

DEBT CAPITAL MARKETS

Luxembourg



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Quick reference guide enabling side-by-side comparison of local insights, including an overview of the market climate and regulatory framework; documentation and filing requirements; cross-border issues; underwriting; management of outstanding debt securities; reporting; liability regime; investor remedies; enforcement; and recent trends.

Generated 28 February 2023

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MARKET SNAPSHOT

Market climate

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

Luxembourg is a renowned financial centre that is 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 (within the meaning of Directive 2014/65/EU on markets in financial instruments, as amended (MiFID II)), known as Bourse de Luxembourg; and
- the Exchange Regulated Market, set up in 2005 as a multilateral trading facility (MTF) (within the meaning of MiFID II), which provides an alternative market to the Regulated Market (ie, the Euro MTF).

The LuxSE also offers the possibility for issuers to list their securities on its Securities Official List (SOL) without admission to trading. The SOL is designed for issuers looking for visibility without the possibility of having their securities traded. Securities listed on the SOL are not subject to the extensive regulatory framework applicable to securities admitted to trading on trading venues, such as the Regulated Market and the Euro MTF.

Moreover, within the framework of Regulation (EU) No. 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 (the 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) only. Securities admitted to the professional segments are not accessible to retail investors. Trading on the professional segments is only allowed for professional investors.

In 2016, the LuxSE launched the Luxembourg Green Exchange (LGX), which is the world's first and leading platform dedicated exclusively to green, social and sustainable financial instruments. It was awarded a prestigious prize in the category 'Financing for Climate Friendly Investment' at the United Nations Global Climate Action Award 2020. Issuers whose securities are listed on the LGX benefit from higher visibility and investors enjoy 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 30 November 2022, the markets operated by the LuxSE had 40,625 quotation lines of securities in 71 currencies from over 1,879 issuers in 98 countries.

About 56 per cent of debt securities listed in Luxembourg are listed on the Regulated Market. At present, a broad range of debt securities is traded on the LuxSE. 38 per cent of all securities traded on the markets operated by the LuxSE are debt securities, excluding structured securities. These debt securities include:

- international debt: the LuxSE is the European leader in terms of listed international bonds;
- high-yield bonds: the LuxSE is Europe's leading exchange for the listing of high-yield bonds;
- green bonds: With 860 green bonds listed in 27 currencies by 183 issuers as at 30 November 2022, the LuxSE is the leading listing venue for green bonds. In October 2021, the LGX listed the first green bond issued by the European Commission under the NextGenerationEU programme. This €12 billion bond issuance was the world's largest green bond issued to date;
- social bonds: as of 30 November 2022, 146 bonds have been categorised as social, including bonds issued by

Micro, Small & Medium Enterprises Bonds SA and the Nederlandse Waterschapsbank NV. In October 2020, the LuxSE also marked the listing of the first social bond issued under the EU Support to mitigate Unemployment Risk in an Emergency (SURE) programme in the context of the covid-19 pandemic. By March 2022, the European Commission had issued €91.8 billion social bonds under the SURE, all listed on the LuxSE and displayed on the LGX. 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: as of 30 November 2022, 508 bonds have been categorised as sustainable, including bonds issued by the International Bank for Reconstruction and Development, the International Development Association and the BNG Bank NV. 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. In May 2021, the LGX hit the 1,000 sustainable bonds mark with the latest Global Climate Awareness Bond from the European Investment Bank (EIB). In May 2022, the EIB issued a €4 billion climate awareness Euro-Area Reference Note, the largest climate awareness bond issued by the bank to date, which was displayed on LGX;
- dim sum bonds: in 2011, the LuxSE admitted to trading the first dim sum bonds, denominated in China's yuan. Some 49 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 eurozone 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 63 different countries;
- sukuk: the LuxSE was the first European stock exchange to list sukuk in 2002. Some 22 sukuk have since then been listed on the LuxSE (including the sovereign sukuk issued by the Luxembourg state in 2014, the first sovereign sukuk to be denominated in euros);
- supranational debt: Luxembourg remains a prominent listing venue for supranational debt issuers, including the EIB, the World Bank, the European Bank for Reconstruction and Development, the European Stability Mechanism and the European Commission;
- asset-backed securities: in November 2022, there were 1669 asset-backed securities from 360 issuers;
- debt issuance programmes: there were about 491 new debt issuance programmes in operation on the LuxSE as of November 2022; and
- others: the LuxSE also lists other types of debt instruments, such as indexed bonds, convertible bonds and commercial papers.

Moreover, to keep up 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. As of 30 November 2022, there were 72 sustainability linked bonds on the LGX platform (including Orbia Advance Corporation SAB De CV, EQT AB and Henkel AG & Co KGAA).

In February 2021, the LuxSE teamed up with the Climate Bonds Initiative (an international non-profit organisation aimed at mobilising the US\$100 trillion bond market for climate solutions) 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. The climate bonds-LGX Climate-Aligned Issuers section includes 20 CAIs in 15 different countries.

In March 2021, the LuxSE won the prize of Exchange of the Year at the Environmental Finance Bond Awards 2021 for the fifth year in a row and the Luxembourg Finance Award in the 'Best Green and Sustainable Initiative' category. The LuxSE was also granted for the first time, the 'Stock Exchange of the Year' award by Environmental Finance as part of the Sustainable Investment Awards 2022 for its pioneering work in expanding the scope of sustainable investment opportunities featured on the LGX, for bringing structured sustainability data to the market with the LGX DataHub and fostering sustainable finance knowledge and awareness through the LGX Academy.

On 31 January 2022, the LuxSE listed the first security tokens representing a debt instrument on the SOL. In a first phase, the LuxSE only considers applications that fulfil the following criteria: (i) debt instruments offered exclusively to qualified investors (as defined in the Prospectus Regulation) or issued in a denomination per unit that amounts to at least €100,000; (ii) issuers having previously issued securities in capital markets or applications having a proven track record in capital market transactions; and (iii) pricing in fiat currency. To be considered for admission on the SOL, security tokens must comply with the Guidelines for the registration of DLT Financial Instruments on the SOL (published by the LuxSE in January 2022) as well as the LuxSE Rulebook.

Finally, further to a Memorandum of Understanding signed on May 2022 with the United Nations Entity for Gender Equality and the Empowerment of Women (UN Women), the LuxSE is now flagging sustainable gender-focused bonds displayed on the LGX which either raise financing for project advancing gender equality and women's empowered or set gender equality targets. Gender-focused bonds are social, sustainability or sustainability-linked bonds which allocate all or part of their proceeds or set clear key performance indicators related to advancing gender equality in their issuer documentation and carry post-issuance reporting attesting to the issuer's concrete actions.

Law stated - 22 December 2022

Regulatory framework

Describe the general regime for debt securities offerings.

The regulatory framework applicable to public offers of debt securities, and to their listing, is set out in 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 Rules and Regulations of the LuxSE (the LuxSE Rules).

In Luxembourg, the offer of debt securities may be subject to one of the three following regimes, depending on the nature of the offering and the market where the securities are to be admitted to trading.

First regime

Offer of debt securities to the public and admission to trading on a regulated market (within the meaning of MiFID II) subject to an EU-wide, harmonised framework 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 by the Luxembourg competent authority, ie, the Financial Sector Supervisory Commission (CSSF), or by a foreign competent authority and passported to Luxembourg, each in accordance with 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, to enable an investor to decide to purchase or subscribe to 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, meaning that a prospectus approved by a European competent authority may be passported to any other member state for the purposes of an offer or a listing.

Second regime

Offers of debt securities to the public and admission to trading of securities falling outside the scope of the Prospectus Regulation

Without prejudice to any exemption that may apply under the Prospectus Law, 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 CSSF (for offers to the public) or by the LuxSE (for admissions to trading) in accordance with the Prospectus Law. An alleviated prospectus does not benefit from the European passport regime. The rules that apply are specific to Luxembourg and as a result, they are not harmonised.

Third regime

Admission to trading on a non-regulated market in Luxembourg

The Prospectus Law empowers the LuxSE to approve prospectuses for listings on the Euro MTF, in accordance with the LuxSE Rules. High-yield bonds typically listed on the Euro MTF are in general subject to this framework.

Law stated - 22 December 2022

FILING AND DOCUMENTARY REQUIREMENTS

General filing requirements

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 Law of 16 July 2019 on prospectuses for securities (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 Financial Sector Supervisory Committee (CSSF) or by the competent authority of another member state and passported to Luxembourg.

Requirements in connection with an application with the CSSF for the approval of a prospectus are set out in the Prospectus Regulation, the various Commission Delegated Regulations, the Prospectus Law, the CSSF Circular 19/724, as amended (CSSF Circular 19/724) and CSSF Circular 21/771 on the application of the guidelines of the European Securities and Markets Authority on disclosure requirements under the Prospectus Regulation of 20 April 2021 (CSSF Circular 21/771).

Since 1 March 2021, applications related to the Prospectus Regulation and the Prospectus Law must be submitted through a CSSF web platform called e-Prospectus.

The application shall include the following:

- the documents to be approved, in particular the draft prospectus containing all information required for investors to make an informed assessment and, where applicable, the documents incorporated by reference that have not yet been approved by the CSSF beforehand;
- 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 built the Perma Link Upload Service – PLUS tool;
- a cross-reference list indicating where the information required under the relevant annexes of the Delegated Regulation (EU) No. 2019/980 can be found in the draft prospectus. In the case of a base prospectus, a precise indication as to which category (A, B and C categories introduced by the Delegated Regulation (EU) No. 2019/980) the information belongs; and
- to the extent applicable, a reasoned waiver request in relation to certain information required under the relevant regulation.

Applications shall be filed with the CSSF by the issuer, the offeror or by a person acting on behalf of one of those persons. The issuer may draw up the prospectus as a single document or as separate documents, composed of a registration document containing information on the issuer, a securities note containing information on the securities and a summary (if applicable).

When securities are issued under a base prospectus, the final terms of the offered securities shall be filed with the CSSF and published in accordance with the Prospectus Regulation.

Every significant new factor, material mistake or material inaccuracy relating to the information included in a prospectus that may affect the assessment of the securities and that arises or is noted between the time when the prospectus is approved and the closing of the offer period or the time when trading on a regulated market begins, whichever occurs later, shall be mentioned in a supplement to the prospectus without undue delay. Supplements shall be submitted to the CSSF for approval.

When a prospectus is submitted to the CSSF for approval in connection with an admission to trading on the Regulated Market, a separate application for the admission to trading will have to be filed with the LuxSE as well.

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 issuer'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 multilateral trading facility (MTF). Once approved for two consecutive financial years, subsequent URDs can be filed or amended without prior approval of the competent authority. Frequent issuers will thus benefit from a fast-track prospectus approval process.

Separately, the LuxSE Rules will govern the filing process, the approval and the content requirements applicable to prospectuses in connection with the admission to trading of securities on the Euro MTF.

On 10 October 2022, the LuxSE launched a so-called FastLane service further to which eligible issuers on the Euro MTF may be fully exempted from the otherwise mandatory approval of their listing particulars by the LuxSE. The FastLane process benefits the following types of issuances:

- non-equity securities and equity convertible bonds issued by issuers whose shares are admitted to trading on a regulated market (within the meaning of MiFID II) or equivalent;
- non-equity securities issued or guaranteed by states (other than member states), their regional or local authorities;
- non-equity securities issued by or guaranteed by member states' regional or local authorities;
- non-equity securities issued by multilateral institutions which are not public international bodies, and of which at least one OECD member state is a member;
- securities issued by central banks; and
- securities issued by associations with legal status or non-profit-making bodies, recognised by a member state or an OECD member state, in order to obtain the means necessary to achieve their non-profit-making objectives.

Qualifying issuers must file an admission document containing the terms and conditions of the securities for which admission to trading is sought, in a searchable electronic format. The LuxSE will neither review nor approve the admission document. In addition, an application form for obtaining a FastLane admission must be filled in and must include public sources of information about the issuer and the securities. The LuxSE can require the submission of any other document which it may deem necessary.

Law stated - 22 December 2022

Prospectus requirements

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 (or both) 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 approved either by the CSSF or by the competent authority of another member state and passported in Luxembourg.

The prospectus shall comply with the following requirements:

- information requirements:
 - prospectuses for public offers of debt securities shall comply with the information requirements set out in the Prospectus Regulation, the Delegated Regulation (EU) No. 2019/980 and the Delegated Regulation (EU) No. 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 and 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 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) No. 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);
 - 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; and
 - 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; and
- language requirements:
 - where Luxembourg is the home member state (as defined by 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; and
 - the same applies where Luxembourg is the home member state and public offers are made in one or more other member states. However, in such a case, the prospectus shall also be made available either in a language accepted by the competent authorities of each host member state or in a language customary in the sphere of international finance, at the choice of the issuer or offeror.

Law stated - 22 December 2022

Documentation

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 and the issuer's home member state (within the meaning of the Prospectus Regulation) is in Luxembourg, the drafting process also involves the CSSF as the Luxembourg competent authority for the purposes of the Prospectus Regulation. The CSSF will comment in detail on the draft documentation until it is approved.

The drafting process for offerings 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. If such an offer is followed by an application for listing on the Official List of the LuxSE and an admission to trading of the debt securities on the Euro MTF, the LuxSE will be involved in the review process.

Law stated - 22 December 2022

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?

Issuances and offers of debt securities are primarily governed by the following 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 issued by Luxembourg issuers 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 a trust deed or an indenture, which, in addition to the terms and conditions, will describe the applicable security package and guarantees, and 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 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 the agency agreement are usually made available to investors at the registered office of the issuer or the appointed agent.

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 a common representative acting on behalf of the holders of the debt instruments is appointed, which is also common, a trust deed or an appointment agreement is put in place setting out the roles, rights and obligations of the 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 trust deed or indenture.

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

Law stated - 22 December 2022

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

Contractual documents relating to offers of debt securities are not subject to regulatory approval. Only prospectuses prepared pursuant to the Prospectus Regulation or the Prospectus Law (or both) shall be approved by the relevant authority prior to their publication.

Once approved by the relevant competent authority, the prospectus shall be made available to the public prior to, and at the latest, at the beginning of the public offer of the debt securities involved. In accordance with the Prospectus Regulation, the prospectus will be deemed available to the public when published in electronic form on any of the following websites:

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

Offering documents falling under an exemption from the obligation to publish a Prospectus Regulation compliant prospectus (such as high-yield bonds) are not subject to the approval process.

Law stated - 22 December 2022

Authorisation

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 with a universal registration document may benefit from a fast-track approval process of five working days. Failure by the CSSF to notify its decision within the review period is

considered an implicit decision of refusal.

If the CSSF finds, on reasonable grounds, that the submitted documents 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 must be in line with the prospectus.

The document shall also indicate that a prospectus has been or will be published and shall specify 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) No. 2019/979.

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

Regulation (EU) No. 596/2014 on market abuse, as amended (the Market Abuse Regulation) and as supplemented in particular by the Commission Delegated Regulation (EU) No. 2016/958, sets out an EU harmonised framework for persons producing or disseminating investment recommendations relating to listed securities. The aim is to ensure high standards of fairness, probity and transparency so as to avoid misleading market participants or the public.

Law stated - 22 December 2022

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

The CSSF will not approve a prospectus until it is satisfied that it meets all the requirements set out in the Prospectus Regulation (including any applicable delegated and implementing regulations relating thereto) and in Part II of the Prospectus Law (for a Prospectus Regulation compliant prospectus) or in Part III of the Prospectus Law (for an alleviated prospectus).

Similarly, the LuxSE will refuse to approve any listing particulars drawn up for the purposes of listing on the Official List and admitting to trading debt securities on the Euro multilateral trading facility (MTF), unless the requirements set out in the LuxSE Rules are met.

Law stated - 22 December 2022

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

In principle, offers of securities to the public in Luxembourg require the publication of a prospectus which complies with the Prospectus Regulation, either approved by the CSSF or by the competent authority of another member state and subsequently passported to Luxembourg. The Prospectus Regulation and the Prospectus Law provide, however, for a set of exemptions from the obligation to publish a Prospectus Regulation compliant prospectus.

This will be notably the case for the following offers of debt securities:

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

Further, Luxembourg has opted for the small-scale exemption introduced by the Prospectus Regulation, pursuant to which issues of securities are exempt 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). Prior notification must be sent to the CSSF when making use of this exemption.

For offers with a total consideration in all member states of at least €5 million and less than €8 million over a 12-month period, an information note must be published in accordance with the Prospectus Law, in addition to the prior notification to the CSSF. 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.

Exceptionally, from 18 March 2021 to 31 December 2022, the obligation to publish a prospectus will not apply to debt securities issued in a continuous or repeated manner by a credit institution, where the total aggregated consideration in the European Union for the securities offered is less than €150 million per credit institution calculated over a period of 12 months.

High-yield bond issuances structured out of Luxembourg will typically be exempt from the requirement to publish 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 the aforementioned exemptions will be regarded as a separate offer and could trigger an obligation to publish a Prospectus Regulation compliant prospectus, unless one of the aforementioned exemptions 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 exempt offers of securities, general principles of Luxembourg law will remain applicable, particularly regarding liability for inaccurate or incomplete information. Issuers and underwriters in the context of exempt 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.

Law stated - 22 December 2022

Offering process

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, if applicable, passported to any other relevant 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, which usually occurs on the second day following the end of the offer period. Price stabilisation activities, if any, will follow usually during a period of up to 30 days.

Exempt offers of debt securities for which an application for listing on the Official List and admission to trading on the Euro multilateral trading facility (MTF) is made (eg, high-yield bonds) are subject to less stringent regulatory requirements and a more flexible process, especially in terms of marketing activities, which may begin earlier in the process. The prospectus is approved by the LuxSE between two and four weeks following the first filing.

Law stated - 22 December 2022

Closing documents

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:

- legal counsels’ legal opinions covering matters of Luxembourg law (including private international 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.

Law stated - 22 December 2022

Listing fees

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

Listing on the Regulated Market

CSSF fees	
Approval fee	
• Stand-alone prospectus	• €5,200
• Base prospectus	• €8,100
Additional fees may 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 €20,000.	
LuxSE fees	First listing

Listing fee	€1,500
Maintenance fee	Maximum €800

Listing on the Euro MTF

LuxSE fees	First listing
Approval fee	€2,750
Listing fee	€1,500
Maintenance fee	Maximum €800

In both cases, supranational issuers and recurrent issuers benefit from reduced fees of the LuxSE.

Law stated - 22 December 2022

KEY CONSIDERATIONS

Special debt instruments

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

The Luxembourg Stock Exchange (LuxSE) lists and admits to trading equity linked notes, hybrid notes, exchangeable and convertible bonds and has a high market share in this area. The post-2008 global financial crisis years have seen a significant increase in these types of products issued mostly by financial sector entities seeking to meet regulatory capital requirements.

The launch in 2016 of the Luxembourg Green Exchange (LGX) has boosted interest in 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.

In addition, under the umbrella of the LGX, issuers can also list social and sustainable bonds. These two categories of bonds are based on strict eligibility criteria that are 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.

Law stated - 22 December 2022

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, Delegated Regulation (EU) No. 2019/979, Delegated

Regulation (EU) No. 2019/980 and, specifically, in the schedules that apply to special types of equity linked debt issuances (as further detailed in Circular Financial Sector Supervisory Commission (CSSF) 21/771).

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 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 the 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 or structural impact (or both), that is triggered by the achievement (or otherwise) of the SPTs;
- reporting; and
- independent verification of performance.

Law stated - 22 December 2022

Classification

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, the classification of 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 rights alongside holders of common share capital, participation in the profits of the issuer, right to liquidation proceeds and 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 or a LuxSE Rules 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 exemptions, 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.

Law stated - 22 December 2022

Transfer of private debt securities

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?

Provided that the transfer qualifies as an exempt offer pursuant to the Prospectus Regulation or the Prospectus Law of 16 July 2019 on prospectuses for securities (the Prospectus Law) (or both) no general restrictions are imposed on the transferability of debt securities.

Any subsequent offer qualifying as an offer of securities to the public within the meaning of the Prospectus Regulation or the Prospectus Law (or both) will be subject to the obligation to publish a prospectus unless an exemption applies.

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 obligation to publish 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 exemptions provided for in the Prospectus Regulation or the Prospectus Law (or both).

Law stated - 22 December 2022

Cross-border issues

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 (within the meaning of the Prospectus Regulation), the prospectus and any supplement thereto, is valid for an offer of securities to the public in Luxembourg or 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.

No specific rules apply to securities offered outside Luxembourg by a Luxembourg issuer, except when Luxembourg is the home member state (within the meaning of the Prospectus Regulation), in which case the Prospectus Regulation (including the EU harmonised framework for the passporting of prospectuses) and the Prospectus Law will apply similarly.

Law stated - 22 December 2022

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 an offer of securities to the public or an admission to trading on a regulated market) in another member state, may require the competent authority of the relevant home member state to notify the

CSSF and the ESMA to passport their prospectus.

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

Law stated - 22 December 2022

Underwriting

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 the prevailing standards in the international capital markets very closely, notably those set out by the ICMA.

Underwriters will typically agree to purchase the offered securities, for subsequent distribution to investors. A typical underwriting agreement will include the issuer's representations and warranties, the agreement to purchase and sell the debt securities, 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 a public offering or private offering.

Law stated - 22 December 2022

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 related to debt issuances are not subject to the approval of the CSSF.

Law stated - 22 December 2022

Transaction execution

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 backgrounds 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.

Law stated - 22 December 2022

Holding forms

How are public debt securities typically held and traded after an offering?

The traditional and 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 depository, who will keep the global note for the account of the central securities depository or depositories 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 depository or depositories. These debt securities are represented by book-entry rights that may subsequently be credited on the accounts of the CSD's participants with the relevant number of issued debt instruments, who in turn will (directly or indirectly) credit the securities 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, as amended, (the 2013 Law) introduced in Luxembourg the concept of dematerialised securities. This law requires the whole issuance of (debt) fungible instruments through a single securities issuance account maintained with a settlement organisation, which is required to be based in Luxembourg and specifically licensed as such. Once the dematerialised debt instruments are registered on the single securities issuance account they can be transferred and held through securities accounts opened in the name of the relevant investors with financial intermediaries.

The 2013 Law 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.

Law stated - 22 December 2022

Outstanding debt securities

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 goals and needs of the relevant issuer, on the overall market conditions and the terms and conditions applicable to the relevant debt securities.

During the 2008 global financial crisis and recent covid-19 pandemic, there was a considerable increase in the 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 sought to take advantage of arbitrage opportunities or to extend the maturities of outstanding issuances.

Issuers often re-purchase their debt securities on the open market.

For debt securities listed on the Regulated Market or the Euro MTF, these interactions are subject to mandatory

disclosures and public dissemination requirements, allowing investors and the market to have access to such information.

Law stated - 22 December 2022

REGULATION AND LIABILITY

Reporting obligations

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 and the issuer's home member state (within the meaning of the Directive 2004/109/EC, as amended (the Transparency Directive) is in Luxembourg, reporting and disclosure obligations will apply to the issuer of such securities pursuant to the law of 11 January 2008 on transparency requirements, as amended, implementing the Transparency Directive in Luxembourg (the Transparency Law). Moreover, the issuer will be subject to the obligations set out in the Market Abuse Regulation and the Luxembourg Stock Exchange (LuxSE) Rules.

Since 4 March 2022, reporting under the Transparency Law and certain reporting under the Market Abuse Regulation must be filed through a new CSSF platform called eRIIS (electronic Reporting of Information concerning Issuers of Securities).

Under the Transparency Law, issuers are notably required to:

- file, store and publish regulated information (within the meaning of the Transparency Law), which comprises, inter alia, financial information; and
- disclose any changes in the rights of holders of debt securities or the issuance of new debt securities.

Specific exemptions from the reporting and disclosure obligations exist, notably for certain public law bodies and debt securities with a minimum denomination of €100,000.

Under the LuxSE Rules, issuers whose debt securities are admitted to trading on one of the markets of the LuxSE shall, 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 redemption, any issue or subscription of securities or a change of the issuer's name.

Debt securities admitted to trading on the Euro multilateral trading facility (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.

Issuers with debt securities admitted to trading on the Euro MTF shall publish certain information (eg, redemption notices, periodic financial information, changes to the rights of bondholders) in accordance with the LuxSE Rules.

Pursuant to the Market Abuse Regulation, issuers whose debt securities are admitted to trading on a regulated market or the Euro MTF are also required to publish inside information as soon as possible (although such publication can be delayed under certain conditions).

Inside information must be disclosed in a manner ensuring fast access to such information on a non-discriminatory basis. To ensure such disclosure Luxembourg issuers usually use the disclosure services offered by the LuxSE.

The Market Abuse Regulation also requires issuers of debt securities to ensure the prompt disclosure of all transactions made by persons discharging managerial responsibilities within the issuer (PDMRs) and by persons

closely associated with PDMRs in relation to the debt securities issued or to derivatives or other financial instruments linked thereto.

In 2017, the LuxSE introduced a multi-functional reporting tool – the Financial Instruments Reporting Services Tool (FIRST) – to publish regulated information in accordance with regulatory standards. FIRST makes it possible to simultaneously distribute announcements to the market, to the Officially Appointed Mechanism (as defined by the Transparency Law) and to the CSSF, all through a single portal. The issuer can access the platform either directly or via its agent or law firm.

Additionally, the use of a legal entity identifier (LEI) code, a unique and universal 20-digit 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 with securities admitted to trading on the Regulated Market or the Euro MTF are required:

- to obtain an LEI code prior to the admission to trading becoming effective; and
- to have their LEI code active as long as their debt securities are admitted to trading on the LuxSE.

Law stated - 22 December 2022

Liability regime

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?

Liability 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 to debt securities and other types of securities. Neither the Prospectus Regulation nor the Law of 16 July 2019 on prospectuses for securities (the Prospectus Law) foresees 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) 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 to help investors when considering whether to invest in such securities. The summary shall contain a clear statement to that effect.

Law stated - 22 December 2022

Remedies

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 the liability of the issuer or the offeror towards investors will, as a general rule, be based on civil liability in tort principles.

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.

Law stated - 22 December 2022

Enforcement

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

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

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 offer to the public for a period of up to 10 consecutive working days;
- disclose, or require the issuer to disclose, all material information that may influence the assessment of the securities offered to the public or admitted to trading on the Regulated Market to ensure investor protection or the smooth operation of the market; or
- prohibit an offer to the public or trading on the LuxSE.

In this 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. Further, 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 Directive 2014/57/EU on criminal sanctions for market abuse (the Market Abuse Directive) in Luxembourg.

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 profits gained or the losses avoided because of the infringement (where those can be determined).

Criminal sanctions relating to the same market abuses comprise (to the extent the person had the intention to obtain for itself or the benefit of a third party, an illicit gain) a fine of up to €5 million or 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).

The fines for infringement of the insider dealing prohibition (including the recommendation to engage in insider dealing) 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 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 the benefit of a third party, an illicit gain with the help of any fraudulent means), a fine of up to €500,000 or imprisonment of up to two years (or a fine of up to €1.5 million in the case of such a violation by a legal person) can be imposed; moreover:

- administrative (but not criminal) sanctions are also specified against persons discharging managerial responsibilities and persons closely associated with them (both terms within the meaning of the Market Abuse Regulation) 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; and
- in the case of securities admitted to trading in Luxembourg, the LuxSE supervises issuers' compliance 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.

Further, 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.

Law stated - 22 December 2022

Tax liability

What are the main tax issues for issuers and bondholders?

Preliminary remarks

This summary solely addresses the principal Luxembourg tax consequences of the issue, acquisition, ownership and

disposal of bonds and does not purport to describe every aspect of taxation that may be relevant to a particular holder.

It assumes that each transaction with respect to the bonds is at arm's length and that, based on genuine legal and economic considerations, the bonds are to be treated as debt for tax purposes. Moreover, it assumes the issuer is a capital company that is fully subject to tax in Luxembourg.

This summary does not address the Luxembourg tax consequences for a bondholder who:

- is an investor as defined in a specific law (eg, the law on family wealth management companies of 11 May 2007, as amended, the law on undertakings for collective investment of 17 December 2010, as amended, the law on specialised investment funds of 13 February 2007, as amended, the law on reserved alternative investment funds of 23 July 2016, the law on securitisation of 22 March 2004, as amended, the law on venture capital vehicles of 15 June 2004, as amended and the law on pension saving companies and associations of 13 July 2005);
- is, in whole or in part, exempt from tax;
- acquires, owns or disposes of bonds in connection with a membership of a management board, a supervisory board, an employment relationship, a deemed employment relationship or management role; or
- has a substantial interest in the issuer or a deemed substantial interest in the issuer for Luxembourg tax purposes. Generally, a person holds a substantial interest if such person owns or is deemed to own, directly or indirectly, more than 10 per cent of the shares or interest in an entity.

Withholding tax – bondholders

Non-resident bondholders

Generally, payments of interest and principal under bonds made to non-residents of Luxembourg are made free from withholding or deduction of or for any taxes of whatever nature imposed, levied, withheld or assessed by Luxembourg or any political subdivision or taxing authority of or in Luxembourg. An exception would apply (for instance) to payments on instruments that are, in whole or in part, profit-sharing instruments, in which case a 15 per cent withholding tax may apply (subject to a domestic law exemption or a double-tax treaty reduction).

Individual resident bondholders

Under the law of 23 December 2005, as amended from time to time (the Relibi Law), payments of interest and similar income made or deemed to be made to an individual who is resident in Luxembourg may be subject to a withholding tax of 20 per cent of the payment.

Taxes on income and capital gains – bondholders

Non-resident bondholders

Non-resident bondholders that do not have a permanent establishment in Luxembourg to which the bonds or income thereon are attributable are not subject to Luxembourg income taxes in respect of any benefits derived or deemed to be derived in connection with the bonds.

Non-resident bondholders that have a permanent establishment in Luxembourg to which the bonds or income thereon are attributable are subject to Luxembourg income taxes in respect of any benefits derived or deemed to be derived in connection with the bonds.

Resident bondholders

Individuals

Any benefits derived or deemed to be derived from or in connection with bonds that are attributable to an enterprise from which an individual derives profits, whether as an entrepreneur or pursuant to a co-entitlement to the net value of an enterprise, are generally subject to Luxembourg income tax. A resident individual who invests in the bonds as part of such person's private wealth management is generally subject to Luxembourg income tax in respect of interest and similar income (eg, premiums or issue discounts) derived from the bonds, except if tax is levied on such income in accordance with the Relibi Law. A gain realised by a resident individual, acting in the course of the management of that person's private wealth, upon the sale or disposal, in any form whatsoever, of bonds is generally not subject to Luxembourg income tax, provided this sale or disposal takes place more than six months after the bonds are acquired. However, any portion of such gain corresponding to accrued but unpaid interest is subject to Luxembourg income tax, except if tax is levied on such interest in accordance with the Relibi Law. Any benefit derived by a resident individual from the disposal of bonds prior to their acquisition is subject to income tax as well.

Corporations

A corporate resident bondholder must generally include any benefits derived or deemed to be derived from or in connection with the bonds, such as interest accrued or received, any redemption premium or issue discount, as well as any gain realised on the sale or disposal, in any form whatsoever, of the bonds, in its taxable income for Luxembourg corporate income and municipal business tax purposes.

General

If a bondholder is neither resident nor deemed to be resident in Luxembourg, such holder will for Luxembourg tax purposes not carry on or be deemed to carry on an enterprise, in whole or in part, through a permanent establishment or a permanent representative in Luxembourg by reason only of the execution of the documents relating to the issue of bonds or the performance by the issuer of its obligations under such documents or under the bonds.

Net wealth tax – bondholders

Corporate bondholders resident in Luxembourg and non-resident corporate bondholders that maintain a permanent establishment in Luxembourg to which or to whom such bonds are attributable are subject to annual net wealth tax on their unitary value (ie, non-exempt assets minus liabilities and certain provisions that are economically connected to such non-exempt assets as valued according to the Luxembourg valuation rules), levied at a rate of 0.5 per cent if the unitary value does not exceed €500 million and, to the extent that the unitary value exceeds €500 million at a rate of 0.05 per cent.

Individuals are not subject to Luxembourg net wealth tax.

Inheritance and gift tax – bondholders

Where bonds are transferred for non-consideration:

- no Luxembourg inheritance tax is levied on the transfer of the bonds upon the death of a bondholder in cases where the deceased was not a resident or a deemed resident of Luxembourg for inheritance tax purposes; and
- by way of gift, Luxembourg gift tax will be levied in the event that the gift is made pursuant to a notarial deed signed before a Luxembourg notary or produced for registration, directly or indirectly, before the Registration and Estates Department.

Other taxes and duties

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

A fixed or ad valorem registration duty in Luxembourg may, however, apply:

- upon registration of the bonds before the Registration and Estates Department in Luxembourg where this registration is not required by law; or
- if the bonds are:
 - enclosed to a compulsorily registrable deed under Luxembourg law; or
 - deposited with the official records of a notary.

FATCA

The Foreign Account Tax Compliance Act (FATCA) was enacted into US law in March 2010 as part of the Hiring Incentives to Restore Employment Act. FATCA aims to reduce tax evasion by US citizens and requires, among other things, foreign financial institutions (FFIs) outside the United States to spontaneously provide information about financial accounts held, directly or indirectly, by specified US persons or face a 30 per cent US federal withholding tax imposed on certain US-source payment (FATCA Withholding).

To implement FATCA in Luxembourg, Luxembourg entered into a so-called Model 1 Intergovernmental Agreement (the IGA) with the United States, and a memorandum of understanding in respect thereof, on 28 March 2014. The IGA was implemented under Luxembourg domestic law by the Law of 24 July 2015 (the Luxembourg FATCA Law). Luxembourg FFIs that comply with the requirements of the IGA and the Luxembourg FATCA Law will not be subject to FATCA withholding.

Under the IGA and the Luxembourg FATCA Law, Luxembourg FFIs are required to perform certain necessary due diligence and monitoring of investors, and to report to the Luxembourg tax authorities on an annual basis, information about financial accounts held by:

- specified US investors;
- certain US-controlled entity investors; and
- non-US financial institution investors that do not comply with FATCA.

Such information will subsequently be remitted by the Luxembourg tax authorities to the US Internal Revenue Service.

Bondholders may be required to provide information to the issuer to ensure the issuer's compliance with the IGA and the Luxembourg FATCA Law. In the event that a bondholder does not provide the required information, the issuer may need to report the financial account information of such bondholder to Luxembourg tax authorities.

Common reporting standard

The Organisation for Economic Co-operation and Development has developed a new global standard, the Common Reporting Standard (CRS), for the automatic exchange of financial information between tax authorities. Luxembourg is a signatory jurisdiction to the CRS and has conducted its first exchange of information with tax authorities of other signatory jurisdictions in September 2017, as regards reportable financial information gathered in relation to fiscal year 2016. The CRS has been implemented in Luxembourg via the law dated 18 December 2015 concerning the automatic exchange of information on financial accounts and tax matters and implementing Directive 2014/107/EU.

The regulations may impose obligations on the issuer and the bondholders, if the issuer is considered as a reporting financial institution (eg, an investment entity) under the CRS, so that the latter could be required to conduct due diligence and obtain (among other things) confirmation of the tax residency, tax identification number and CRS classification of bondholders to fulfil its own legal obligations.

Issuer

Corporate income tax and municipal business tax

The issuer is subject to corporate income tax (CIT), which is levied at a rate of 17 per cent in the tax year 2022. The CIT is increased with a 7 per cent surcharge for the unemployment fund, bringing the combined rate to 18.19 per cent. The issuer is further subject to municipal business tax (MBT). In the municipality of the city of Luxembourg, the MBT rate currently stands at 6.75 per cent. The CIT and the MBT add up to an effective tax rate of 24.94 per cent for the city of Luxembourg. For CIT and MBT purposes, taxable profits are determined on a single basket (no distinction between income and gains) and worldwide basis. Income and profits, losses and expenditure as recognised for local commercial accounting purposes determine the Luxembourg taxable basis, subject to certain adjustments, such as corrections under the arm's length principle and other adjustments contained in domestic tax law or tax treaty provisions. For Luxembourg tax purposes, the issuer must operate at arm's length when dealing with associated companies. Moreover, the issuer must prepare proper transfer pricing documentation that must be made available upon request to the Luxembourg revenue. In the absence of transfer pricing documentation, the burden of proof of the arm's length nature of the transaction rests on the taxpayer.

Net wealth tax

The issuer is subject to net wealth tax (NWT) levied every 1 January of any given year at a headline rate of 0.5 per cent of its taxable net wealth if the unitary value does not exceed €500 million and, to the extent that the unitary value exceeds €500,000,000, at a rate of 0.05 per cent. Broadly, the taxable basis consists of the fair market value of all its (non-exempt) assets minus the fair market value of its liabilities and certain provisions that are economically connected to such (non-exempt) assets as valued according to the Luxembourg valuation rules. The issuer will be liable to an annual minimum NWT under certain circumstances. This minimum annual NWT typically amounts to €4,815 and applies if more than 90 per cent of the total assets of the issuer consist of certain financial assets and such assets exceed €350,000. Subject to conditions, all or part of the NWT is creditable against CIT in respect of the preceding year.

Value added tax

Where the issuer uses the proceeds to grant interest-bearing loans it carries on an activity falling within the scope of the Luxembourg value added tax (VAT). For VAT purposes, its revenue in the form of interest is tax-exempt. The issuer should be entitled to recover the input VAT incurred by it if it lends to non-EU borrowers. The issuer will have the obligation to register for VAT purposes with the Luxembourg revenue as a business enterprise. Typically, it will have to file VAT returns on a monthly basis in addition to an annual VAT return.

Dividends paid by the issuer

Dividend distributions made by the issuer are subject to a 15 per cent Luxembourg dividend withholding tax (WHT). A full dividend WHT exemption typically applies when the (direct) shareholder of the issuer satisfies the following two conditions for this exemption:

- it is a capital company resident of a treaty country and subject in its country of residence to income tax comparable with the Luxembourg CIT or, alternatively, a company entitled to the benefits of Directive 2011/96/EU (Parent-Subsidiary Directive); and
- it holds a direct participation in the issuer of at least 10 per cent or, alternatively, with an acquisition cost of at least €1.2 million for an uninterrupted period of at least 12 months.

A WHT return for a dividend payment must be filed within eight days of the moment that the dividends are made available. A WHT return should be filed even if the dividend payment is exempt from WHT. Liquidation distributions are not subject to this WHT.

Provided that the non-resident parent company owns all of the shares in the issuer for a continuous period of at least six months, any capital gains derived from a (deemed) disposal of the shares in the issuer should not be subject to capital gains tax in Luxembourg.

Law stated - 22 December 2022

UPDATE AND TRENDS

Key developments of the past year

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

In line with the global market trends, 2022 was slightly less successful than the exceptionally good year of 2021 for the Luxembourg financial centre and its capital markets, which involved setting up new debt issuance programmes with Luxembourg issuers, an increased number of debt issuances and 11,465 new securities listed on the Luxembourg Stock Exchange (LuxSE), representing €1.09 trillion.

At the end of November 2022, the exchange had 39,660 securities admitted to listing and trading on its markets, including 509 new green, social and sustainability securities displayed on the Luxembourg Green Exchange (LGX), representing a total value of €199 billion. As the leading exchange for sustainable securities, the LuxSE has consolidated its firm commitment to sustainable finance through various initiatives, in particular through:

- displaying gender-focused bonds on the LGX, further to its new commitments with UN Women to link gender and finance;
- the issue on 5 November 2022 by the European Commission of a further €6 billion through a NextGenerationEU green bond for its recovery programme. With this green bond, the Commission has issued a total of €35.5 billion of NextGenerationEU green bonds to finance green projects under EU member states' Recovery and Resilience plans. NextGenerationEU is a temporary recovery instrument to support the EU's recovery from the covid-19 pandemic and help build a greener, more digital and resilient European Union;
- the reaching in September 2022 by KfW (a promotional bank owned by the Federal Republic of Germany and the German federal states) of the milestone of €50 billion in total green bond issuances since 2014; the great majority of these green bonds have been displayed on the LGX;
- displaying on the LGX of a €750 million social bond, the largest ever of its kind issued by an Italian bank, Intesa Sanpaolo;
- displaying on the LGX by the German real estate lender Berlin Hyp of its inaugural €750 million social bond, thus becoming the first European financial institution to issue green, social and sustainability-linked bonds; and
- displaying on the LGX Uruguay's inaugural sustainability-linked bond.

The year 2022 also saw the continuing success of the LGX section dedicated to climate-aligned issuers, inaugurated in February 2021 and built on the Climate Bonds Initiative's issuer screening and research.

Another significant milestone was when the LGX reached the 1,000 sustainable bonds mark in May 2021, with the European Investment Bank's (EIB) 10-year US\$1.5 billion Global Climate Awareness Bond. As of 30 November 2022, the EIB has 63 securities displayed on the LGX (52 green bonds and 11 sustainable bonds).

In November 2021, the LGX DataHub reached a milestone with data points on over 10,000 securities now available in one centralised hub. The LGX DataHub is a unique and centralised database of structured data on a vast range of sustainable securities. It addresses the complex data challenge that asset managers and investors are facing in their investments and reporting activities. In November 2022, the LuxSE also acquired a stake in Util, a global sustainability data provider based in the UK in order to help meet the growing demand for environmental, social and governance (ESG) data coverage. Util's innovative approach and insights have been recognised by a number of prestigious awards.

In September 2022, Luxembourg published the second bond report relating to its pioneering sovereign sustainability bond issued in September 2020, as foreseen by Luxembourg's Sustainability Bond Framework. The document is primarily aimed at international institutional investors and includes allocation and impact reports. The proceeds of the bond intend to finance and refinance social and environmental projects, such as the electric-powered public transport service and the country's second-largest hospital.

On 31 January 2022, the LuxSE listed the first security tokens representing a debt instrument on its Securities Official List (SOL). As of 30 November 2022, there were four securities of that type listed on the SOL.

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LAW STATED DATE











Correct on

Give the date on which the information above is accurate.

14 December 2022

Law stated - 22 December 2022

Jurisdictions

	Belgium	Liedekerke Wolters Waelbroeck Kirkpatrick
	Greece	Koutalidis Law Firm
	India	Cyril Amarchand Mangaldas
	Japan	Anderson Mōri & Tomotsune
	Luxembourg	Loyens & Loeff
	Malta	GVZH Advocates
	Netherlands	Stibbe
	Switzerland	Baker McKenzie
	Taiwan	Lee and Li Attorneys at Law
	USA	Sullivan & Cromwell LLP