



## How to set up in Luxembourg

### CRD/CRR Bank

This series is designed to help you understand the benefits and drawbacks of setting up your business in key European jurisdictions. Here, we provide a summary of the key issues and processes involved in setting up a bank in Luxembourg.

Simmons & Simmons has a team of experts, skilled in assisting clients with achieving the correct authorisation to establish their businesses across Europe. We use a series of tools to help streamline the process, making it as efficient, but cost-effective as possible.



#### What are the pros?

- No material super-equivalent requirements
- Broad domestic and treaty dividend withholding tax exemptions
- Data protection legislation is very similar to the UK in terms of practical application
- Multi-lingual jurisdiction
- International financial centre in the heart of Europe
- Reliable, predictable approach

#### What are the cons?

- Restrictions on the outsourcing of strategic or core functions

## Bank

### Licence/Passport Process

- Information on the application process is available (<http://www.cssf.lu/en/supervision/banks/authorisation/>)
- As a result of the creation of the EU Banking Union, the ECB (in conjunction with national competent authorities (NCAs)) grants and withdraws any bank authorisation
- The ECB also takes “fit and proper” decisions – it assesses the suitability of new members of the significant banks’ management bodies
- The process is iterative and involves submission of a template application form plus numerous supporting documents to the *Commission de Surveillance du Secteur Financier* (“CSSF”) for review
- A pre-submission meeting with the CSSF is required (and is recommended in any event)
- The CSSF serves as the entry point for applications and notifications related to all authorisation procedures. A bank must use CSSF’s forms for application or notification where available
- Feedback from the ECB is that it has a backlog of authorisation applications, so delays can be expected (we understand that the ECB is not outsourcing as much to the NCAs as it could)
- In light of Brexit, the ECB is considering its approach and with what guidance it will provide firms
- It usually takes six months from the applicant providing a complete application for a decision to be taken regarding a licence application. A decision should be taken within twelve months of the date of the application, but the backlog means that start to finish is more likely to be 12-18 months
- The decisions are made following the ECB and CSSF applying the Common Procedures – which include information as to expectations as to substance and people, including:
  - programme of operations
  - governance (fit and proper members of management bodies, suitable shareholders)
  - capital, liquidity and solvency
  - internal organisation (risk management, compliance, audit).

### Conduct of business Prudential rules

- CRR/CRD IV requirements will apply
- No material super-equivalent requirements
- The minimum capital resources requirement for a credit institution is €8,7 million
- There is also an ongoing risk-weighted capital requirement which refers to the firm’s credit, market and operational risks, as applicable.

### Corporate governance

- Systems and controls requirements are based on CRD IV requirements
- The CSSF needs to be satisfied that the applicant firm has staff of adequate quality, skills and experience at all levels and it will consider whether the applicant firm can demonstrate that its staff has appropriate experience
- The CSSF will verify that the members of the management body shall at all times be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties
- At least two persons must be responsible for the management of the institution
- There is no requirement relating to nationality
- The number of staff required will very much depend upon the services offered by the bank.

### Regulatory environment

- Licensing restrictions into other jurisdictions for marketing will need to be considered
- Although delegation is generally possible, this is likely to require that any representative of the UK entity would need to be dual hatted (secondment arrangement probably suffice) to do the marketing into jurisdictions where a licence is required.
- Dual hatting will need to be considered from a corporate perspective
- The CSSF is open to discussion on key issues in the licence application.

## Bank

### Tax

- Luxembourg global corporate income tax rate is 29.22% for Luxembourg city and should be reduced to 26.01% in 2018
- A net worth tax is levied by Luxembourg on the net assets of Luxembourg companies on a digressive scale of rates with two brackets: for a net worth tax base of €500m the tax is 0.5% and for a net worth tax base over €500m the tax is 0.05%
- No withholding tax on liquidation proceeds, interest and royalty payments. Luxembourg withholding tax rate on outgoing dividends is 15%, which can be reduced or exempt, under conditions
- Extended double tax treaty network, over 70 double tax treaties
- Related party transactions must be conducted considering the OECD arm's length principles
- Income from employment is subject to income tax at progressive rates up to 43.60%. Social security contributions are capped for both employee and employer at an annual ceiling of €115,337.84
- Luxembourg VAT rate is 17%
- No stamp duty.

### Employment law

- CRD IV remuneration requirements apply
- Notice – the greater of statutory (max 6 months based on service) or contractual
- Unfair dismissals risk – there must be substantial grounds justifying the dismissal, ie performance, conduct, redundancy and the process used must be fair. If an employee is unfairly dismissed he may seek damages or reinstatement.

### Data protection

- Legislation is based on EU directives.

### Outsourcing

- There are restrictions on outsourcing
- If after analysis the function is considered a strategic or core function, outsourcing is not permitted
- If it is not deemed to be a strategic or core function, outsourcing is allowed subject to obtaining the CSSF's prior authorisation to do so
- Notification to be sent to the CSSF in order to request the outsourcing should also include an in-depth analysis demonstrating that the outsourcing does not result in the relocation of the central administration
- For outsourced activities, the Luxembourg bank must be able to supervise and monitor the entity to which the activity has been outsourced .

### Corporate

- Firm must be incorporated in the form a public-law institution (public limited company) (*société anonyme*), a limited partnership with a share capital (*société en commandite par actions*) or a cooperative society (*société cooperative*)
- There is no "single entity representation" restriction. Some groups have different entities (subsidiaries) in Luxembourg, other such as eg Chinese banks usually have a branch of the PRC bank and a standalone bank governed by Luxembourg law
- Corporate considerations depending on actual structure
- Not possible to convert branch into new legal entity
- New entity to be established.

## Key contacts



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