

Europe's foremost *renminbi* hub

Laurent Lazard and Helen Haijing Liu of **Bonn Steichen & Partners** explain the role of Luxembourg in the internationalisation of the *renminbi* and the benefits of structuring investments through the country

1. What are the continuing efforts to internationalise the *renminbi*? What is the role of Luxembourg in this process?

On June 28 2014, a memorandum of understanding (MOU) on *renminbi* clearing arrangements in Luxembourg was signed between the central bank of Luxembourg (*Banque centrale du Luxembourg*) (BCL) and China's central bank, the People's Bank of China (PBOC). A *renminbi* clearing bank will soon be designated in Luxembourg. This evidences a further step in China's efforts to internationalise the *renminbi*.

Currently, Luxembourg is the leading centre for *renminbi* business in the euro zone. As of the first quarter of 2014, it harbours around Rmb79.4 billion in deposits, a 24% increase from the last quarter of 2013. It currently hosts the European headquarters of China's three leading banks, namely Bank of China, China Construction Bank and Industrial and Commercial Bank of China. China Merchants Bank and Agricultural Bank of China are expected to set up in Luxembourg as well.

Luxembourg endeavours to play a more important role in the internationalisation of the *renminbi*. After the signing of the MOU, the Ministry of Finance of Luxembourg led a delegation of 70 top executives from the financial and related sectors to China to further reinforce the financial cooperation between China and Luxembourg. It was during this visit that announcements were made on the opening of branches of Alipay, China Merchants Bank and the Agricultural Bank of China in Luxembourg.

2. China's State Administration of Foreign Exchange has relaxed foreign exchange control on round-trip investments utilising special purpose vehicles. How do the new rules facilitate trade and investment processes?

On July 14 2014, the State Administration of Foreign Exchange (SAFE) promulgated the *Circular on Issues Relevant to Exchange Control in Connection with Offshore Investment/Financing and Round-trip Investment by Residents in China Through Special Purpose Vehicles* (Circular 37) to simplify the approval process and promote cross-border investment, supporting China's outbound strategy.

Circular 37 facilitates China's outbound investment processes in the following three ways:

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- i. It expressly allows outward funds flow. Domestic residents may purchase and remit foreign exchange out of China to establish a special purpose vehicle (SPV), repurchase or delist shares of an SPV based on actual and reasonable needs. Domestic entities under direct or indirect control of a domestic resident may also finance their registered SPVs. These are very significant and positive developments as they indicate that the PRC government is becoming increasingly flexible in allowing outbound funds flow by domestic institutions and individuals;
- ii. It expands the definition of SPVs. Circular 37 expands the purpose of SPVs to include offshore investments in addition to financing. It also allows resident individuals to make foreign exchange registrations for their offshore investments even when such foreign investments do not involve any PRC assets or interests; and
- iii. There is no mandatory requirement for repatriation of profits onshore. Circular 37 does not require mandatory repatriation of all profits, dividends and proceeds arising from the disposal of interests in an SPV within 180 days of the receipt of such profits, dividends or proceeds (as required under the previous Circular 75).

The promulgation of Circular 37 is in line with the recent developments on the internationalisation of the *renminbi*, i.e. the aforesaid

MOU signed between China and Luxembourg. With the future establishment of a *renminbi* clearing bank in Luxembourg and the promotion of outbound investment domestically in China, the use of *renminbi* by businesses and financial institutions for cross-border transactions will be enlarged, thus promoting trade and investment in Luxembourg.

3. The National Development and Reform Commission of China published a new report on August 5 2014. What impact does it have on Chinese outbound investments?

On August 5 2014, the National Development and Reform Commission of China (NDRC) published a report on outbound investment. According to the report, private direct outbound investments are expressly allowed. The NDRC will draft the Outbound Investment Regulations to strengthen the legal development for Chinese outbound investments. The NDRC will also coordinate with other governments to simplify the approval process and to build a comprehensive servicing system combining fiscal policies, financial services and information sharing platform for outbound investments.

This report shows China's further resolution in promoting and facilitating outbound investments after the promulgation of Circular 37. As mentioned above, trade and investments in/through Luxembourg to Europe are expected to expand as a result.

4. What are the recent developments in the fund industry between China and Luxembourg? What are the impacts of these developments?

In May 2014, the Luxembourg Stock Exchange listed the first dim sum bond in the Eurozone, which was issued by the Bank of China. It is referred to as the "Schengen bond" which has strengthened the Luxembourg Stock Exchange's position for the listing of offshore *renminbi* bonds.

On June 19 2014, a MOU was signed between the Luxembourg Stock Exchange and the Bank of China that involves the creation of a strategic partnership between these two institutions. On June 30 2014, another MOU was signed between the Asset Management Association of China and the Association of the Luxembourg Fund Industry with the purpose of deepening the collaboration between the two associations.

These developments are expected to reinforce Luxembourg's leading position in the fund industry in the Eurozone, and to attract more investors, especially from China, to set up funds in Luxembourg.

5. Is there any limitation on the funds flow in Luxembourg?

No, both the inflow and outflow of funds are not limited, including the remittance of profits, interests and capital. For example, approval from the tax authorities for the distribution of dividends is not required.

Author biographies

Laurent Lazard

Partner

Laurent Lazard is the partner in charge of Bonn Steichen & Partners' (BSP) finance department. He has advised major banks and institutional investors on acquisition finance transactions and has assisted them in setting up platforms for the issuance of structured finance instruments.

He has also substantial experience in high-profile corporate matters and insolvency and restructuring matters.

As head of BSP's China Desk, he assists Chinese clients with their investment in or through Luxembourg.

Laurent holds law degrees from the Université Panthéon-Assas (Paris 2) and the University of Chicago Law School.



Helen Haijing Liu

Associate

Helen Haijing Liu comes from Weifang in the Shandong province of China. She obtained her JD degree from the Chinese University of Hong Kong in 2014. During her law school studies, she interned in several international law firms in Beijing, Hong Kong and Dusseldorf (Germany). Before starting law school, she majored in bioengineering for her bachelor's study in Qingdao and biochemistry for her MPhil (Master of Philosophy) study in Hong Kong.

Helen is now part of the firm's banking, corporate and M&A team and is also a member of the China desk.



In recent years, Luxembourg has increasingly become the preferred platform to structure Chinese outbound investments in the light of government clampdowns on offshore tax havens

6. In terms of China's outbound investments to Europe, why is the Hong Kong-Luxembourg structure often used?

The obvious benefit of this structure is the minimisation of the exposure to withholding tax on dividends when they are paid by the European subsidiaries to the Chinese parent companies. Three layers of legislation are involved in this structure:

The first layer is the European Union (EU) Parent-Subsidiary Directive. Under this directive, the withholding tax on dividends is exempt when the following conditions are met:

- The Luxembourg recipient is either a resident company fully subject to tax in Luxembourg, or a Luxembourg permanent establishment of a foreign entity that falls within the scope of the Parent-Subsidiary Directive;
- The Luxembourg recipient company holds or commits itself to hold at least 10% of the capital of the payer company (or the shares were acquired for at least €1.2 million) for an uninterrupted period of at least 12 months; and
- The distributing company is another Luxembourg company or a qualifying EU company under the Parent-Subsidiary Directive.

The second layer is the Luxembourg national tax law, implementing the EU directives. Under the participation exemption regime, dividend income will be exempt from Luxembourg income tax.

The third layer is the double tax treaty between Luxembourg and Hong Kong. Under this treaty, 0% withholding tax on dividends will be payable if the beneficial owner in Hong Kong is a company which holds directly at least 10% of the capital of the Luxembourg company.

Thus, the withholding tax liability is minimised if the dividends are repatriated to China through the Hong Kong-Luxembourg structure, subject to the tax arrangements between China and Hong Kong.

Similarly, the tax liabilities on interests and capital gains are usually exempt through this structure, subject to taxation only in Hong Kong/China.

7. What are the advantages of using Luxembourg structures over Cayman structures?

In recent years, Luxembourg has increasingly become the preferred platform to structure Chinese outbound investments in the light of government clampdowns on offshore tax havens such as the Cayman Islands. For example, the well-known acquisition of Portugal's largest power producer by China Three Gorges Corporation, one of

China's largest outbound M&A deals to date, used a Luxembourg company structure. The joint takeover of Putzmeister Holding by SANY Heavy Industry and CITIC PE Advisors (Hong Kong) was also structured through a Luxembourg holding company.

A major reason for using a Luxembourg company structure is the tax advantages, especially in case of investments in assets subject to withholding tax (e.g. dividends, interests, etc.). A Cayman Islands structure is not the right option in this case, since one would suffer withholding tax in the source country. On the contrary, when a Luxembourg entity is used, the withholding tax gets eliminated either under the Parent-Subsidiary Directive, the Interest-Royalty Directive or the relevant Luxembourg tax treaty.

Also, Luxembourg is a well-known financial centre within the European Union. It ranks as an "AAA" credit-rated country and benefits from white-list status and international tax transparency compliance in line with OECD guidelines.

8. Are there any preferential treatments for high net worth individuals to invest in your country?

Yes, Luxembourg now also offers a privileged framework for private wealth management by abolishing the net wealth tax for individuals, levying a withholding tax of 10% on interest income, maintaining the exemption of inheritance tax in direct line and – under certain conditions – exonerating capital gains realised on stocks and capitalisation products as well as exempting gifts made by hand under certain conditions.

Luxembourg also offers financially independent persons the opportunity of becoming a resident. Sufficient funds, a sustainable monthly income, permanent housing and full health insurance, in accordance with the local standards and laws, are the main prerequisites. Visas, where required, are obtained swiftly and most documents may be processed in English.

Luxembourg is about to adopt, in the upcoming months, a new state-of-the art framework especially designed for high net worth individuals – the Luxembourg private foundation regime

Apart from existing vehicles such as the Luxembourg family holding company or the securitisation vehicle, which are often used for managing high net worth, Luxembourg is about to adopt, in the upcoming months, a new state-of-the art framework especially designed for high net worth individuals – the Luxembourg private foundation regime. The private foundation will offer a considerable degree of flexibility both in terms of management and governance. It actually may own movable and immovable properties, tangible and intangible assets or enter into insurance contracts as a subscriber or a

beneficiary. It may also create other public or private foundations or trusts or be the beneficiary of such vehicles.

The tax treatment applicable to the private foundation appears to be particularly attractive.

Firstly, although the private foundation is subject to corporation income tax at the standard corporate income tax rate, it is possible

to minimise such tax liability, as it will benefit from an exemption regarding its investment income: dividends, profit sharing and interest payments derived from securities and capital gains realised on the sale of assets.

Secondly, income distributions made by the private foundation to non-resident beneficiaries are not subject to withholding taxes.

欧洲首席人民币枢纽

Bonn Steichen & Partners 律师事务所的 **Laurent Lazard** 律师和 **刘海婧** 律师阐述了卢森堡在人民币国际化进程中的角色，以及经卢森堡构建投资的好处

1. 推动人民币国际化一直以来有什么举措在不断推出？卢森堡在此过程中发挥了什么作用？

2014年6月28日，卢森堡中央银行（*Banque Centrale Du Luxembourg, BCL*）与中国央行（即中国人民银行）在卢森堡签署人民币清算安排谅解备忘录。很快将在卢森堡指定一间人民币清算银行。这标志着中国为推动人民币国际化而作出的进一步举措。

卢森堡目前是欧元区人民币业务的主导中心。截至2014年第一季度，其人民币存款达794亿元，比2013年第四季度增长24%。卢森堡目前是中国三大主要银行（即中国银行、中国建设银行和中国工商银行）的欧洲总部所在地。预期招商银行和中国农业银行也将进驻卢森堡。

卢森堡致力为人民币国际化发挥更加重要的作用。签署谅解备忘录后，卢森堡财政部率领金融和相关行业的70名高管代表访问中国，进一步加强中国与卢森堡之间的金融合作。在此次访问期间，发布了有关支付宝、招商银行和中国农业银行在卢森堡设立分支机构的公告。

2. 中国国家外汇管理局已放宽对利用特殊目的公司进行返程投资的外汇管制。新条例如何促进贸易和投资进程？

2014年7月14日，中国国家外汇管理局（外管局）发布了《关于境内居民通过特殊目的公司境外投融资及返程投资外汇管理有关问题的通知》（37号通知），以简化批准程序和促进跨境投资，支持中国“走出去”战略的实施。

37号通知以下列三种方式促进中国对外投资进程：

- I. 明确允许汇出资金。境内居民可在真实、合理需求的基础上购汇并汇出资金用于特殊目的公司设立、股份回购或退市等。境内居民还可以直接或间接控制的境内企业，向其已登记的特殊目的公司放款。由于有关规定说明，中华人民共和国（中国）政府采取日益灵活的手段允许境内机构和个人汇出资金，因此这是十分重大且积极的发展；
- II. 扩大特殊目的公司的定义。37号通知扩大了特殊目的公司的用途，除融资外，还包括境外投资。37号通知也允许境内居民个人办理境外投资（即使有关境外投资并不涉及任何中国资产或权益）外汇登记手续；
- III. 取消利润调回境内的强制性规定。37号通知取消了强制性调回资金规定，即出售特殊目的公司权益而获得的所有利润、红利和收益，无须从获得之日起180日内调回境内（如此前75号通知所规定的情况）。

卢森堡目前是欧元区人民币业务的主导中心。截至2014年第一季度，其人民币存款达794亿元，比2013年第四季度增长24%

发布37号通知符合人民币国际化的近期发展（即如上文所述中国与卢森堡之间签署谅解备忘录）。随着未来在卢森堡设立人民币清算银行及中国国内对外投资的推动，企业和金融机构将增加使用人民币进行跨境交易，从而促进卢森堡的贸易与投资。

3. 国家发展和改革委员会于2014年8月5日发布了新报告。它对中国境外投资有何影响？

2014年8月5日，国家发展和改革委员会发布了有关境外投资的报告。根据此报告精神，将明确允许私人投资者直接开展境外投资。国家发改委将起草《境外投资条例》，以加强中国境外投资的法规进程。国家发改委还将与其他政府部门协调，以简化审批流程并构建综合服务体系，体系中将包罗有关境外投资的所有财政政策、金融服务和信息共享平台。

继37号文出台之后发布的此报告显示了中国政府进一步推动和促进境外投资的决心。如上所述，这必将带动在卢森堡境内进行/通过卢森堡向欧洲市场进行的贸易和投资大幅扩张。

4. 中国和卢森堡的基金行业最近有什么新发展？这些发展有什么影响？

2014年5月，欧元区首只点心债券在卢森堡证券交易所上市，该债券由中国银行发行，被称为「申根债」。此「申根债」上市加强了卢森堡证券交易所在离岸人民币债券上市方面的地位。

2014年6月19日，卢森堡证券交易所与中国银行为两家机构之间建立战略合作伙伴关系签署了谅解备忘录；而在2014年6月30

作者简介

Laurent Lazard
合伙人

Laurent Lazard是Bonn Steichen & Partners (BSP)律师事务所中负责融资部的合伙人。他曾向许多大型银行和机构投资者提供关于并购融资交易的建议，并帮助它们建立结构性金融工具的发行平台。

他还对处理高知名度企业的相关事宜以及破产和重组方面的相关事宜方面，拥有非常丰富的经验。

作为BSP驻中国业务部的负责人，他协助中国客户完成其在卢森堡的投资或通过卢森堡进行的投资。

Laurent拥有巴黎第二大学(Université Panthéon-Assas)和芝加哥大学法学院的法律学位。

刘海婧
律师

刘海婧律师来自中国山东省潍坊市。她于2014年获得香港中文大学法学博士学位。在法学院学习期间，她曾在北京、香港和德国杜塞尔多夫的若干国际律师事务所实习。进入法学院前，她先后在青岛主修生物工程本科课程及在香港主修生物化学硕士课程（哲学硕士）。刘律师现为BSP银行、公司和并购团队的一员，也是BSP中国业务的成员。



近年来，鉴于政府严禁使用开曼群岛等离岸避税天堂，卢森堡已逐渐成为构建中国境外投资的首选平台

日，中国证券投资基金业协会与卢森堡基金业协会签署了另一份谅解备忘录，旨在深化两家协会之间的合作。

这些发展有望加强卢森堡在欧元区基金行业的领先地位，并吸引更多投资者，尤其是来自中国的投资者，在卢森堡设立基金。

5. 卢森堡对资金流动有无限制？

没有，资金流入及流出均无限制，包括对利润、利息和资本的汇款。例如，无须就分配股息取得税务机关的批准。

6. 中国对欧洲的境外投资为什么经常使用香港—卢森堡结构？

此结构的显著好处是在欧洲子公司向中国母公司支付股息时，最大程度地降低股息预提税。此结构涉及三层法律：

第一层为欧洲联盟（欧盟）母公司—子公司指令。根据该指令，满足下列条件时，可获豁免缴纳股息预提税：

- 卢森堡收款人为须全面缴纳税项的卢森堡居民企业，或属于母公司—子公司指令范围的外国实体在卢森堡的常设机构；
- 卢森堡收款公司在至少12个月期间不间断持有或承诺持有付款公司至少10%资本（或收购的股份不低于120万欧元）；
- 股息分配公司为另一家卢森堡公司或根据母公司—子公司指令下一家合格欧盟公司。

第二层为实施欧盟指令的卢森堡国家税法。根据股东免税制度，股息所得将获豁免缴纳卢森堡所得税。

第三层为卢森堡与香港之间签订的避免双重征税协定。根据该协定，如果香港受益所有人是直接持有卢森堡公司至少10%资本的公司，则无须缴纳股息预提税。

因此，根据中国与香港之间的税务安排，如果通过香港—卢森堡结构将股息汇回中国，预提税责任将为最低。

同样，通过此结构通常也可获豁免承担利息和财产收益税项责任，只须缴纳香港/中国税项。

7. 采用卢森堡结构而非开曼群岛结构有哪些优势？

近年来，鉴于政府严禁使用开曼群岛等离岸避税天堂，卢森堡已逐渐成为构建中国境外投资的首选平台。例如，中国长江三峡集团公司收购葡萄牙最大电力生产商的著名案例就曾采用卢森堡公司结构，这是迄今为止中国最大的境外并购交易之一。由三一重工和中信产业投资基金（香港）顾问联合收购普茨迈斯特（Putzmeister）股权也是通过卢森堡控股公司结构进行。

采用卢森堡公司结构的主要原因在于获得税务优惠，特别是当投资资产须缴纳预提税（如股息、利息等）。在此情况下，开曼群岛结构并非合适的选择，因为须承担投资来源国的预提税。相反，若采用卢森堡实体，即可根据母公司—子公司指令、利息和特许权使用费指令或相关卢森堡税务条约，免除预提税。

另外，卢森堡是欧盟著名的金融中心。其国家信贷评级达“AAA”级，并且根据经合组织指引受惠于白名单地位和国际税收透明度合规状况。

8. 高净值个人投资您国是否有优惠待遇？

是，卢森堡目前也实行私人财富管理优越框架，废除了个人净财产税，对利息所得征收的10%预提税，继续豁免从直系亲属继承遗产的遗产税，并且根据若干条件免除股票和资本化产品所实现财产收益的税项，以及根据若干条件豁免亲自馈赠的税项。

卢森堡还为经济独立人士提供成为本国居民的机会。根据

地方标准和法律，主要前提条件是须拥有充足的资金、可持续的月所得、永久住房和全面的健康保险。可快速获得签证（如需要），且大部分文件可以英文处理。

除了常用于管理高净值的现有投资工具（如卢森堡家族控股公司或证券化工具）外，卢森堡将在未来数月采用专门为高净值个人而设计的新先进框架—卢森堡私募基金会制度。私募基金会将在管理和治理两方面提供许多灵活性。私募基金会可实际上拥有动产和不动产、有形和无形资产或作为认购人或受益人签订保险合同，也可以创立其他公募或私募基金会或信托或作为此类投资工具的受益人。

适用于私募基金会的税务条约尤其具有吸引力。

首先，尽管私募基金会须按标准企业所得税税率承担企业所得税，但由于它可受惠于有关其投资所得（股息、利润分成和证券产生的利息款项以及出售资产所得的财产收益）的免税规定，因而有关税务责任仍可降低；

其次，私募基金会向非居民受益人作出的所得分配，无须缴纳预提税。