Capital Markets Comparative Guide

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Capital Markets Comparative Guide

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1.Legal and regulatory framework

1. 1. Which laws and regulations govern the capital markets in your jurisdiction?

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The main capital markets legislation applicable to issuers whose shares are listed and admitted to trading on a regulated market within the meaning of Article 1(31) of the law of 30 May 2018 on markets in financial instruments, as amended ('MiFID II Law') is:

- the law of 24 May 2011 relating to the exercise of certain shareholder rights in general meetings of listed companies, as amended;
- the law of 11 January 2008 on transparency requirements for issuers, as amended ('Transparency Law') implementing the EU Transparency Directive (2004/109/EC);
- the EU Prospectus Regulation (2003/71/EC) and the law of 16 July 2019 on prospectuses for securities, as amended ('Prospectus Law');
- the law of 19 May 2006 on takeover bids, as amended ('Takeover Law'); and
- the EU Market Abuse Regulation (596/2014) (MAR) and the law of 23 December 2016 on market abuse, as amended ('Market Abuse Law').

In addition, the Luxembourg financial regulatory authority, the *Commission de Surveillance du Secteur Financier* (CSSF), regularly publishes circulars, annual reports and FAQs on various capital markets-related topics.

An issuer is also subject to the Rules and Regulations of the Luxembourg Stock Exchange (LuxSE), which lay down the requirements for listing and admission to trading.

1. 2. Is your jurisdiction part of a supranational, transnational or multinational framework with relevance to capital markets? If yes, how does this work?

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The Grand-Duchy of Luxembourg, as an EU member state, is subject to EU secondary legislation adopted by the EU institutions by means of regulations, decisions, directives, opinions and recommendations. Hence, decisions and regulations related to the capital markets, such as the EU Prospectus Regulation and the EU MAR, are directly applicable to Luxembourg; whereas directives, such as the Transparency Directive, must first be incorporated into Luxembourg law within a specific timeframe in order to achieve their objectives. By contrast, the opinions and recommendations issued by the European Union in order to suggest a line of action on a specific matter have non-binding force.

1. 3. Which bodies are responsible for regulating the capital markets in your jurisdiction? What powers do they have?

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In Luxembourg, the main body responsible for monitoring compliance with the capital markets regulations and ensuring their implementation is the CSSF. For this purpose, the CSSF has all supervisory and investigatory powers which are necessary to exercise its functions, including the power to impose remedies.

According to its Rules and Regulations, the LuxSE is the competent body for all decisions and operations relating to, among other things, the admission of securities and the continuing obligations of issuers, unless otherwise prescribed by EU or national law.

1. 4. How does enforcement work and what kinds of sanctions may be applied?

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The CSSF has the authority to pronounce administrative sanctions and measures, such as specific orders, public warnings and fines. For example, the CSSF has the power to set up an enforcement process in order to control whether the financial information published by the issuer is in accordance with the Transparency Law. Following the completion of such enforcement process, the CSSF will communicate its decisions to the issuer in the form of injunctions, recommendations and follow-up measures for the purpose of correcting or improving the content of the financial information being published.

Another arrow in the quiver in terms of sanctioning are the criminal sanctions that may be imposed by a criminal court in case of market abuse under the context of the EU MAR and the Market Abuse Law.

The LuxSE may also proceed with the suspension, withdrawal, delisting or transfer of securities from one market to another in case of non-compliance with its Rules and Regulations (see also question 4.7).

2.Capital markets infrastructure

2. 1. What is the capital markets infrastructure in your jurisdiction (eg, trading venues, central counterparties, central securities depositaries (CSDs)?

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The Luxembourg Stock Exchange (LuxSE) is authorised to operate in Luxembourg the business of trading venues – that is, regulated markets, multilateral trading facilities (MTFs) and organised trading facilities (OTFs) – pursuant to the MiFID II Law. In particular, the LuxSE operates:

- the main regulated market – an EU-regulated market named *Bourse de Luxembourg* (BdL); and
- the exchange regulated market, called the Euro MTF market.

Currently, no OTF has been established in Luxembourg.

Post-trading activities are cleared via LCH.Clearnet SA, which acts as central counterparty within the meaning of the European Market Infrastructure Regulation (648/2012) (EMIR), and are settled through Euroclear Bank and Clearstream Banking SA. The settlement process is carried out by securities settlement systems (SSSs), which enable the securities to be transferred and settled by book entry. An SSS is operated by a central securities depository (CSD) pursuant to the EU CSD Regulation (909/2014). CSDs may provide

securities accounts, central safekeeping services and asset services. There are two CSDs established in Luxembourg:

- LuxCSD SA; and
- Clearstream Banking SA, which also acts as international CSD.

2. 2. What are the main exchanges and other trading venues in your jurisdiction? What are the key differences between those various trading venues?

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The LuxSE operates the BdL market and the Euro MTF market. The main difference between these two markets is that far less stringent disclosure requirements apply to issuers whose securities are admitted to trading on the Euro MTF market. In particular, the Euro MTF market is outside the scope of the EU Prospectus Regulation and the EU Transparency Directive. As a consequence, a prospectus prepared in connection with a securities admission to trading on the Euro MTF market is not eligible for the European passport for the prospectus documentation, which is very useful when an issuer intends to offer securities in more than one EU member state. In addition, the LuxSE is responsible for the review and approval of a prospectus for an admission to the Euro MTF market pursuant to its Rules and Regulations; whereas for an admission to the BdL market, the competent authority responsible for the approval of a prospectus based on the EU Prospectus Regulation is the *Commission de Surveillance du Secteur Financier* (CSSF).

In addition to the BdL market and the Euro MTF market, the LuxSE offers issuers the possibility to register their securities in the LuxSE Securities Official List (SOL), without admission to trading in order to provide for enhanced visibility for investors. The SOL is not subject to regulation related to admission to trading and also gives access to the Luxembourg Green Exchange (LGX), a platform dedicated exclusively to the exchange of green securities.

2. 3. What kinds of securities does your jurisdiction provide for (eg, electronic securities)?

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Under Luxembourg law, securities may be issued in bearer, dematerialised or registered form.

2. 4. Is it mandatory to deposit securities with a (local) CSD (eg, for listing)?

Luxembourg
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According to the EU CSD Regulation, where a transaction in transferable securities takes place on a trading venue, the relevant securities must be recorded in book-entry form in a CSD in order to ensure that all such securities can be settled in an SSS.

An issuer can arrange for its securities admitted to trading on regulated markets or MTFs or traded on trading

venues to be recorded in any CSD established in any EU member state, subject to compliance by that CSD with conditions referred to in Article 23 of the EU CSD Regulation.

2. 5. Are there rules in place governing crypto-assets and crypto-infrastructure (eg, crypto-exchanges, local crypto-money)?

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There is currently no legal framework in Luxembourg that specifically applies to crypto-currencies. However, the CSSF has acknowledged that the raising of funds from the public in the form of an initial coin offering may fall within the ambit of certain rules and regulations, such as the EU Prospectus Regulation, depending on the nature of the tokens issued. In addition, the services provided by crypto-exchanges – that is, platforms which allow the conversion of crypto-currencies to fiat money or to other digital currencies and vice versa – are considered by the CSSF as financial services and as such are subject to ministerial authorisation in order to conduct their business in Luxembourg. Currently, there are two crypto-currency exchanges licensed in Luxembourg and which are therefore subject to the supervision of the CSSF: Bitstamp, a bitcoin exchange, and bitFlyer.

In general, Luxembourg law is continually modernised in order to keep up with technological innovations such as distributed ledger technology (DLT) as the underlying technology for crypto-currencies. For instance, the Luxembourg legislature recently introduced the laws of 1 March 2019 and 22 January 2021, which, among other things, allow dematerialised securities to be issued, held and maintained with secured electronic registration systems such as a DLT or in databases managed by settlement organisations or central account keepers.

2. 6. Are special rules in place for crowdfunding products?

Luxembourg
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Currently, there are no specific crowdfunding rules in Luxembourg. However, the EU Crowdfunding Regulation (2020/1503) and EU Directive 2020/1504 amending Directive 2014/65/EU linked to the EU Crowdfunding Regulation were published in the *Official Journal of the European Union* in October 2020. The EU Crowdfunding Regulation, which applies as of 10 November 2021, sets out detailed rules on:

- financial products marketed on crowdfunding platforms;
- crowdfunding services; and
- the authorisation and supervision of crowdfunding service providers for the purpose of creating an EU passport that would facilitate and foster cross-border funding of businesses.

2. 7. What kinds of databases are available on instruments issued and traded in your jurisdiction, and how can they be accessed?

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The LuxSE affords the public free access to a centralised database in which various documents relevant to issued securities are available, such as prospectuses, financial statements and other information relating to issuers. In addition, the LuxSE recently launched the LGX DataHub, which is a centralised database on green securities which can be accessed only upon payment.

3. Trading and post-trading infrastructure

3. 1. What kind of market infrastructure does your jurisdiction provide for?

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The market infrastructure in Luxembourg consists mainly of:

- the trading venues – that is, the *Bourse de Luxembourg* market and the Euro MFT market, both operated by the Luxembourg Stock Exchange (LuxSE);
- the central securities depositories which, together with the central counterparties, largely contribute to maintaining the post-trading infrastructure;
- the trade repositories in relation to the collection and maintenance of records related to derivatives such as REGIS-TR, a trade repository established in Luxembourg; and
- the payment systems – for example, TARGET2 for settling large-value payments and TARGET2 Securities for settling securities (see also question 2.1).

The Luxembourg Central Bank is responsible for:

- maintaining financial stability in Luxembourg; and
- monitoring, among other things:
    - payment systems;
    - clearing and settlement systems; and
    - cash operations.

3. 2. What are the rules governing liquidity flows across execution venues (eg, use of systematic internalisers, trading obligations)?

Luxembourg
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Articles 3 to 21 of the EU Markets in Financial Instruments Regulation (600/2014) (MiFIR) impose specific pre-trade and post-trade transparency requirements on:

- market operators;
- investment firms that operate a trading venue; and
- investment firms, including systematic internalisers (SIs) within the meaning of the MiFiD II Law, that operate over the counter.

Further, MiFIR sets out certain trading obligations for investment firms in connection with shares and derivatives pursuant to Articles 23 and 32 of MiFIR. In particular, investment firms must undertake all trades including trades dealt on own account and trades dealt when executing client orders on a regulated market, a multilateral trading facility (MTF), an SI or an equivalent third-country trading venue. However, an exclusion

from this trading obligation applies if there is a legitimate reason – that is, where trades:

- are non-systematic, *ad hoc*, irregular and infrequent; or
- are technical trades such as give-up trades which do not contribute to the price discovery process.

In addition, Articles 26 and 27 of MiFIR impose transaction reporting and reference data obligations on investment firms and operators of trading venues. Commission Delegated Regulation 2017/585, stemming from the empowerment of Article 27(3) of MiFIR, specifies the relevant identifying reference data that must be submitted for each financial instrument admitted to trading on regulated markets or traded on multilateral trading facilities or organised trading facilities.

3. 3. Are there rules on light and dark markets and how do these apply?

Luxembourg
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As mentioned in question 3.2, market operators and investment firms operating a trading venue are subject to, among other things, pre-trade transparency requirements, which are mainly set out in Articles 3, 8, 12 and 13 of MiFIR and apply to both equity and non-equity instruments. For example, market operators and investment firms must make public current bid and offer prices and the depth of trading interests at those prices which are advertised through their systems for shares, depositary receipts, exchange-traded funds, certificates and other similar financial instruments traded on a trading venue. However, the *Commission de Surveillance du Secteur Financier* (CSSF) may grant a waiver to such pre-trading transparency requirements based on Article 37-6 of the 1993 law on the financial sector, as amended ('1993 Law'), in case of orders that are large in scale, compared with normal market size, which would otherwise have a negative impact on the share price. In addition, Articles 4 and 9 of MiFIR provide for further waivers to the pre-trade transparency regime that may apply when specific conditions are met, such as:

- transactions that are executed in systems where the price is determined by reference to a price generated by another system (the 'reference price waiver'); or
- transactions that are bilaterally negotiated and formalised on a trading venue (the 'negotiated transaction waiver').

However, Article 5 of MiFIR introduces a double volume cap mechanism in order to ensure that the use of such waivers does not harm the price formation and to limit the execution of transactions in dark pools, which are operated without any pre-trade transparency due to waivers allowed by the MiFID II Law/MiFIR. This mechanism limits the transactions that can be executed under both the reference price waiver and the negotiated transaction waiver at:

- 4% at a trading venue level; and
- 8% for all EU trading venues.

3. 4. Are market participants subject to best execution requirements?

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Credit institutions and investment firms are subject to best execution requirements in accordance with Article

37-5 of the 1993 Law and Articles 64, 65 and 66 of Commission Delegated Regulation 2017/565. In particular, credit institutions and investment firms are bound to obtain the best possible result when executing orders for their clients, taking into account:

- price;
- costs;
- speed;
- likelihood of execution and settlement;
- size;
- nature; and
- all other consideration relevant to the execution order.

To achieve this, credit institutions and investment firms must put in place procedures and arrangements, and establish an order execution policy. The order execution policy must be communicated to clients and must explain clearly, in sufficient detail and in a way that can be easily understood by clients how orders will be executed by the credit institution or investment firm for the client.

3. 5. Does your jurisdiction apply a target market concept?

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Articles 98 and 100 of the MiFID II Law, which subsequently amended the 1993 Law, introduced specific requirements for credit institutions and investment firms with respect to the determination of a target market. In particular, credit institutions and investment firms that manufacture financial instruments for sale to clients must maintain, operate and review a process for the approval of each financial instrument. This product approval process must:

- specify an identified target market of final customers – that is, the customers for which the product was manufactured;
- ensure that all relevant risks for the identified target market are assessed, and that the planned distribution strategy is appropriate for the identified target market;
- regularly review the financial instruments they offer, considering any event that could materially affect the potential risk to the identified target market; and
- make available to any distributor all relevant information on the financial instrument and on the product validation process, including the identified target market for the financial instrument.

In 2017 the European Securities and Markets Authority issued guidelines on the target market assessment and more recently a series of Q&As in this respect.

3. 6. How does securities settlement work in your jurisdiction?

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According to the Rules and Regulations of the Luxembourg Stock Exchange (LuxSE), the delivery and settlement instructions of executed trades must be carried out through:

- recognised systems of the LuxSE (eg, Clearstream Banking SA); and/or
- an internalisation of settlement of trades outside a securities settlement system.

The relevant transfer of securities is usually implemented via a delivery versus payment process, whereby the securities are transferred by book entry and the corresponding payment takes place simultaneously through the transfer of the corresponding funds to the investor's account. The settlement of each trade must occur with an agreed settlement date of two business days after the execution date of such trade.

4.Listing and delisting of shares and bonds

4. 1. What key requirements must be met to obtain a primary listing in your jurisdiction? What restrictions apply in this regard? Do any exemptions apply?

Luxembourg
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A primary listing of securities following an initial public offering (IPO) on the *Bourse de Luxembourg* (BdL) and/or the Euro MTF markets may be obtained subject to certain listing conditions enumerated under the Grand-Ducal Regulation of 13 July 2007 relating to the official listing for financial instruments, as amended ('Grand-Ducal Regulation') and the Rules and Regulations of the Luxembourg Stock Exchange (LuxSE). These listing criteria may vary depending on the type of securities and are summarised as conditions applicable to:

- the issuer (eg, its legal position; minimum size of at least €1 million; period of existence of at least three years prior to the application for admission to listing);
- shares (eg, legal position; negotiability; physical form; listing of shares of the same category); and
- bonds (eg, legal position; negotiability; physical form; listing of bonds of a minimum amount of €200,000).

An application for admission to trading of securities on one of the securities markets operated by the LuxSE is also deemed to be an application for admission to its official list.

The prior publication of a prospectus is a *sine qua non* in order to obtain a primary listing on the BdL market and/or the Euro MTF market. The prospectus must be prepared and approved in accordance with:

- the EU Prospectus Regulation and Part II of the Prospectus Law, which implements the EU Prospectus Regulation, if the securities offered:
  - are covered by the EU Prospectus Regulation; and
  - relate to an offering and admission to a regulated market;
- Part III of the Prospectus Law (alleviated prospectus regime) in relation to securities not covered by the EU Prospectus Regulation; or
- Part IV of the Prospectus Law in case of an admission to the Euro MTF market.

The obligation to publish a prospectus does not apply to:

- any of the offers listed under Article 1(4) of the EU Prospectus Regulation (see also question 5.2); or
- certain types of securities offered pursuant to Article 1(5) of the EU Prospectus Regulation, such as securities fungible with securities already admitted to trading on the same regulated market, provided that they represent, over a period of 12 months, less than 20% of the number of securities already

admitted to trading on the same regulated market.

In addition, offers of securities to the public with a total consideration of less than €8 million in the European Union over a period of 12 months are exempt from the obligation to publish a prospectus based on Article 4(1) of the EU Prospectus Law. Nevertheless, an information notice must be prepared in accordance with Articles 4(3) and 4(4) of the Prospectus Law in case of an offer between €5 million and €8 million.

4. 2. What key requirements must be met to obtain a secondary listing in your jurisdiction? What restrictions apply in this regard? Do any exemptions apply?

Luxembourg
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A prospectus that is approved and notified in accordance with the EU Prospectus Regulation for admission to trading on an EU regulated market may validly be used for an admission to trading on a market operated by the LuxSE. Hence, the *Commission de Surveillance du Secteur Financier* (CSSF) must not undertake any approval or administrative procedures relating to prospectuses and supplements approved by the competent authorities of other EU member states. Nevertheless, the admission to trading on the Euro MTF market of securities already admitted to trading on an EU regulated market other than the regulated market of the LuxSE is subject to certain conditions based on the Rules and Regulations of the LuxSE – for example:

- the LuxSE must receive a confirmation stating that the ongoing obligations for trading on that other EU regulated market have been fulfilled; and
- the issuer must publish a notice stating where the most recent prospectus and information can be obtained.

4. 3. What are the most common listing structures? What are the advantages and disadvantages of these different types of structures? What other factors should companies consider when deciding on a listing structure?

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The most common listing structure under Luxembourg law is the public limited liability company (*société anonyme* (SA)) due to various factors such as:

- the free transferability of SA shares;
- the limited liability of its shareholders; and
- the flexibility of its corporate organisation.

An IPO may be also structured through a partnership limited by shares (*société en commandite par actions* (SCA)). Once incorporated, an SCA must have at least one general partner with unlimited liability and one limited partner with limited liability. In this type of corporate vehicle, the control of the company can be divided from the shareholding if, for example, a general partner is appointed manager and cannot be replaced without such general partner's consent. Usually only the limited partner's shares are publicly offered or traded in the SCA.

Other factors that companies must consider when deciding on a listing structure include:

- the form of shares to be listed;
- the management and tax structure;
- the implementation of any defence methods against hostile takeover post listing; and
- in general, the overall timing required for pre-IPO restructuring.

4. 4. How does the listing of bonds differ from the listing of shares?

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Pursuant to the Grand-Ducal Regulation and the Rules and Regulations of the LuxSE, different listing criteria may apply between bonds and shares, which mainly relate to:

- the minimum threshold of public distribution (not applicable to bonds – 25% free float for shares);
- the minimum market capitalisation/issuance amount (€1 million for shares; €200,000 for bonds);
- the issuer's operating history (no minimum track record for bonds issuers; operating history of three financial years for share issuers); and
- compliance with specific corporate governance principles (the corporate principles of the LuxSE may apply to share issuers, but not to bond issuers).

4. 5. What advisers are typically involved in the listing process? What claims (if any) can be brought against advisers with regard to their role in the listing process? Is there any way to mitigate such liability?

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The following advisers are typically involved in relation to a listing of securities:

- financial institutions, which mainly act as lead managers, bookrunners, arrangers or paying agents;
- legal advisers, who in general prepare the necessary legal documentation and coordinate with public authorities;
- tax advisers; and
- independent auditors.

As mentioned under question 5.6 and pursuant to the Prospectus Law, responsibility for the information given in a prospectus attaches to the issuer, the offeror, the person asking for the admission to trading on a regulated market or MTF or the guarantor, as the case may be. However, the liability of other persons – for example, legal advisers – cannot be excluded if it is evidenced that they have been providing false or misleading information. Such liability is extra-contractual (tort liability), based on Articles 1382 and 1383 of the Civil Code, and/or contractual. The contractual liability can be mitigated to a certain extent based on the terms of the relevant contract.

4. 6. What other factors should companies consider when deciding on a listing strategy?

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See question 4.3.

4. 7. What are the typical reasons for voluntary delisting? What are the grounds for compulsory delisting? What is the process for delisting?

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Without prejudice to the right of the CSSF under Article 45 of the MiFID II Law to demand, among other things, the removal of a financial instrument from trading, the LuxSE may not only suspend but go a step further and withdraw from trading any security that no longer complies with, or whose issuer no longer conforms to, the Rules and Regulations of the LuxSE, unless this measure is likely to significantly damage the interests of investors or to compromise the orderly operation of the market. The LuxSE may also, on its own initiative, decide to delist a security from trading on a market where it is of the firm belief that, for specific reasons, the normal and consistent market for this security cannot be maintained.

Contrary to compulsory delisting, the suspension or withdrawal of securities from trading may also take place on the initiative of the issuer due, for example, to:

- insufficient market capitalisation;
- merger; or
- the general restructuring of the issuer.

To this end, a justified request specifying the reasons for the voluntary delisting must be addressed to the LuxSE. Upon reviewing such request, the LuxSE will take into account:

- the interests of the stock market;
- the interests of investors; and
- if applicable, the interests of the issuer.

The LuxSE will then fix the date on which the suspension or withdrawal of securities will take effect. It may request the issuer to publish a press release to this effect and demand that the announcement be made sufficiently early so that a reasonable timeframe can be respected between the announcement and the date on which the suspension or withdrawal becomes effective.

The delisting from trading and the simultaneous deletion from the official list of the LuxSE will be published on the website of the LuxSE. These decisions must be communicated to the CSSF along with the relevant information relating to such decisions.

4. 8. What tax considerations should be borne in mind from the issuer's perspective?

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Issuers that have either their registered office or their central administration in Luxembourg are considered as being resident in Luxembourg and are therefore fully taxable in Luxembourg. In particular, the net taxable

profit of a resident company is subject to corporate income tax (*impôt sur le revenu des collectivités*) and municipal business tax (*impôt commercial communal*) at ordinary rates in Luxembourg. Liability for such corporation taxes extends to the issuer's worldwide profits, including capital gains, subject to the provisions of any relevant double taxation treaty and the tax exemptions for qualifying participations provided by the Luxembourg income tax law or the Grand-Ducal decree dated 21 December 2001.

A Luxembourg issuer is also subject to the annual net wealth tax charge, which amounts to 0.5% of the net asset value of the company on a net asset value up and including €500 million. A reduced tax rate of 0.05% is due for the portion of net assets exceeding the €500 million threshold. A Luxembourg issuer is subject to an annual minimum net wealth tax (contingent to its balance sheet of either a fixed amount of €4,815 or to a progressive rate of between €535 and €32,100). However, this flat tax charge is reduced by the corporate income tax to be paid by the issuer (if any).

Dividends paid by a Luxembourg issuer to its shareholders are generally subject to a 15% withholding tax in Luxembourg unless the domestic withholding tax exemption regime or a withholding tax reduction or exemption under a double tax treaty concluded by Luxembourg applies. Responsibility for the withholding of the tax is assumed by the issuer.

Under the Luxembourg general tax laws currently in force, there is no withholding tax on arm's-length interest payments in Luxembourg. Interest paid under certain hybrid instruments or not at arm's length may be subject to a 15% withholding tax if reclassified as dividend payments by the tax authorities.

If the Luxembourg issuer is a partnership such as a limited partnership, the Luxembourg issuer being a transparent company is not taxable as such (with the exception of municipal business tax in specific cases). The income of the partnership is directly taxable at the level of its partners.

5.Prospectus rules and marketing

5. 1. What kinds of instruments are subject to prospectus requirements?

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The obligation to publish a prospectus applies to securities offered to the public or admitted to trading on regulated markets. The term 'securities' is defined under Article 2(a) of the EU Prospectus Regulation and refers to 'transferable securities' as defined in point 44 of Article 4(1) of Directive 2014/65/EU, with the exception of money market instruments as defined in point 17 of Article 4(1) of Directive 2014/65/EU with a maturity of less than 12 months.

The obligation to publish a prospectus also applies in case of sales of closed-end funds' units, as these units fall under the definition of 'securities'.

5. 2. What are the key exemptions from the prospectus requirements and what kinds of selling restrictions might apply?

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The obligation for an issuer to publish a prospectus does not apply to certain types of offers of securities to

the public enumerated under Article 1(4) lit (a) to (j) of the EU Prospectus Regulation. The most common types of offers that qualify for an exemption are:

- an offer of securities addressed solely to qualified investors;
- an offer of securities addressed to fewer than 150 natural or legal persons per member state, other than qualified investors;
- an offer of securities whose denomination per unit amounts to at least €100,000; or
- an offer of securities addressed to investors that acquire securities for a total consideration of at least €100,000 per investor, for each separate offer.

Hence, sales to institutions such as credit institutions and investments firms and sales to sophisticated or high-net-worth individuals which fall under one of the above exemptions, among others, are generally unrestricted.

As far as the secondary market is concerned, a subsequent resale of securities which were originally exempt from the obligation to publish a prospectus is considered as a separate offer within the meaning of Article 2(d) of the EU Prospectus Regulation. In such case, the subsequent resale of securities may trigger the obligation to publish a prospectus.

5. 3. What key information must be included in a prospectus? What other requirements and restrictions apply with regard to the content of the prospectus?

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The content and format of the prospectus are determined by the annexes to the EU Prospectus Regulation, which are supplemented by the detailed provisions of EU Regulation 2019/980 on the format, content, scrutiny and approval of the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market. In general, a prospectus must contain all necessary information which is material to an investor in making an informed assessment of:

- the assets and liabilities, profits and losses, financial position and prospects of the issuer and any guarantor;
- the rights attaching to the securities; and
- the reasons for the issuance and its impact on the issuer.

The information in the prospectus must be written and presented in an easily analysable, concise and comprehensible form. The prospectus may be drawn up either as a single document or as separate documents consisting of:

- the issuer description (registration document);
- the securities note; and
- a summary of the prospectus.

5. 4. What is the process for preparation, approval, filing and publication of the prospectus? How long does each step take?

Luxembourg
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The prospectus must contain all necessary information in order for the investors to make an informed assessment of their investment. The prospectus must be drafted in English, German, French or Luxembourgish. Since 1 March 2021, the *Commission de Surveillance du Secteur Financier* (CSSF) has required the mandatory use of a new identification application tool for the submission of prospectuses. This E-prospectus Portal will ultimately fully replace the previously used email submission. Once the prospectus is submitted, the competent authority has 10 working days to review the submitted prospectus or 20 working days for first-time issuers pursuant to the EU Prospectus Regulation. In practice, the approval process may last from a few weeks to a few months, depending on the amount of missing information. The final version of the prospectus, as approved by the CSSF, must be available to the public at the latest on the date of the beginning of the public offer of the relevant securities.

5. 5. What are the rules governing prospectus summaries/key information documents (KIDs) in your jurisdiction?

Luxembourg
GSK Stockmann SA

In accordance with Article 7 of the EU Prospectus Regulation, a prospectus must at minimum provide the key information that investors need in order to understand the nature and the risks of the issuer, the guarantor and the securities that are being offered or admitted to trading on a regulated market. The summary must consist of four sections:

- the introduction;
- the key information on the issuer;
- the key information on the securities; and
- the key information on the offer.

The information to be included in each section must:

- accord with Articles 7(5), 7(6), 7(7) and 7(8) of the EU Prospectus Regulation; and
- be accurate, fair and clear and not misleading.

In addition, the prospectus summary must be drawn up as a short document written in a concise manner and of a maximum length of seven sides of A4-sized paper when printed. Commission Delegated Regulation 2019/979, as amended, sets out regulatory technical standards with regard to, among other things, the key financial information in the summary of a prospectus.

Where a key information document (KID) must also be prepared under EU Regulation 1286/2014 on KIDs for packaged retail and insurance-based investment products (PRIIPs) ('PRIIPs Regulation'), the issuer, the offeror or the person seeking admission to trading on a regulated market may reuse the contents of the KID in the prospectus summary. However, the requirement to produce a prospectus summary is not waived when a KID is required, as the latter does not contain key information on the issuer and the offer to the public or admission to trading on a regulated market of the securities concerned. In general, a KID must contain all the information that will enable retail clients to understand and compare the key features and risks of the packaged retail and insurance-based investment products and make well-founded investment decisions

thereon. The KID is a standalone document, clearly separate from marketing materials. It must also be accurate, fair, clear and not misleading. Commission Delegated Regulation 2017/653, as amended, supplementing the PRIIPs Regulation, lays down regulatory technical standards with regard to:

- the presentation, content, review and revision of KIDs; and
- the conditions for fulfilling the requirement to provide such documents.

5. 6. Who is liable for the content of a prospectus/KID in your jurisdiction? On what grounds can such claims be brought? Is there any way to mitigate such liability?

Luxembourg
GSK Stockmann SA

The Prospectus Law prescribes that specific persons can be held liable for damages due to false or misleading information contained in a prospectus or the omission of material information. In particular, in accordance with Article 5 of the Prospectus Law, such persons are:

- the issuer;
- the offeror;
- the person seeking admission to trading on a regulated market or MTF; and
- the guarantor.

The aforementioned person(s) bear(s) civil liability, which arises under the extra-contractual liability of the Civil Code (Articles 1382 and 1383). As an exception to the above, no civil liability should be attached to any person solely on the basis of the prospectus summary, including any translation thereof, unless:

- it is misleading, inaccurate or inconsistent with the relevant parts of the prospectus; or
- it does not provide, when read together with the other parts of the prospectus, key information in order to aid investors when considering whether to invest in such securities.

The same applies to PRIIP manufacturers, such as insurance undertakings and credit institutions: according to Article 11 of the PRIIPs Regulation, they will not incur civil liability solely on the basis of the KID, including any translation thereof, unless it is:

- misleading;
- inaccurate; or
- inconsistent with:
    - the relevant parts of legally binding pre-contractual and contractual documents; or
    - the requirements laid down in Article 8 of the PRIIPs Regulation.

Administrative sanctions and other administrative measures may also be imposed in case of breaches of the Prospectus Law and/or the law of 17 April 2018 on KIDs for PRIIPs, implementing the PRIIPs Regulation, as amended.

The responsible person(s) as determined in accordance with Article 5 of the Prospectus Law cannot exclude, proportionate or limit its civil liability in connection with the content of the prospectus by including, for example, a limitation clause, except for the particular circumstances in which the EU Prospectus Regulation and subsequently the Prospectus Law allow a limitation to such liability. This is in particular the case in

relation to:

- the specific liability regime applicable to the summary of the prospectus; and
- the potential limitation on liability in case the issuer or the person responsible for drawing up a prospectus does not consent to its use in view of a resale of securities in accordance with Article 5(1) and Recital 26 of the EU Prospectus Regulation.

6.Financial services (marketing and distribution)

6. 1. What kinds of services in financial instruments are subject to authorisation requirements? Is proprietary trading allowed *per se*?

Luxembourg
GSK Stockmann SA

Pursuant to the 1993 law on the financial sector ('1993 Law'), the offering of services in financial instruments, depending on each case, is subject to an authorisation granted within the context of a credit institution or other financial sector players, such as investment firms. These services may include:

- investment services and activities, such as:
  - reception and transmission of orders in relation to one or more financial instruments;
  - investment advice;
  - underwriting of financial instruments; and
  - placing of financial instruments on a firm/without a firm commitment basis; and
- ancillary services, such as:
  - safekeeping and administration of financial instruments for the account of clients;
  - services relating to underwriting; and
  - granting credits or loans to an investor to allow it to carry out a transaction in one or more financial instruments.

Proprietary trading – that is, trading with the (investment) firm's own money – is in principle allowed in Luxembourg and is subject to the conditions of Article 24-3 of the 1993 Law if no exemptions apply pursuant to such law.

6. 2. Do special authorisation requirements apply to members of trading venues and/or issuers?

Luxembourg
GSK Stockmann SA

The admission of a person to membership of a securities market of the Luxembourg Stock Exchange (LuxSE) – that is, any regulated market for securities or multilateral trading facility – is subject to, among other things, the eligibility criteria for membership as set out in Part 3 Chapter 2 of the Rules and Regulations and the prior written approval by the LuxSE.

Issuers with shares listed and admitted to trading on the regulated market of the LuxSE must comply with the listing provisions of the Rules and Regulations and the capital markets legislation (see also question 1.1).

6. 3. How are financial instruments typically marketed in your jurisdiction? Are there special rules for initial public offerings?

Luxembourg
GSK Stockmann SA

The marketing in Luxembourg of financial instruments within the meaning of the MiFID II Law typically consists of public offerings or placements manifested by means such as advertising, investor road shows and *ad hoc* meetings. An initial public offering (IPO) process is launched only after the approval and publication of a prospectus pursuant to the EU Prospectus Regulation, if applicable. Hence, during the IPO process, any marketing material advertised by the issuer and/or the financial institution(s) appointed by the issuer must comply with the principles set out in the EU Prospectus Regulation. For example, advertising materials must:

- be clearly recognisable as such; and
- state that a prospectus has been or will be published and where it can be obtained.

Moreover, the information in the advertising materials must:

- not be inaccurate or misleading; and
- be consistent with the information contained in the prospectus.

Where marketing activities are conducted prior to the IPO and the publication of the prospectus, it must be ensured that:

- they do not qualify as an offer of securities to the public pursuant to the EU Prospectus Regulation; and
- the provisions relating to market soundings of the EU Market Abuse Regulation (MAR) are taken into consideration.

See also questions 4.1 and 4.3 regarding the listing requirements of the LuxSE.

6. 4. Is book building commonly used in your jurisdiction? If so, what does this process typically involve and do the regulatory requirements apply to book building? What are the advantages and disadvantages of book building?

Luxembourg
GSK Stockmann SA

Book building is a widely used process in the European Union, including in Luxembourg, based on which an underwriter – for example, an investment bank – attempts to determine the price of securities proposed to be issued by an issuer within the context of an IPO. For this purpose, the underwriter invites, for example, institutional investors to submit their respective bids, which must be within the price band or floor price specified by the issuer. The book runner then collects the bids from investors and sets the final price based on demand at various prices. Credit institutions and investment firms must, among other things, act honestly, fairly and professionally in accordance with the best interests of their clients when providing underwriting services in line with the MiFID II Law (Article 37-3 of the 1993 Law).

Book building is in general a fair, efficient and transparent tool for collecting bids and evaluating the intrinsic

worth of the securities being offered, and it gives underwriters and issuers control and flexibility over the allocation of securities. On the other hand, as with every public offering, there is still a risk of the share being overpriced or undervalued when the initial price is set.

6. 5. What requirements and restrictions apply with regard to price stabilisation in your jurisdiction?

Luxembourg
GSK Stockmann SA

Stabilisation (within the meaning of the EU MAR) of the market price of securities is generally subject to the prohibitions against market abuse, but can be legitimate for economic reasons and if carried out under the necessary transparency. In particular, according to Article 5(4) of the EU MAR, the prohibitions set out in Articles 14 (prohibition of insider dealing and unlawful disclosure of inside information) and 15 (prohibition of market manipulation) of the EU MAR do not apply to trading in securities or associated instruments for the stabilisation of securities where:

- the stabilisation is carried out over a limited period;
- the relevant information about the stabilisation is disclosed and notified to the competent authority of the trading venue in accordance with Article 5(5) of the EU MAR;
- adequate limits with regard to price are complied with; and
- such trading complies with the conditions for stabilisation laid down in the regulatory technical standards referred to in Article 5(6) of the MAR.

The conditions to be complied with for stabilisation measures under Articles 5(1) and (4) of the MAR are clarified by Commission Delegated Regulation 2016/1052.

The details of all stabilisation transactions must be notified to the competent authority of the trading venue (ie, where the financial instruments are admitted to trading), no later than the end of the seventh daily market session following the date of execution of such transactions.

7.Derivatives

7. 1. What trading and clearing obligations apply to derivatives?

Luxembourg
GSK Stockmann SA

Article 4 of the European Market Infrastructure Regulation (EMIR) introduced the obligation to centrally clear certain classes of over-the-counter (OTC) derivative contracts through central counterparties (CCPs) that have been authorised or recognised under the EMIR framework. In particular, the CCPs' role in his context is to interpose themselves between the counterparties to the contracts traded on one or more financial markets, becoming the buyer to every seller and the seller to every buyer. In this way, the clearing of derivative contracts through CCPs increases market transparency and mitigates risks in derivative markets. Article 29(1) of the EU Markets in Financial Instruments Regulation (MiFIR) extends the scope of the clearing obligation to all derivative transactions concluded on a regulated market.

Certain classes of derivative contracts that are already subject to a clearing obligation under EMIR may also

be subject to the trading obligation of Article 28 MiFIR and may thus be executed only on a regulated market, a multilateral trading facility, an organised trading facility or a third country trading venue deemed to be equivalent by the European Commission. The trading obligation is established in accordance with the procedure set out in Article 32 of MiFIR and further specified in Commission Delegated Regulation 2016/2020.

7. 2. Do mandatory risk mitigation techniques (eg, provision of collateral) apply?

Luxembourg
GSK Stockmann SA

Risk mitigation techniques apply to all non-centrally cleared OTC derivative transactions based on Article 11 of EMIR and Chapter VIII of Commission Delegated Regulation (EU) 149/2013. Such techniques include:

- timely confirmation;
- portfolio reconciliation;
- portfolio compression;
- dispute resolution procedures;
- the exchange of collateral; and
- mark-to-market valuation.

In addition, Commission Delegated Regulation 2016/2251 sets out the standards for the timely, accurate and appropriately segregated exchange of collateral for OTC derivatives contracts that are not cleared by a CCP.

7. 3. Is a mandatory reporting system for derivatives transactions in place?

Luxembourg
GSK Stockmann SA

In the case of OTC derivatives, counterparties and CCPs must mandatorily report the details of such derivative contracts, including any modification or termination, to:

- a trade repository established in the European Union and registered with the European Securities and Markets Authority (ESMA) (eg, Regis-TR SA, based in Luxembourg); or
- a trade repository established in a third country and recognised by ESMA.

This reporting obligation will not apply to derivative contracts within the same group subject to certain conditions enumerated under Article 9 of EMIR.

In the case of derivatives admitted to trading on a regulated market, the reporting obligations of Article 26 of MiFIR apply instead, pursuant to which investment firms must report derivative transactions to the relevant competent authority (see also question 3.2).

7. 4. What are the commonly used framework agreements in your jurisdictions for non-cleared and cleared derivatives?

Luxembourg
GSK Stockmann SA

The 2002 International Swaps and Derivatives Association (ISDA) Master Agreement – which is accompanied by a customised schedule, definitions and credit support documentation – is the most commonly used framework agreement for OTC derivative transactions and is typically governed by foreign law, mainly English law or New York law. In addition, ISDA and the Futures and Options Association have published a cleared OTC derivatives addendum which supplements the ISDA Master Agreement, so that parties to the ISDA Master Agreement may enter into derivative transactions that are cleared.

8.Corporate governance/continuing obligations

8. 1. What corporate governance requirements apply to listed companies?

Luxembourg
GSK Stockmann SA

Luxembourg laws – notably the law of 10 August 1915 on commercial companies, as amended and the law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, as amended – stipulate certain basic corporate governance-related regulations which apply mandatorily to all commercial companies, including listed companies. These generally:

- cover the basic set-up and responsibilities of the management and shareholders;
- regulate conflicts of interest;
- provide for certain disclosure obligations; and
- regulate auditing.

Further, there are mandatory legal provisions that apply exclusively to listed companies and which relate to, among other things:

- shareholder engagement;
- board remuneration;
- transparency;
- conduct of general meetings; and
- market abuse.

(See also question 1.1.)

In addition, the Luxembourg Stock Exchange (LuxSE) has issued the X Principles of Corporate Governance, which apply to companies listed on the regulated market in Luxembourg and which further focus on matters such as:

- the composition of the board of directors and of the special committees;
- remuneration policy;
- professional ethics;
- corporate social responsibility; and
- risk management.

(See also question 8.2.)

8. 2. Is there a mandatory or voluntary corporate governance index? If so, what does it

contain?

Luxembourg
GSK Stockmann SA

The most relevant corporate governance index in Luxembourg is the LuxSE X Principles of Corporate Governance, which contain:

- mandatory principles;
- recommendations that can be waived if the company can explain the reasons for their non-application; and
- indicative best practice guidelines.

The principles are mandatory and binding for all issuers whose shares are admitted to trading on the regulated market operated by the LuxSE. The recommendations provide for the proper application of the principles on a 'comply or explain' basis. Finally, the guidelines refer to 'best practices' as to the implementation of the recommendations; they are optional and hence are not subject to the comply-or-explain system.

Luxembourg companies which are listed not on the LuxSE but on another EU regulated market, as well as non-listed companies, may voluntary apply the LuxSE principles as evidence of good corporate governance.

8. 3. What reporting obligations apply to listed companies? Do these vary if the issuer is a foreign company or between trading venues/segments?

Luxembourg
GSK Stockmann SA

Under the Transparency Law, issuers whose securities are admitted to trading on an EU regulated market and for which Luxembourg is the home member state must comply with specific disclosure requirements with respect to regulated information within the meaning of Article 1(10) of the Transparency Law. In particular, the issuer must:

- publish the regulated information;
- store it with an officially appointed mechanism (OAM); and
- file the regulated information with the *Commission de Surveillance du Secteur Financier* (CSSF) on an ongoing basis.

The regulated information can be classified into periodic information and ongoing information. The notion of periodic information encompasses mainly the publication of:

- an annual financial report to be published at the latest four months after the end of each financial year; and
- a half-yearly financial report to be published at the latest three months after the end of the first six months of each financial year.

In parallel, the notion of ongoing information refers to specific information that the issuer must publish under certain conditions, such as:

- changes in major shareholdings;
- acquisition or disposal of own shares;
- total number of voting rights and capital; and
- changes in the rights of securities.

An issuer whose securities are admitted to trading on a regulated market situated or operating in the territory of Luxembourg, but of which Luxembourg is not the home member state within the meaning of the Transparency Law, need not store the regulated information in accordance with the Transparency Law (ie, store it with a Luxembourg OAM or file it with the CSSF). Nevertheless, the issuer must comply with the dissemination provisions of the Transparency Law and therefore publish the regulated information in a manner that ensures fast access to such information on a non-discriminatory basis.

8. 4. What other continuing obligations apply to listed companies?

Luxembourg
GSK Stockmann SA

Listed companies are subject to further publication and notification obligations in respect of certain information which is not regarded as regulated information. For example, listed companies must ensure that:

- all shareholders/bondholders ranking *pari passu* are treated equally;
- all information necessary to allow the shareholders/bondholders to exercise their rights themselves or by proxy is publicly available in Luxembourg; and
- the integrity of this information is preserved.

In addition, issuers subject to the Transparency Law must disclose information required under Articles 17 (public disclosure of inside information) and 19 (managers' transactions) of the EU Market Abuse Regulation (MAR) as regulated information. Information in this context must therefore be filed with the CSSF, stored with the OAM and disseminated according to the provisions of the Transparency Law.

8. 5. What are the consequences of breach of any of these obligations?

Luxembourg
GSK Stockmann SA

Pursuant to Article 25(2) of the Transparency Law, if an issuer fails to make public the regulated information or notify the acquisition of a disposal of a major holding within the required timeframe, the CSSF may impose the following administrative sanctions:

- in case of legal entities, fines of:
  - up to €10 million or 5% of their annual turnover (on a consolidated basis for groups); or
  - twice the amount of profits gained or losses avoided because of the breach, where those can be determined; and
- in case of individuals, fines of:
  - up to €2 million; or
  - twice the amount of the profits gained or losses avoided because of the breach, where those can be determined.

In the event of non-compliance by a legal entity, administrative sanctions may also apply to:

- the members of its administrative, management or supervisory bodies; and
- other individuals who are responsible for non-compliance under the applicable law.

Criminal sanctions may also be imposed consisting of fines of up to €125,000.

8. 6. Do mandatory auditing rules apply and is there a special review/enforcement process?

Luxembourg
GSK Stockmann SA

EU Regulation 537/2014, together with the law of 23 July 2016 on the audit profession, outlines the requirements applicable to the statutory audit of public-interest entities – for example, entities whose shares are admitted to trading on a regulated market in an EU member state. These relate to, among other things:

- the audit fees;
- the independence rules (prohibition of non-audit services);
- the content of the audit report;
- the additional report to the audit committee;
- the transparency report from the audit firm; and
- the duration of the audit engagement.

The CSSF may set up an enforcement process in order to control the financial information published by the issuers (see question 1.4).

9.Inside information and market manipulation

9. 1. What qualifies as inside information?

Luxembourg
GSK Stockmann SA

According to Article 7(1)(a) of the EU Market Abuse Regulation (MAR), 'inside information' generally means information which:

- is of a precise nature;
- relates, directly or indirectly, to particular instruments or issuers;
- has not been made public; and
- if it were made public, would be likely to have a significant effect on the price of those financial instruments.

9. 2. What prohibitions apply to inside information? Is there a legitimate behaviour exemption?

Luxembourg
GSK Stockmann SA

According to Article 14 of the EU MAR, a person must not:

- engage or attempt to engage in insider dealing – that is, use inside information by acquiring or disposing of, for its own account or for the account of a third party, directly or indirectly, financial instruments to which that information relates;
- recommend that another person engage in insider dealing or induce another person to engage in insider dealing; or
- unlawfully disclose inside information.

However, Article 9 of the MAR sets out certain types of behaviour that are considered to be legitimate in the context of the insider dealing offences. These refer to situations where the (legal) person in possession of inside information:

- has taken steps to ensure that the natural person who made the decision to acquire or dispose of the relevant financial instrument is not in possession of the inside information and has not influenced that natural person;
- is a market maker acting legitimately in the normal course of the exercise of such function;
- is authorised to execute orders on behalf of third parties and acts legitimately in the normal course of the exercise of that person's employment, profession or duties;
- acquires or disposes of financial instruments in discharge of a pre-existing obligation that has become due, in good faith; or
- obtained such information in the course of conducting a public takeover or merger with a company and uses the information solely for proceeding with that merger or public takeover (and not for stake-building), so long as that information has ceased to be inside information at the time of approval of the merger or acceptance of the offer by the shareholders of that company.

9. 3. What are the rules on mandatory disclosure of inside information?

Luxembourg
GSK Stockmann SA

According to Article 17 of the EU MAR, an issuer must inform the public as soon as possible of inside information which directly concerns that issuer. In such case, the issuer must:

- ensure that the inside information is made public in a manner which enables fast access and complete, correct and timely assessment of the information by the public; and
- where applicable, store it with an officially appointed mechanism referred to in Article 21 of EU Directive 2004/109/EC, as amended.

The issuer:

- must not combine the disclosure of inside information to the public with the marketing of its activities; and
- must post and maintain on its website, for a period of at least five years, all inside information it is required to disclose publicly.

However, an issuer may, on its own responsibility, delay disclosure to the public of inside information, provided that all of the following conditions are met:

- Immediate disclosure is likely to prejudice the legitimate interests of the issuer or emission allowance market participant;
- Delay of disclosure is not likely to mislead the public; and
- The issuer or emission allowance market participant can ensure the confidentiality of that information.

9. 4. Are there special provisions on the operation of insider lists and Chinese walls?

Luxembourg
GSK Stockmann SA

Issuers and any person acting on their behalf or on their account must each:

- draw up an insider list in accordance with Article 18 of the EU MAR and Commission Implementing Regulation 2016; and
- promptly update such insider list and provide it to the *Commission de Surveillance du Secteur Financier* (CSSF) upon its request as soon as possible.

The insider list must be retained for at least five years after it is drawn up or updated.

Further, market operators and investment firms that operate a trading venue, as well as any person professionally arranging or executing transactions, must establish and maintain effective arrangements, systems and procedures aimed at preventing and detecting insider dealing (ie, Chinese walls), based on Article 16 of the EU MAR.

9. 5. Do special rules apply to personal transactions?

Luxembourg
GSK Stockmann SA

Persons discharging managerial responsibilities within the meaning of Article 3(25) of the EU MAR, and persons closely associated with them within the meaning of Article 3(26) of the EU MAR, must notify the issuer or the emission allowance market participant and the CSSF:

- in respect of issuers, every transaction conducted on their own account relating to the shares or debt instruments of that issuer or to derivatives or other financial instruments linked thereto; and
- in respect of emission allowance market participants, every transaction conducted on their own account relating to emission allowances, to auction products based thereon or to derivatives relating thereto.

Such notifications must be made promptly by these persons and no later than three business days after the date of the transaction. In addition, the issuer or the emission allowance market participant shall ensure that the information contained in the above notification is made public within two business days of receipt of such notification. Further details on the notification of managers' transactions are set out in Article 19 of the EU MAR, in Commission Implementing Regulation 2016/523 and in Commission Delegated Regulation 2016/522 ('MAR Commission Delegated Regulation').

9. 6. What kinds of activities may amount to market manipulation?

Luxembourg
GSK Stockmann SA

Article 12(1) of the MAR sets out which activities are covered by the term 'market manipulation'. For example, it is prohibited to enter into a transaction, place an order to trade or behave in any other way that gives false or misleading signals as to the supply of, demand for, or price of a financial instrument. A non-exhaustive list of indicators of manipulative behaviour is set out in Annex I of the MAR and in the MAR Commission Delegated Regulation.

The prohibition of market manipulation applies to all financial instruments traded on a regulated market, on a multilateral trading facility or on an organised trading facility.

9. 7. What are the consequences of breach of these requirements and restrictions, both for issuers and for their directors and officers?

Luxembourg
GSK Stockmann SA

The Market Abuse Law, which transposes the EU Market Abuse Directive and in general aligns the national market abuse rules with the EU MAR, provides for certain administrative sanctions in case of infringements of the MAR. These include:

- an order to cease certain conduct;
- the disgorgement of profits;
- a public warning identifying the responsible person;
- the withdrawal or suspension of the authorisation granted to persons supervised by the CSSF;
- a temporary or permanent ban on a person discharging managerial responsibilities;
- administrative pecuniary sanctions of:
    - between €500,000 and €5 million against a natural person; and
    - between €1 million and €5 million or a percentage between 2% and 15% of the total annual turnover against a legal person; and
- pecuniary sanctions of at last 10 times the amount of profits gained or losses avoided due to the infringement.

The Market Abuse Law also imposes criminal sanctions in case of:

- insider dealing;
- recommending or inducing another person to engage in insider dealing;
- unlawful disclosure of inside information; and
- market manipulation.

Such criminal offences are sanctioned with:

- imprisonment of between three months and four years; and
- a fine of between €251 and €5 million for natural persons; or
- a fine of between €500 and €15 million for legal persons.

The fines can be increased by up to 10 times the amount of the profit realised for offences on insider dealing and must not be less than the profit realised.

10.Short selling

10. 1. What kinds of restrictions apply to short selling?

Luxembourg
GSK Stockmann SA

Article 12 of the EU Short-Selling Regulation (236/2012) prohibits any uncovered short sales in shares unless one of the following conditions is met:

- The natural or legal person has borrowed the share or has made alternative provisions resulting in a similar legal effect;
- The natural or legal person has entered into an agreement to borrow the share or has another absolutely enforceable claim under contract or property law to be transferred ownership of a corresponding number of securities of the same class so that settlement can be effected when it is due; or
- The natural or legal person has an arrangement with a third party under which that third party has confirmed that the share has been located and has taken measures *vis-à-vis* third parties necessary for the natural or legal person to have a reasonable expectation that settlement can be effected when it is due.

These restrictions are also applicable to uncovered short sales in sovereign debt – that is, debt instruments issued by any of the sovereign issuers listed under Article 2(d) of the EU Short Selling Regulation. In addition, all credit default swap (CDS) positions, within the meaning of Article 2(c) of the EU Short Selling Regulation, related to a sovereign issuer must not lead to uncovered positions pursuant to Article 14 of the regulation.

Exemptions are foreseen for market making activities and authorised primary dealers, as both terms are defined under Article 2(k) and Article 2(n) of the EU Short Selling Regulation respectively.

10. 2. Is a mandatory disclosure requirement in place regarding short selling?

Luxembourg
GSK Stockmann SA

The EU Short Selling Regulation introduced a notification system according to which natural or legal persons must notify the competent authority – that is, for Luxembourg, the *Commission de Surveillance du Secteur Financier* (CSSF) – of:

- significant net short positions in shares which are admitted to trading on a regulated market or a multilateral trading facility, unless the main trading venue is in a third country;
- significant net short positions in sovereign debt; and
- uncovered positions in sovereign CDS.

The above notification requirements apply when the net short positions reach or fall below certain thresholds, as indicated in Articles 5, 7 and 8 of the EU Short Selling Regulation. Further, the notification requirement of significant net short positions in shares may become a public disclosure requirement in accordance with Article 9 of the regulation when the net short position in shares exceeds the threshold of 0.5% of capital issued by the entity concerned, and each 0.1% above that.

Commission Delegated Regulation 826/2012, Commission Implementing Regulation 827/2012 and CSSF Circular 12/548, as amended by Circular 13/565, provide further details in relation to the above disclosure requirements, among other things.

10. 3. Is it permitted to write research reports while holding short positions?

Luxembourg
GSK Stockmann SA

At times, short selling may fall within the definition of 'price manipulation'. This might be the situation where a short position is taken in a financial instrument and then misleading negative information is disseminated about such financial instrument with a view to decreasing its price. After the price has fallen, the position is then closed. This practice constitutes an indicator of manipulative behaviour based on Annex II, Section I(4) (d) of the MAR Commission Delegated Regulation and may be subject to the sanctions of the MAR.

11.Sustainability

11. 1. Is the term 'sustainability' defined in your jurisdiction and, if so, how? Does it cover environmental as well as social objectives? How is compliance with sustainability assessed (eg, quantitatively or qualitatively)? Are there certain minimum requirements?

Luxembourg
GSK Stockmann SA

The term 'sustainability' is not defined under Luxembourg law, but it is generally understood in line with the Sustainable Development Goals adopted by the United Nations in 2015, which cover the three dimensions of sustainability – that is, economic, social and environmental (ESG). In addition, Luxembourg recognises different sustainability standards, with the most significant importance being those set out in the EU Taxonomy Regulation (2020/852). In particular, pursuant to the EU Taxonomy Regulation, an economic activity will be deemed sustainable if it:

- makes a substantial contribution to at least one of the six environmental objectives set out in Article 9 of the EU Taxonomy Regulation;
- does not significantly harm any of the other environmental objectives;
- complies with minimum social safeguards; and
- complies with technical screening criteria.

Such technical screening criteria are developed in delegated acts and may, among other things, be quantitative and contain comprehensive thresholds to the extent possible on a sector-by-sector basis, and otherwise be qualitative.

11. 2. Are there special rules in place in your jurisdiction on the identification, management and disclosure of sustainability issues?

Luxembourg
GSK Stockmann SA

Issuers meeting certain thresholds in relation to their balance sheet and number of employees on either a

statutory or group level must provide a (consolidated) non-financial statement in their management report (Article 1730-1 of law of 10 August 1915 on commercial companies, as amended; and Article 68*bis* (2) of the law of 19 December 2002 on the register of commerce and companies and the accounting and annual accounts of undertakings, as amended). The non-financial statement must contain information on:

- the development, performance and position of the group; and
- the impact of its activity relating at least to:
    - environmental, social and employee matters;
    - respect for human rights; and
    - anti-corruption and bribery matters.

In addition, as of the financial year 2021, these issuers are required, among other things, to disclose pursuant to the EU Taxonomy Regulation:

- the proportion of their turnover derived from products and services of taxonomy aligned activities; and
- the proportion of their capital expenditures and operational expenditures relating to assets or processes associated with taxonomy-aligned activities.

11. 3. Do applicable sustainability rules distinguish between sustainability risks (ie, financial risks resulting from sustainability issues) and the actual impact of corporate actions on, for example, the environment?

Luxembourg
GSK Stockmann SA

The non-financial statement described in question 11.2 will also include, among others things:

- a description of the policies pursued by the issuer in relation to environmental, social, employment, respect for human rights, anti-corruption and bribery matters;
- the outcome of those policies; and
- the principal risks related to those matters linked to the issuer's operations – including, where relevant and proportionate:
    - its business relationships, products or services which are likely to cause adverse impacts in those areas; and
    - how the issuer manages those risks.

11. 4. Does your jurisdiction provide for a special green bond regime?

Luxembourg
GSK Stockmann SA

In the world's first law dedicated to green bonds, in 2018 Luxembourg introduced a new category of covered bonds – renewable energy covered bonds – which are guaranteed by rights in assets or securities linked to renewable energy. 'Renewable energy' includes any energy produced from renewable non-fossil sources, including wind, solar, thermal, geothermal, hydrothermal and marine energy.

In general, Luxembourg is considered as leading financial centre for green bonds, since 50% of the world's

green bonds are listed on the Luxembourg Green Exchange (LGX) platform, the world's first platform for the exchange of a variety of sustainable finance instruments. All instruments and/or issuers on the LGX platform must be aligned with established (international) frameworks 'recognised' by the Luxembourg Stock Exchange (LuxSE), such as:

- the International Capital Market Association's Green Bond Principles; the
- the EU Taxonomy Regulation; and
- the Climate Bond Initiative.

11. 5. Are there restrictions on the sale or distribution of instruments not considered sustainable?

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There are no restrictions under Luxembourg law on the sale or distribution of instruments that are not considered sustainable. Nevertheless, sustainable instruments are generally encouraged.

11. 6. Is it necessary to comply with certain minimum standards (eg, on human rights) to qualify as a 'green' issuer?

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In order to qualify as 'green', an issuer must comply with the minimum standards laid down in the EU Taxonomy Regulation. For example, pursuant to Article 18 of the regulation, an issuer that is carrying out an economic activity must implement procedures in order to ensure alignment with:

- the Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises; and
- the United Nations Guiding Principles on Business and Human Rights, including the principles and rights set out in the eight fundamental conventions identified in the Declaration of the International Labour Organisation on Fundamental Principles and Rights at Work and the International Bill of Human Rights.

11. 7. How will sustainability rules affect the capital markets in your jurisdiction?

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The European Union's current legislative efforts to promote sustainability aim to ensure that demand for sustainable products and sustainability reporting will remain high by further increasing sustainability duties of key financial market participants. Issuers will thus be prepared for an internal review of their ESG strategies and risks, and will adjust to a changing regulatory environment where the following will be critical:

- a strong focus on sustainability matters;
- a clear identification of climate-related risks; and

- a balanced and comparable presentation of the issuer's non-financial performance.

12.Product bans

12. 1. What products are currently banned from sale or marketing to (certain kinds of) investors in your jurisdiction?

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Pursuant to CSSF Regulations 19-05 and 19-06, the *Commission de Surveillance du Secteur Financier* (CSSF) has prohibited the marketing, distribution or sale to retail clients of binary options and contracts for difference under certain circumstances.

12. 2. What is the process for imposing product bans and which regulators are in charge of this?

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The CSSF may prohibit or restrict the marketing, distribution or sale of certain financial instrument or structured deposits, a type of financial activity or practice, if this activity is satisfied on reasonable grounds pursuant to Article 42(2) of the EU Markets in Financial Instruments Regulation (MiFIR). However, this prohibition or restriction may not be imposed unless the CSSF notifies, not less than one month before the measure is intended to take effect, all other competent authorities and the European Securities and Markets Authority (ESMA) about the details of such prohibition or restriction. In exceptional cases, this period may be reduced to no less than 24 hours. After receiving the notification, ESMA or, for structured deposits, the European Banking Authority (EBA) will issue an opinion on whether the prohibition or restriction is justified and proportionate. The CSSF will further publish on its website notice of its decision to impose any product bans; and if its action is contrary to an opinion adopted by ESMA or the EBA, it will fully explain in the notice its reasons for doing so.

13.Trends and predictions

13. 1. How would you describe the current capital markets landscape and prevailing trends in your jurisdiction? Are any new developments anticipated in the next 12 months, including any proposed legislative reforms?

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Luxembourg has become a major financial centre by, among other things, constantly adapting its legal framework to the evolving capital markets landscape. A salient example of the innovative steps it has taken in recent years is the establishment of the Luxembourg Green Exchange, the world's first and leading platform dedicated exclusively to sustainable finance, which has put Luxembourg in the driving seat for sustainable financial products. Luxembourg has been also supporting the use of new technologies by introducing the laws of 1 March 2019 and 22 January 2021 ('Blockchain Law'). The Blockchain Law brings

further clarity on the use of distributed ledger technology and databases when issuing and circulating dematerialised securities and should this encourage more token offerings to take place. In addition, the law of 22 March 2004 on securitisation, as last amended by the law approved by the Luxembourg Parliament on 9 February 2022, is expected to increase the attractiveness of securitisation structures on public offerings, among other things.

14. Tips and traps

14. 1. What are your top tips for the smooth conclusion of offerings in your jurisdiction and what potential sticking points would you highlight?

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Thanks to the easily approachable and competent *Commission de Surveillance du Secteur Financier* (CSSF), which reviews and approves around 1,300 prospectuses and supplements annually, and the very responsive and business-minded Luxembourg Stock Exchange (LuxSE), both national, and cross-border offerings are generally smoothly concluded in Luxembourg. Hence, the focus is more on effective project management and having competent legal counsel on board, who are capital markets experts and familiar with the financial centre of Luxembourg.

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