

ELVINGER HOSS

LUXEMBOURG LAW

Listing of Shares on the Luxembourg Stock Exchange





THE FIRM IN BRIEF:

Elvinger Hoss Prussen was founded in 1964 by lawyers committed to excellence and creativity in the provision of legal services. The founders of the firm were among the first to foresee the role that Luxembourg was about to play as a leading European financial centre.

For decades, the partners of the firm have played an instrumental role in the construction of the legal and regulatory environment which is crucial to the success of the Luxembourg financial sector. In this context, the firm pioneered instruments and legal structures before they were recognised by law and regulations and used on a daily basis in financial transactions. Today the firm advises on high-profile local and international transactions and has an impressive client base.

Over the years the firm has grown with the financial centre and earned the reputation of being one of the most prestigious and highly respected law firms in Luxembourg.

Elvinger Hoss Prussen has a broad experience in working on all kinds of capital market transactions and assists its clients in securing listings on regulated or alternative markets. We regularly advise on equity, convertibles and debt listings including Euro MTN programmes. Among others we pioneered “tier one” hybrid instruments for Luxembourg banking institutions and their foreign parents as well as fiduciary note structures listed on the Luxembourg and foreign stock exchanges.

For further information, please liaise with your usual contact person at Elvinger Hoss Prussen or any of the partners of the team listed below.



THE LUXEMBOURG STOCK EXCHANGE

The Luxembourg Stock Exchange (the "LSE") was set up in 1927 and operates two markets, the regulated market "Bourse de Luxembourg" (hereafter the "Regulated Market") and the alternative market, the "Euro MTF". The Euro MTF market is a multilateral trading facility as defined in the Law of 13 July 2007 implementing Directive 2004/39/EU of 21 April 2004 on markets in financial instruments.

"Some 44,500 tradable securities including 29,250 bonds are currently listed on the LSE. This represents more than 40% of all international bonds listed on European markets. These bonds are denominated in more than 54 currencies and issued by over 3,000 private and public issuers in 100 countries around the world.

*Investment funds form another important segment with more than 6,400 separate instruments listed. More than 280 depositary receipts, the majority being GDRs, are also listed on the LSE."*¹

WHICH ISSUERS CAN LIST THEIR SECURITIES ON THE LSE?

The term "issuer" is defined very broadly by the rules and regulations of the LSE (the "LSE Rules") as "any legal entity that has issued Securities admitted to trading or wishing to proceed to such an admission".

Issuers of securities listed on the LSE include Luxembourg and foreign corporate issuers as well as sovereigns and international institutions.

WHICH TYPES OF SECURITIES MAY BE ADMITTED ON THE LSE?

The LSE Rules provide for the possibility to admit:

- (i) shares of companies and other securities equivalent to shares of companies and partnerships, and share depositary receipts;
- (ii) bonds and other debt securities including depositary receipts representing such securities;
- (iii) any other security giving the right to buy or sell such securities or with a cash settlement, determined by reference to transferable securities, a currency, a rate of interest or yield, commodities or indices;
- (iv) shares and units in undertakings for collective investment in all their forms;
- (v) money market instruments and all other securities which, subject to Luxembourg law, as the LSE may decide, can be traded on a securities market of the LSE.

¹ The Luxembourg Stock Exchange – Your premium listing destination, Brochure from Luxembourg Stock Exchange and Deloitte as available on the LSE website on 14 January 2014.

WHICH REGULATIONS APPLY TO WHICH MARKET ?

The Regulated Market		Euro MTF	
✓	Prospectus Law ²	✗	Prospectus Law
✓	Transparency Law ³	✗	Transparency Law
✓	Market Abuse Provisions ⁴	✓	Market Abuse Provisions
✓	LSE Rules	✓	LSE Rules (including in particular ongoing disclosure)

MAIN DIFFERENCES BETWEEN THE REGULATED MARKET AND THE EURO MTF

- The applicable accounting standards required for the financial statements of issuers to be included in the listing prospectus and to be provided on an ongoing basis: the regulations applicable to the Regulated Market require that the financial statements be prepared in accordance with Regulation (EC) 1606/2002 on international accounting standards as adopted by the EU (IFRS) in case of EEA issuers or in case of third-country issuers, in accordance with accounting standards considered as equivalent⁵. Issuers listed on the Euro MTF may prepare their financial statements under their national GAAP and IFRS.
- The Euro MTF market is out of scope of the Transparency Law.
- A listing prospectus approved by the LSE in accordance with the LSE Rules for an admission on the Euro MTF does not benefit from the European passport as provided for by the Prospectus Law.

THE LISTING PROSPECTUS

Basic features may be summarised as follows:

1. The Regulated Market

- (i) the competent authority for the approval of the listing prospectus is the Commission de Surveillance du Secteur Financier ("CSSF");

- (ii) the content requirements for the prospectus are set out in the Prospectus Regulation⁶;
- (iii) the consolidated financial statements of issuers must be drawn up in accordance with IFRS (or equivalent);
- (iv) the Prospectus Regulation sets out specific rules regarding the structure of the prospectus and the basic order of the various sections; the Prospectus may be drawn up in English, French or German;
- (v) the prospectus may be used as a public offer prospectus and for further listings, in the EEA.

2. Euro MTF

- (i) the competent authority for the approval of the listing prospectus is the LSE;
- (ii) the content requirements for the prospectus are set out in the relevant schedules of the LSE Rules;
- (iii) financial statements can be in IFRS or the national GAAP of the issuer;
- (iv) the LSE Rules do not include guidelines regarding a specific structure of the listing prospectus; the prospectus may be drawn up in English, French or German;
- (v) the prospectus may not be used as a public offer document or for further listings in Luxembourg or other jurisdictions.

² Law of 10 July 2005 on prospectuses for securities and implementing Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading.

³ Law of 11 January 2008 on transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and transposing Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC.

⁴ Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse ("MAR") and Directive 2014/57/EU of the European Parliament and of the Council of 16 April 2014 on criminal sanctions for market abuse as implemented by the Law of 23 December 2016 (the "Market Abuse Law" and together with MAR, the "Market Abuse Provisions").

⁵ In this context:

- In accordance with Regulation 1289, the standards applicable in Japan and in the United States are to be considered as being equivalent to IFRS as from 1 January 2009;
 - In accordance with Delegated Regulation 311, the generally accepted accounting principles of Canada, South Korea and the People's Republic of China are to be considered as being equivalent to IFRS as from 1 January 2012. Moreover, issuers of third-countries are authorised to draw up their consolidated and semi-annual accounts in accordance with the generally accepted accounting principles of the Republic of India for the financial years starting before 1 January 2015.

⁶ Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements (as amended).

SUMMARY OF THE ONGOING OBLIGATIONS WITH RESPECT TO ISSUERS WITH SHARES LISTED ON THE LSE:

1. Transparency Law

The Transparency Law only applies to the Regulated Market and in summary, provides for the following obligations for an issuer of shares:

- a) Periodic financial information:
Issuers are required to publish
 - an audited annual financial report; and
 - a semi-annual financial report.
- b) Any new issue of shares and any modification of the rights attached to the shares must be published.
- c) Issuers must treat all shareholders equally.

The Transparency Law also includes an obligation for investors to notify the issuer and the CSSF when their shareholding reaches or crosses certain thresholds. These thresholds are 5%, 10%, 15%, 20%, 25%, 33 1/3%, 50% and 66 2/3% of the voting rights in the issuer. An investor may have to aggregate the holding of certain other persons (such as persons controlled by the investor) with its own holdings. Similar rules apply if the investors hold financial instruments (e.g. options) giving access to shares. The issuer will then need to publish these notifications.

2. Market Abuse Provisions

Issuers whose shares are listed on the Regulated Market or the Euro MTF (or who have requested admittance to any such market) must:

- publish price sensitive inside information as soon as possible (subject to the right with a valid reason and subject to certain conditions to postpone any such publication); and
- keep insider lists.

Directors and senior executives (and certain of their related persons, e.g. spouse) must disclose their dealings in shares of the issuer.

3. The LSE Rules

For issuers listed on the Regulated Market, the LSE Rules complement the ongoing obligations under the Transparency Law and the Market Abuse Law by various notification obligations to the LSE in case of certain securities events and for certain technical matters.

Issuers listed on the Euro MTF are required by the LSE Rules to make their audited annual financial statements available and for those issuers whose national legislation so require, a half-yearly report. Such issuers must also publish any change to the rights attached to the shares and where they have knowledge that an investor has crossed certain thresholds (10%, 20%, 1/3%, 50% and 2/3%) of voting rights. These issuers are also subject to the requirement to notify the LSE of certain securities events and other technical matters.

DISCLAIMER:

This brochure only outlines some of the requirements applicable to a listing of securities on the LSE. Any aspects relating to a public offer of securities are not considered herein. Many of the areas of laws and regulations outlined in this brochure are complex and it provides only a basic outline to a large body of law and practice in this area. It is not a substitute for specific advice.

SUMMARY OF ONGOING REPORTING OBLIGATIONS

(This summary does not include all ongoing reporting obligations which may be applicable and does not take into consideration specific exemptions which may apply in certain cases)

ONGOING REPORTING OBLIGATIONS AND PROSPECTUS REQUIREMENTS		
	REGULATED MARKET	EURO MTF
Audited annual report	✓	✓
Timing	4 months from year end	No specific timeframe ("as soon as possible")
Semi-annual report	✓	✗ [unless required by national law of the issuer]
Timing	3 months after half-year	✗ [4 months, if any is required]
Accounting standard	IFRS (or equivalent)	National GAAP or IFRS (or equivalent) (optional)
MARKET ABUSE REGULATIONS		
Prohibition of insider dealing	✓	✓
Prohibition of improper disclosure of "inside information"	✓	✓
Prohibition of recommendation to deal with securities on the basis of inside information	✓	✓
Prohibition of "market manipulation"	✓	✓
Obligation to publish "inside information" subject to certain conditions	✓	✓
Establishment and update of insider lists	✓	✓
Notification to the company and public disclosure of transactions in shares of the company by directors, senior executives and connected persons	✓	✓
DISCLOSURE AND FILING METHODS		
Publication of regulated information within EEA	✓	✗ ("inside information" as defined under MAR will need to be published in accordance with MAR)
Filing of regulated and certain other information with CSSF (or relevant Home Member State Authority)	✓	✗
Filing of regulated and certain other information with LSE	✓	✓
Deposit of regulated and certain other information with OAM	✓	✗
Requirement to establish and regularly update a website	✓	✗
RELATIONS WITH SHAREHOLDERS / GOVERNANCE		
Shareholder Rights Directive	✓	✓
Ten principles of corporate governance of LSE	✓	✗
PROSPECTUS		
Public offer – Prospectus Directive standards and exemptions	✓	✓
Listing prospectus – Prospectus Directive standards	✓	✗
TAKEOVER LAW		
Takeover rules	✓	✗
PUBLIC DISCLOSURES: SHAREHOLDING, CHANGES TO ARTICLES OR SHARE CAPITAL, BOND ISSUES		
Notification obligation of investors who cross certain voting thresholds	✓	✗
Publication by company of shareholder notifications	✓	✓
Changes in share capital	✓	✗
Disclosure of holding of own shares reaching 5% or 10% threshold	✓	✗
Changes to articles of association	✓	✓
Disclosure of the issue by the company of any bonds or notes listed on a regulated market and of collateral securing such notes	✓	✗

ELVINGER HOSS PRUSSEN TEAM

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CHAMBERS EUROPE, 2016

Outstanding capital markets powerhouse, renowned for its ability to offer high levels of partner involvement in transactions. Advises on all types of capital markets deals, often acting as Luxembourg counsel on sophisticated cross-border transactions. Takes a multidisciplinary approach, with a deep bench of expertise in a range of related fields.

"This firm displays a high level of service, which inspires client loyalty and recognition of its leading position in its areas of expertise."

"The lawyers always respond quickly with a full answer."

CHAMBERS EUROPE, 2017

Highly regarded domestic firm serving clients with specialist capital markets advice from within a multidisciplinary practice. Covers the full range of capital markets transactions, often including those with cross-border elements. Demonstrates expertise in hybrid bond work, structured finance deals and acquisitions.

"They are very responsive, dedicated and produce quality work."

"The team has a good understanding of the market and provides good, pragmatic advice. They also understand the time pressures in transactions."

Contact us to discuss how we can support
your business in Luxembourg.

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