



How to set up in Luxembourg

Alternative Investment Fund Manager (AIFM)

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

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

What are the pros?

- Very experienced regulator in dealing with setting up AIFMs
- A constructive and open approach to fund/manager regulation
- Multi-lingual jurisdiction: documents can be submitted to the regulator in French, English and German
- International financial centre in the heart of Europe
- Broad domestic and treaty dividend withholding tax exemptions

What are the cons?

- High examination fees as well as annual fees



Alternative Investment Fund Manager

Licence/Passport Process

- The process is iterative and involves submission of a template application form plus numerous supporting documents and information to the Commission de Surveillance du Secteur Financier ("CSSF") for review, authorisation and supervision
- CSSF application forms are detailed, but cross referencing can be done and the forms are reasonably user-friendly
- Additional supporting documents must be provided along with these forms, mainly:
 - Relevant service providers agreements;
 - Relevant board members/senior management documents;
 - Ownership structure;
 - agreement; and
 - Relevant policies
- A pre-submission meeting with the CSSF may be suggested on a case by case basis
- The CSSF serves as the entry point for applications and notifications related to all authorisation procedures. An AIFM must use CSSF's forms for application or notification
- CSSF examination fees between €5,000 and €10,000
- It typically takes between 1 to 2 months to prepare an application file before submission
- The CSSF usually takes between 6 to 8 months to review and approve an application
- The CSSF is highly experienced and used to dealing with a wide variety of situations and structures (authorised AIFMs, transformation of existing management companies into AIFM, so-called "Super Mancos", etc.)
- Technically an AIFM can apply for authorisation without having established its first AIF, but the AIFM would (i) need to provide information on the AIF(s) it intended to manage; and (ii) subsequently need to apply for permission to manage each new AIF.

Conduct of business Prudential rules

- Initial capital of €125,000 required (if external AIFM) / €300,000 required (if internal AIFM)
- Additional own funds equal to 0.02% of the amount by which the AIFM's asset under management exceeds €250 million
- In any event, the required initial capital shall not exceed €10 million
- Further own funds to cover professional indemnity risks equal to 0.01% of AIFM's asset under management (or appropriate professional indemnity insurance).

Corporate governance

- The AIFM carries out portfolio management and risk management services (The delegation of only one of the portfolio management or risk management functions is possible)
- The AIFM may also fulfil marketing, administrative and valuation functions
- The AIFM can also be authorised to carry out portfolio management on a discretionary, client-by-client basis, investment advice, safekeeping of assets and reception and transmission of orders
- The CSSF, in particular, will consider the experience of the board members / senior officers in light of their specific functions and responsibilities with regards to the AIFs managed by the AIFM
- Furthermore and from an overall perspective, the CSSF needs to be satisfied that the AIFM has staff of adequate quality, skills and experience at all levels
- In addition, the CSSF will verify that the members of the management body shall at all times be of sufficiently good repute and possess sufficient knowledge, skills and experience to perform their duties
- The AIFM can delegate functions to another entity subject to complying with AIFMD delegation rules and in particular the "letter-box entity test".

Regulatory environment

- CSSF annual fees between €15,000 and €25,000.

Alternative Investment Fund Manager

Tax

- Luxembourg global corporate income tax rate is 29.22% for Luxembourg city and should be reduced to 27.08% in 2017 and 26.01% in 2018
- A net worth tax is levied by Luxembourg on the net assets of Luxembourg companies product of the sum of the following two brackets: for a net worth tax base of €500m the tax is 0.5% and for a net worth tax base over €500m the tax is 0.05%
- No withholding tax on liquidation proceeds (which are not considered as dividends), interest and royalty payments. Luxembourg withholding tax rate on outgoing dividends is 15%, which can be reduced or exempt, under conditions
- Extended double tax treaty network, over 70 double tax treaties
- Related party transactions must be conducted considering the OECD arm's length principles
- Income from employment is subject to income tax at progressive rates up to 43.60%. Social security contributions are capped for both employee and employer at an annual ceiling of €115,337.84
- Luxembourg VAT rate is 17%
- No stamp duty
- See also a [comparative table](#) of the main taxes and reliefs relevant to setting up a financial services business.

Employment law

- Remuneration principles and relevant policy applying as further specified in AIFMD and ESMA guidelines.

Data protection

- Legislation is based on EU directives.

Outsourcing

- There are restrictions on outsourcing in line with AIFMD requirements
- Notification to be sent to the CSSF in order to request the outsourcing which should also include an analysis demonstrating that the outsourcing is of interest for the investors of the AIF(s)
- For outsourced activities, the Luxembourg AIFM must be able to supervise and monitor the entity to which the activity has been outsourced and will anyway bear the responsibility of such activities.

Corporate

- Typically a public limited liability company (société anonyme – S.A.), but other corporate forms are available.
- When incorporating the AIFM before a Luxembourg notary, the articles of incorporation of the AIFM shall also be translated in French/German/Luxembourgish
- Head office and registered office must be in Luxembourg and a majority of the board members needs to preferably be from Luxembourg / with professional address in Luxembourg.

Key contacts



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



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



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



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



María Tomillo
Managing Associate
Spain
T +3491 426 2583
E maria.tomillo
@simmons-simmons.com



Harald Glander
Partner
Germany
T +49 69 907454 44
E harald.glander
@simmons-simmons.com



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



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

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

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

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

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

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

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

It is authorised and regulated by the Solicitors Regulation Authority.

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