The bright future of infrastructure funds in Luxembourg

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There is no doubt that infrastructure is an asset class which has a bright future, not only in the renewable energy sector or for the development of transportation or telecom in emerging countries, but also in any single country where there are needs to be addressed, which can probably not be financed by public money anymore. This of course creates opportunities for asset managers and private investors and the Luxembourg fund industry does indeed offer many great opportunities for them.

While for a number of years, infrastructure funds were considered as a niche asset class, difficult to compare to real estate or private equity funds, the interest of institutional investors for long-term and stable income return has given comfort to infrastructure asset managers that this asset class should be developed. Due to their particular characteristics, and more specifically the fact that these funds are created for a very long period of time, the organisation and the functioning of these funds must anticipate a number of reorganisations, or difficulties that may arise during their lifetimes.

These difficulties may occur in respect to the financing of the investment vehicle, due to the frequency of investments via consortiums or joint-ventures, which dictate certain corporate governance schemes and possibilities for multiple exit strategies, or simply the possibility for investors to reallocate their investment, during the lifetime of the fund via an active secondary market.

From a legal and regulatory perspective, the solutions offered by the Luxembourg legislator to the alternative fund industry are certainly beneficial towards infrastructure funds as well. After the global restructuring of the regulatory regime applicable to fund managers (AIFM), with the adoption of the directive on alternative investment fund managers on 8 June 2010, and its implementation into national laws in 2013 and 2014, the fund industry players have been able to concentrate their efforts on product offering again. Undoubtedly, the new vehicles created and the legal reform modernizing the law on commercial companies are not creating new constraints this time, but on the contrary are taking the industry's wishes into consideration, which in turn strengthens the legal security of the investment structures and removes certain unnecessary constraints.

Furthermore, the initiative of the reserved alternative investment fund (RAIF), supported by the fund industry and created by the law of 23 July 2016, is certainly of great interest to infrastructure funds. Managers, holding an AIFM license delivered by any regulator from a member state of the European Union, now have the opportunity to set up a fund vehicle, which will benefit from the most flexible rules, usually reserved to the specialised investment funds, governed by the law of 13 February 2007, or investment companies in risk capital, governed by the law of 15 June 2004.

The difference is that there will be no obligation to go through the approval process of the fund by the Luxembourg regulator, the *Commission de Surveillance du Secteur Financier*, and no ongoing supervision will be needed during the lifetime of the fund. The advantages of the RAIF include in particular, the possibility to have a company with a variable capital and to create several compartments, in which assets and liabilities are fully segregated from those of the other compartments of the investment fund. Until now, these two possibilities were typically not allowed in any vehicle, which was not under the supervision of the regulator.

This makes the RAIF a hybrid vehicle between regulated specialised investment funds or investment companies in risk capital and the unregulated vehicles, which are not supervised by any regulator. It certainly offers an interesting solution for investors in infrastructure funds, looking for investment vehicles that need to be very similar to the regulated structures, operated in their home jurisdictions, where they must abide by specific investment restrictions, as defined by their own legislator or their national supervisory authority.

For these reasons, it can be expected that multiple RAIFs shall be set up in the coming months. But this should undermine the other unregulated vehicles, that have proven their efficiency and have become classic investment structures in the alternative assets space. After the last modernisation of the law of 10 August 1915, which occurred concomitantly with the introduction of the AIFMD regulation into national law in July 2013, assets managers have proposed to their investors Luxembourg limited partnerships with great success, which are either the 'simple' limited partnership having a separate legal personality or the 'special' one being fully transparent.

These often unsupervised vehicles offer multiple structuring opportunities, as the Luxembourg law only covers the areas which have not specifically been decided by the parties, within the limited partnership agreement, which on the one hand creates the vehicle and governs the rights and obligations of the manager and on the other hand the investors (or limited partners).

The new modernization of the law on commercial companies which was adopted this summer, on 10 August 2016, is another important step to render the use of commercial companies even friendlier for the purpose of infrastructure investments, and not only for the limited partnerships. Indeed, certain mechanisms that are needed for the management of shareholdings in long-term investments have been addressed in order to become closer to the realities of infrastructure funds. For instance, there is enhanced security in respect to certain constraints designed to apply to defaulting investors: the possibility to suspend their voting rights or to buy back their participation at a discounted price will definitely be enforceable from now on.

The flexibility of the share capital has been improved with the possibility to issue no voting shares, the possibility to have shares issued with unequal values, the beneficiary shares and sweat contribution regimes have been expanded, the recognition of tracking shares is confirmed and permits the financial rights to be determined on the basis of the performance of certain assets or activities of the companies. What is more, capital increases by compensation of liquid and due receivables will be assimilated to cash contributions, removing the burden of the provision of an auditor's report.

The corporate governance of these companies will also benefit from greater opportunities to adapt to specific needs of infrastructure, where it is esteemed that there should be specific committees to carry out certain duties, under the supervision of the board of directors, or the executive committee which may also be created in public companies.

Other improvements include the possibility for any company to be financed by an issuance of bonds, including by way of public subscription. Another field of the reform is the protection of minority shareholders. Shareholders representing together at least 10% of the share capital have the possibility to raise questions to the board of directors and to obtain written answers. The same number may require the convening of a general meeting of shareholders, even during the liquidation phase. In public companies, the shareholders that hold shares representing 10% of the share capital may also bring forwards an action to challenge the liability of the directors.

Finally, the transfer restrictions which used to apply in the past and 'blocked' partners in a private limited liability company, in case the other partners had not approved the transfer or of its interests, are no longer as strict. Quite the contrary, should the partners oppose the sale to a third party, the transferring partners shall be able to exit the company within three months either by the sale of the participations to another partner or to another third party, approved by the partners or by the company itself. To this end, no partners shall remain obliged to remain partners in a company. In public limited liability companies, the lock-up clause has also been framed so that they can only be used for a limited period.

It has also been confirmed that voting agreements are lawful when certain conditions are met: they should not be contrary to the corporate interest and it is forbidden to make any undertaking to automatically approve the decision of the governing body of the company.

All in all, the initiators of infrastructure funds will find a number of options in the Luxembourg legislation, that will allow them to offer tailor-made investment structures to their clients. The investors will have the possibility to opt for a regulated vehicle, satisfying a high degree of protection via the supervision of the Luxembourg regulator within the European regulatory framework, which will render their investments comparable, or to opt for a more flexible vehicle within the common law applicable to companies, but whose features which are classic for investment funds will from now on doubtlessly be enforceable in case of a dispute.

Therefore, the Luxembourg fund industry which already counts a number of the biggest sponsors of infrastructure funds, has a lot of arguments to maintain and even to improve its appealing position towards investors.

New Templeton Global Currency Fund

Active Currency Management with a Benchmark Unconstrained Approach

Franklin Templeton Investments announced the launch of the Templeton Global Currency Fund (the "Fund"), a sub-fund of the Luxembourg-registered Franklin Templeton Investment Funds (FTIF) range. Using a benchmark unconstrained approach, the new Fund seeks to maximise return by investing predominately in securities and instruments offering long or short exposure to currencies of any country, including developed and developing markets. Luxembourg-based investors can access this new Fund from 10 October 2016.

The Fund's portfolio managers are California-based Michael Hasenstab, Ph.D., Executive Vice President and Chief Investment Officer, and Sonal Desai, Ph.D., Senior Vice President, Director of Research from Templeton Global Macro. Dr Hasenstab and Dr Desai have 21 and 22 years of industry experience, respectively, and are supported by the breadth and depth of Franklin Templeton's global fixed income platform with 170 investment professionals worldwide. Currencies are increasingly being viewed as a separate asset class in the context of an overall portfolio, given their historically low to moderate correlation to traditional asset classes. The Fund's portfolio managers have the ability to pursue an actively-managed, benchmark-unconstrained approach that enables the Fund to hold positions that are believed to have the most potential to maximise returns.

"We consider the new Templeton Global Currency Fund an all-weather strategy, given its ability to go long or short in any currency, which enables us to capitalise on opportunities around the globe and in any market environment," said Dr Hasenstab. "By keeping a pulse on evolving economic and policy trends and employing our disciplined investment approach, we can uncover emerging opportunities to make compelling investments where the ability to go long or short allows us to best express our long-term views."

He added: "While our investment philosophy and approach to managing currencies has remained unchanged over nearly three decades, this new Fund enables us to focus on our high-conviction currency views with access to an entire opportunity set of global currency investments in developed and developing markets."

The investment team uses a multi-tiered approach, combining in-depth macroeconomic and country-specific research with fundamentals-based valuation analysis to capitalize on short-term market inefficiencies and capture long-term potential. In selecting investments for the Fund, the managers determine fundamental long-term currency valuations while analyzing short-term dynamics to assess what will drive currencies either toward or away from their long-term equilibrium value.

Vivek Kudva, Managing Director, EMEA and India at Franklin Templeton Investments, commented: "Currency markets are often inefficient and can provide compelling opportunities to generate excess returns relative to many other asset classes. In addition, global currencies are often less-correlated with both equity and fixed income markets and as a result, can help diversify the risk in a portfolio. We believe that this new Fund will be appealing to investors seeking absolute return strategies that aim to deliver a positive return regardless of market environment."

Templeton Global Macro has been a pioneer of unconstrained global fixed income, having launched its flagship Templeton Global Bond Fund in 1986. With assets under management of over US$ 130 billion (as of June 30, 2016), the group consists of 19 portfolio managers, analysts and traders, including seven Ph.D holders. The team draws on the breadth of Franklin Templeton's global fixed income capabilities with investment professionals based in London, New York, San Mateo, and Singapore and supported by investment professionals in Australia, Brazil, Canada, China, India, Malaysia, Mexico, Poland, South Korea, and the U.A.E. This structure enables the Templeton Global Macro group to gain a true global perspective of the interaction between economies and the world's bond markets.

Bourse de Luxembourg

Obligations	au 30/09	au 31/08	Var	Plus haut	Plus bas
EUR AirFranceKLM 6,75% 27/10/2016	100,430	101,071	-0,63 %	104,448	100,430
EUR AlticeLux 7,25% 15/05/2022	105,263	106,028	-0,72 %	107,068	89,515
EUR ArcelorMittal 4,5% 29/03/2018	107,898	108,470	-0,52 %	108,550	91,335
EUR BayerLB 5,75% 23/10/2017	105,572	105,898	-0,30 %	108,350	105,572
EUR BcDelleMarche FRN 01/06/2017	20,000	-	-		
EUR BEI 3,875% 15/10/2016	100,139	100,529	-0,38 %	103,201	100,139
USD BEI 5,125% 30/05/2017	102,823	103,132	-0,30 %	105,741	102,822
EUR BMWFinance 1,5% 05/06/2018	102,700	102,740	-0,03 %	103,255	102,677
EUR BNPParibas 4,875% pp	102,703	100,852	1,83 %	102,950	94,000
NZD BNPParibas 5,875% 04/12/2019	107,480	107,546	-0,06 %	107,572	99,420
USD Colombia 8,375% 15/02/2027	127,277	126,887	0,30 %	127,920	116,250
EUR CreditAgricole 5,971%	107,898	108,452	-0,51 %	111,160	107,898
EUR CreditSuisseAG 5,125%	106,463	-	-	107,638	106,463
USD DeutscheBank 2% 04/02/2019	97,490	97,840	-0,35 %	99,150	97,270
USD DeutscheBank 2,2% 17/11/2020	94,160	95,770	-1,68 %	98,700	94,160
EUR DongEnergy 6,25% 26/06/3013	116,137	117,432	-1,10 %	117,450	98,485
EUR EDF 5,5% 25/10/2016	100,324	100,808	-0,48 %	104,479	100,324
EUR EfestoEnergy2 6,5% 25/02/2020	99,700	-	-		
EUR EFSF 2,625% 02/05/2019	108,000	108,225	-0,20 %	109,450	108,000
USD EksportFin 5,5% 26/06/2017	102,549	102,852	-0,29 %	104,300	102,549
USD ElecCaracas 8,5% 10/04/2018	64,072	55,000	16,49 %	64,072	32,000
EUR EnergieBadWürtt 7,375%	103,401	104,025	-0,60 %	106,273	103,348
EUR Engie 6,875% 24/01/2019	116,399	116,901	-0,42 %	120,124	116,399
EUR ENI 3,75% 27/06/2019	110,230	110,462	-0,21 %	111,618	109,960
USD GazCapital 8,625% 28/04/2034	131,500	130,831	0,51 %	132,582	104,000
EUR GiePsaTresor 6% 19/09/2033	124,142	124,442	-0,24 %	125,454	106,900
EUR HeidelbergFinLu 7,5%	122,913	124,699	-1,43 %	124,800	118,310
EUR Heineken 4,625% 10/10/2016	100,093	100,494	-0,39 %	103,479	100,093
EUR InnogyFinance 6,625%	115,409	115,886	-0,41 %	117,221	115,409
USD KfWA 4,5% 16/07/2018	106,324	106,480	-0,14 %	108,578	106,268
EUR Lafarge 4,75% 23/03/2020	115,689	115,889	-0,17 %	116,455	113,165
EUR Lafarge 7,625% 24/11/2016	101,072	101,866	-0,77 %	106,697	101,072
EUR Luxembourg 2,125% 10/07/2023	117,622	117,430	0,16 %	117,868	113,553
EUR Luxembourg 2,25% 19/03/2028	126,891	127,007	-0,09 %	127,213	116,233
EUR Luxembourg 2,25% 21/03/2022	115,339	115,336	0,00 %	115,836	113,049
EUR Luxembourg 2,75% 20/08/2043	143,669	-	-	145,664	129,666
EUR Luxembourg 3,375% 18/05/2020	114,346	114,575	-0,20 %	116,160	114,346
EUR MPSCapitalTrust Acts préf. FRN pp	43,650	47,050	-7,22 %	67,968	34,900
EUR NovoBanco ZCN 09/04/2052	6,800	6,300	7,93 %	12,500	6,200
EUR NyrstarNlHlds 8,5% 15/09/2019	104,693	104,125	0,54 %	104,931	81,000
EUR Orange 4,75% 21/02/2017	101,878	102,277	-0,39 %	105,168	101,878
EUR Orange 5,625% 22/05/2018	109,445	109,873	-0,39 %	112,810	109,441
USD PetroVenezuela 12,75%	65,422	59,207	10,49 %	65,422	44,500
USD PetroVenezuela 5,375%	41,119	37,190	10,56 %	41,119	31,813
USD PetroVenezuela 5,5% 12/04/2037	40,900	38,000	7,63 %	40,900	31,810
EUR Proximus 4,375% 23/11/2016	100,618	101,029	-0,40 %	103,917	100,618
EUR RaiffeisenBkInt 5,875%	102,916	103,464	-0,53 %	104,201	94,934
EUR RaiffeisenBkInt 6% 16/10/2023	102,128	102,428	-0,29 %	103,688	84,105
USD RussianFed 7,5% 31/03/2030	121,564	121,719	-0,12 %	122,579	119,659
EUR TakkoLuxembour2 9,875%	64,386	59,400	8,39 %	66,109	53,402
USD TelecomItaliaCa 7,2% 18/07/2036	107,002	107,433	-0,40 %	107,694	91,300
EUR TelecomItaliaFi 7,75% 24/01/2033	133,949	137,456	-2,55 %	142,000	121,127
USD Turkey 7,375% 05/02/2025	118,110	120,478	-1,96 %	125,552	114,857
EUR UCB 5,75% 10/12/2016	101,146	101,605	-0,45 %	105,133	101,146
USD Venezuela 11,75% 21/10/2026	57,561	52,000	10,69 %	57,561	33,325
EUR VWIntlFin 5,125% pp	107,433	110,777	-3,01 %	111,490	95,800