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Luxembourg

Joram Moyal & Patrick Houbert
Moyal & Simon

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 (LuxSE) is the world's leading exchange for the listing of international debt securities. As at 31st December 2020, it had more than 37,000 listed securities, including 33,000 debt instruments, from 2,000 issuers (including 118 sovereign issuers) representing more than 100 countries and more than 42% of total international bonds listed on EU markets. It also lists nearly 6,000 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. In 2020, 104 new issuers joined LuxSE and issued securities totalling EUR 54.6 billion.

LuxSE is also well known to have been the first stock exchange globally to introduce a platform for green financial instruments – the Luxembourg Green Exchange (LGX) – established in 2016 as a contribution to the Paris Climate Agreement and the UN SDGs. LGX is the world's leading platform dedicated exclusively to sustainable securities. Its mission is to facilitate sustainable investment and help redirect capital flows towards sustainable development projects. LGX displays 898 sustainable securities, with a total value of EUR 389 billion, from 148 issuers in 34 countries. LGX has a leading market share of listed green, social and sustainability bonds worldwide. In 2020, LGX was awarded the prestigious UN Global Climate Action Award 2020 in the category of Financing for Climate Friendly Investment for its contribution to curbing climate change.

LuxSE can also be considered as a valid and sustainable Gateway to China, which boasts one of the world's largest bond markets, valued at USD 11 trillion. As this market may appear off-limits to the international investor community due to the difficulties of accessing the right level of information on the traded bonds, LuxSE – by displaying information about Chinese domestic bonds either listed and traded on Chinese exchanges (Shanghai Stock Exchange – SSE and Shenzhen Stock Exchange – SZSE) or traded on the Chinese Interbank Bond Market (CIBM) – is bridging the information gap between Chinese issuers and international investors. Bonds listed on Chinese exchanges can be traded via existing channels. The cooperation with LuxSE focuses on providing relevant information in English to international investors.

With more than 139 listed Global Depositary Receipts (GDRs), the LuxSE is the second exchange in Europe in GDRs, providing companies facing restrictions on foreign ownership of their assets easy access to investors from multiple jurisdictions.

As at 31st December 2020, new and existing issuers listed 10,797 new securities worth EUR 1.4 trillion. LuxSE issuers come from around 100 different countries and securities are denominated in 66 currencies.

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.

Prior to listing, the Luxembourg Stock Exchange checks that all the prerequisites are fulfilled. Listed securities are registered with an ICSD and have access to a top state of the art trading platform: the UTP platform of Euronext's European markets. Therefore, listed securities are not simply listed but are also tradable.

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 markets of any other Member States of the EU, or conduct a public offer there, without substantive additional disclosure requirements in the host Member State (European passport). The latter allows issuers, on the basis of an already approved Prospectus Regulation-compliant prospectus, to apply for the admission to listing and trading of their securities on the regulated market of another EU Member State.

The current tendency is to list on the regulated market (*Bourse de Luxembourg*). 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 (secondary market). The listing on this market offers more straightforward options with fewer regulatory restraints. This is, especially for issuers from outside the EU, a very attractive listing option.

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

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.

As opposed to the Regulated Market, issuers applying for a listing on the Euro MTF cannot benefit from the European passport. However, as the Euro MTF lies outside the scope of the Prospectus Regulation and the Transparency Directive, issuers having securities admitted to trading on the Euro MTF are bound by less costly and stringent requirements. Additionally, securities admitted to trading on the Euro MTF are eligible for Eurosystem collateral operations.

Both markets provide issuers greater visibility and all securities listed on one of LuxSE's markets are admitted to trading on the exchange. Both the Regulated Market and the Euro MTF fall within the scope of Regulation 596/2014 on market abuse, as amended.

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 accomplish the requirements and to protect persons who intend to invest in a listed company, the information set out in the prospectus must 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 shall 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.

It is worth noting that in anticipation of the application of the Prospectus Regulation since 21 July 2019, the LuxSE has established two professional segments for its Regulated Market and the Euro MTF for which Issuers may opt. Such segments are specifically designed for issuers targeting professional clients within the meaning of MiFID II. Securities admitted thereto are therefore not accessible to retail investors (trading on these segments is only allowed between professional investors). Issuers using the Professional Segment will enjoy an alleviated prospectus regime under the Prospectus Regulation, simplified MiFID II product governance requirements as well as alleviated disclosure obligations under the Regulation (EU) No 1286/2014 of 26 November 2014 on key information documents for packaged retail and insurance-based investment products (PRIIPS).

The listing application forms provided by the LuxSE give issuers the possibility to specifically apply for an admission to trading on one of its Professional Segments. Application files should clearly indicate the segment chosen by the issuer.

3. Get prospectus approval

Depending on the market choice, any listing and admission to trading requires that a prospectus be prepared and approved by either the LuxSE (for admission on the secondary market) or the financial sector regulator, the *Commission de Surveillance du Sector Financier* (CSSF) for admission on the regulated market.

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

When applying on the Regulated Market the prospectus must be drawn up in accordance with the Prospectus Regulation and the Prospectus Delegated Regulation (EU) 2019/980 of 14 March 2019 supplementing Regulation (EU) 2017/1129 of the European Parliament and of the Council as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (the Prospectus Delegated Regulation), whereas an application for an admission to trading on the Euro MTF will require the prior approval by the LuxSE of a prospectus drawn up in accordance with the Rules and Regulations.

4. Listing and admission

The 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 associations of the issuer and its annual financial reports relating to the last three years (or such shorter period the issuer is in existence) must be added.

For newly incorporated issuers, a waiver from producing latest financial statements may be accepted at the sole discretion of the Luxembourg Stock Exchange.

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

An application for the admission to trading of securities on one of the markets operated by the LuxSE is also deemed to be an application for the admission to the Official List held by the LuxSE. However, the LuxSE also offers a new alternative enabling issuers to list their securities on the Securities Official List (SOL) without requiring such securities to be admitted to trading on one of its markets. The SOL is governed by a dedicated Rulebook of the LuxSE (<https://www.bourse.lu/luxse-sol>) (the SOL Rulebook) and the Grand-Ducal Regulation of 13 July 2007, as amended, implementing Directive 2001/34/EC on the admission of securities to official stock exchange listing and on information to be published on those securities. The SOL therefore offers an alternative for issuers looking for enhanced visibility resulting from the listing of their securities on a recognised official list whilst being spared the extensive regulatory framework applicable to admissions to trading of securities.

In order to be admitted on one of the LuxSE markets, the minimum issue amount is EUR 200,000 and there is no minimum operating history required. As far as convertible bonds, exchangeable bonds and bonds with warrants attached are concerned, the underlying shares must have been admitted or be admitted at the same time to listing on the LuxSE or whenever applicable on the SOL, or on another market that operates in a legitimate, recognised and open manner. Clearing and settlement are possible, via systems recognised by the LuxSE, i.e. Euroclear, Clearstream, LuxCSD and BNY Mellon CSD.

Timing for admission 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 securities, including the drafting of the prospectus).

5. Post-listing reporting and obligations

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

First, issuers having securities admitted to trading on the Regulated Market or the Euro MTF are required to obtain a Legal Entity Identifier (LEI) code, which is a 20-digit unique and universal identifier designed to ensure absolute certainty in the identification of entities participating in financial transactions and exchanging information with local regulators and trading venues, which has become a standard requirement under a number of EU regulations and directives, including capital markets legislation.

Once the listing and/or admission to trading is effective, issuers will be subject to various ongoing and periodic disclosure and reporting obligations. The scope of these obligations varies depending on which market the securities are listed and/or admitted to trading. They will generally be more stringent and costly in the case of securities admitted to trading on the Regulated Market.

Those obligations derive, *inter alia*, from the Transparency Law, the Market Abuse Regulation and the Rules and Regulations (the Rules). For securities listed and admitted to trading on the Euro MTF, the obligations derive from the Rules and the Market Abuse Regulation. Issuers of securities listed on the SOL only benefit from an extremely alleviated reporting regime set out exclusively in the SOL Rulebook, as they are not subject to regulations relating to the admission to trading (notably the Transparency Law and the Market Abuse Regulation).

Regulatory architecture: Overview of the regulators and key regulations

Issuers must comply with:

- the law of 16 July 2019 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 trading on a securities market;
- the Prospectus Regulation (EU) 2017/1129 of 14 June 2017 Prospectus Regulation (EU) on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market (the **Prospectus Regulation**), implemented in Luxembourg by the Prospectus Law and the Prospectus Delegated Regulation (EU) 2019/980 of 14 March 2019 as regards the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated 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 requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, as amended, implementing the EC Transparency Directive 109/2004 (the **Transparency Law**); and
- 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 Luxembourg stock exchange.

The regulatory entities are the Luxembourg Stock Exchange (LuxSE) and the Commission de surveillance du secteur financier (CSSF).

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 report on an annual basis their corporate governance in a specific chapter contained in their 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 the LuxSE listed companies and the Euro MTF traded companies.

As further 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.

Furthermore, IPOs involving an admission to trading on the regulated market are therefore 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 made an offer of securities to the public or obtained 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 has been working in Luxembourg since 2000 and has gained extensive experience in corporate and commercial law ever since.

Joram initially studied in Germany but had his first job in a Luxembourg law firm. After passing the Luxembourg Bar exam, Joram was admitted as an *Avocat à la Cour* in 2003.

As Joram also passed both German law exams, he admitted himself as a Rechtsanwalt in Germany in 2006 and later also passed the UK qualified lawyers transfer test, becoming registered as a solicitor qualified in England & Wales in 2010.

After working for several law firms Joram partnered up with Philipp Simon in 2010, creating what eventually became the M&S Law firm in Luxembourg.

Joram specialises in corporate law, restructurings, M&A and banking. In addition, he defends cases in civil and administrative law in court and covers labour law, corporate immigration law and debt collection matters.

Joram enjoys what he does, not only solving problems but also the exchange with people from all over the world.

He has inherited a gift for languages and speak English, French, German, Dutch, Portuguese, Russian, Luxembourgish and some Hebrew and Italian.

Joram is proud of a recommendation in the EMEA edition of *The Legal 500* directory as follows:

Team head Joram Moyal has a 'high level of industry knowledge'. He advises corporates and private equity firms on M&A, and also handles general corporate governance and strategic matters.



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Patrick is an *Avocat à la Cour* and specialises in corporate law, M&A, funds law and banking. He also advises start-ups in new technologies and has a strong knowledge of computer and IP law.

Before joining M&S in 2015 (then MMS) he was associated with a well-established French business law firm and worked as legal counsel and managing director of a Luxembourg trust company.

Patrick has represented companies and private clients with respect to M&A and funding (including with start-ups). He also advised international businesses on, *inter alia*, corporate and international restructuring, partnerships, internal financing, share deals and acquired significant experience in commercial litigation cases.

Patrick is a member of the Mauritian Association in Luxembourg and of the Indian Business Chamber of Luxembourg and has dedicated his Ph.D. in private law to Foreign Direct Investments in the Indian Ocean region by writing his thesis on "The Normative Instruments of Off-shore Investment in Mauritius".

Patrick speaks English, French and Italian.

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