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Debt Capital Markets 2021

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Sullivan & Cromwell LLP

Lexology Getting The Deal Through is delighted to publish the eighth edition of *Debt Capital Markets*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

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Luxembourg

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MARKET SNAPSHOT

Market climate

1 | What types of debt securities offerings are typical, and how active is the market?

Regulatory framework

Luxembourg is a renowned financial centre, particularly active in the debt segment of the capital markets. As a result of a favourable legal and tax framework, debt issuances of all types are frequently structured through Luxembourg. In addition, the markets operated by the Luxembourg Stock Exchange (LuxSE) are prominent in the listing and negotiation of debt instruments.

To date, the LuxSE operates two markets:

- the regulated market, *Bourse de Luxembourg* (within the meaning of Directive 2014/65/EU on markets in financial instruments, as amended (MiFID II)), which falls within the EU harmonised regime and offers simplified access to other European regulated markets, thanks to the European passport for prospectuses (Regulated Market); and
- the exchange regulated market set up in 2005 as a multilateral trading facility within the meaning of MiFID II, which provides an alternative market to the Regulated Market (Euro MTF).

The LuxSE also offers the possibility for issuers to register their securities on its Official List without admission to trading (Securities Official List (SOL)). The SOL is designed for issuers looking for visibility and for whom admission to trading is not a prerequisite, while being spared the extensive regulatory framework applicable to trading of securities.

Moreover, within the frame of Regulation (EU) 2017/1129 of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, as amended (Prospectus Regulation), the LuxSE has established a professional segment for each of the two markets it operates. The professional segments are specifically designed for issuers targeting professional clients within the meaning of MiFID II. Securities admitted to the professional segments are not accessible to retail investors. Trading on the professional segments is only allowed between professional investors.

In 2016, the LuxSE launched the United Nations-awarded Luxembourg Green Exchange (LGX), which is the world's first and leading platform dedicated exclusively to green, social or sustainable financial instruments. Issuers benefit from higher visibility and investors enjoy an easy access to sustainable financial instruments and a high level of transparency.

According to publicly available information and recent figures provided by the LuxSE, as of December 2020, the markets operated by the LuxSE had 37,197 quotation lines of securities in 66 currencies from over 2009 issuers in 98 countries.

About 70 per cent of debt securities listed in Luxembourg are listed on the Regulated Market. At present, a broad range of debt securities are traded on the LuxSE (representing around 39 per cent of all securities traded on the markets operated by the LuxSE). These debt securities include:

- international debt: the LuxSE is the European leader in terms of listed international bonds; around 35 per cent of international debt securities in Europe are listed on the LuxSE;
- high-yield bonds: the LuxSE is Europe's leading exchange for the listing of high-yield bonds. About 40 per cent of European high-yield bonds are listed on the LuxSE;
- green bonds: the LGX grew by 930 per cent from 2016, year of its launch. With 459 green bonds listed in 29 currencies by 124 issuers, the LuxSE is the leading global exchange for green bonds;
- social bonds: up until now, 60 bonds have been categorised as social, including bonds issued by the Council of Europe Development Bank, the Spanish *Instituto de Crédito Oficial* and the *Nederlandse Waterschapsbank, NV*. The LuxSE also marked in October 2020, the listing of the first social bond issued under the EU SURE (Support to mitigate Unemployment Risk in an Emergency) programme in the context of the covid-19 pandemic. Social bonds allow to finance social projects and to benefit from environmental, social and corporate governance credentials to the extent the proceeds from the relevant instruments are applied exclusively to finance or refinance social projects;
- sustainable bonds: to date, 311 bonds have been categorised as sustainable, including bonds issued by the International Bank for Reconstruction and Development, the BNG Bank and the European Investment Bank. Sustainable bonds allow to finance sustainable projects and to benefit from environmental, social and corporate governance credentials if the proceeds are applied exclusively to finance or refinance sustainable projects.
- dim sum bonds: in 2011, the LuxSE admitted to trading the first dim sum bonds, denominated in the Chinese currency. 48 per cent of dim sum bonds that are listed on European stock exchanges are listed with the LuxSE and the first offshore yuan bonds in the euro-zone by a mainland China issuer are also listed with the LuxSE;
- sovereign debt: the LuxSE lists at least one issue of the sovereign debt of 65 different countries;
- sukuk: the LuxSE was the first European stock exchange to list sukuk in 2002. Twenty-one sukuk have since then been listed on the LuxSE (including the sovereign sukuk recently issued by the Luxembourg state, the first sovereign sukuk to be denominated in euros);
- supranational debt: Luxembourg remains a prominent listing venue for supranational debt issuers, including the European Investment Bank, the World Bank, the European Bank for Reconstruction and Development, the European Stability Mechanism and the European Commission;

- asset-backed securities: in 2020, there were 1752 asset-backed securities from 368 issuers;
- debt issuance programmes: there were about 494 new debt issuance programmes in operation on the LuxSE as of December 2020; and
- others: the LuxSE also lists other types of debt instruments, such as indexed bonds, convertible bonds and commercial papers.

Moreover, to keep up to speed with recent market developments and the increasing interest in sustainable finance, the LuxSE decided in November 2020, to welcome sustainability-linked bonds on its LGX platform. Following this, the LuxSE teamed up in February 2021 with the Climate Bonds Initiative (an international non-profit organisation aimed at mobilising the US\$100 trillion bond market for climate solutions (CBI)) to display on the LGX a brand-new section dedicated exclusively to climate-aligned issuers (CAI), which are public or private companies with outstanding debts that are not labelled as green, social or sustainability bonds, but which finance climate-aligned activities. On the day of the launch, the climate bonds-LGX Climate-Aligned Issuers section included 23 CAIs in 16 different countries. Other CAIs are expected to join the LuxSE and LGX in the coming months.

Regulatory framework

2 | Describe the general regime for debt securities offerings.

The regulatory framework applicable to public offers of debt securities and to their listing, derives essentially from the Prospectus Regulation and the law of 16 July 2019 on prospectuses for securities (the Prospectus Law).

In addition, the admission to trading of debt securities on both markets operated by the LuxSE is subject to the internal rules and regulations of the LuxSE (the LuxSE Rules).

In Luxembourg, the issuance of debt securities may be subject to one of three different regimes, depending on the nature of the offering or the type of market where the securities are to be admitted to trading.

First regime: Public offers and admission to trading on a regulated market subject to EU harmonisation under the Prospectus Regulation

No offer of debt securities to the public or admission to trading on the Regulated Market within the territory of Luxembourg is allowed unless a prospectus has been duly approved or passported in Luxembourg, in accordance with the provisions of the Prospectus Regulation. An offer of securities to the public is understood as a communication to persons in any form and by any means, presenting sufficient information on the terms of the offer and the securities to be offered, so as to enable an investor to decide to purchase or subscribe for those securities.

A prospectus drawn up in accordance with this regime is subject to EU harmonisation under the Prospectus Regulation and benefits from the European passport.

Second regime: Public offers and admission to trading of securities not encompassed by the Prospectus Regulation

No offer to the public or admission to trading on the Regulated Market of debt securities falling outside the scope of the Prospectus Regulation is allowed, unless an alleviated prospectus is approved by the *Commission de Surveillance du Secteur Financier* (CSSF), the Luxembourg financial sector supervisory authority (for offers to the public) or by the LuxSE (for admissions to trading) (unless an exemption under the Prospectus Law applies). An alleviated prospectus does not benefit from the European passport nor from the rules on harmonised offers.

Third regime: admissions to trading on a non-regulated market

The Prospectus Law empowers the LuxSE to approve prospectuses for listings on the Euro MTF, in accordance with the LuxSE Rules. In this

context, the CSSF acts as the authority responsible for supervising the LuxSE. High-yield bonds, a busy segment of the debt capital markets in Luxembourg, are in general subject to this framework, as they normally qualify as exempted offers under one of the safe harbours described below and are typically listed on the Euro MTF.

FILING AND DOCUMENTARY REQUIREMENTS

General filing requirements

- 3 | Give details of any filing requirements for public offerings of debt securities. Outline any requirements for debt securities that are not applicable to offerings of other securities.

Unless an exemption under the Prospectus Regulation or the Prospectus Law applies, no offer of debt securities shall be made to the public within the territory of Luxembourg without the prior publication of a Prospectus Regulation compliant prospectus duly approved by the CSSF or, as the case may be, approved by the competent authority in another member state and duly passported in Luxembourg.

The requirements in connection with an application with the CSSF for the approval of a prospectus are set out in the Prospectus Regulation, the Delegated Regulation (EU) 2019/980 supplementing Regulation (EU) 2017/1129 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, as amended (Delegated Regulation (EU) 2019/980), the Delegated Regulation (EU) 2019/979 supplementing Regulation (EU) 2017/1129 with regard to regulatory technical standards on key financial information in the summary of a prospectus, the publication and classification of prospectuses, advertisements for securities, supplements to a prospectus, and the notification portal, as amended (Delegated Regulation (EU) 2019/979), the Prospectus Law and the CSSF Circular 19/724, as amended (CSSF Circular 19/724).

Since 1 March 2021, issuers must submit their applications related to the Prospectus Regulation and the Prospectus Law through a new CSSF interactive digital portal (e-Prospectus).

The submission file for approval by the CSSF must include a draft prospectus containing all the information which is required for investors to make an informed assessment as well as:

- the documents to be approved (and, where applicable, the documents incorporated by reference which have not yet been approved by the CSSF beforehand); and
- a cross-reference list indicating where the information required under the relevant annexes to the Delegated Regulation (EU) 2019/980 can be found in the prospectus.

The prospectus must be filed with the CSSF by the issuer, the offeror or by a person acting on behalf of one of these persons. The issuer may draw up the prospectus as a single document or as separate documents, in accordance with the Prospectus Regulation and the Delegated Regulation (EU) 2019/980, namely composed of a registration document containing the information relating to the issuer, a securities note containing information concerning the securities and a summary.

For securities issued under an offering programme, the prospectus may consist of a base prospectus containing all relevant information regarding the issuer and the securities. The final terms of the offered securities must then be published (in accordance with the Prospectus Regulation) and filed with the CSSF. The information given in the base prospectus shall be supplemented, if necessary, with updated information on the issuer and on the securities. Similar rules apply in the case of an application to the CSSF to approve a prospectus in connection with an admission to trading on the Regulated Market. In such case, a separate application for the admission to trading will also need to be simultaneously filed with the LuxSE.

Separately, the LuxSE Rules will govern the filing for approval of a prospectus in connection with the admission to trading on the Euro MTF.

It is also worth mentioning that, in accordance with the Prospectus Regulation, issuers seeking to raise funds on a regular basis can file a 'Universal Registration Document' (URD), which describes the company's organisation, business, financial position, earnings and prospects, governance and shareholding structure. The mechanism is available to issuers whose securities are admitted to trading on the Regulated Market or the Euro MTF. Once approved for two consecutive financial years, subsequent URDs can be filed or amended without prior approval of the competent authority. A frequent issuer will thus benefit from a fast track prospectus approval process.

Prospectus requirements

4 | In a public offering of debt securities, must the issuer produce a prospectus or similar documentation? What information must it contain?

Unless an exemption under the Prospectus Regulation or the Prospectus Law applies, no offer of debt securities shall be made to the public within the territory of Luxembourg without the prior publication of a Prospectus Regulation compliant prospectus duly approved by the CSSF or, as the case may be, approved by the competent authority in another member state and duly passported in Luxembourg:

- Information requirements:
 - Prospectuses for public offers of debt securities must comply with the information requirements set out in the Prospectus Regulation, the Delegated Regulation (EU) 2019/980 and the Delegated Regulation (EU) 2019/979, including the relevant annexes applicable to debt instruments.
 - The prospectus will contain information on the assets and liabilities of the issuer, its financial position, profits and losses, future prospects as well as on the rights attached to the offered securities. The prospectus shall also include information on the applicable risk factors, business and markets' descriptions, financial statements of the issuer and management discussion and analysis.
 - It will need to contain a summary conveying in a non-technical language, the essential characteristics and risks associated with the issuer, any guarantor and the securities. The Prospectus Regulation and the Delegated Regulation (EU) 2019/979 detail the features of such summary. However certain exemptions from the obligation to include a summary can apply (eg, for debt instruments having a minimum denomination of at least €100,000).
 - Documents included by reference in the prospectus must also be filed (in a searchable electronic format) with the CSSF and be accessible through hyperlinks pointing directly to the relevant documents, which must remain valid and freely accessible for at least 10 years. To comply with these requirements, the LuxSE has recently built a new tool (the Perma Link Upload Service – PLUS).
 - The CSSF may request further information to be included in the prospectus for certain types of issuers.
 - A simplified disclosure regime for secondary issuances under the framework of the Prospectus Regulation also allows issuers – under certain conditions – to draw up a simplified prospectus.
 - Additionally, the Prospectus Regulation introduces the concept of an EU Growth Prospectus for certain issues by small and medium-sized enterprises, which permits an alleviated standard of disclosure in a standardised format. These provisions aim to facilitate access to capital markets for smaller companies.

- Language requirements:
 - Where Luxembourg is the home member state (within the meaning of the Prospectus Regulation) and an offer to the public is made in Luxembourg only, the prospectus may be drawn up in Luxembourgish, English, French or German.
 - The same applies where Luxembourg is the home member state and public offers are made in more than one member state. However, in such a case, the prospectus must also be made available either in a language accepted by the competent authorities of each host member states or in a language customary in the sphere of international finance, at the choice of the issuer or offeror.

Documentation

5 | Describe the drafting process for the offering document.

Market practice in Luxembourg for drafting of offering documentation, notably the prospectus, closely follows international practices, standards and procedures.

Typically, the prospectus or offering memorandum is drafted by the issuer's counsel (often a joint effort by local and international counsels), in accordance with applicable rules and regulations and closely reviewed by the issuer's management team, the investment banks acting as managers and initial underwriters or purchasers, the auditors and their respective counsels. It is common practice to hold regular drafting sessions involving all parties, notably for the most relevant sections, such as the description of the debt instruments, management analysis and discussions of business prospects.

There are key documentation issues concerning the level and detail of disclosure on the issuer's business and prospects, including the relevant risk factors, the description of certain matters of Luxembourg law relevant in the context of the issuance (ie, insolvency law, corporate governance and tax) and the description of the main legal features of the debt instruments.

Where the offer qualifies as an offer to the public (and no exemption from the obligation to draw up a Prospectus Regulation compliant prospectus applies) or if the debt instruments are to be admitted to trading on a regulated market, the drafting process also involves in principle the CSSF, as the regulator will comment in detail on the draft document until it is approved.

The drafting of offering documents benefiting from an exemption from the obligation to draw up a Prospectus Regulation compliant prospectus follows a similar process and will be subject to high standards of care and transparency. In case such an offer is followed by an application for trading of the bonds on the Euro MTF, the LuxSE will be involved in the review.

6 | Which key documents govern the terms and conditions of the debt securities? Who are the parties to such documents? How can such documents be accessed?

Issuance and offers of debt securities are primarily governed by three key documents:

- the terms and conditions of the debt instruments set out in detail the legal content of the debt instruments to be offered, governing the calculation and payment of interests, the amortisation of the principal, the events triggering a mandatory or voluntary early redemption, the events of default, etc. Although these may be governed by Luxembourg law, it is common to have debt instruments offered in Luxembourg governed by English law or New York law. Specifically for the high-yield bonds segment, in which Luxembourg has been particularly active in the aftermath of the financial crisis, the debt instruments are created under an

indenture or a trust deed, which, in addition to the terms and conditions, will also describe the applicable security package and guarantees, and also detail the usual incurrence and maintenance covenants agreed by the issuer;

- the underwriting or purchase agreement (or dealer agreement for debt programmes) governs the relationship between the issuer and the financial intermediaries who will assist in placing the instruments with the final investors. This agreement is usually confidential and not disclosed to investors; and
- the agency agreement governs the relationship between the issuer, the trustee and the agent(s) appointed to administer the outstanding debt instruments, including the payments of interest and principal, updates to the register of bondholders (if any), the sending of notices to investors and other actions on behalf of the issuer.

The terms and conditions are, as a rule, fully disclosed in the applicable prospectus or offering memorandum prepared in connection with the offer. In addition, the terms and conditions and agency agreement are usually made available to investors at the registered office of the issuer or the appointed agent(s).

In addition, other documents that may be prepared in connection with the offer include the relevant issuer's corporate authorisations, the global certificates representing the debt instruments, engagement letters for auditors and the listing applications.

When a trustee or common representative acting on behalf of the holders of the debt instruments is appointed, which is also common, a trust deed or appointment agreement is put in place setting out the roles, rights and obligations of this entity appointed to act on behalf of, and in the interest of the investors. For high-yield bonds issuances, this is achieved under the applicable indenture or trust deed.

Also, for secured issuances, as often is the case with high-yield bonds, the contractual documentation will also include the relevant security documents.

7 | Does offering documentation require approval before publication? In what forms should it be available?

No offer of securities can be made to the public within the territory of Luxembourg without the prior publication of a Prospectus Regulation compliant prospectus approved by the CSSF or by the competent authority of another member state and passported in Luxembourg (unless one of the exemptions applies).

Approval of the prospectus by the CSSF will depend on the authority being satisfied that the disclosure requirements set out in the Prospectus Regulation, the Delegated Regulation (EU) 2019/980 and the CSSF Circular 19/724 are duly met.

This approval does not guarantee the economic and financial soundness of the offering, nor the quality and solvency of the issuer. The CSSF will require the document to contain an express disclaimer to this effect.

Once approved, the prospectus must be filed with the CSSF and made available to the public in advance of, and at the latest, at the beginning of the public offer of the debt securities involved. The prospectus will be deemed available to the public when published in electronic form on either the website of:

- the issuer or offeror;
- the financial intermediaries placing or selling the securities, including paying agents; or
- in electronic form on the website of the LuxSE.

Offering documents falling under an exemption from the obligation to draw up a Prospectus Regulation compliant prospectus (such as

high-yield bonds benefiting from a safe harbour provision) are not subject to the approval of the CSSF.

Authorisation

8 | Are public offerings of debt securities subject to review and authorisation? What is the time frame for approval? What are the restrictions imposed, if any, on the issuer and the underwriters during the review process?

Upon submission of the draft prospectus, the CSSF shall notify the issuer within 10 working days of its decision regarding the approval of the prospectus. Frequent issuers applying the URD regime may benefit from a fast-track approval process of five working days. Failure by the CSSF to notify its decision within such a review period is considered as an implicit decision of refusal.

If the CSSF finds, on reasonable grounds, that the documents submitted are incomplete or that supplementary information is needed, it shall notify the issuer or offeror within the review period specified above, and the review period shall start to run only from the date on which such information is provided.

The effective timetable for the approval of the prospectus can thus vary from two to three weeks to two or more months, mainly depending on whether the issuer is a first-time issuer, the existence of a registration document, the characteristics of the offer (cross-border, etc) or the securities offered (eg, the complexity of the terms and conditions) and the completeness of the file.

For a first-time offeror or in the case of a complex transaction as well as for transactions aimed at the retail market, it is thus advisable to file the offering documentation well in advance.

During the offer period, any promotional communication or advertisement relating to an offer of securities to the public must be clearly recognisable as such, and the information contained therein cannot be inaccurate or misleading and needs to be in line with the prospectus.

Such a document must also indicate that a prospectus has been or will be published and must indicate where potential investors are or will be able to retrieve a copy thereof.

Advertisements disseminated to potential retail investors are subject to specific requirements detailed in the Delegated Regulation (EU) 2019/979.

Similar rules apply to public offers made pursuant to an alleviated prospectus.

Regulation (EU) 596/2014 on market abuse, as amended (Market Abuse Regulation) and as supplemented in particular by the Commission Delegated Regulation (EU) 2016/958, sets out a harmonised framework throughout the EU to which persons producing or disseminating investment recommendations relating to listed securities need to comply with to ensure high standards of fairness, probity and transparency so as not to mislead market participants or the public.

9 | On what grounds may the regulators refuse to approve a public offering of securities?

The CSSF will not approve the prospectus until it is satisfied that it meets all the requirements set out in the Prospectus Regulation and Part II of the Prospectus Law (in the case of a Prospectus Regulation compliant prospectus) or Part III of the Prospectus Law (in the case of an alleviated prospectus).

Similarly, the LuxSE will refuse to approve a prospectus drawn up for the purposes of admitting debt securities to trading on the Euro MTF to the extent that the requirements set out in the LuxSE Rules are not met.

10 | How do the rules differ for public and private offerings of debt securities? What types of exemptions from registration are available?

Public offers in Luxembourg will, as a rule, require the drawing up of a Prospectus Regulation compliant prospectus, either approved by the CSSF or by the competent authority of another member state and subsequently passported into Luxembourg. The Prospectus Regulation and the Prospectus Law provide however for a set of safe harbours, that allow an offer to the public to be exempted from the obligation to publish a Prospectus Regulation compliant prospectus.

This will be the case for offers of debt securities (among others):

- addressed solely to qualified investors (as defined in the Prospectus Regulation);
- addressed to fewer than 150 natural or legal persons per member state, other than qualified investors;
- whose denomination per unit amounts to at least €100,000; or
- addressed to investors who acquire debt securities for a total consideration of at least €100,000 per investor, for each separate offer.

Furthermore, Luxembourg has opted for the small-scale exemption introduced by the Prospectus Regulation pursuant to which issues of securities are exempted from the obligation to publish a Prospectus Regulation compliant prospectus, if the total amount of the offer in all member states is less than €8 million (on a rolling 12-month basis). A prior notification must be sent to the CSSF when making use of this exemption.

For offers with a total consideration in all member states between €5 million and €8 million over a 12-month period, an information note must be published in accordance with the Prospectus Law, on top of the prior notification to the CSSF. It should be noted that the Prospectus Regulation will not apply to offers of securities with a total consideration in all member states of less than €1 million over a 12-month period.

In addition, the obligation to publish a prospectus will not apply to, among others, public offers of debt securities issued in a continuous or repeated manner by a credit institution, where the total aggregated consideration in the EU for the securities offered is less than €75 million per credit institution, calculated over a 12-month period, provided that those securities are not subordinated, convertible or exchangeable and do not give a right to subscribe for, or acquire other types of securities and are not linked to a derivative instrument.

High-yield bonds issuances structured out of Luxembourg will typically be exempted from the requirement to draw up a Prospectus Regulation compliant prospectus, as such offers are usually addressed solely to qualified investors.

However, any subsequent resale of debt securities (including the placement of securities through financial intermediaries) that previously fell within one of these safe harbours will be regarded as a separate offer and could trigger an obligation to publish a Prospectus Regulation compliant prospectus, unless one of the aforementioned exemption applies to the said resale itself.

Similar exemptions apply to offers of securities governed by Part III of the Prospectus Law (ie, the alleviated regime).

While there are no specific rules governing exempted offers of securities, general principles of Luxembourg law will remain applicable, particularly in what concerns liability for inaccurate or incomplete information. Issuers and underwriters in the context of exempted offers are therefore required to treat all prospective investors (including qualified investors) fairly and equally, particularly concerning the material information made available in the context of the offer.

Offering process

11 | Describe the public offering process for debt securities. How does the private offering process differ?

For offers requiring the approval of a prospectus by the CSSF, the primary focus is on drafting such a document in view of its submission to the regulator. This is a joint task carried out by the issuer, the underwriters and their respective advisers, which will take in normal circumstances, from four to 10 weeks, depending on the characteristics and track record of the relevant issuer. The CSSF will agree on a tentative timetable for approval, although the approval will in any event be subject to all legal requirements being complied with.

Once the prospectus is approved and, when appropriate, passported into other member states, the offer period can start, usually for a period ranging between five and 15 days.

In parallel, the issuer's management team and the underwriters will conduct marketing and sales activities to reach out to investors.

As the offer period comes to an end, the underwriters will proceed with the allocation of the offer and its settlement will, as a rule, occur on the following third day. Price stabilisation activities, if any, will follow usually during a period of up to 30 days.

For debt offerings exempted from the requirement to publish a Prospectus Regulation compliant prospectus but for which application has been made to admit them to trading on the Euro MTF, which is typically the case for high-yield bonds, regulatory requirements are less stringent and, accordingly, the process is usually more flexible (particularly in relation to marketing activities, which may begin earlier in the process). The prospectus is usually approved by the LuxSE between two and four weeks as of the first filing.

Closing documents

12 | What are the usual closing documents that the underwriters or the initial purchasers require in public and private offerings of debt securities from the issuer or third parties?

Customary documentation to be produced in connection with the closing of a debt issuance includes:

- counsels' legal opinions covering Luxembourg matters and, where applicable, any relevant foreign law (eg, when the issuer's group is based abroad or when the debt instruments are governed by another law);
- certificates issued by appropriate officers of the issuer or guarantor, providing usual assurances as to solvency and authority to enter into the relevant transaction documents; and
- auditor's opinions and comfort letters.

Listing fees

13 | What are the typical fees for listing debt securities on the principal exchanges?

The CSSF will charge a fee for the approval of a Prospectus Regulation compliant prospectus, ranging from €5,000 (for a prospectus) to €8,000 (for a base prospectus). Additional fees will apply for the approval of supplements, as well as in the case of multiple issuers or guarantors. The overall amount levied by the CSSF shall in no event exceed €15,000.

Additional fees levied by the LuxSE will be incurred in case of a listing on the Regulated Market or the Euro MTF consisting of one-off approval and listing fees (for a total amount of €4,250 for a first listing and €2,050 for subsequent listings) and an annual maintenance fee (ranging between €400 and €800 depending on the issuance size and whether this is a first or subsequent listing). Supranational issuers and recurrent issuers benefit from reduced fees.

KEY CONSIDERATIONS

Special debt instruments

14 How active is the market for special debt instruments, such as equity-linked notes, exchangeable or convertible debt, or other derivative products?

The LuxSE lists and negotiates equity-linked notes, hybrids and exchangeable or convertible bonds and has a high market share in this area. In particular, the post-crisis years have seen a significant increase in these types of issuances, particularly by financial sector entities looking to meet regulatory capital requirements through the issuance of hybrid instruments.

The launch in 2016 of the LGX has boosted interest for green securities listings in Luxembourg. The LGX is the first platform dedicated exclusively to green securities. The LGX helps issuers market their green securities by generating awareness about their green projects. To date, the LuxSE is the leading exchange for green securities with half of the world's listed green bonds (in terms of volumes).

In addition, under the umbrella of the LGX, issuers can also list the so-called social and sustainable bonds. These two categories of bonds are based on strict eligibility criteria (in line with the Social Bond Principles and the Sustainability Bond Guidelines developed by the International Capital Markets Association (ICMA)). An independent assessment on the use of proceeds, a selection process and management of proceeds is required for social or sustainable bonds to be categorised as such. The LuxSE also decided in November 2020 to welcome sustainability-linked bonds on its LGX platform, following the publication of ICMA's Sustainability-Linked Bond Principles in June 2020.

15 What rules apply to the offering of such special debt securities? Are there any accounting implications that the issuer should be aware of?

Issuance of special debt instruments generally follows the rules that apply to the offer and admission to trading of debt instruments.

For Prospectus Regulation compliant transactions, the relevant offering documentation will need to comply with the disclosure requirements set out in the Prospectus Regulation, the Delegated Regulation (EU) 2019/979 and the Delegated Regulation (EU) 2019/980 and, specifically, in the schedules that apply to special types of equity-linked debt issuances.

Where equity-linked debt instruments are to be issued and offered by a Luxembourg entity, a requirement for approval by a general meeting of shareholders may as a rule apply, including for the purpose of withdrawing the statutory preferential rights of existing shareholders.

Under the LuxSE Rules, convertible or exchangeable bonds may only be admitted to trading on one of the markets operated by the LuxSE if the underlying shares have themselves been previously admitted to trading on the same market, or on another market offering similar assurances. By derogation, these securities may however be admitted to trading if the LuxSE is satisfied that the holders of the debt instruments have received all the required information to form an opinion on the value of the shares related to such debt instruments.

As far as the listing of green, social and sustainable bonds on the LuxSE is concerned, issuers will need to comply with certain specific disclosure requirements and obtain an independent assessment on the use and management of the proceeds in order to join the LGX. To remain on the LGX, issuers will have to commit to ex-post reporting obligations (to ensure that the proceeds are used to finance green, social and sustainable projects). Additionally, the LGX eligibility criteria for sustainability-linked bonds are built on ICMA's Sustainability-Linked Bond Principles, which cover five core principles: selection of key performance

indicators; calibration of sustainability performance targets (SPTs); the bond must include a financial and/or structural impact which is triggered by the achievement (or otherwise) of the SPTs; and reporting and independent verification of performance.

Classification

16 What determines whether securities are classed as debt or equity? What are the implications for instruments categorised as equity and not debt?

For the purposes of Luxembourg law, classification of a security as equity or debt will be determined by a substance approach, taking into account the relevant features of the securities.

Typical features of equity instruments include voting alongside holders of common share capital, participation in the profits of the issuer, right to liquidation proceeds and to the residual value of the issuer as well as subordination to all other creditors. The Prospectus Regulation expressly defines equity securities as shares and other transferable securities equivalent to shares in companies, as well as any other type of transferable securities issued by the same issuer (or another entity belonging to the same group), giving the right to acquire shares or transferable securities equivalent to shares.

Conversely, typical features of debt instruments include a claim for payment of principal, fixed or variable interests, no voting rights alongside shareholders and no participation in liquidation proceeds.

The content of a Prospectus Regulation compliant prospectus will differ in an equity issue or a debt issue and different elements will need to be provided to investors. In addition, debt instruments may benefit from certain safe harbour provisions, which may preclude the qualification of a securities offer as a public offer, or which may otherwise provide for an exemption to draw up and publish a Prospectus Regulation compliant prospectus.

Transfer of private debt securities

17 Are there any transfer restrictions or other limitations imposed on privately offered debt securities? What are the typical contractual arrangements or regulatory safe harbours that allow the investors to transfer privately offered debt securities?

No general restrictions on transferability of debt securities are imposed in connection with offers of debt securities exempted from the obligation to draw up a Prospectus Regulation compliant prospectus, unless any subsequent offer of the relevant securities would qualify as a public offer, in which case the requirement to draw up a Prospectus Regulation compliant prospectus would apply, to the extent no exemption thereto is applicable.

It is customary for certain transaction documentation (notably the underwriting agreement and the offering memorandum) to include an undertaking by the underwriters, directors or managers not to offer and sell the debt securities in a way that could trigger the requirement to draw up a Prospectus Regulation compliant prospectus under the applicable laws and regulations.

Typically, these undertakings are devised to make sure that the relevant offer of securities falls under one of the safe harbours provided for in the Prospectus Regulation and the Prospectus Law.

Cross-border issues

- 18** | Are there special rules applicable to the offering of debt securities by foreign issuers in your jurisdiction? Are there special rules for domestic issuers offering debt securities only outside your jurisdiction?

Under the EU harmonised legal framework for mutual recognition of prospectuses under the Prospectus Regulation, when Luxembourg is the host member state, the prospectus and any supplement thereto, is valid for a public offer in Luxembourg or for an admission to trading on the Regulated Market, as soon as the CSSF and the European Securities and Markets Authority (ESMA) have received a certificate of approval from the competent authority of the home member state of the issuer, attesting that the prospectus has been drawn up in accordance with the Prospectus Regulation. In such cases, the CSSF does not undertake any approval or administrative procedures relating to the prospectus.

There are no special rules applying to securities offered outside Luxembourg by a Luxembourg issuer, except when Luxembourg is the home member state for the purposes of the Prospectus Regulation, in which case the Prospectus Law and the EU harmonised framework for the passporting of prospectuses will apply similarly.

- 19** | Are there any arrangements with other jurisdictions to help foreign issuers access debt capital markets in your jurisdiction?

Under the EU harmonised rules for mutual recognition of prospectuses, issuers of debt securities that obtain the approval of a prospectus (in the context of a public offer or an admission to trading on a regulated market) in another member state, may require the relevant home member state authority to notify the CSSF and the ESMA in order to 'passport' their prospectus.

Once this process is completed, the issuer will be allowed to offer the relevant debt securities in Luxembourg or admit such securities to trading on the Regulated Market (in the latter case, the LuxSE in its capacity of market operator of the Regulated Market will still need to approve the listing application).

Underwriting

- 20** | What is the typical underwriting arrangement for public offerings of debt securities? How do the arrangements for private offerings of debt securities differ?

Underwriting activities in connection with Luxembourg debt capital markets follow very closely the prevailing standards in the international capital markets, notably the standards set out by the ICMA.

Underwriters will typically agree to purchase the offered securities, for subsequent dissemination with investors. A typical underwriting agreement will include the issuer's representations and warranties, the agreement to purchase and sell the debt instruments, the covenants and undertakings of the issuer, the terms of the offering and the applicable indemnity clauses.

In general, there are no fundamental differences in the underwriting arrangements for public offering or private offering.

- 21** | How are underwriters regulated? Is approval required with respect to underwriting arrangements?

Underwriters established in Luxembourg are subject to a licensing requirement with the CSSF and to its supervision (unless duly licensed in another member state).

Other than the requirements set out previously, underwriting agreements entered into in connection with debt issuances are not subject to approval by the CSSF.

Transaction execution

- 22** | What are the key transaction execution issues in a public debt offering? How is the transaction settled?

As a significant international financial centre, Luxembourg hosts several clearing and settlement agents with notable background and experience in public offers and admission to trading in Luxembourg.

Clearstream Banking SA, LuxCSD SA, Euroclear Bank SA/NV and BNY Mellon CSD SA/NV are the main players.

Settlement and execution of debt issuances will fundamentally depend on the form of representation of the securities.

In any event, settlement and delivery of debt instruments occur typically on a payment-against-delivery basis, on the second day following the end of the offer or placement period. Regardless of the actual form of the debt securities (bearer, registered or dematerialised), the debt instruments are subsequently registered in the books of the entity operating the relevant settlement system and thereafter credited to investors through the accounts held with the participant financial intermediaries.

Admission to trading will, as a rule, occur on the date of settlement and issue of the debt securities.

Holding forms

- 23** | How are public debt securities typically held and traded after an offering?

The traditional and still most commonly used form of representation for debt securities in Luxembourg is the registered form or bearer form.

In both cases, the issuance is either represented by a global note deposited with a custodian or common depositary, who will keep the global note for the account of the central securities depositary or depositaries or registered in the bondholders' register maintained by the Luxembourg issuer at its registered office or an appointed registrar, on behalf of a nominee for the account of the central securities depositary or depositaries. The latter then credits the accounts of its participants with the relevant number of issued debt instruments, who in turn will (directly or indirectly) credit the accounts of the ultimate investors.

The applicable terms and conditions will provide only for certain exceptional circumstances in which definitive notes may be issued, notably in scenarios where there is a severe disruption of the accepted clearing systems.

The law of 6 April 2013 on dematerialised securities introduced in Luxembourg the concept of dematerialised securities. This law requires the whole issuance of (debt) fungible instruments to be held through an issue account maintained with a central clearing entity, which is required to be based and recognised as such in Luxembourg, and are thereafter held through securities accounts maintained by investors (directly or indirectly) with financial intermediaries.

The law on dematerialised securities has contributed to the modernisation of Luxembourg securities law by providing enhanced legal certainty and flexibility for cross-border issues and holdings of securities. It is interesting to note in this respect that further to recent amendments to the said law, dematerialised securities can now also be directly issued by using blockchain technology.

Outstanding debt securities

24 Describe how issuers manage their outstanding debt securities.

Management of outstanding debt securities by Luxembourg issuers or in relation to debt securities admitted to trading on one of the markets operated by the LuxSE, follows the prevailing market practices in the international capital markets and will depend on the particular goals and needs of the relevant issuer, on the overall market conditions and on the terms and conditions applicable to the relevant debt securities.

The crisis years as well as the last year (owing to the covid-19 crisis) have evidenced a growing number of interactions between issuers and investors (acting through trustees or other fiduciaries) in the context of liability management transactions, for the purpose of obtaining consent for certain actions (notably, in connection with rating triggers) as well as tender and exchange offers, as issuers seek either to take advantage of arbitrage opportunities or to extend the maturities of outstanding issuances.

Issuers also frequently engage themselves in ongoing purchases of their securities on the open market.

For listed debt securities, all these interactions are subject to mandatory disclosure and public dissemination (including in the LuxSE information system), so that interested investors can have access to the elements required to make informed investment decisions.

REGULATION AND LIABILITY

Reporting obligations

25 Are there any reporting obligations that are imposed after the offering of debt securities? What information would be included in such reporting?

Where debt securities are admitted to trading on the Regulated Market, reporting and disclosure obligations will apply to the issuers of such securities under the law of 11 January 2008 on transparency requirements, as amended (the Transparency Law), the Market Abuse Regulation and the LuxSE Rules.

Debt securities admitted to the Euro MTF are not subject to the Transparency Law but will be subject to the reporting and disclosure obligations set out in the Market Abuse Regulation and the LuxSE Rules.

Under the Transparency Law, issuers of debt securities admitted to trading on the Regulated Market having chosen Luxembourg as their home member state are notably required to file, store and publish regulated information, which comprises, inter alia, financial information.

Specific exemptions to reporting and disclosure requirements exist, notably for certain public law bodies and for debt securities with a denomination par unit of at least €100,000. In addition, issuers are also subject to ad hoc disclosure requirements, such as the disclosure of any changes in the rights of holders of debt securities or the issuance of new debt securities.

Under the LuxSE Rules, issuers whose debt securities are admitted to trading on one of the markets of the LuxSE must, inter alia, communicate certain information to the LuxSE, including information relating to events affecting the debt securities, such as any amendment affecting the rights of different categories of debt securities, any issue or subscription of securities or a change of the issuer's name.

In addition, issuers with debt securities admitted to trading on the Euro MTF will need to comply with certain publication requirements set out in the LuxSE Rules (eg, relating to any changes to the rights of bondholders).

Under the Market Abuse Regulation, issuers of debt securities admitted to trading on the Regulated Market or the Euro MTF are

also required to disclose any inside information as soon as possible (although such publication can be delayed under certain conditions).

Inside information must be disclosed in a manner enabling the public's fast access and complete, correct and timely assessment of the information. In practice, Luxembourg issuers rely for such purpose on the disclosure services offered by the LuxSE.

The Market Abuse Regulation also requires each issuer of debt securities to ensure the prompt disclosure of all transactions on their issued securities effectuated by persons discharging managerial responsibilities within the issuer (or persons closely associated to such managers).

In 2017, the LuxSE introduced a new multi-functional reporting tool called FIRST (which stands for Financial Instruments Reporting Services Tool) to publish regulated information in accordance with regulatory standards. FIRST allows to simultaneously distribute announcements to the market, to the officially appointed mechanism within the meaning of the Transparency Law and to the financial regulator through a single portal. The issuer can access the platform either directly or pass control to its agent or law firm.

Additionally, the use of a legal entity identifier (LEI) code, a 20-digit unique and universal identifier designed to permit absolute certainty in the identification of entities participating in financial transactions and exchanging information with local regulators and trading venues, has become a standard requirement under a number of EU regulations and directives, including capital markets legislation. In Luxembourg, issuers having securities admitted to trading on the Regulated Market or the Euro MTF are required to obtain and keep an LEI code.

Liability regime

26 Describe the liability regime related to debt securities offerings. What transaction participants, in addition to the issuer, are subject to liability? Is the liability analysis different for debt securities compared with securities of other types?

Responsibility for the information given in a prospectus attaches to the issuer, the offeror, the person asking for the admission to trading on a regulated market or multilateral trading facility or the guarantor, as the case may be.

This principle applies for debt securities and other types of securities. Neither the Prospectus Regulation nor the Prospectus Law foresee an autonomous civil liability regime as they mainly establish the situations upon which civil liability may be sought and the relevant persons incurring (non-exclusive) liability.

The persons responsible for the prospectus must be clearly identified in the prospectus by their names and functions or, in the case of legal persons, by their names and registered offices, as well as declarations made by them that, to the best of their knowledge, the information contained in the prospectus is in accordance with the facts and that the prospectus makes no omission likely to affect its accuracy.

These declarations will not however exempt from liability (whether liability in tort or contractual liability, as the case may be) other parties contributing to the preparation of the prospectus, if it is evidenced that they have provided false or misleading information.

The Prospectus Regulation and the Prospectus Law specify that no civil liability shall attach to any person solely on the basis of the summary, including any translation thereof, unless it is misleading, inaccurate or inconsistent when read together with the other parts of the prospectus, or if it does not provide, when read together with the other parts of the prospectus, key information in order to help investors when considering whether to invest in such securities. The summary shall contain a clear statement to that effect.

Remedies

27 | What types of remedies are available to the investors in debt securities?

The most common remedy in the context of a debt securities offering is the liability for incorrect, inaccurate or incomplete information contained in the prospectus.

Under Luxembourg law, liability towards the underwriters by the issuer or the offeror will in general be contractual, whereas liability of the issuer or the offeror towards the investors will, as a general rule, be based on civil liability in tort principles.

For such purpose, civil litigation may be brought by investors seeking to recover any losses suffered in connection with the offer of securities. In addition, administrative proceedings may be started by the CSSF, following a complaint by a private investor or further to its own initiative.

Enforcement

28 | What sanctioning powers do the regulators have and on what grounds? What are the typical results of regulatory enquiry or investigation?

Both the Prospectus Regulation and the Prospectus Law provide the CSSF with broad powers to take remedies and sanctions in the presence of improper activities in connection with offers of securities in Luxembourg.

Indeed, the CSSF is in particular entitled to:

- require additional disclosures in the prospectus;
- suspend a public offer or an admission to trading on the Regulated Market for a period of up to 10 consecutive working days;
- prohibit or suspend any advertisements regarding an offence for a period of up to 10 consecutive working days;
- disclose, or require the issuer to disclose, all material information that may have an effect on the assessment of the securities offered to the public or admitted to trading on a Regulated Market in order to ensure investor protection or the smooth operation of the market; or
- prohibit a public offer or trading on the LuxSE.

In such a context, the CSSF is entitled to publicly announce that a certain issuer, an offeror or a person asking for admission to trading on the Regulated Market is failing to comply with its regulatory obligations.

Moreover, the CSSF may impose administrative fines in connection with violations of the Prospectus Regulation and the Prospectus Law from €250 to €250,000 against those who obstruct its powers of surveillance and investigation or who have knowingly communicated inaccurate or incomplete information. Furthermore, in certain cases, the CSSF can impose a fine against a legal person of up to €5 million or up to 3 per cent of the total annual turnover.

Additionally, a person who knowingly makes an offer of securities to the public in Luxembourg without having obtained approval of a prospectus under the Prospectus Regulation and the Prospectus Law may be subject, in the case of a legal person, to a criminal fine ranging from €251 to €5 million and in the case of a natural person, from €500 to €700,000.

The CSSF is also the competent authority to monitor compliance with and enforce the provisions of the Transparency Law and the law of 23 December 2016 on market abuses, as amended (the Market Abuse Law). The Market Abuse Law implements the Market Abuse Regulation and transposes Directive 2014/57/EU on criminal sanctions for market abuse (Criminal Sanctions Market Abuse Directive).

To ensure compliance with these texts, the CSSF can impose a set of administrative sanctions, the scope of which is completed by various

criminal sanctions, both detailed in the Transparency Law and Market Abuse Law:

- In terms of administrative sanctions provided by the Market Abuse Law, the CSSF is entitled to sanction market abuses (ie, insider dealing, unlawful disclosure of inside information or market manipulation) in different manners, from an injunction to stop the prohibited behaviour, to the issue of a public warning disclosing the name of the person responsible for the prohibited behaviour or fines of up to €5 million (or up to €15 million or 15 per cent of the total annual turnover in the case of a violation by a legal person) or up to 10 times the profit derived from the illicit transaction.
- Criminal sanctions relating to the same market abuses comprise (to the extent the person had the intention to obtain for itself or for the benefit of a third party, an illicit gain) a fine of up to €5 million or an imprisonment of up to four years (or both), for infringements of the insider dealing prohibition (including the recommendation to engage in insider dealing) and market manipulation (or a fine of up to €15 million in the case of such a violation by a legal person).

Those amounts can be increased up to 10 times the profit derived from the illicit transaction and shall, in any event, not be lower than the amount of the actual profit made.

An attempt to commit any of the aforementioned prohibited activities shall be punishable by the same criminal sanctions.

In the case of a violation of the prohibition to unlawfully disclose inside information (and again to the extent the person had the intention to obtain for itself or for the benefit of a third party, an illicit gain with the help of any fraudulent means), a fine of up to €500,000 or an imprisonment of up to two years (or a fine of up to €1.5 million in case of such a violation by a legal person) can be imposed.

- Administrative (but not criminal) sanctions are also specified against persons discharging managerial responsibilities (and persons closely associated with them) who fail to notify the relevant issuer or the CSSF of transactions conducted on their own account relating to the securities of that issuer or derivatives or other financial instruments linked thereto.
- In the case of securities admitted to trading in Luxembourg, the LuxSE supervises compliance by issuers with the LuxSE Rules. In terms of sanctioning powers, the LuxSE can suspend or withdraw from trading any debt security that no longer complies with, or whose issuer no longer conforms to, the LuxSE Rules relating to disclosure obligations, except where such measure would be likely to significantly damage the interests of investors or compromise the orderly operation of the market.

Furthermore, the LuxSE can, on its own initiative, delist debt securities from trading on a market when it firmly believes that for specific reasons, the normal and consistent market for these debt securities cannot be maintained.

Tax liability

29 | What are the main tax issues for issuers and bondholders?

Withholding tax

In relation to transactions based on genuine legal and economic considerations, payments of arm's-length interest and repayments of principal on non-profit sharing debt instruments are, as a general rule, not subject to withholding tax in Luxembourg. Interest paid on (wholly or partially) profit-sharing instruments can be deemed qualified as a profit distribution subject to a 15 per cent withholding tax subject to domestic law exemption or applicable double tax treaty reduction.

Under the law of 23 December 2005 as amended (the 23 December 2005 Law), payments of interest or similar income made or ascribed by

a Luxembourg paying agent to or for the benefit of certain individual beneficial owners who are Luxembourg residents will be subject to a withholding tax of 20 per cent.

Luxembourg taxation of the holders of debt instruments

Non-resident individual and corporate holders of debt instruments, who do not have a permanent establishment nor a permanent representative in Luxembourg to which the debt instruments are attributable, are not liable to any Luxembourg tax obligations on repayments of principal or payments of interest on the debt instruments or capital gains realised upon a disposal of the debt instruments.

Luxembourg resident corporate holders of debt instruments not benefiting from a special tax regime must include any interest and gains derived from the debt instruments in their taxable income while those who benefit from a special tax regime (eg, certain undertakings for collective investments, specialised investment funds or family wealth management vehicles) may be exempt from tax on interest and gains realised on such debt instruments.

Luxembourg individual resident holders of debt instruments must include any interest and gains derived from the debt instruments in their taxable income that is regularly liable to income tax and surcharges at progressive rates, unless the 20 per cent withholding tax has been applied and the individual is acting in the course of the management of his or her private wealth

Pursuant to the 23 December 2005 Law, such individuals acting in the course of the management of his or her private wealth can opt to self-declare and pay a 20 per cent tax (the 20 per cent self-declared tax) on interest payments made by paying agents located in an EU member state other than Luxembourg or a member state of the EEA other than an EU member state. The 20 per cent withholding tax or the 20 per cent self-declared tax will be in full discharge of income tax if the beneficial owner is an individual acting in the course of the management of his or her private wealth.

Other taxes

It is not compulsory that the bonds be filed, recorded or enrolled with any court or other authority in Luxembourg. No registration tax, capital tax, stamp duty or any other similar documentary tax or duty is due in respect of or in connection with the issue of debt instruments, the performance by the issuer of its obligations under the debt instruments, or the transfer of debt instruments.

A fixed or ad valorem registration duty in Luxembourg may however apply upon voluntary registration of the debt instruments before the Registration and Estates Department in Luxembourg, or if the debt instruments are enclosed to a compulsory registrable deed under Luxembourg law or deposited with the official records of a notary.

UPDATE AND TRENDS

Key developments of the past year

30 | Please provide any updates and trends in your jurisdiction's debt capital market.

2020 was a very successful year for the Luxembourg financial centre and for its capital markets, with 10,797 new securities listed on the LuxSE, representing €1.4 trillion. At the end of 2020, the exchange had 36,833 securities admitted to listing and trading on its markets, including 407 new green, social and sustainability securities displayed on the LGX and, representing a total value of €185.9 billion.

As the leading exchange for sustainable securities, the LuxSE has consolidated its firm commitment to sustainable finance through various initiatives, in particular through:

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- the introduction of sustainability-linked bonds on the LGX, alongside green, social and sustainable bonds (following the publication of ICMA's Sustainability-Linked Bond Principles in June 2020);
- the inauguration by the LGX of a brand-new section dedicated to Climate-Aligned Issuers, built on the CBI's issuer screening and research;
- the launch of the LGX DataHub, a unique and centralised database of structured data on a vast range of sustainable securities, which addresses the complex data challenge that asset managers and investors are facing in their investments and reporting activities;
- the listing on the LGX of Europe's first sovereign sustainability bond issued by Luxembourg. The proceeds of the bond will finance and refinance social and environmental projects, such as the electric public transportation service and the country's second-largest hospital; and
- the signing of an agreement with the German index engineering company Solactive AG to establish a new green bond impact index (the Solactive LGX Green Bond Impact Index). This index is composed of a selection of green bonds listed on the LuxSE and displayed on the LGX.

The LuxSE also significantly updated its Rules in January 2020, taking into account both legal and regulatory developments (inter alia, the Prospectus Regulation and the Prospectus Law) as well as feedback received over the last years from issuers and counterparts of the LuxSE.

The main and most important changes introduced by the new LuxSE Rules relate to lighter prospectus requirements for the admission of securities on the Euro MTF, a broader scope of prospectus exemptions and the creation of a single prospectus regime for the admission to trading on the Euro MTF.

Finally, the LuxSE has also increased its focus on fintech. In particular through the acquisition of a 10 per cent stake in the London-based fintech firm Origin, which simplifies the bond issuance process, and the investment in the Luxembourg start-up StarTalers, a digital investment adviser for sustainable investments. The LuxSE also successfully closed the Series A funding round of FundsDLT, a project initiated by the LuxSE in 2017 and set to transform fund distribution with blockchain technology.

Coronavirus

- 31 | What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

The markets operated by the LuxSE have remained opened throughout the covid-19 outbreak and the listing processes and information services have been running as normal and according to the LuxSE's strict quality standards. There have been no plans of market closure or delay in the admissions for listing.

The LGX has welcomed several social and sustainability covid-19 response bonds from different issuers, for which the LuxSE temporarily levied listing fees.

Furthermore, the LuxSE marked the listing and display on the LGX of the first €17 billion social bond issued under the EU SURE (Support to mitigate Unemployment Risk in an Emergency) programme, which aims to help protect jobs and workers across Europe that have been heavily impacted by the covid-19 pandemic.

Additionally, the CSSF temporarily decided (in line with ESMA's recommendations) not to take any administrative measures or sanctions against issuers who failed to comply with publication deadlines of periodic information required by the Transparency Law and having chosen Luxembourg as home member state. Issuers benefited from an additional period of two months to publish their upcoming periodic information.

Finally, a new 'EU recovery prospectus' – a shorter prospectus – should be adopted in 2021. The new regime will apply until 31 December 2022 to help issuers raise the necessary additional equity to overcome the covid-19 crisis.

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