

**Michel MOLITOR**

Managing Partner Avocat à la Cour, Member of the Luxembourg Bar, 1985
Banking & Finance, Business & Commercial, Employment, Pensions &
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Bar Admission(s): Avocat à la Cour, Member of the Luxembourg Bar, 1985

Speaks: Speaks English, French, German and Luxembourgish

Associations: As well as being an active member of the Association of Luxembourg Banking Lawyers (ALJB) and of the financial services section of the International Bar Association (IBA), Michel is a member of the Luxembourg Investment Fund Association (ALFI) and the Association Luxembourgeois des Compagnies d'Assurances (ACA).

CAREER TO DATE

Michel MOLITOR started his law career in banking after obtaining a law degree from the University of Strasbourg (France) and a PhD in political sciences from the University of Vienna (Austria). For the past 30 years he has been the contact partner for many of the firm's national and international clients in numerous industry sectors. Michel is known for his technical competences in Luxembourg financial law and is particularly active in Banking and Finance.

RECOMMENDATIONS & LISTINGS

Michel has been listed by Chambers Europe where he "is commended for his expertise, efficiency, reliability and client-focused service" and compared "favourably to the market's larger players, especially noting his technical competence in Luxembourg financial law". In The Legal 500 he is ranked as a leading individual and praised for his excellent response times, 'especially at critical moments'. Best Lawyers Luxembourg has also ranked Michel for his expertise in Litigation and Corporate.

Furthermore, IFLR1000 listed Michel as a leading insurance lawyer and for over 10 years he has been continuously ranked among the top insurance lawyers in Who's Who Legal: Insurance and Reinsurance Lawyers.

MOLITOR

Avocats à la Cour

EDUCATION

1985 Vienna University, PhD (Politikwissenschaften)

1983 Strasbourg University, France (Maître en Sciences Politiques)

1982 Strasbourg University, France (Maître en Droit Privé)

TRANSACTIONS

ACQUISITION FINANCING

MOLITOR was instructed by a Luxembourg bank in relation to the granting of credit to a Luxembourg company to facilitate the acquisition of mandates of management of assets belonging to certain funds. MOLITOR set up all the contractual relationships and identified and managed lawyers from other countries where legal issues needed to be coordinated.

ACQUISITION OF A LUXEMBOURG INSURANCE COMPANY

MOLITOR were appointed by a large industrial group to advise and assist in the EUR 20,000,000 acquisition of a Luxembourg insurance company. MOLITOR carried out the legal due diligence and drafted the offer, the pre-SPA and the SPA and assisted in the successful completion of the deal.

ADVICE FOLLOWING RESIGNATION OF ENTIRE TEAM

MOLITOR advised a professional of the financial sector relating to the resignation of an entire team. MOLITOR advised the client on how to handle the substantial reduction in staff, how to retain the remaining employees, the clients and know-how.

ARGENTINE BONDS

MOLITOR was retained by a major US law firm to assist with a matter involving the issuance by the Republic of Argentina of certain debentures, notes, bonds and other evidences of indebtedness. The deal relates to the well-publicised default of Argentinian Bonds.

CHINESE INVESTMENT

MOLITOR advised the London branch of an Asian bank on all aspects of the investment fund structure in relation to a group of Chinese investors who purchased a real estate through a Luxembourg investment vehicle.

COMPARISON BETWEEN THE INSURANCE LEGISLATION OF LUXEMBOURG AND MAURITIUS

A Luxembourg brokerage house which belongs to one of the leading French banking groups was considering opening a subsidiary in Mauritius. It requested MOLITOR to provide it with a legal opinion regarding the comparison between the laws of Luxembourg and Mauritius regarding (i) insurance sector supervision and (ii) regulation and life insurance legal framework. MOLITOR continue to provide general advice to this client.

CONSTRUCTION OF A NEW TOP BRAND HOTEL

MOLITOR issued a legal advice to a client summarising the rules regarding common walls under Luxembourg law and detailing its rights and duties with respect to the performance and the costs of insulation and asbestos-removal works in the context of the construction of a new top brand hotel in the business district of Luxembourg City.

CORPORATE LIABILITY

MOLITOR have been requested to address a number of queries regarding possible civil liability claims that some directors may face, as well as being asked to assess the risks from a criminal law perspective. This involved an energy joint venture agreement between two majors players in the sector linked to special purpose vehicles and solar installations in Italy. Criminal investigations are in progress with several people having been arrested by the Italian authorities.

CORPORATE MERGER WITHIN THE BANKING SECTOR

We assisted a Luxembourg bank in the preparation and execution of a merger with a Luxembourg investment firm.

CORPORATE RESTRUCTURING OF A BANK

We advised a Luxembourg bank on the restructuring of its corporate form.

CREATION OF SIF

MOLITOR provided advice and assistance to a solar panel company in the creation of a specialised investment fund (SIF) in order to invest in and promote their products.

CROSS-BORDER FINANCING

MOLITOR was contacted by a lead counsel to a Swedish bank, who asked MOLITOR's advice as Luxembourg counsel in relation to a cross-border financing transaction. In particular, the bank planned to grant a loan to a company and, as a security, enter into a Swedish law-governed share pledge agreement over shares of Swedish companies, with two Luxembourg companies as pledgors, all in connection with an intra-group re-organisation. MOLITOR advised on whether the structure would create any financial assistance or corporate benefit issues, advised on the share pledge agreement (not governed by Luxembourg law), reviewed certain corporate authorisation documents in connection with the share pledge agreement and issued a legal opinion.

DISTRIBUTION AGREEMENTS

MOLITOR drafted an exclusive distribution agreement for a company wishing to launch a new beverage product.

DUE DILIGENCE

MOLITOR have been recommended to the client by the Belgian law firm. The client intended to sell the shares he held in a Belgian commercial company, which has several branches in Europe and one in Luxembourg. The Luxembourg branch performs some commercial activities in Luxembourg through several shops located in the centre of Luxembourg and in shopping centres. MOLITOR performed a due diligence and drafted a due diligence report on documents involving the Luxembourg branch and concerning corporate, real estate, environmental, commercial, IP-IT and labour matters.

EMPLOYEE RELOCATION

MOLITOR has advised an IT service provider on the relocation of an employee with a German employment contract, to work 50% from Germany and 50% from France in the form of teleworking, while being registered in Luxembourg.

ESPIRITO SANTO

MOLITOR acted and are acting on many matters relating to the Banco Espirito Santo insolvency, including several companies that were in possession of bonds in one or more companies of the Espirito Santo Group. MOLITOR drafted and submitted proof of claims to the receivers (Commercial Court) in Luxembourg and reviewed proof of claims.

FATAL TRAIN CRASH

This very complicated and high-profile case involved international conventions and contract law in the context of a large insurance claim. Following a serious and high-profile fatal train crash, a series of cases arose around the insurance liabilities of the train operators. The accident happened in one country, but was deemed to have been the fault of employees of the train company of another country. There is a convention in such cases that when a train accident happens, the (insurance company of the) train operator in the country in which the accident takes place takes responsibility for the resulting costs. In this case, the operator in the country where the accident took place argued that it was not a convention, but a contract and that the clear fault of the employees of the other country caused the contract to be overruled.

GLOBAL DEBT RESTRUCTURING

MOLITOR was contacted by a Dutch law firm which acted as local counsel for a group of creditors of a large industrial group, regarding a global debt restructuring matter managed by two US multinational law firms, to act as Lux counsel to the creditors. The work included the drafting of security agreements.

INTERPRETATION OF A SETTLEMENT AGREEMENT

MOLITOR advised in a very high profile development involving complicated insurance matters, relating to the building of a shopping mall and business centre in Luxembourg and involving a claim for EUR 18,000,000 for faulty construction work.

LIQUIDATION OF SIF

MOLITOR assisted a specialised investment fund (SIF) in its liquidation.

MADOFF PRE-LITIGATION ADVICE

MOLITOR advised a segregated portfolio company established under the laws of the Cayman Islands. It was an open-ended investment company and acted, in particular, as a feeder fund to the portfolio company. The client invested all, or substantially all, of its assets with Madoff. MOLITOR advised the client on pre-litigation matters against its custodian, administrator and investment manager as regards those matters covered by Luxembourg law.

MAJOR ITALIAN BRAND

MOLITOR assisted and advised Trinity Limited to acquire a major luxury brand held through a Luxembourg holding company. The deal involved assisting Trinity Limited (www.trinity-limited.com), a subsidiary of the distribution group Li & Fung Group (www.lifunggroup.com) and listed on the Hong Kong stock exchange, with the acquisition of a major Italian luxury fashion and perfume brand. The deal received widespread press coverage and involved well-known brands in Europe.

MANAGERIAL LIABILITY

MOLITOR have been requested by a Luxembourg BiG 4 audit firm in its capacity as liquidator of a Luxembourg SICAV to determine the potential liabilities that the different players (the employees and legal representatives of the Investment Managers, Board of Directors, Investment Managers, Custodian Agents, Administrative Agents, domiciliary agents, Auditors) involved in the management, operation and supervision of the Fund may have to face due to the incorrect calculation of NAV and the payment of undue performance fees, etc.

MANAGERIAL LIABILITY FOR HEALTH AND SAFETY

MOLITOR advised a large engineering firm on the liability of top managers as regards health and safety issues when employees work in other countries especially when outside the EU.

MINORITY INVESTMENT

MOLITOR assisted a major Swiss law firm who in turn was advising a Swiss bank with respect to a minority investment they planned to make in an external asset manager acting as a financial intermediary.

ONGOING REGULATORY WORK FOR REGULAR CLIENT

MOLITOR have advised this client on several occasions following referrals from a top Belgian law firm. The client retained MOLITOR to check its contractual documentation in various insurance matters.

POSTING OF EMPLOYEES WITHIN EU

MOLITOR advised a worldwide concession-construction group relating to the posting of employees within the group from Luxembourg to France and from France to Luxembourg. MOLITOR's advice included an analysis of the posting scenario for different types of employees and related labour law, social security and tax consequences. MOLITOR also assisted the client with the formalities of the posting of employees in order to ensure compliance with Luxembourg laws.

PURCHASE OF A TOP BRAND HOTEL

MOLITOR was recommended to a top tier Spanish law firm acting in the acquisition of a hotel, part of a top brand hotel chain. MOLITOR was retained to assist the buyer in the due diligence, the acquisition negotiations and the acquisition contractual documentation. Deal value: 22 million euro

REMUNERATION

MOLITOR assisted a Luxembourg AIFM to set up its remuneration system.

REVIEW OF WARRANTY POLICIES

MOLITOR assisted an international technology company in reviewing its warranties policies, to confirm that its products would not be considered as insurance products.

SALE OF A LUXCO OWNING A LUXURY HOTEL

Some years ago, MOLITOR assisted one of its clients with the creation of a Luxembourg luxury city hotel in the context of buying and leasing several adjacent properties. The client then decided to sell its sole Luxembourg subsidiary which indirectly held the hotel and restaurants, in order to be able to reimburse some bank loans, and engaged MOLITOR as counsel. MOLITOR organised and managed a physical data room in its premises, negotiated with the purchaser, the bank, the landlords and the Luxembourg company in charge of the management of the whole property on all the legal documentation to be prepared for the closing. MOLITOR also drafted/reviewed all this documentation including the share purchase agreement and the agreements by which the bank had waived all its rights against the client.

SET UP OF LUXEMBOURG BRANCH

MOLITOR assisted a South African company which acquired a Luxembourg company so that the new business manager could be granted a business authorisation.

SINGAPORE-DOMICILED PRIVATE EQUITY FUND

A Singaporean law firm was retained by a Singapore-domiciled private equity fund which was managed by a Singapore registered fund manager. It was proposed to offer the fund to investors in Luxembourg. MOLITOR advised on the offering in Luxembourg, the private placement exemption rules and the rules relating to marketing by a third country alternative investment fund manager.

SOFTWARE DEVELOPMENT AGREEMENTS

MOLITOR assisted various software developers with the drafting of software distribution, license and development agreements. In particular, MOLITOR participated in the negotiation of an exclusive license granted to the client to market, promote, distribute and license, directly or indirectly, an integrated Human Resource and Payroll computer program developed by an external specialised company to its clients in the European Union, Switzerland, Iceland and Russia.

SYNDICATED LOAN

MOLITOR assisted a Swiss Bank, as lender and agent of a banking consortium, to advise and provide a legal opinion on the Luxembourg law aspects of a CHF 500 million five-year syndicated loan.

TERMINATION OF SERVICE AGREEMENT

A long-standing client of MOLITOR became involved in a major dispute with their former warehouse managing company after terminating the service agreement between them. The warehouse manager sued for 1 million euro in damages and MOLITOR's client claimed the warehouse manager had overcharged for the last four years. Even more problems arose around employment issues.

TOXIC INSURANCE LOANS

An investment company promoted a Luxembourg securitisation vehicle invested in toxic insurance loans, to a UK building society which on that basis sold the products on to its clients. The investment company fell into administration and the Luxembourg securitisation vehicle was liquidated. These events had a negative impact on the UK building society. MOLITOR acted for the UK building society.

TRANSFERS OF UNDERTAKING AND COLLECTIVE BARGAINING AGREEMENT

MOLITOR advised a major player in the Luxembourg fund industry regarding the effects of the transfer of undertaking that followed the launching of the company. In particular, the former collective bargaining agreement was maintained for the transferred employees even though the new employer (the transferee) was not a party to the collective bargaining agreement. The question was therefore to know how long this provisional regime would apply and at the end of this phase, how to harmonise the employees' social regime.

UK MUTUAL SOCIETY

MOLITOR assisted a UK Mutual Society, which, through the advice of a UK investment company, sold to its clients securities owned by a Luxembourg-regulated entity, which went into administration. MOLITOR provided advice on Luxembourg law issues and beyond and followed up the relationship with the Luxembourg regulatory authority (the CSSF).