euros.

The CAA pension fund must establish sufficient technical provisions in relation to its commitments: the minimum amount of such technical provisions shall be sufficient for the continuation of payment of pensions and benefits

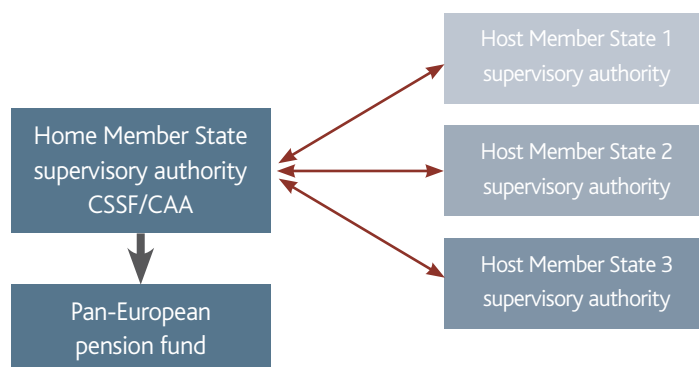
to its beneficiaries and to reflect the commitments arising from the members' accrued pension entitlements. These liabilities should be represented at all times by equivalent assets. At the end of each quarter, the amount of the technical provisions and the amount of variation in the quarter have to be submitted to the Commissariat aux Assurances.

External audit

Due to the international character of the financial transactions taking place in Luxembourg, Luxembourg based audit firms have extensive knowledge of the international environment in which pension funds operate.

Authorisation procedure

A pension fund operating cross-border in different countries will be supervised only by the home Member State supervisory authority (where the pension fund is based). Hence a pan-European ASSEP or SEPCAV will be controlled by the CSSF. The CAA pension fund will be supervised by the Commissariat aux Assurances. Nevertheless, there will be cooperation between the CSSF or the CAA and the host Member State supervisory authorities where sponsoring undertakings of the pension fund are based.



When preparing a pension fund authorisation file for the CSSF or the CAA, (statutes, pension rules, financing plan, investment policy principles, governance rules etc.), a notification file for cross-border activity must be established.

Preparing the notification file for a cross-border pension fund

A Luxembourg based pension fund has to advise the CSSF or the CAA of its planned cross-border activity. The process is detailed in a CEIOPS¹ document known as the Budapest Protocol², published in February 2006. The steps are as follows:

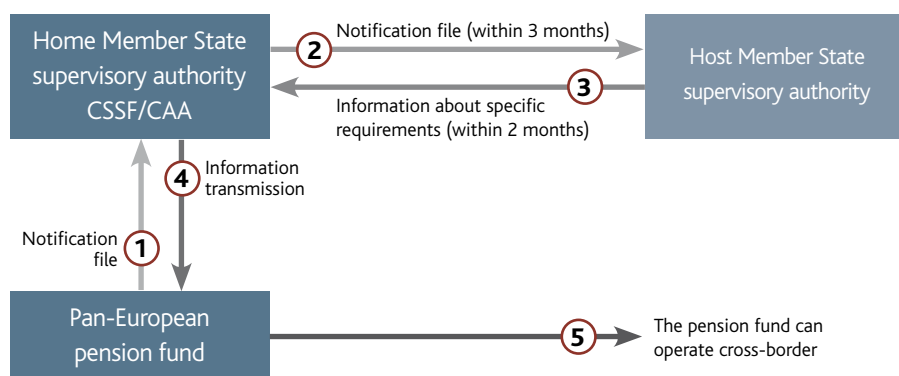
- Prepare and send the notification file to the CSSF or CAA (including the name of the host Member State, the name of the sponsoring undertaking and the main characteristics of the pension rules – see Budapest Protocol Appendix 2 "List of the main characteristics regarding the IORP and the pension scheme offered by the IORP in the host Member State").

¹ Committee of European Insurance and Occupational Pensions Supervisors

² Protocol relating to the collaboration of the relevant competent authorities of the EU Member States, in particular in the application of the Directive on the activities and supervision of Institutions for Occupational Retirement Provision (IORPs) operating cross-border (February 2006).

- The CSSF or CAA forwards the notification file to the host Member State supervisory authority within maximum three months.
- The host Member State supervisory authority has a time limit of two months after receiving the notification to advise the CSSF or CAA about specific national labour and social law¹ requirements or any specific investment or information requirements the pension fund has to adhere to.
- The CSSF/CAA transmits this information to the pension fund.
- Two months after the host Member State has been notified, or on reception of the communication of the host country's requirements, the pension fund may start doing business in the host Member State while complying with the applicable regulations.
- The pension fund can operate cross-border.

To obtain agreement to operate cross-border, it will therefore take a maximum



of five months once the notification file has been sent to the CSSF/CAA, and typically less than three months. The CSSF and CAA will normally transmit files rapidly to the host Member State supervisory authority.

Note: Supervisory authorities in several countries (such as the DNB in The Netherlands, the BaFin in Germany and the CBFA in Belgium) have already issued helpful documents on their websites, concerning social and labour law, investment rules and communication requirements.

Tax aspects

Luxembourg companies/entities are generally subject to corporate income tax (22.88% on profits exceeding EUR 15,000) and municipal business tax (6.75% on profits in Luxembourg City) leading to an aggregate nominal rate of 29.63%.

Luxembourg has an extensive tax treaty network with 53 countries (as at 1.1.2008). Sixteen more are in negotiation. This allows considerable reduction or elimination of double taxation of income.

¹ As social and labour law requirements are compulsory wherever the pension fund is based, the employee has no disadvantage due to the fact that the pension fund is based outside the host Member State.



SEPCAV, ASSEP

Luxembourg SEPCAV and ASSEP pension funds have been designed to be as much as possible “tax neutral” while considered in Luxembourg as entities fully subject to corporate income tax and municipal business tax.

They are subject to a small one-off capital duty (€ 1,250) collected on formation and covering all operations relating to the aggregation of capital.

SEPCAVs and ASSEPs are exempt from net worth tax.

While the SEPCAV is subject to corporate income tax and municipal business tax, there is an exemption for any income derived from securities and gains realised upon the sale of such assets. The taxable basis is therefore very limited, such as to taxation on interest earned on term deposits and real estate income.

The ASSEP is also subject to corporate income tax and municipal business tax. Technical reserves are tax deductible.

An ASSEP supporting biometric risk, interest rate risk or benefits risk may establish a technical reserve as an extra layer of security which is tax deductible and will offset the tax gains of the assets. This means that, in practice, there will be only a very small, or no, taxable income at all. Furthermore, if a pension fund is funding DC retirement schemes, all income and capital gains derived from the assets will be off-set by tax deductible reserves representing the pension rights of affiliated members in the pension fund.

SEPCAVs and ASSEPs have to report to the Luxembourg tax authorities the register of members and beneficiaries, giving their names and addresses, total rights at year end and details of any payments made during the year.

This provision, besides the fact that SEPCAVs and ASSEPs are considered in Luxembourg as taxable entities, is designed to allow transmission of information to tax authorities of the beneficiaries’ country of residence so as to obtain and facilitate application of double tax treaties signed by Luxembourg to SEPCAVs and ASSEPs.

CAA pension fund

As for an ASSEP, Luxembourg tax law provides for technical provisions of pension funds subject to the prudential control of the CAA to be considered as tax deductible in computing taxation. As a consequence, pension funds are largely free from Luxembourg corporate income tax and municipal business tax, the taxation burden falling on the members when benefits are actually taken.

In contrast to the situation with regard to a SEPCAV or an ASSEP, reporting of data on beneficiaries to the Luxembourg tax authorities is not required by law, but can be performed as no confidentiality provisions have been introduced. CAA pension funds are thus free to provide individual data as is appropriate to the circumstances.

VAT

Management services rendered to supervised pension funds are exempt from VAT.

Alternatives to pension funds

Some people see the fully fledged cross-border pension fund as a distant goal. Indeed, legal and cultural barriers seem to hinder the development of the pan-European pension fund at every turn.

But there are intermediary steps that can lead to an integrated solution later on.

Luxembourg offers the international pension market tools which enable a company to prepare for further development. Pension fund pooling vehicles, for instance, are becoming increasingly popular throughout Europe. They allow the pooling of assets of several pension funds in one entity. Two other legal structures which allow companies to fund pension liabilities in reliable external entities are group insurance and pension trusts.

Pension pooling vehicle

In some cases, the cross-border distribution of IORPs might be burdensome and ultimately not cost effective. In these cases, pension pooling may be a good alternative.

Pension pooling allows companies operating in several countries to pool their scheme assets in a single vehicle. The pension pooling vehicle (PPV) in turn invests in a diverse range of assets such as global equities, bonds, funds and cash on behalf of the pension schemes. As the pooling vehicle is composed of several asset classes, a number of pools may be created to match the varying objectives of pension sponsors.

This framework retains the local dimension for pension schemes, allows their marketing as local products in the countries of origin, ensures compliance with local legal or regulatory requirements and potentially avoids discriminatory taxation on cross-border contributions to, and payments of benefits from, pension schemes.

What is a pension pooling vehicle?

A PPV is a category of vehicle exclusively used for pooling assets held by the various supplementary pension schemes of multinationals in order to achieve efficiencies at the level of

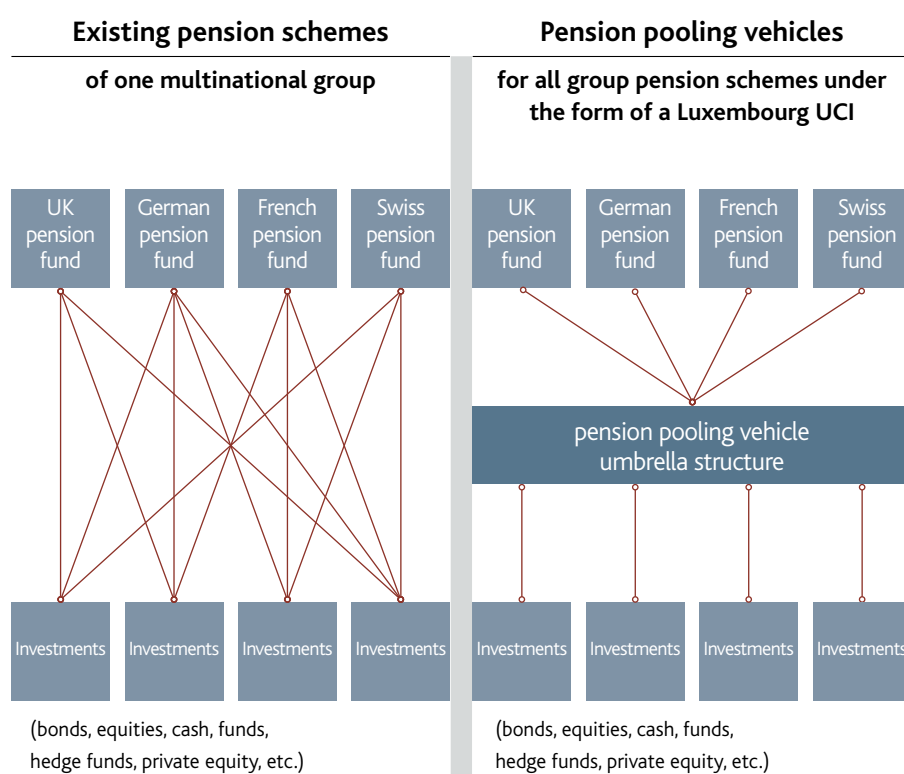
- investment management
- administration
- custody
- taxation.

Who should be interested in establishing a pension pooling vehicle?

- Multinational companies or large companies running several pension schemes (multinational pooling);
- Pension money asset managers (manager pooling);
- Global asset allocation managers (multi-manager structures).

The pension pooling vehicle – how does it work?

An example:



Benefits for pension funds and multinational companies

The pooling of assets of individual pension schemes in a common pool can provide:

- more efficient asset allocation for both large and smaller pension schemes;
- cost savings through economies of scale in the management, administration and custody of these assets;
- neutral tax treatment.

More specifically, compared to multiple individual pension schemes without pooling, pension pooling can achieve:

- greater consistency in quality of asset management and performance;
- increased performance through securities lending, trailer fees and other commission mechanisms;
- better control and oversight on a range of pension schemes with respect to management and administration;
- reduction in transaction costs and asset management fees;
- outsourcing of administrative and routine tasks;
- simplified reporting from a single global custodian and administrator.



Which legal structure for a pension pooling vehicle?

Luxembourg offers a variety of legal vehicles that may be used for pension pooling. A particularly tax efficient vehicle is the UCI (undertaking for collective investment):

- The “fonds commun de placement” (FCP) has a track record for tax transparency in relation to institutional investors. The objective is to create a tax neutral structure, allowing multinational companies/pension asset managers to ensure that each pension scheme benefits, in the countries of source of its investment income, from the same tax treatment, including the benefit of double tax treaties, as that applying when the pension scheme does not invest through a pooling vehicle, and without an additional tax charge caused by the Luxembourg vehicle.
- Incorporated vehicles such as SICAVs present an alternative, in the event that the participating pension schemes seek an investment in shares rather than units for local domestic tax reasons and where the withholding tax on investment income is either irrelevant or identical whether the income is

received by a SICAV or directly by the pension scheme. Withholding tax on fixed income securities is generally zero or very low.

Neutral tax treatment

- Tax transparent vehicle (FCP)
- Tax exempt vehicle
- Zero subscription tax (taxe d’abonnement)
- No Luxembourg withholding tax on distribution
- No capital gains tax for non-residents
- Non significant capital duty (€ 1,250)
- Management services exempt from Luxembourg VAT
- No Luxembourg transfer tax

Group insurance contract

Group insurance contracts are available to finance the obligations from occupational pensions either in the form of direct insurance contracts or in the form of re-insurance contracts. Common to both types is the fact that the employer is the policy holder and the affiliated member the insured person, and that the employer negotiates the terms of the policy with the insurer.

A direct insurance contract provides for a direct claim and for the payment of benefits to the affiliated member or his/her heirs, without involvement of the employer. This provides additional security to the employee and minimises the administrative burden on the employer.

A reinsurance contract is used by the employer to ensure that funds are available to pay benefits to former employees as and when they fall due. Such contracts may fund liabilities in full or in part. In case of fully funded obligations, the insurer may also make payments directly to beneficiaries.

Group insurance contracts can be used to fund defined benefit and defined contribution plans. In the case of final salary schemes, employers are required to pay additional premiums to fund salary increases. Defined contribution plans are available as traditional with-profits policies or in the form of unit-linked contracts, where the investment risk is borne by the employee.

Group insurance contracts are usually geared to one particular jurisdiction, to ensure that benefits are optimised from

a tax perspective. As a consequence, such plans are usually standardised and offer limited discretion to the employer.

Group pension plans to provide pension cover centrally to highly mobile employees are also available; in this case attractive investment options and administrative flexibility may prevail over tax efficiency in any given country.

The principal advantage of group insurance contracts is that they are readily available and enable smaller and medium-sized employers to provide occupational pensions. For larger, internationally active groups, they offer a flexible instrument to complement the main pension scheme in countries where staff levels do not justify the implementation of the group pension fund.

Pension trust solution

The Luxembourg equivalent of trusts (or "fiducies" as they are called in French) are organised under the Law of July 27, 2003.

The Law provides a legal environment and a high level of protection for Luxembourg trusts to the extent that only supervised professionals such as banks, other financial intermediaries or insurance companies can become trustees. The Law allows the setting up of pension trusts according to continental European law (civil code).

In such a structure, the employer (settlor or "fiduciant") will pay monies (contributions) to a trustee ("fiduciaire") and set conditions for the withdrawal of assets by beneficiaries.

By comparison with pension funds, the pension trust is even more flexible as it is not a supervised entity as such (only the trustee is supervised). This gives total flexibility to the pension trust, for example in the area of investment policy, amendment of the investment policy or the surrender of pension rights.

Registration of the pension trust with a supervisory authority and reporting to a supervisory authority are not required.

The Luxembourg pension trust may be the appropriate solution for expatriate pension plans where a maximum of flexibility is often required.

Why Luxembourg?

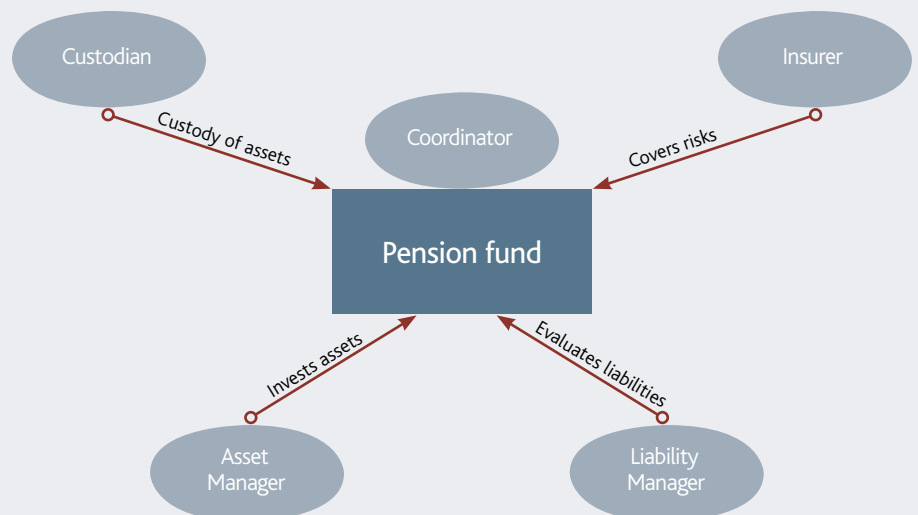
What are the success factors for a financial centre to become a “centre of excellence” for pan-European pension funds? Ideally, you need:

- an established financial centre with expert knowledge in the different fields covered by pension funds: asset management, custody, actuarial advice, legal expertise, accounting and administration capacity, communication and IT facilities;
- a stable fiscal and political environment where it is easy to do business without unnecessary constraints;
- a tax-neutral environment over the long term: political and social stability is of paramount importance;
- an international servicing centre where teams are accustomed to working in a multilingual and multicultural environment;
- a servicing centre with experience of handling cross-border business on a day-to-day basis. The cross-border provision of services is, in practice, a considerable operational challenge;
- a domicile where the rules are strict, but are more qualitative than quantitative in application; where the supervisory authorities are rapid, pragmatic and efficient and able to operate in different languages.

There is a financial centre that fulfils all these criteria: the Grand Duchy of Luxembourg

Luxembourg has positioned itself over the years as the financial heart of Europe. In the area of investment funds, the Grand Duchy holds 1st place in Europe and 2nd in the world, after the United States, with over 2,000 billion euros under management at 31 December 2007. All the largest financial groups are

present with highly-skilled international teams. Some already offer a global pensions service, meeting the needs of umbrella pension funds (multi-compartment, multi-employer), with web-driven facilities and knowledge of the specific social, labour, investment and communication rules operating in different European countries, as required by Directive 2003/41/EC.



Luxembourg has a flexible legal framework which meets international requirements and is easily adapted to diverse international requirements.

Luxembourg has a long history of being an attractive investment centre: tax neutrality, combined with political stability to guarantee return on investments over the long term, are both necessary for pension funds. People working in Luxembourg come from all over Europe, creating an international melting-pot that is both culturally rich and economically successful. Luxembourg has over two decades of experience in the business of cross-border investment fund sales and has been active in the cross-border provision of insurance products for many years. Last but not least, the pragmatism and efficiency of its supervisory authorities make Luxembourg an ideal place to do business.

Combining all these elements makes for a compelling argument: Luxembourg is set to become the European centre of excellence for pan-European pension fund administration and management.

A final word

Full cross-border pension solutions, including asset and liability management, can be complicated if implemented from scratch.

Luxembourg offers a number of solutions allowing for progressive, step by step implementation through pension pooling,

benefit pooling, pension administration, single-country pan European pension funds, etc.

These solutions have a recognised track record.

Such step-by-step implementation can be easier to manage and provide accelerated savings.

Why Luxembourg?

- Internationally recognised and reputable financial centre
- dedicated, modern regulatory and tax framework for international pension schemes
- compatibility with other national legislations
- flexibility in asset and liability management
- fiscal neutrality
- effective control
- the world leader in cross-border fund distribution
- expertise in foreign tax and regulatory reporting requirements
- an established centre for multiple fund structures, requiring sophisticated asset allocation
- world class service levels throughout the value chain
- Europe's leading investment fund centre

Glossary

ABO	Accumulated benefit obligation
ALM	Asset and liability management
asbl	<i>Association sans but lucratif</i> Non-profit making association
ASSEP	<i>Association d'épargne-pension</i> Pension Savings Association
DB scheme	Defined benefit pension scheme
DC scheme	Defined contribution pension scheme
CAA	<i>Commissariat aux Assurances</i> The insurance supervisory authority
CAA pension fund	Pension fund vehicle supervised by the insurance supervisory authority
CSSF	<i>Commission de surveillance du secteur financier</i> The financial supervisory authority
FCP	<i>Fonds commun de placement</i> Common investment fund
IORP	Institution for Occupational Retirement Provision
IORP Directive	Directive on the activities of Institutions for Occupational Retirement Provision
Member State	Country that is a member of the European Union
PPV	Pension pooling vehicle

SCoSA	<i>Société coopérative organisée comme une société anonyme</i> Cooperative company organised as a public limited company
SEPCAV	<i>Société d'épargne-pension à capital variable</i> Pension savings company with variable capital
SICAV	<i>Société d'investissement à capital variable</i> Open ended investment company
SIP	Statement of investment principles
UCI	Undertaking for collective investment
2000 Regulation	Regulation by the Commissariat aux Assurances of 31 August 2000 creating the CAA pension fund
2005 Law	Luxembourg Law of 13 July 2005 implementing the EU IORP Directive. This amended the 1999 law which created the SEPCAV and the ASSEP

Luxembourg for Finance thanks the members of the joint ABBL/ALFI Pension Fund Working Group for their work on this brochure.

Luxembourg for Finance

Agency for the Development of the Financial Centre

Luxembourg for Finance a public-private partnership between the Luxembourg Government and the Luxembourg Financial Industry Federation (PROFIL). It consolidates the efforts made by the public authorities and principal actors of the financial sector to ensure the development of an innovative and professional financial centre through a coherent and structured communications policy.

Thus Luxembourg for Finance will enhance the external presentation of the financial centre, communicating the advantages of its products and services to a wider public and highlighting the numerous opportunities available to investors and clients, whether institutional or private, from around the world.

Luxembourg for Finance organises seminars in international financial centres and takes part in selected world class trade fairs and congresses.

The Agency also develops its contacts with opinion leaders from international media and is the first port of call for foreign journalists.



Luxembourg for Finance

Agency for the Development of the Financial Centre

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