



Initial Public Offerings

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Luxembourg

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Introduction

Luxembourg is a multilingual, leading investment and financial centre located in Western Europe. As a founder member of the European Union, Luxembourg is one of the most stable political and economic countries in Europe.

The Luxembourg Stock Exchange lists 30,000+ international bond issues, representing 42% of total international bonds listed on EU markets. It also lists some 5,600 shares and units of investment funds in around 20 currencies, offering a wide range of investment opportunities, as well as 150+ depositary receipts of issuers based in emerging markets.

Prior to listing, the Luxembourg Stock Exchange checks that all the prerequisites for a secondary market to develop are fulfilled. Listed securities are registered with an International Central Securities Depository (ICSD) and have access to a trading platform: the UTP platform of Euronext's European markets. Therefore, listed securities are not simply listed but are also tradable.

The IPO process: Steps, timing and parties and market practice

The Luxembourg Stock Exchange (LuxSE) operates two markets: the regulated market (named *Bourse de Luxembourg*), within the meaning of the EU Markets in Financial Instruments Directive (MiFID II – Directive 2014/65/ EU) and the Euro Multilateral Trading Facility (MTF) market.

One of the advantages of listing on the regulated market is that the issuer benefits from a regulatory European directive, which allows it to apply for admission of the securities to the regulated market of any other member state of the EU, or conduct a public offer there, without substantive additional disclosure requirements in the host member state.

The present tendency is to list on the regulated market. This presupposes that the application for listing is made in the context of an IPO.

Nevertheless, some issuers tend to apply for listings on the Euro MTF market. The listing on this market offers more straightforward options, with fewer regulatory restraints. This is a very attractive listing option, especially for issuers from outside the EU.

As the Luxembourg domestic market is rather small, the majority of IPOs are listed abroad. Some issuers request an additional or dual listing on the LuxSE, however.

With more than 139 listed global depositary receipts (GDRs), the LuxSE is the second exchange in Europe in GDRs.

Typically, an issuer contemplating an IPO is advised by a financial institution as well as by a legal adviser and/or a listing agent.

Listing in Luxembourg is both relatively straightforward and flexible. The steps are as follows:

1. *Choose market*

Before listing, a choice needs to be made between listing on the EU-regulated Bourse de Luxembourg Market or the exchange-regulated Euro MTF Market.

Both markets provide issuers greater visibility and all securities listed on one of LuxSE's markets are admitted to trading on the exchange.

2. *Draft prospectus*

In the prospectus, issuers will need to provide, among other things, detailed financial statements, terms and conditions relating to the security and information on recent developments.

In order to meet the requirements and to protect persons who intend to invest in a listed company, the information set out in the prospectus has to be trustworthy.

According to that, the prospectus must contain all information, involving the particular nature of the issuer and of the securities offered to the public or admitted to trading, in order to enable investors to make an informed assessment of the assets and liabilities, financial position, profit and losses and prospects of the issuer, and of the rights attaching to the securities.

The information should be presented clearly and in an easily analysable form.

Moreover, it must be ensured that pre-IPO marketing activities do not qualify as an offer of securities to the public, as long as no Prospectus Directive-compliant prospectus is approved. Furthermore, the marketing material must comply with the principles set out in the Prospectus Law; advertisements, for example, must be clearly recognisable as such.

3. *Get prospectus approval*

Any listing and admission to trading requires that a prospectus be prepared and approved by either the LuxSE or the *Commission de Surveillance du Sector Financier* (CSSF).

The Luxembourg Stock Exchange and the CSSF have dedicated teams of experts reviewing listing prospectuses who strive to complete the approval process as quickly as possible.

4. *Listing and admission*

This listing application (by way of an application form) shall be accompanied by the approved prospectus (where required, the certificate of approval) as well as a signed undertaking letter for purposes of confirming compliance with the Rules and Regulations.

Moreover, the up-to-date articles of association of the issuer and its annual financial reports relating to the last three years (or such shorter period as the issuer may have been in existence) must be added.

For newly incorporated issuers, waiver may be accepted at the sole discretion of the LuxSE.

No restriction on the negotiability of the listed instruments is accepted by the LuxSE (e.g. no possibility to restrict the ownership transfer of the listed instruments to professional investors)

5. *Post-listing reporting*

After being listed and admitted to trading, issuers must regularly disclose regulated information relating to their business and listed security.

Timing depends on the (1) market, (2) type of security, and (3) prospectus.

In general, up to four months may be necessary to complete a listing process on the LuxSE, which would include the time for the listing of equities, including the writing of the prospectus.

Regulatory architecture: Overview of the regulators and key regulations

Issuers must comply with:

- the law of 10 July 2005 on prospectuses for securities (**Prospectus Law**) which applies to the drawing-up, approval and distribution of the prospectus to be published when securities are given to the public or admitted to trade on a securities market;
- the law of 9 May 2006 on market abuse implementing EC Directive 6/2003, EC Directive 124/2003, EC Directive 125/2003 and 72/2004 (**Market Abuse Law**);
- the law of 11 January 2008 on transparency obligations (implementing EC Directive 109/2004) (**Transparency Law**); as well as
- the Rules and Regulations of the LuxSE.

Based on the type of offer and the securities offered, different regimes under the Prospectus Law apply.

The admission of financial instruments to an official listing is governed by the law of 13 July 2007 on markets in financial instruments (**MiFID II**), the Grand-Ducal Regulation of 13 July 2007 relating to the keeping of the official listing for financial instruments and implementing article 37 of the MiFID Law, as well as the rules and regulations of the LuxSE.

The regulatory entities are the LuxSE and the CSSF, the Luxembourg supervisory authority of the financial sector.

Public company responsibilities

Listed companies are subject to the corporate governance guidelines for listed companies, published by the Luxembourg Stock Exchange and known as the “**Ten Principles of Corporate Governance**”. These rules are recommendations which apply on a “comply or explain” basis, allowing companies to deviate therefrom when circumstances so justify.

Based on the Ten Principles, LuxSE listed companies have to publish a corporate charter setting out their governance principles and, on an annual basis, report on their governance in a specific chapter in the annual report.

The Rules and Regulations also contain a certain number of disclosure rules which are primarily derived from the transparency directive and apply to both LuxSE listed companies and Euro MTF traded companies.

As set out above, listed companies are further subject to a number of laws and regulations implementing EU legislation relating to prospectus requirements, transparency requirements and market abuse such as the Prospectus Law; the Market Abuse Law and the Transparency Law.

Additional rules and regulations applicable to LuxSE listed companies result from various circulars and other publications of the CSSF.

Potential risks, liabilities and pitfalls

Compared with those targeting the Euro MTF, issuers willing to access the regulated market

of the LuxSE (assuming the admission to trading and listing is not associated with any public offer) will face higher regulatory hurdles.

Consequently, IPOs involving admission to trading on the regulated market are more time-intensive and complex. Among the initial challenges, the prospectus approval process is one of the biggest.

Moreover, issuers, offerors (including financial intermediaries commissioned to carry out the offer to the public) or persons asking for admission to trading on a regulated market face criminal charges in the event they make an offer of securities to the public or obtain an admission of securities to trading on a regulated market in breach of the Prospectus Law provisions. In addition to the criminal charges that would apply, criminal and administrative sanctions will be added on, if relevant facts were to qualify as market abuse.

Furthermore, the CSSF may prohibit or suspend advertisements for a maximum of 10 consecutive working days, and it may also suspend or prohibit an offer to the public if legal provisions have been infringed.

The CSSF also has extensive rights to obtain information (including the right to make on-site inspections) as well as to publish the fact that the issuers, offerors, including financial intermediaries commissioned to carry out the offer to the public, or persons asking for admission to trading, have not complied with their legal obligations.

Additionally, the CSSF may in certain cases exchange confidential information with competent authorities of other member states, or transmit confidential information to the European Securities and Markets Authority (ESMA) or to the European Systemic Risk Board.

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Joram is a founding Partner of Moyal & Simon and specialises in corporate law, M&A, funds law and banking.

Before joining M&S (then MMS) as a founding partner in 2010, Joram was a sole practitioner for his own firm, worked in the corporate department for a well-established Luxembourg business law firm for several years, was legal counsel of a Luxembourg trust company, and managed a boutique law firm specialising in corporate and tax law.

Joram has represented companies and private clients with respect to M&A. He has also advised international businesses on, *inter alia*, corporate restructuring, partnerships, internal financing and sale of shares, and acquired significant experience in commercial litigation cases.

Joram is a *pro bono* member of the Arbitration Court of the German Central Council of Jewish Communities and a tutor for an NGO defending the rights of mentally handicapped people.

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