

# How to set up in Luxembourg

## MIFID Firm

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 in Luxembourg.

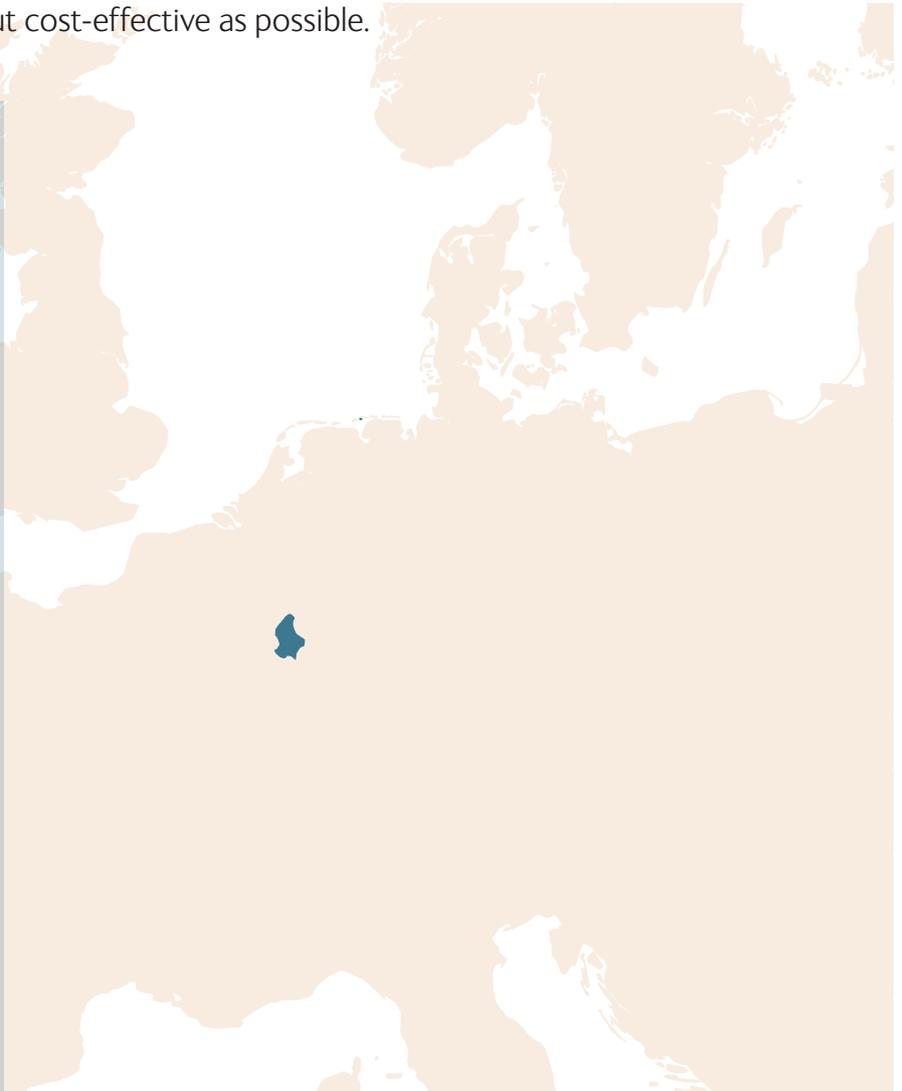
Simmons & Simmons has a team of experts, skilled in assisting clients with achieving the correct authorisation to establish their businesses across Europe. We use a series of tools to help streamline the process, making it as efficient, but cost-effective as possible.

### 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, principle based approach

### What are the cons?

- Critical/significant outsourcing will require CSSF pre-approval
- Application fee of €10,000



## Subsidiary (MiFID Investment Firm)

### Licence/Passport Process

- Information on the application process is available here: [MiFID Application Guidance](#)
- The process is iterative and involves submission of an application form and supporting documents to the [Commission de Surveillance du Secteur Financier](#) (“CSSF”) for review. As part of the application shareholders and board members will need to be tested on honorability and professional experience. In addition, there are requirements of central administration, internal governance and risk management
- Timetable is 6-12 months (with a maximum of 12 months)
- Ongoing contribution fees apply.

### Conduct of business Prudential rules

- Luxembourg requirements will apply - based on MiFID (copy-out)
- CRR/CRD IV requirements will apply
- No material super-equivalent requirements albeit certain derogations have been exercised (as in all Member States).

### Corporate governance

- Systems and controls requirements are based on CRD IV/MiFID requirements
- At least two conducting officers in charge of the daily management and key risk functions must be located in Luxembourg or sufficiently close to permit an effective day-to-day management in Luxembourg. The four eyes principle applies
- A fitness and probity regime will apply to certain controlled functions, with persons in “pre-approval controlled functions” (eg directors, CEO, CFO, CRO, head of compliance, etc) requiring CSSF pre-approval.
- Minimum two directors. Note that the CSSF may apply limits on the number of other directorships a director can hold – directors must be able to devote sufficient time to the role
- No other specific quantitative requirements but the CSSF will require that an institution shall ensure a majority of its directors are reasonably available to the CSSF at short notice.

### Regulatory environment

- The CSSF is open to discussion on key issues in the licence application.

## Subsidiary (MiFID Investment Firm)

### 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.
- See also a [comparative table](#) of the main taxes and reliefs relevant to setting up a financial services business.

### 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

- Many Luxembourg financial institutions have outsourcing arrangements
- Critical/significant outsourcing will require CSSF pre-approval (CSSF is now more challenging on outsourcing arrangements than it has been historically)
- Appropriate oversight will be required per MiFID requirements (including regular audits/reviews and information on the outsourced activities, plus detailed outsourcing agreement)
- Firm remains responsible for any outsourced activity and will be expected to retain/maintain in-house expertise to supervise/manage the outsourcing
- Outsourcing of important operational functions may not be undertaken in such a way as to impair materially the quality of its internal control and the ability of the CSSF to monitor the investment firm's compliance with all obligations.

### Corporate

- Firm should be incorporated as public-law institution, a public limited company, a limited partnership with a share capital or a cooperative society
- Capital minimum requirements apply depending on the type of service
- External auditors should be appointed
- No major issues to flag.

## Key contacts



**Charlotte Stalin**  
Partner  
London  
T +44 20 7825 4180  
E charlotte.stalin  
@simmons-simmons.com



**Louis-Maël Cogis**  
Partner  
Luxembourg  
T +352 26 21 16 14  
E louis-mael.cogis  
@simmons-simmons.com



**Ian Rogers**  
Partner  
France  
T +331 53 29 16 22  
E ian.rogers  
@simmons-simmons.com



**Fionán Breathnach**  
Partner  
Ireland  
T +3531 266 2111  
E fionan.breathnach  
@simmons-simmons.com



**Rezah Stegeman**  
Partner  
The Netherlands  
T +3120 722 2333  
E rezah.stegeman  
@simmons-simmons.com



**Jochen Kindermann**  
Partner  
Germany  
T +49 69 907454 43  
E jochen.kindermann  
@simmons-simmons.com



**Romeo Battigaglia**  
Partner  
Italy  
T +3902 72505 471  
E romeo.battigaglia  
@simmons-simmons.com

[simmons-simmons.com](http://simmons-simmons.com)  
[elexica.com](http://elexica.com)  
[@SimmonsLLP](https://twitter.com/SimmonsLLP)

elexica.com is the award winning online legal resource of Simmons & Simmons

© Simmons & Simmons LLP 2018. All rights reserved, and all moral rights are asserted and reserved.

This document is for general guidance only. It does not contain definitive advice. SIMMONS & SIMMONS and S&S are registered trade marks of Simmons & Simmons LLP.

Simmons & Simmons is an international legal practice carried on by Simmons & Simmons LLP and its affiliated practices. Accordingly, references to Simmons & Simmons mean Simmons & Simmons LLP and the other partnerships and other entities or practices authorised to use the name "Simmons & Simmons" or one or more of those practices as the context requires. The word "partner" refers to a member of Simmons & Simmons LLP or an employee or consultant with equivalent standing and qualifications or to an individual with equivalent status in one of Simmons & Simmons LLP's affiliated practices. For further information on the international entities and practices, refer to [simmons-simmons.com/legalresp](http://simmons-simmons.com/legalresp)

Simmons & Simmons LLP is a limited liability partnership registered in England & Wales with number OC352713 and with its registered office at CityPoint, One Ropemaker Street, London EC2Y 9SS.

It is authorised and regulated by the Solicitors Regulation Authority.

A list of members and other partners together with their professional qualifications is available for inspection at the above address.