

HOW TO SET UP

A BANK

DESCRIPTION

In Luxembourg banks are allowed to operate as “universal banks”, that is, spanning the full range of banking activities, both on the domestic market and abroad.

AUTHORISATION REQUIREMENT

The incorporation of a bank under Luxembourg law requires written authorisation from the Minister responsible for the financial supervisory authority. Authorisation is granted after examination of the application by the CSSF.

SUPERVISORY AUTHORITY

Banks incorporated in Luxembourg are supervised by the *Commission de Surveillance du Secteur Financier* (CSSF). Regulatory and supervisory rules apply in the same way to all credit institutions incorporated under Luxembourg law, regardless of the nature of their activities. Legal and regulatory framework The legal conditions governing the establishment of a Luxembourg bank are laid down in the Law of 5 April 1993 on the financial sector, as modified.

LEGAL FORM

Banks must be incorporated in one of the following forms: a public law institution (*établissement de droit public*), a public limited company (*société anonyme*), a corporate limited partnership (*société en commandite par actions*) or a cooperative company (*société coopérative*).

CENTRAL ADMINISTRATION

The registered seat and central administration of a Luxembourg bank must be in Luxembourg, meaning that all

accounting and administrative functions must be performed in the Grand Duchy. The requirements of a central administration are detailed in the IML Circular 95/120.

SHAREHOLDERS

Authorisation of a bank is subject to communication to the CSSF of the identity of shareholders or partners, either direct or indirect, individuals or legal entities, who hold a qualifying holding, or a holding which permits them to exercise significant influence over the conduct of its affairs, and the total amount of these holdings. The suitability of these shareholders or partners must be of a satisfactory level, taking into consideration the need to guarantee sound and prudent management of the credit institution.

The structure of the shareholding must be transparent in order not to impede the prudential supervision of the institution, especially, when applicable, the supervision of the group on a consolidated basis.

INFRASTRUCTURE

A credit establishment must have sound administrative and accounting organisation including a clear organisational structure with defined procedures and responsibilities. It should have adequate internal control processes for the monitoring, detection, management and declaration of risks to which the bank might be exposed. It must have autonomous support functions in accounting and data processing, mechanisms for the control and security of its IT systems and an internal audit function adapted to its size and activities.

PROFESSIONAL STANDING AND EXPERIENCE

Authorisation is subject to the members of the bodies performing administrative, management and supervisory functions, as well as the shareholders or partners, providing proof of their professional standing. This reputation is

CAPITAL BASE

Banks incorporated under Luxembourg law are required to have a subscribed capital of at least EUR 8,700,000, of which EUR 6,200,000 must be paid in. These amounts may be modified by Grand Ducal regulation.

The shareholders' equity may not fall below the minimum level of share capital stated above. If the shareholders' equity does fall below this amount the CSSF can, if circumstances justify it, grant a limited time extension for the credit institution to correct its position or cease its activities.

assessed on the basis of past history and by any other evidence which shows that the persons concerned have a good reputation and present every guarantee of irreproachable conduct.

The management of the bank must be exercised by at least two persons who are effectively authorised to determine general business policy. These persons must have the necessary professional reputation and sufficient experience for the performance of their duties.

EXTERNAL AUDITING

The annual accounts must be audited by one or more independent auditors who qualify in Luxembourg as "Réviseurs d'entreprise" and who have the professional experience necessary for the performance of their duties. Any change of external auditors requires prior approval by the CSSF.

OTHER LEGAL OBLIGATIONS

The bank must adhere to the deposit guarantee scheme in force in Luxembourg. The CSSF keeps an official list of the deposit guarantee schemes set up in Luxembourg which are recognised by it.

SPECIALIST SERVICE PROVIDERS

A number of legal firms have specialist expertise in the creation of companies and can assist applicants during the process of setting up a credit establishment in Luxembourg.

GOVERNANCE

The establishment must put in place a governance model based on three lines of defence:

The operational units:

1. The support functions (finance, accounting, IT, compliance and risk);
2. The internal audit

The internal governance mechanism should comprise:

- A clear organizational structure (decision takers, functional diagrams, definition of responsibilities avoiding conflicts of interest);
- Appropriate mechanisms for internal control in line with local laws, regulations and CSSF requirements (administrative, accounting, computer systems and remuneration procedures);
- A formal procedure for escalation, settlement and sanctions regarding problems found by the internal

- control mechanism;
- Risk management procedures;
- Internal communication tools with protection for whistleblowers;
- A crisis management procedure and business continuity plans.

In the fulfillment of these requirements the principle of proportionality applies.

AUTHORISATION PROCEDURE

Authorisation is accorded by the Minister responsible for the CSSF (under this legislature, the Minister of Finance) on the basis of a written application and following instruction by the CSSF.

The application must be accompanied by a full set of supporting documentation, together with a business plan identifying the type and volume of business to be undertaken and the administrative and accounting structures to be put in place.

It is customary for entities applying for authorisation as a credit establishment to submit an informal file to the CSSF containing information relevant to the evaluation of the request, before submitting a formal request for approval to the Ministry.

Useful information sources

www.cssf.lu

Commission de Surveillance du Secteur Financier
(Luxembourg financial supervisory authority)

www.abbl.lu

The Luxembourg Bankers' Association