



association of the
luxembourg fund industry



Institut Luxembourgeois
des Administrateurs

BOARD MEMBER LETTER OF APPOINTMENT

Example Director Engagement Letter

Please note that this letter of engagement is an example of what a “Director Engagement Letter” could include. The parties entering into the agreement need to adapt the wording to the particular circumstances of each engagement and amend the letter accordingly.

Introduction

In Luxembourg, shareholders elect and dismiss a company's Directors.

Shareholders and/or the existing Board may find it appropriate to use letters or agreements setting out the terms of the offer for the nomination of a new Director to a Board. These are useful to clarify issues such as remuneration, VAT application (if any), expectations regarding necessary time and attention required of Directors, D&O insurance, rights after termination, etc. This is especially the case with respect to non-executive and independent non-executive directors.

With increased scrutiny on the effectiveness of the functioning of a Board, more Boards have also started including in such letters items related to time commitment, and the induction and on-going training offered to Directors, as well as reference to where to find the Company's policies and procedures.

Example Director Engagement Letter

Agreement between

[Name of
ManCo] [Name
of Fund] the
“**Company**”

And

[Name of
director] The
“**Director**”

WHEREAS

- A. The Company is incorporated in Luxembourg and qualifies as [] set up under the amended Luxembourg law of [].
- B. [*Manco*: The Company manages various Luxembourg investment funds governed either by the law of 17 December 2010 on undertakings for collective investment or by the law of 13 February 2007 on specialised investment funds (the “**Funds under management**”).]
- C. The directors of the Company (the “**Directors**”) must be of sufficiently good repute and be sufficiently experienced in relation to the type of business carried out by the Company.

D. The Director has agreed to act as a member of the board of Directors of the Company (the “**Board**”) [*Manco*: and to provide management services in relation to the Funds under management].

THE PARTIES AGREE AS FOLLOWS:

SERVICES

1. The Director undertakes such duties and powers relating to the Company in compliance with Luxembourg laws and regulations, and as agreed from time to time with the other members of the Board.
2. [*Manco*: The Director’s services shall include fund management services in relation to the Funds under management, and services related to the management of the Company itself.]
3. The Director will attend the Company’s Board meetings. Furthermore he/she will act with the utmost care and in the best interests of the [*Manco*: Funds under management] the Company and its shareholders. In accordance with the articles of incorporation of the Company (the “**Articles**”), the Director will be permitted to present his/her excuses if he/she is not able to attend meetings, or to give a proxy to a fellow director.
4. The Director will undertake such travel as may be reasonably necessary for the performance of his/her duties.
5. The Director shall at all times hold such authorisations and conditions of professional honour as may be necessary to enable him/her to carry out its services with the highest standards of integrity.

RIGHTS AND OBLIGATIONS

6. The Director undertakes to carry out his/ her functions with loyalty and integrity. He/she will, pursuant to the applicable law, use his/her best endeavors to avoid or resolve any potential conflicts of interest.
7. For the purpose of the proper performance of the Director’s duties, he / she will respond promptly to any queries addressed to him/her by the *Commission de Surveillance du Secteur Financier* (the “**CSSF**”) in connection with the Company.
8. Each Director is subject to professional confidentiality provisions as set out in Luxembourg law.
9. The Director undertakes to the Company that he/she shall not (whether during or after the term of appointment), except as authorised or required by the Company, reveal to any person, company or body, whether before or after the termination of this appointment, any of the trade secrets, secret or confidential operations, processes or dealings or any other information concerning the organisation, business, finances, transactions or affairs of the Company which may come to his/her knowledge during this appointment.
10. The Company shall be responsible for providing the Director with all documents and other pieces of information as may be required from time to time to ensure that the Director is capable of satisfying the obligations that may arise from his/her position as a member of the Board.

For the purpose of reviewing all relevant information prior to board meetings, the Director will be provided with full information in respect of the meeting at least five (5) Luxembourg business days in advance of each Board meeting, except in case of urgency or where such deadline has been formally waived by each Director.

11. The Director will have the right to seek independent advice, at the expense of the Company, at any time, when in doubt as to any action to be taken or omitted. The Director shall not be required to act thereon.
12. The Company acknowledges that the Director may have business interests other than those of the Company.

The Company agrees that the Director will be free to accept other appointments and mandates provided that such other appointments or mandates will not, in his/her reasonable opinion, given in good faith, conflict with his / her role as a director of the Company. The Director shall declare any such directorships, appointments and interests to the Board in writing.

FEES AND EXPENSES

13. Subject to the approval of the general meeting of shareholders of the Company, the Director will be entitled to be paid a gross annual fee of [EUR xxx], before deduction of any withholding tax and/or other levies deductible by law and exclusive of value added tax, if applicable.

This fee will be paid every six months in advance on the [1st day of July] and [January].

14. [If Manco: The annual gross fee shall be split into:
 - a. XX A “*fund management*” fee which is deemed to compensate the services which are considered as specific and essential for the management of the Funds under management. This fee will be exempt from VAT by application of article 44,1,d) of the Luxembourg VAT law;
 - b. A “*management fee*” which is deemed to compensate the services supplied for the benefit of the management company itself and which will be subject to VAT.

In order to facilitate the fees’ allocation, the Parties agree that the services to be supplied by the Director shall as a main rule [be equally split] between both activities, unless it would be demonstrated based on reliable elements that such allocation is not accurate and not in line with the effective activities performed during the concerned year.

The reliable elements to be taken into account to that aim are the agenda of the meetings, attendance records to the meeting, list of documents circulated before the meeting, the board minutes and another relevant document.

Alternatively a system of points attributed to each of the functions could also be agreed by the Board, discussed with and validated by a third party such as an auditor, a lawyer or a director who is not a member of the Board.]

15. For the first and the last year of appointment, this fee will be calculated *prorata temporis* to the duration of the period of office.

16. The Company undertakes to pay the Director all reasonable expenses incurred in the performance of her duties, upon production of relevant vouchers or receipts.

INSURANCE AND INDEMNITIES

17. The Company shall ensure that the Directors are covered by a directors and officers liability insurance policy ("D&O") issued in connection with the activities of the Company by a well-known and reputable insurance company covering his/her responsibilities as a director of the Company, the characteristics of which shall comply with market practices used by reputable members of the mutual fund industry, notably in terms of amount of the insurance and of the exclusion clauses.

The parties agree that costs and expenses relating to the Director's professional indemnity insurance and D&O shall be for the account of the Company.

The Director is entitled to receive annually a copy of the renewed D&O documentation as well as a confirmation of payment.

18. The Company shall indemnify and hold the Director harmless as provided under the indemnity article contained in the Articles.
19. In addition the Company hereby undertakes to indemnify and hold the Director harmless against any losses, damages, costs and expenses, including, but not limited to, any administrative fine imposed by the CSSF, incurred by the Director as a result of any act or failure to act in carrying out its duties as a director of the Company, except when such losses result from the willful default, fraud or gross negligence of the Director. The Director shall inform the Company of any such claim for a loss in respect of which an indemnity is sought under this agreement.

TERM AND TERMINATION

20. This agreement shall come into force on the date of the appointment of the Director as director of the Company and shall continue until the term of its mandate, or in case of (re)appointment by the general meeting of shareholders of the Company, until the term of any successive mandate(s), unless earlier terminated in accordance with this agreement or any applicable law.
21. The Director shall be entitled to terminate its appointment under this agreement at any time by giving the Company written notice. In doing so, the Director shall take reasonable efforts to provide as much prior notice as possible, and not to damage the Company, for example by considering the Company's needs to appoint a replacement director according to its Articles.
22. In the case of termination of the Director's mandate, this shall be without payment of damages or compensation, except that he/she shall be entitled to any accrued fees and expenses under the terms of the mandate agreement as of the date of his/her appointment until the date of such termination.
23. Upon termination of the Director's functions as director, he/she shall, at the expense of the Company, return all physical assets belonging to the Company, together with all original documents, papers, disks, and information relating to the Company.

24. Both during and after the end of the mandate, in particular in case of litigation. The Company shall use its best efforts to provide the Director access to all corporate information regarding the Company that is relevant to his/her time as a Director (such as board packs, board minutes and shareholders' minutes which relate to the mandate period).

MISCELLANEOUS

25. Neither the Director nor the Company may assign his/her/its rights and/or obligations hereunder other than with the prior written consent of the other party.
26. This agreement is governed by the laws of the Grand-Duchy of Luxembourg, and will be construed in accordance with these. Any dispute is exclusively subject to the jurisdiction of the Luxembourg courts.

The Company

Name:

Date:

Name:

Date:

The Director

Name:

Date:



The Association of the Luxembourg Fund Industry (ALFI), the representative body for the Luxembourg investment fund community, was founded in 1988. Today it represents more than 1,500 Luxembourg-domiciled investment funds, asset management companies and a wide variety of service providers including depositary banks, fund administrators, transfer agents, distributors, law firms, consultants, tax advisers, auditors and accountants, specialist IT providers and communications agencies.

Luxembourg is the largest fund domicile in Europe and its investment fund industry is a worldwide leader in cross-border fund distribution. Luxembourg-domiciled investment structures are distributed in more than 70 countries around the globe, with a particular focus on Europe, Asia, Latin America and the Middle East.

ALFI defines its mission as to **“Lead industry efforts to make Luxembourg the most attractive international investment fund centre”**.

Its main objectives are to:

Help members capitalise on industry trends
ALFI's many technical committees and working groups constantly review and analyse developments worldwide, as well as legal and regulatory changes in Luxembourg, the EU and beyond to identify threats and opportunities for the Luxembourg fund industry.

Shape regulation

An up-to-date, innovative legal and fiscal environment is critical to defend and improve Luxembourg's competitive position as a centre for the domiciliation, administration and distribution of investment funds. Strong relationships with regulatory authorities, the government and the legislative body enable ALFI to make an effective contribution to decision-making through relevant input for changes to the regulatory framework, the implementation of European directives and the regulation of new products or services.

Foster dedication to professional standards, integrity and quality

Investor trust is essential for success in collective investment services and ALFI thus does all it can to promote high professional standards, quality products and services, and integrity. Action in this area includes organizing training at all levels, defining codes of conduct, transparency and good corporate governance and supporting initiatives to combat money laundering.

Promote the Luxembourg investment fund industry

ALFI actively promotes the Luxembourg investment fund industry, its products and services. It represents the sector in financial and economic missions organised by the Luxembourg government around the world and takes an active part in meetings of the global fund industry.

ALFI is an active member of the European Fund and Asset Management Association, of the International Investment Funds Association, of Pensions Europe, of the International Association of Pension Funds Administrators and of the Global Impact Investing Network.

For more information, visit our website at www.alfi.lu and follow ALFI on





The mission of ILA is to promote the profession of Directors by developing its members into highly qualified, effective and respected Directors.

In parallel, it will promote best practices in Luxembourg in the field of Corporate Governance of companies and institutions by actively engaging with those institutions charged with the introduction, application and oversight of those Corporate Governance rules and practices. It will achieve this through high quality training, forum discussions, research, publications and conferences.

ILA aims to be the premier interlocutor in Luxembourg on issues affecting Directors.

For more information, visit our website at www.ila.lu and follow ILA on:



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**Code of Conduct - Guidance on
Board member letter of appointment**