

CLASSIFICATION SHEET

This document relates to the following request:

13 May 2009

References: AEJE/LANO/M14409007M-IAMH

MGP EUROPE FUND II (Main) – Addendum to the ATAs dated 14 March 2007 and 11 June 2008.



1. Key topics: Functional currency

2. Name of the advisor : PwC

3. Corporate group's name, or fund sponsor: MGPA

4. Name of the project: MGP Europe Fund II (Main)

5. Amount intended to be invested:

6. Date of receipt:

10 JUIN 2009

For the attention of Mr Marius Kohl

Administration des Contributions Directes
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13 May 2009

References: AEJE/LANO/M14409007M-IAMH



MGP EUROPE FUND II (Main)
Addendum to the Advance Tax Agreements of 14 March 2007 and 11 June 2008

Dear Mr Kohl,

For and on behalf of MGP Europe Fund II (Main), we would like to add an addendum to the Advance Tax Agreements dated 14 March 2007 (reference DDRH/NABK/M14407008M-AEJE) and 11 June 2008, (reference DDRH/IAMH/M14408002M-IAPI) (**Enclosure 1**) (hereafter the "ATAs"), and submit this herewith for your review and approval. Alternatively, we would be pleased to receive your written comments of these structures.

A. Functional currency

1. The structure of MGP Europe Fund II (Main) comprises two funds, one of them (i.e. MGP Europe Fund II, L.P.) running its activities in EUR and the other one (i.e. MGP Europe Parallel Fund II, L.P.) in USD. In this respect, the Luxembourg companies underneath MGP Europe Parallel Fund II, L.P. (i.e. Master LuxCos, Lux Sub-HoldCos and Lux JVCos) will have their share capital, loan funding and accounts denominated in USD.
2. Based on the above, the relevant Luxembourg companies apply for the use of USD as the functional currency for tax purposes, so that no foreign exchange differences not appearing in the accounts of the Luxembourg companies will arise for tax purposes.

3. This implies that the taxable profits of the Luxembourg companies will be established in USD and converted into EUR on the closing date of the fiscal year by using the market exchange rate applicable on this date. The tax liabilities of the Luxembourg companies will be denominated and settled in EUR for tax compliance purposes.
4. A consequence of this treatment will be that when a USD denominated loan funding is repaid, no foreign exchange gain or loss will be recorded in the Luxembourg companies' accounts, and nor will any foreign exchange gain or loss be taxable or deductible in the hands of the Luxembourg companies.

We remain at your disposal should you need any further information, and would like to thank you for the attention that you will give to our request.

Yours sincerely,



Alexandre Jaumotte
Partner

For approval

*Le préposé du bureau d'imposition Sociétés 6
Marius Kohl*

Luxembourg, 10 JUIN 2009



Enclosures

Enclosure 1: Copy of the Advance Tax Agreements dated 14 March 2007 (reference DDRH/NABK/M14407008M-AEJE) and 11 June 2008 (reference DDRH/IAMH/M14408002M-IAPI)

This tax agreement is based on the facts as presented to PricewaterhouseCoopers Sàrl as at the date the advice was given. The agreement is dependent on specific facts and circumstances and may not be appropriate to any party other than the one for which it was prepared. This tax agreement was prepared with only the interests of MGPA in mind, and was not planned or carried out in contemplation of any use by any other party. PricewaterhouseCoopers Sàrl, its partners, employees and or agents, neither owe nor accept any duty of care or any responsibility to any other party, whether in contract or in tort (including without limitation, negligence or breach of statutory duty) however arising, and shall not be liable in respect of any loss, damage or expense of whatever nature which is caused to any other party.

Enclosure

Mr Marius Kohl

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14 March 2007

References: DDRH/NABK/M14407008M-AEJE



**MACQUARIE GLOBAL PROPERTY ADVISORS
MGP EUROPE FUND II (Main)**

- MGP Europe (Lux) Sàrl ("Master LuxCo 1") – Fiscal number: 2006 2403 234**
- MGP Europe Parallel (Lux) Sàrl ("Master LuxCo 2") – Fiscal number: 2006 2403 242**
- Luxembourg Joint Venture Companies ("Lux JVCos") – see Appendix 1**
- Luxembourg Sub-Holding Companies ("Lux Sub-HoldCos") – see Appendix 1**
- Luxembourg Special Purpose Vehicles ("Lux SPVs") – see Appendix 1**

Dear Mr Kohl,

At the request of our above clients, and Macquarie Global Property Advisors (hereafter "MGPA"), we are pleased to submit for your review and approval the Luxembourg tax treatment of the following finance and holding structure. Alternatively, we would be pleased to receive your written comments on this structure.

1 Description of operations

MGPA has organised the set up of two Bermuda limited partnerships, MGP Europe Fund II, L.P. (hereafter "MGPE") and MGP Europe Parallel Fund II, L.P. (hereafter "MGPEP") (MGPE and MGPEP collectively hereafter "the Funds"). The Funds have already undertaken, or are in the process of undertaking, various investments, each within the framework outlined below.

The structure comprises two Funds, rather than one, because each Fund runs its activities in a particular currency. MGPE runs its activities in EUR and MGPEP in USD.



The Funds' target investment is real estate located in Europe.

Within this framework, a Malta and Luxembourg holding and financing structure is being used to acquire (directly or indirectly) the real estate investments.

As shown in the chart below, the finance and holding structure envisages a combination of profit participating loans ("PPLs"), interest bearing loans and interest free loans being used by Luxembourg holding companies to finance other entities that are to make the acquisition of the real estate investments. The real estate will be held in special purposes vehicles (collectively hereafter referred to as "SPVs").

To implement the structure, MGPE has incorporated a Maltese limited liability company, MGP Europe (Malta) Ltd, (hereafter "MaltaCo 1") with minimum share capital of USD 1,600 (i.e. approximately EUR 1,200). MGPEP has incorporated a Maltese limited liability company, MGP Europe Parallel (Malta) Ltd, (hereafter "MaltaCo 2") with minimum share capital of USD 1,600 (approximately EUR 1,200).

In turn, MaltaCo 1 and MaltaCo 2 have each incorporated one master Luxembourg holding company, respectively MGP Europe (Lux) Sàrl ("Master LuxCo 1") and MGP Europe Parallel (Lux) Sàrl ("Master LuxCo 2"), each with the minimum share capital of EUR 12,500.

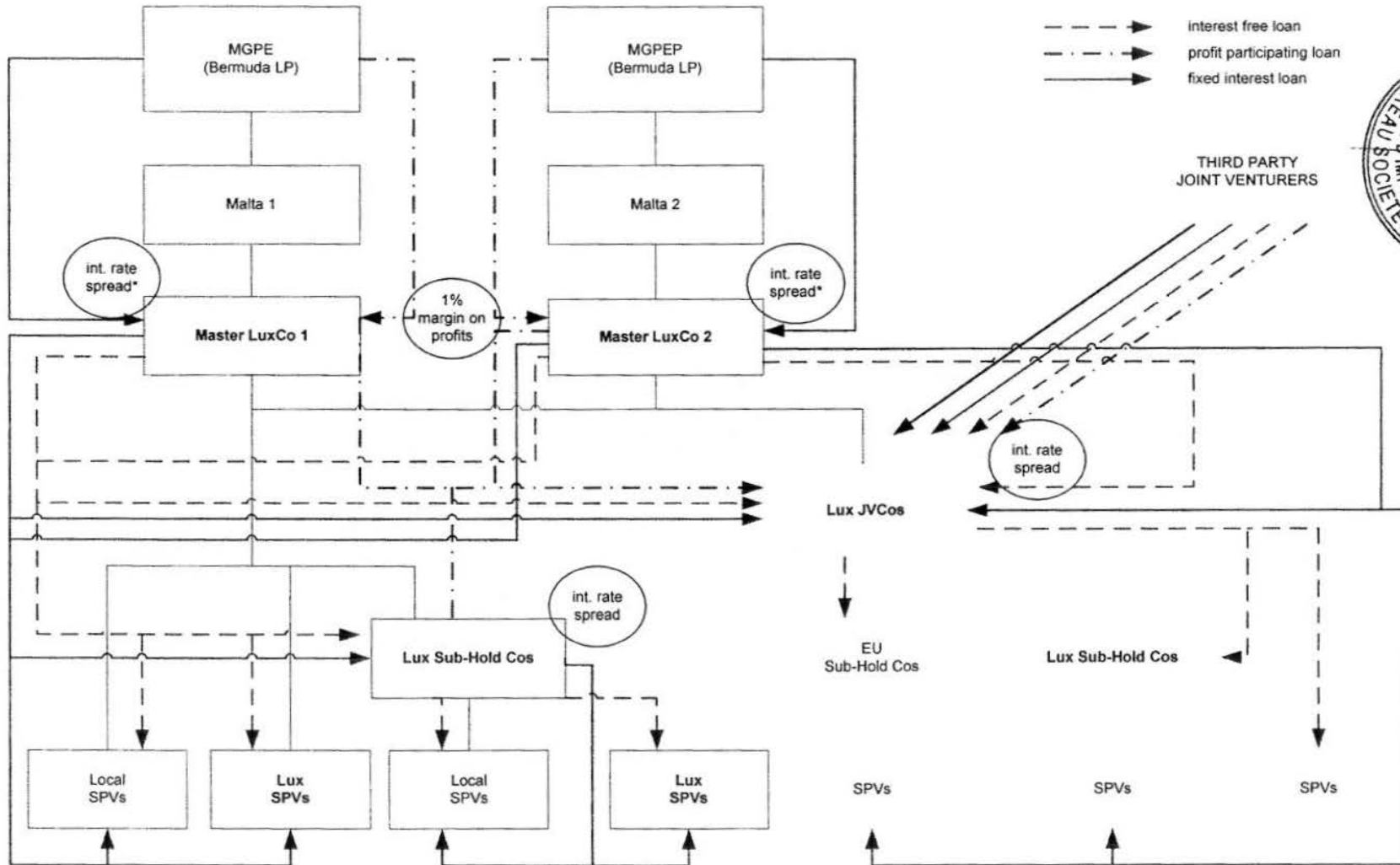
Ownership of the SPVs will or may be structured in a number of ways, as follows:

- One or more interests in SPVs (hereafter "Local SPVs", or "Lux SPVs" if the entity owning the real estate is resident in Luxembourg) being directly owned by the Master LuxCos.
- Via one or more sub-holding companies in another EU territory (hereafter "EU Sub-HoldCos").
- Via one or more Luxembourg sub-holding companies (hereafter "Lux Sub-HoldCos") owned in aggregate 100% by the Master LuxCos.
- If joint venture investments are made, through Luxembourg sub-holding companies (hereafter "Lux JVCos") owned partly by the Master LuxCos and partly by the joint venture partner. Each Lux JVCo will or may in turn invest in SPVs with their ownership structured in a manner similar to any of the three scenarios listed directly above.
- Joint-venture partners may also join at the SPV or EU Sub-HoldCo level.

The precise names and other details of all companies incorporated in Luxembourg and included in the structure and thus covered by this letter, together with copies of their articles of association, are set out in **Appendix 1** and related **Enclosures**. Whenever new Luxembourg companies are added to the structure, we will forward to you amended versions of **Appendix 1**.

The financing of the real estate investments will generally comprise external senior debt directly granted to the various SPVs, with the balance of the debt financing of these SPVs being provided indirectly by the Funds themselves, as outlined in section 2 below.

MGPA Europe FUND II (main)



* only where investing direct into SPVs

Lastly, it is noted that at some future time a “co-invest” structure may be implemented. This is not shown on the above diagram. Such a structure would likely involve a parallel structure corresponding to (and extremely similar to) that involving MGPE, Malta 1 and Master LuxCo 1 investing in a Lux JVCo. Should the “co-invest” structure be proceeded with we will write to you separately to seek your agreement to such arrangements.



2 Framework financing structure

At the Master LuxCo 1 and Master LuxCo 2 level, financing activities will or may comprise the following.

- On-lending of profit participating loans (“PPLs”) – **PPL** borrowings from MGPE and MGPEP respectively are on-lent by Master LuxCo 1 and Master LuxCo 2 in the same amounts to Lux Sub-HoldCos and potentially Lux JVCos with **1% of the profits deriving from interest** being left as a margin in Master LuxCo 1 or Master LuxCo 2 respectively. In some cases the on-lending may take the form of fixed interest-bearing debt – here the same 1% element of the interest income will be left as the margin.
- **PPL** borrowings from MGPE and MGPEP used to finance economically linked investments – these comprise equity participations in (and potentially interest free loans to) SPVs and EU Sub-HoldCos that are directly owned, and (where Lux JVCos or Lux Sub-HoldCos are not fully financed with PPLs) interest free loans to Lux JVCos and Lux Sub-HoldCos, with **1% of the profits deriving from dividends** being left as a margin in Master LuxCo 1 or Master LuxCo 2 respectively. (It is noted that wherever PPLs are used to finance interest-free loans, Master LuxCo 1 and Master LuxCo 2 will also directly own dividend-yielding equity in the borrower involved).
- On-lending of **interest-bearing debt** – interest bearing loans received from MGPE and MGPEP respectively are on-lent by Master LuxCo 1 and Master LuxCo 2 on the same terms to **Lux Sub-HoldCos** and potentially **Lux JV Cos**, with **no spread** being left in Master LuxCo 1 or Master LuxCo 2. Similarly-funded on-lending may also be made to **SPVs or EU Sub-HoldCos** directly owned by Master LuxCo 1 and Master LuxCo 2 – here a minimum **12.5 bps** spread will be left in Master LuxCo 1 and Master LuxCo 2.

At the Lux Sub-HoldCo level, financing activities comprise the following.

- **PPL** borrowings from Master LuxCo 1 and Master LuxCo 2 used to finance economically linked investments – these comprise equity investments in SPVs or interest free loans to such entities, with **no margin** being left in the Lux Sub-HoldCo. It is noted that in all cases a margin will be left at Master LuxCo 1 and Master LuxCo 2.

- On-lending of **interest-bearing debt** – interest bearing loans received from Master LuxCo 1 and Master LuxCo 2 are in aggregate on-lent on the same terms to SPVs, with a minimum **12.5 bps** spread being left in Lux Sub-HoldCo.

Potentially, at the Lux JVCo level, financing activities would comprise the following.

- **PPL** borrowings from Master LuxCo 1 and Master LuxCo 2 used to finance economically linked investments – these comprise equity investments in (and potentially interest free loans to) SPVs and EU Sub-HoldCos, and interest free loans to Lux Sub-HoldCos owned by the Lux JVCo involved, with **no margin** being left in the Lux JVCo. It is noted that in all cases a margin will be left at Master LuxCo 1 and Master LuxCo 2.
- On-lending of **interest-bearing debt** – interest bearing loans received from Master LuxCo 1, Master LuxCo 2 and third party joint venturers would in aggregate be on-lent on the same terms to SPVs or **EU Sub-HoldCos**, with a minimum **12.5 bps** spread being left in Lux JVCo.

No interest free borrowing would be on-lent by a Lux JVCo – such borrowings would be used to finance equity or working capital.

Any PPL borrowings from third party joint venturers (hereafter “JV investor PPLs”) would **not** be regarded as financing investments that are **economically linked**, unless advanced by a Luxembourg Soparfi owned by the third party joint venturer involved.

The terms of all PPLs noted above are outlined in detail in **Appendix 2**.



3 Applicable tax regime

3.1 Tax residency

Master LuxCo 1, Master LuxCo 2, Lux JVCos, Lux Sub-HoldCos and Lux SPVs will all be Luxembourg tax residents in the sense of the double tax treaties concluded by Luxembourg and in the sense of article 159 of the Luxembourg Income Tax Law (hereafter “LITL”) as their shareholders’ meetings and their managers’ meetings will take place in Luxembourg and as their accounting will be done in Luxembourg. Consequently, tax residency certificates will be issued upon request.

3.2 Financing activities

3.2.1 *PPLs on-lending (Master LuxCo 1 and Master LuxCo 2), PPLs used to finance economically linked investments (Master LuxCo 1, Master LuxCo 2, Lux Sub-HoldCos and Lux JVCos)*

PPLs granted respectively by MGPE and MGPEP to Master LuxCo1 and Master LuxCo 2 (“top PPLs”) used to finance economically linked investments or subsequently on-lent to Lux Sub-HoldCos and potentially Lux JVCos by means of PPLs (“bottom PPLs”), and any JV investor PPLs, will all be qualified as debt for both net wealth tax purposes and corporate income tax purposes, and interest thereon will in principle be fully tax deductible, subject to article 166 (5) LITL in the case of PPLs used to finance economically linked investments (see the further analysis on the tax regime applicable to PPLs in **Appendix 3**). These activities will fall outside the calculation of the 85:15 debt-to-equity ratio (see also **Appendix 3**), and thus generally no PPL interest payments of any description will be subject to withholding taxes on dividends.

JV investor PPLs that are not regarded as financing investments that are economically linked, but that used to finance participations (or interest free loans to such participations) would also be subject to the above treatment, except that they will be subject to debt to equity rules for the purpose of any withholding tax liability. Hence any interest paid on such PPLs would be generally subject to a **2.25% withholding tax**, subject to tax treaty or EU Directive relief.

Considering the amounts involved and the risk profile, the profit realised by Master LuxCo1 and Master LuxCo 2 in relation to this activity will be considered as appropriate and acceptable insofar as it represents 1% per annum of the net income (after all Luxembourg overhead costs) derived from the bottom PPLs and other assets financed by the top PPLs. This 1% margin will be left in each Master LuxCo. To the extent that this net income derives from the bottom PPLs, it will be fully taxable (i.e. not subject to any exemptions). Similarly, no profit need be realised in any Lux Sub-HoldCo or in any Lux JVCo given that profits are realised in a Master LuxCo on the same financing, or (in the case of some JV investor PPLs) given that partial dividend distribution treatment is applied as noted above.

3.2.2 Fixed interest bearing loans

Taking into account that the entity on-lending will not bear any default risk and that amounts borrowed and lent will be the same and in the same currency, and will be on matching terms, the remuneration earned by the entities involved will be considered as being at arm’s length and the interest paid fully tax deductible, so long as an arm’s length margin is in aggregate realised on the back-to-back activities.

The above arm’s length margin will be determined taking into account the global amount of financing of fixed interest bearing loans advanced to SPVs as a result of the activity outlined in section 2 above (which is at the date of this letter more than EUR 25 million) and will be adjusted based on that amount in order to correspond to the margin generally considered being arm’s length by the Luxembourg tax authorities. This margin is agreed as being a minimum of **12.5 bps** for the life of the loans described in this letter.



The above spread will be subject to corporate income tax and municipal business tax in the hands of the entity on-lending. Overhead costs directly attributable to the on-lending will not be deductible. Other overhead costs will be taken into account in calculation of the variable interest due on the PPL financing, and will thus in practice be deductible.

In practice, an appropriate margin on this fixed interest bearing loan activities will generally be left in Lux Sub-HoldCo or potentially in a Lux JVCo, and no margin subject to taxation is to be left in Master LuxCo 1 and Master LuxCo 2. Exceptionally, if Master LuxCo 1 and Master LuxCo 2 are on-lending direct to an SPV, then the margin will be left in Mater LuxCo 1 and Master LuxCo 2.

3.2.3 Payment of the senior debt interest by MGP Jack Sàrl instead of Jack (Sobel) Sprl

The Belgium resident SPV, Jack (Sobel) SPRL, which is held by a Lux Sub-HoldCo, MGP Jack Sàrl, will borrow EUR 3,150,000 of external senior debt to finance the acquisition of the Sobel property. However, payments of interest on the senior debt will be made by MGP Jack Sàrl until such time as Jack (Sobel) SPRL is disposed of, or has sufficient income to support the payments. For each payment, a loan with interest rate at arm's length will be concluded between MGP Jack Sàrl and Jack (Sobel) SPRL. The payment of this interest by MGP Jack Sàrl for the account of Jack (Sobel) SPRL will be financed by a fixed interest bearing loan coming from the Funds, so that MGP Jack Sàrl, a Lux Sub-HoldCo, will also be in a pure back-to-back position for this additional financing activity.

Interest paid by MGP Jack Sàrl on behalf of its subsidiary, Jack (Sobel) SPRL, will be deductible in the hands of MGP Jack Sàrl since, in compensation, MGP Jack Sàrl will have due from Jack (Sobel) SPRL a debt-claim producing interest at arm's length.

Moreover, as MGP Jack Sàrl will be in a pure back-to-back position for this additional financing activity, a spread of 0.125% on the amounts borrowed will be left at the level of MGP Jack Sàrl and subject to corporate income tax and municipal business tax at the aggregate rate (currently 29.63%) in the hands of MGP Jack Sàrl.

3.3 Foreign Exchange

Any Lux SPV that accounts in a non-EUR currency and has all its real estate assets located in the territory of that non-EU currency is, since its inception, to benefit from a functional currency regime whereby it can hold its accounts in the local currency of its investment, so that no foreign exchange differences not appearing in its accounts will arise when computing taxable profits. The taxable profits of these Lux SPVs will be computed in the local currency, will be converted into EUR at the closing date according to the official exchange rate at that date, and tax liabilities will be denominated and settled in EUR.

Whenever a Lux SPV which is to have the above treatment is added to the structure, we will note this in providing the relevant amended version of **Appendix 1**.



3.4 Luxembourg tax position of the Lux SPVs in regard to the ownership of real estate located outside Luxembourg

Some Lux SPVs will purchase real estate located, most likely, either in Germany or in the UK.

The Lux SPVs purchasing real estate will generally be funded with a mix of fixed interest bearing debt, interest free debt and equity..

According to the provisions of the Germany-Luxembourg double tax treaty or of the UK-Luxembourg double tax treaty (“the Treaties”), any rental income generated by the German or UK property or capital gains arising on the disposal of the German or UK property will not be subject to either corporate or municipal business tax in Luxembourg.

As income and gains arising from the German or UK real estate will be exempt from tax in Luxembourg, any costs including those of financing in relation to the real estate will not be deductible in Luxembourg in accordance with article 45 (2) LITL.

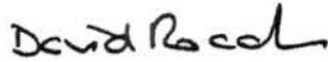
Also, according to the Treaties, the German or UK real estate properties will not be subject to Luxembourg net wealth tax.

The debt in relation to the real estate will not be deductible from the Luxembourg net wealth tax basis, according to paragraph 62 of the Luxembourg BeWG, Circulaire n°39 dated 23 August 1993.

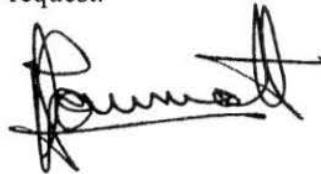


We remain at your disposal should you need any further information, and would like to thank you for the attention that you will give to our request.

Yours sincerely,




David Roach
Partner



Alexandre Jaumotte
Director

For approval



of
Le préposé du bureau d'imposition Sociétés 6
Marius Kohl
Luxembourg, 

20 MARS 2007

- Appendix 1: List of Luxembourg companies
- Appendix 2: Profit Participating Loans – principal terms
- Appendix 3: Further analysis of the tax regime applicable to the PPLs

This tax agreement is based on the facts as presented to PricewaterhouseCoopers Sàrl as at the date of this letter. The agreement is dependent on specific facts and circumstances and may not be appropriate to a party other than the one for which it was prepared. This tax agreement was prepared with only the interests of Macquarie Global Property Advisors in mind, and was not planned or carried out in contemplation of any use by any other party. PricewaterhouseCoopers Sàrl, its partners, employees and or agents, neither owe nor accept any duty of care or any responsibility to any other party, whether in contract or in tort (including without limitation, negligence or breach of statutory duty) however arising, and shall not be liable in respect of any loss, damage or expense of whatever nature which is caused to any other party.

**MGP EUROPE FUND II (Main)
LIST OF LUXEMBOURG COMPANIES**

Name	Fiscal number	Functional currency	Shareholders	Articles of association
<u>Master LuxCos</u>				
MGPA Europe (Lux) Sàrl	2006 2403 234	EUR	MGP Europe (Malta) Ltd	Enclosure 1
MGPA Europe Parallel (Lux) Sàrl	2006 2403 242	EUR	MGP Europe Parallel (Malta) Ltd	Enclosure 2
<u>100% owned Lux Sub HoldCos</u>				
MGP Jack Sàrl	2006 2403 072	EUR	Master LuxCo 1 and Master LuxCo 2	Enclosure 3
MGP Pope Sàrl (until merger)	2006 24 19 300	EUR	Master LuxCo 1	Enclosure 4
MGP Pope Parallel Sàrl (until merger)	2006 2419 297	EUR	Master LuxCo 2	Enclosure 5
MGP Pope Sàrl (after merger)	<i>[TBA]</i>	EUR	Master LuxCo 1 and Master LuxCo 2	<i>[TBA]</i>
<u>100% owned Lux SPVs</u>				
MGP Dean Sàrl	2006 2450 321	EUR	Master LuxCo 1 and Master LuxCo 2	Enclosure 6
Jack (Pencoed) Sàrl	2006 2403 064	GBP	MGP Jack Sàrl	Enclosure 7
Jack (Cologne 20) Sàrl	2006 2403 048	EUR	MGP Jack Sàrl	Enclosure 8
Jack (Cologne 21) Sàrl	2006 2403 056	EUR	MGP Jack Sàrl	Enclosure 9
<u>Lux JVCos</u>				
None				
<u>Lux Sub-HoldCos owned by LuxJVCos</u>				
None				

PROFIT PARTICIPATING LOANS – PRINCIPAL TERMS

The PPLs issued by Master LuxCo1 and Master LuxCo 2 to the Funds (hereafter “top PPLs”) will have, inter alia, the following terms and conditions:

- The PPLs will be EUR denominated.
- The top PPLs will bear two types of interest as described below:
 - A mandatory fixed rate of interest of 0.5% p.a. on the outstanding balance of the top PPL; and
 - A variable interest rate per annum, that will be **99%** of the adjusted accounting profit of the borrower, this being the net accounting profit for each accounting year or period for statutory purposes for the borrower before Luxembourg tax, with any foreign withholding tax suffered by the borrower being recorded as an expense, before calculation of the variable interest charge, after deduction of net income arising on the fixed interest bearing loans granted by the borrower, after deduction of the mandatory fixed interest, and after deduction of any losses brought forward (“Variable Interest”). Furthermore, the adjusted accounting profit will include any gains or losses made on any part or full disposal of any participation by Master LuxCo1 and Master LuxCo 2 in Lux Sub-HoldCos, or any Lux JVCos, or of other assets financed by these PPLs.
- Variable interest can be prepaid during the accounting year to which it relates.
- The principals of the PPLs along with any accrued but unpaid interest is due after 12 years. The PPLs will however be repayable pro-rata immediately on any full or part disposal of any asset financed by these PPLs.
- The lenders are not entitled to any voting rights in the borrower.
- The lender are not entitled to participate in any surplus profits upon liquidation.

The PPLs issued by Lux Sub-HoldCos or any Lux JVCos to Master LuxCo1 and Master LuxCo 2 (hereafter “bottom PPLs”) and to third party joint venturers (hereafter “JV investor PPLs”) will have, inter alia, the following terms and conditions:

- The PPLs will be EUR denominated.

- The bottom PPLs and any JV investor PPLs will bear two types of interest as described below:
 - A mandatory fixed rate of interest of 0.5% p.a. on the outstanding balance of the PPL; and
 - A variable interest rate per annum, that will in amount be equal to **100%** of a share (such share generally corresponding to the equity shareholding of the lender in the borrower) of the Adjusted Accounting Profits of the borrower, this being the net accounting profit for each accounting year or period for statutory purposes for the borrower before Luxembourg tax, with any foreign withholding tax suffered by the borrower being recorded as an expense, before calculation of the variable interest charge, after deduction of net income arising on the fixed interest bearing loans granted by the borrower, after deduction of the mandatory fixed interest, and after deduction of any losses brought forward (“Variable Interest”). Furthermore, the adjusted accounting profit will include any gains or losses made on any part or full disposal of any asset financed by these PPLs.
- Variable interest can be prepaid during the accounting year to which it relates.
- The principals of the PPLs along with any accrued but unpaid interest is due after 12 years. The PPLs will however be repayable pro-rata immediately on any full or part disposal of any asset financed by the PPLs.
- The lenders are not entitled to any voting rights in the borrower.
- The lenders are not entitled to participate in any surplus profits upon liquidation.

**FURTHER ANALYSIS OF THE TAX REGIME APPLICABLE TO THE PPLS,
AND DEBT TO EQUITY RATIO CONSIDERATIONS**

1 Tax classification as debt

According to the commentaries to the income tax law (commentaries included in “Projet de Loi No 571” (1955) on the former article 114 LITL (now article 97 LITL) on income from participation, where a profit participating loan bears a minimum fixed interest rate, payable even when the company is in a loss position, and provided the principal amount of the loan is repayable before the reimbursement of the company’s share capital, the profit participating loan should continue to be treated as a debt for Luxembourg tax purposes.

Consequently, all the PPLs described in Section 2 will be qualified as debt for both net wealth tax purposes and corporate income tax purposes, and interest thereon will be deductible under the same conditions as apply to fixed interest debt.

2 Classification as interest rather than dividend

Authors have examined the question whether the definition of “dividend” given by the Luxembourg income tax law could include payments accounted for as interest¹. The key criteria for characterizing a payment as dividend rather than interest are:

- entitlement to the ongoing profit (including the profit reserves); and
- entitlement to the liquidation proceeds.

Under this interpretation, the payment of an amount neither directly relating to the entire profit of the borrower, nor to the liquidation proceeds, need not be considered as a dividend.

For all the PPLs described in Section 2, since the participating loan interest will be dependent on the income realized before Luxembourg tax and variable interest, and not profit after tax, the loan interest may be qualified as interest rather than dividend.

¹ A. Steichen, “Précis de droit fiscal de l’entreprise”, Editions Saint Paul, § 701 *et seq.*, p. 343 *et seq.*

3 Payment of remuneration free of Luxembourg dividend withholding tax

Article 146 (1) 3 LITL provides for the application of a withholding tax upon payment of interest arising from participating bonds or other similar securities. Interest payment may be subject to a 15 % dividend withholding tax on this ground if the following conditions apply:

- The loan is structured in the form of a bond or other similar security; and
- Aside from the fixed interest, a supplementary interest varying according to the amount of distributed profits is paid, unless the supplementary interest is linked to a corresponding decrease in the fixed interest.

On the contrary, interest payments related to participating loans are not subject to a specific dividend withholding tax.

For all the PPLs described in Section 2, the debt instruments are structured as profit participating loans (and not as a profit participating bonds), and the participating interest does not depend on distributed profit.

In addition, articles 97 (1) 2 and 146 (1) 2 LITL provide for a withholding tax when a profit participating return is paid to a silent partner ("bailleur de fonds"). The PPL holders cannot be assimilated to silent partners within the meaning of the above-mentioned provisions. Indeed, there is no common interest/goal between the PPL holder and the borrowing company.

Based on the above analysis, no dividend withholding tax on investment income will be due on interest paid under any of the PPLs (neither on the grounds of article 146 (1) 3 LITL or of article 146 (1) 2 LITL).

4 Deductibility of the remuneration paid to PPL holders

100% of all interest paid on all the PPLs described in Section 2 will in principle be tax deductible in accordance with article 45 (1) LITL, unless article 45 (2) LITL, or article 166 (5) LITL (see 5. below), is applicable.

5 Debt to equity ratio

Generally, according to Luxembourg practice, a debt to equity ratio of 85:15 needs to be respected by a company investing in participations. Any interest paid in excess of the applicable ratio should be qualified as dividends and subject to a 15% withholding tax for the purposes of article 146 LITL.

However, in the situations outlined in Section 2 above where PPL borrowings are used to finance economically linked investments, this economic linkage will be respected for the purposes of consideration of the debt to equity ratio.

Economically speaking this is clearly the case: if the investments made by the PPL borrower do well, it pays out a very significant element of its income as variable interest on the PPLs, and if the investments do badly, only fixed interest has to be paid on the PPLs. Additionally, the PPLs provide for limited recourse by the lenders against the assets financed by the PPLs. Furthermore, the principal amount of the bottom PPLs outstanding will also be partially reimbursed in case of a partial exit from one or more of the investments thereby financed.

Since the PPL borrower will be deemed to be in a connected position with respect to all investments financed by the PPLs, this activity will fall outside the calculation of the 85:15 debt to equity ratio. Hence none of the interest paid on the PPLs will be re-characterised as a deemed dividend. As a result, all the interest paid on PPLs will in principal be fully deductible for corporate tax purposes and will not be subject to any withholding tax. However, in practice, as all interest paid on bottom PPLs and some interest paid on top PPLs will derive directly from dividend income from participations, such interest will be regarded as operating expenses in direct economic relation to the income and will thus not be deductible in accordance with article 166 (5) LITL.

In other situations outlined in Section 2 above as potentially arising, PPL borrowings are **not** regarded as financing investments that are similarly linked. In such cases the treatment outlined above will not apply, and the 85:15 debt to equity ratio **will** need to be applied insofar as withholding tax considerations are concerned. (Furthermore, in such cases where PPL borrowings are used to finance interest free loans, such loans will be regarded as participations subject to the debt to equity practice.) Hence, the portion of the interest paid on debt in excess of the 85:15 debt to equity ratio will be characterised for Luxembourg tax purposes as a dividend distribution, subject to withholding tax at the normal rate of 15% in the absence of double tax treaty or EU Directive relief. Therefore, this will result in a Luxembourg withholding tax at an effective rate of 2.25% (i.e. 15% re-qualified into dividend subject to 15% withholding tax) on interest paid on such PPLs.

For the attention of Mr Marius Kohl

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11 June 2008

References: DDRH/IAMH/M14408002M-IAPI

MGP Europe Fund II (Main)

Addendum to the Advance Tax Agreement of 14 March 2007



Dear Mr Kohl,

For and on behalf of our clients we would like to notify you of some amendments as well as new Luxembourg companies added to the structure described in the Advance Tax Agreement dated 14 March 2007 (reference: DDRH/NABK/M14407008M-AEJE) (**Enclosure 1**) (hereafter the "ATA"), and to confirm the identity of the Luxembourg companies that to date are within the scope of the above ATA. We are also seeking your confirmation of the tax treatment applicable to the new elements of the financing structure covered by the ATA, which have recently arisen and thus have not been previously presented to you.

A New Luxembourg companies and amendments to the structure

- 1 Please find attached in **Appendix 1** an amended version of the Appendix 1 of the ATA (list of Luxembourg companies), which takes into account newly created Luxembourg companies (outlined in bold).

A.1 Amendments to the corporate structure

- 2 The corporate structure covered by the ATA has been expanded as described below.
 - Master LuxCo1 and Master LuxCo2 will or may hold a direct participation in EU Sub-HoldCos.
 - Lux Sub-HoldCos will or may hold a direct participation in EU Sub-HoldCos and Lux JVCos.
 - SPVs will or may hold the real estate directly or indirectly.

A.2 Amendments to the financing structure

- 3 The financing structure described in the ATA has been expanded as follows.
- 4 At the Master LuxCo 1 and Master LuxCo 2 level, financing activities will or may comprise the following.
 - **PPL** borrowings from MGPE and MGPEP are used to finance economically linked investments – these comprise interest bearing loans granted to EU Sub-HoldCos and/or SPVs, with **1% of the profits deriving from interest** being left as a margin in Master LuxCo 1 or Master LuxCo 2 respectively.
- 5 At the Lux Sub-HoldCos level, financing activities comprise the following.
 - **PPL** borrowings from Master LuxCo1 and Master LuxCo 2 are used to finance economically linked investments – these comprise interest bearing loans to EU Sub-HoldCos and/or SPVs, with **no margin** being left in Lux Sub-HoldCo. It is noted that in this case a margin will be left at Master LuxCo 1 and Master LuxCo 2.



B Fees paid by Luxembourg companies by virtue of Finance Arrangement and/or Asset Management Agreements

B.1 Facts

- 6 Lux Sub HoldCos, Lux JVCos and/or Lux SPVs (hereafter the “Company” or the “Companies”) may enter into Finance Arrangement Agreements and / or Asset Management Agreements (hereafter the “Agreement” or “Agreements”) with MGPA (Bermuda) Limited (hereafter “MGPA Bermuda”).
- 7 As a consideration for the services provided under the Agreements, MGPA Bermuda may charge the Companies a fee, set in compliance with arm’s length principles.

B.2 Applicable tax treatment

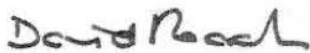
- 8 Any fee payment finally borne by the Company by virtue of the Agreement(s), or other similar expenses, will constitute an overhead cost of the Company not directly attributable to the on-lending activity per 3.2.2 of the ATA, and will thus be a tax deductible expense at the level of the Company, unless a specific provision applies to the contrary.
- 9 The expense constituted by the fee and borne by the Company by virtue of the Agreements, or other similar expense, will be considered as being in economic relation with the participation held by the Company in the share capital of the subsidiaries. Consequently and based on article 45 of the Luxembourg Income Tax Law (“hereafter “LITL”) this expense will only be considered as tax deductible for the amount exceeding tax exempt income (if any) received by the Company from the said subsidiaries during the year the expense was borne. This deductible expense also will be subject to “recapture” in accordance with the Grand-Ducal decree of 21 December 2002 in case of sale of the subsidiaries for a gain.

All other aspects of the ATA remain valid and unaltered.

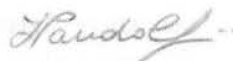


We remain at your disposal should you need any further information and would like to thank you for the attention that you will give to our request.

Yours sincerely,



David Roach
Partner



Isabella Pandolfini
Manager

Appendices and enclosures:

- Appendix 1: Amended Appendix 1 of the Advance Tax Agreement dated 14 March 2007
(Reference: DDRH/NABK/M14407008M-AEJE)
- Enclosure 1: A copy of the Advance Tax Agreement dated 14 March 2007
(Reference: DDRH/NABK/M14407008M-AEJE)
- Enclosure 2: A copy of the by-laws of MGP Twist S.à r.l.
- Enclosure 3: A copy of the by-laws of MGP Mahuta S.à r.l.

For approval

*Le préposé du bureau
d'imposition Sociétés 6
Marius Kohl*

Luxembourg, le 11 JUIN 2008



This tax agreement is based on the facts as presented to PricewaterhouseCoopers Sàrl as at the date the advice was given. The agreement is dependent on specific facts and circumstances and may not be appropriate to any party other than the one for which it was prepared. This tax agreement was prepared with only the interests of Macquarie Global Property Advisors in mind, and was not planned or carried out in contemplation of any use by any other party. PricewaterhouseCoopers Sàrl, its partners, employees and or agents, neither owe nor accept any duty of care or any responsibility to any other party, whether in contract or in tort (including without limitation, negligence or breach of statutory duty) however arising, and shall not be liable in respect of any loss, damage or expense of whatever nature which is caused to any other party.

**MGP EUROPE FUND II (Main)
LIST OF LUXEMBOURG COMPANIES**

Name	Fiscal number	Functional currency	Shareholders	Articles of association
<u>Master LuxCos</u>				
MGP Europe (Lux) Sàrl	2006 2403 234	EUR	MGP Europe (Malta) Ltd	<i>Already sent</i>
MGP Europe Parallel (Lux) Sàrl	2006 2403 242	EUR	MGP Europe Parallel (Malta) Ltd	<i>Already sent</i>
<u>100% owned Lux Sub HoldCos</u>				
MGP Jack Sàrl	2006 2403 072	EUR	Master LuxCo 1 and Master LuxCo 2	<i>Already sent</i>
MGP Pope Sàrl (until merger) ¹	2006 2419 300	EUR	Master LuxCo 1	<i>Already sent</i>
MGP Pope Parallel Sàrl (until & after merger)	2006 2419 297	EUR	Master LuxCo 2	<i>Already sent</i>
MGP Twist Sàrl	2006 2447 746	EUR	Master LuxCo 1 and Master LuxCo 2	Enclosure 2
MGP Mahuta Sàrl	2007 2435 770	EUR	Master LuxCo 1 and Master LuxCo 2	Enclosure 3
<u>100% owned Lux SPVs</u>				
MGP Dean Sàrl	2006 2450 321	EUR	Master LuxCo 1 and Master LuxCo 2	<i>Already sent</i>
Jack (Pencoed) Sàrl	2006 2403 064	GBP	MGP Jack Sàrl	<i>Already sent</i>
Jack (Cologne 20) Sàrl	2006 2403 048	EUR	MGP Jack Sàrl	<i>Already sent</i>
Jack (Cologne 21) Sàrl	2006 2403 056	EUR	MGP Jack Sàrl	<i>Already sent</i>
<u>Lux JVCos</u>				
None				

¹ MGP Pope Sàrl ceased to exist following its merger into MGP Pope Parallel Sàrl

