



Institut Luxembourgeois  
des Administrateurs

# THE ILA TOOLKITS FOR FUND DIRECTORS

March 2016



# AN OVERVIEW OF FUND GOVERNANCE IN LUXEMBOURG

## INTRODUCTION TO ILA



Institut Luxembourgeois  
des Administrateurs

### ■ ILA – The Luxembourg Institute of Directors

- Founded in 2005 as a non-profit association
- Timing coincided with growing awareness of corporate governance in Europe following the Enron and Parmalat scandals  
*(EU “Bolkenstein” Plan for Modernizing Company Law & Enhancing Corporate Governance ....)*
- “Institute”: mission of research and education

### ■ ILA’s mission is to:

- 1. Develop highly qualified, effective and respected Directors**
  - 2. Promote best practices in Luxembourg in the field of corporate governance**
- Both independent and executive directors
  - Training, conferences, publications, forum discussions, research, responses to EU green papers ...
  - Certification programme
  - [www.ila.lu](http://www.ila.lu)

### Other ILA Committees

Legal, Regulatory & Practices

Insurance; Banks

Fraud & Governance

SMEs & Family-Owned

Listed Companies

Financial Companies

Public Sector Companies

Audit Committee

Remuneration

Company Secretaries

Non-Profits

Marketing & Communication

Education ; Certification



# AN OVERVIEW OF FUND GOVERNANCE IN LUXEMBOURG

## *INTRODUCTION TO THE ILA FUNDS COMMITTEE*

### Promoting Luxembourg as a leader in fund governance

- Committee founded in Q1 2008
- Clear messaging on Fund Director issues
- Thought leadership
- Target stakeholder community

#### Establishing a framework

- « What does good governance look like ? »
- « we think... »
- Independence
- Role of Chairman
- Code and role of ethics

#### Driving behaviour

- Fund Governance Survey
- Points of view
  - ManCo vs Fund Director roles and responsibilities
  - Independence
  - Conflicts of interest
- Discussion forums
- Topical working groups
- Liaison with stakeholders (ALFI LPEA, ALCO, ALRIM, CSSF, etc...)

#### Education and technical support

- Events
- Training
- Fund Director FAQs
- AIFMD Practical Guide
- Board Evaluation Toolkit
- ILA/ALFI Fund Director Training
- Director Certification Programme

# FUND GOVERNANCE IN LUXEMBOURG :

## *OVERVIEW OF TOOLS TO HELP*

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- ILA FAQ for Directors of Regulated Funds
- ILA Practical Guide for Directors of AIF and AIFM
- ILA/PwC Fund Governance Survey
- ALFI Code of Conduct
- Other ILA tools available on the ILA website :
  - Guide to Accepting Director Mandates
  - Board Evaluation Toolkit
  - Bank Director Guide
  - Fraud & Governance Guide
  - FAQ for Directors of non-regulated entities
  - Subsidiary governance
  - Director remuneration survey 2014
  - ILA Guidelines on Executive & Director Remuneration
  - Audit Committee Survey 2014
  - Board Minutes Factsheet
  - Board Meeting Factsheet
  - Conference Materials
- ILA Training programmes
- ILA Certification programme

Available on  
the ILA  
website  
(mostly in  
members  
section)

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## NATURE OF THE ILA FUNDS FAQs

### The FAQ for Directors of Regulated Funds (the “*ILA Funds FAQ*”) ....

- Relevant to all Luxembourg funds (UCITS, AIFs and non-regulated funds)
- Base is company law, overlaid with ALFI Code, fund specific laws, etc...
  - Grown from UCITS, so more focus on liquid asset classes
  - Move from self-managed to ManCo model
- 2<sup>nd</sup> edition 2011
- 3<sup>rd</sup> edition Jan 2015
  
- “*Frequently asked questions*” (and not recommendations)
- *Corporate governance* NOT Compliance
- *Practical guidance* for day-to-day situations
- Circumstances of each fund, asset class will differ
- Will continue to be adapted over time
- Training initiatives

### Practical Guide for Directors of AIF and AIFM

- Complementary to FAQ
- Key questions for AIF & AIFM Directors on additional issues specific to AIFMD
  - Role of AIF vs role of AIFM
  - Examples of AIFMD organisational models
  - Liquid & illiquid alternative asset classes
  - 20 key oversight questions - all from the perspective of AIF and AIFM Directors
- 1<sup>st</sup> edition 2014

# PRACTICAL GUIDANCE FOR FUND DIRECTORS –THE ILA FAQs

## *STRUCTURE OF THE ILA FUNDS FAQ*

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1. Luxembourg fund structures
2. Board composition and organisation
3. The role of Directors of Funds, ManCos and AIFM
4. Functioning of the Board
5. Delegation to, and diligence on, delegates and service providers
6. Director time availability and remuneration
7. Liabilities
8. Insurance and Indemnities
9. Listed funds
10. Director induction and education
11. Industry guidance and resources
12. Bibliography

- |            |   |
|------------|---|
| Appendix 1 | Example Quarterly Board Meeting Agenda – UCITS Fund                 |
| Appendix 2 | Checklist of other potential Board Meeting agenda items to consider |
| Appendix 3 | Sample Action Points Table  |
| Appendix 4 | Sample Errors and Breaches Log                                      |
| Appendix 5 | Sample template: Status of agreements                               |
| Appendix 6 | Checklist of Policies and Procedures                                |
| Appendix 7 | Assessing appropriate adherence to the ALFI Code of Conduct         |

# STRUCTURE OF THE ILA AIFMD PRACTICAL GUIDE

1. **Foreword**
  2. **Introduction**
  3. **Glossary of terms**
  4. **Setting the scene**
    - 4.1 The overall regulatory framework
    - 4.2 Portfolio management, risk management and investment advice and holding structures
    - 4.3 AIFM Directive requirements applicable to governing bodies (Rules of conduct, Qualifications & Roles of the governing body)
    - 4.4 Key oversight bodies in the AIF context
    - 4.5 Typical roles of governing bodies in an AIF context
    - 4.6 Illustrations of typical Luxembourg AIF and AIFM models
    - 4.7 Illustrations of key AIFM decision-making processes (Portfolio & Risk management)
  5. **FAQ: Key oversight challenges for Board Members of AIFMs and AIFs**
    - The 20 questions...
  6. **Annexes**
- | <b>The 20 questions...</b> |   |
|----------------------------|---|
| Q1                         | Board composition   |
| Q2                         | Substance   |
| Q3.                        | Oversight over delegates and service providers                    |
| Q4.                        | Independent functions (Functional independence PM, RM, Valuation) |
| Q5. & 6.                   | Board oversight over Internal control functions                   |
| Q7.                        | Valuation   |
| Q8. & 9.                   | Oversight over Marketing & Distribution; KYC                      |
| Q10.                       | Approaches to Investor representation                             |
| Q11. & 12                  | Conflicts of interest   |
| Q13.                       | Remuneration  |
| Q14.                       | Managing Board processes  |
| Q15.                       | Large AIFM – the additional challenges of multiple asset classes  |
| Q16.                       | AIF oversight over the AIFM                                       |
| Q17.                       | Annual accounts (and required representations from AIFM to AIF)   |
| Q18.                       | Operational compliance  |
| Q19.                       | Insurance & liability management                                  |
| Q20.                       | Out of scope & sub-threshold AIF & AIFM                           |

# BOARD EVALUATIONS

## State of the Market – evolution of requirements

**2012 – Banks** – EBA Guidelines & CSSF Circular 12/552

*“evaluate in writing the aptitude of the key function holders ...”.*

**2013 – Listed Companies** - X Principles of the Luxembourg Stock Exchange (3<sup>rd</sup> Ed)

*Principle 6 – Evaluation of the performance of the Board:*

*“The Board shall assess regularly ... .. at least once every two years”*

**2013 – Investment Funds** - ALFI Code of Conduct (2<sup>nd</sup> Ed)

*Principle II., Rec. 7*

*“The Board should conduct a periodic review of its performance and activities”*

## State of the Market - survey data

**2010/2011 Survey** (PWC/ILA Luxembourg Fund Governance Survey)

|                                    |     |      |        |
|------------------------------------|-----|------|--------|
| Do you evaluate Board performance: | NO  | 100% |        |
| Would it be a valuable exercise:   | YES |      | 53-56% |

**2012 Survey** (PWC/ILA Luxembourg Fund Governance Survey)

|                                    |     |        |  |
|------------------------------------|-----|--------|--|
| Do you evaluate Board performance: | YES | 7-10%* |  |
|------------------------------------|-----|--------|--|

*\* Management Companies, UCITS and*

*alternative funds*

**2014 Survey** (PWC/ILA Luxembourg Fund Governance Survey)

|                                    |     |             |                 |
|------------------------------------|-----|-------------|-----------------|
| Do you evaluate Board performance: | YES | <u>54%*</u> | UCITS (35%AIFs) |
|------------------------------------|-----|-------------|-----------------|

**2014  
was a  
turning  
point**





# BOARD EVALUATIONS – QUESTIONNAIRES

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ILA Toolkit Part 1 : Descriptions, tips and discussion

ILA Toolkit Part 2 : Sample Questionnaire for  
internal evaluations

– **Part A: Board Functioning : The Group**

- I. Board Meetings
- II. Board values and culture
- III. Board purpose & responsibilities
- IV. Board's role and responsibilities
- V. Board Committees & Experts
- VI. Board's Interaction with Management
- VII. Board's interaction with key stakeholders

– **Part B: Board composition : The Directors**

- VIII. Board Members
- IX. Succession and New Director Appointments
- X. Board Remuneration
- XI. Individual Director self-reflection
- XII. General comments and suggestions for improving Board effectiveness / Other

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# FUND GOVERNANCE IN LUXEMBOURG :

## *EXAMPLES OF ILA'S TRAINING OFFERINGS*

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### Funds

- Role & responsibilities of Fund Directors (level 1)
- Role & responsibilities of Fund Directors (level 2)
- Governance of AIF & AIFM (case-study based workshop)
- AML for Fund Directors – Level 1, Level 2 & On-line module
- In development – Understanding Risk Reporting; Fund Director Masterclass

### General

- ILA Bootcamp (in French or in English)
- ILA Essentials - Luxembourg
- Board Committees
- Chairing Skills
- Role of Non-Executive Directors
- Minute Taking
- Effective Board Packs
- Fraud and its governance
- Risk Management
- Improving Impact in the Boardroom
- M&A for Directors

[www.ila.lu](http://www.ila.lu)

- Events
- education