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LUXEMBOURG LEGAL UPDATE
JULY 2021

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CONTENTS

CORONAVIRUS FOCUS

CAA INFORMATION NOTICE ON COVID-19 IMPACT STUDY – QUESTIONNAIRE DECEMBER 2020

CAA information notice of 24 March 2021[1]

On 24 March 2021, the CAA issued an information notice on its COVID-19 impact study.

The objective of this information notice is to summarise and communicate to the sector the main findings of the survey carried out at the end of 2020, among life and non-life insurance companies, and certain reinsurers, established in Luxembourg. The aim of the survey was to assess the impact of the health crisis on (i) operational and financial aspects, (ii) the measures taken, as well as (iii) the outlook for the sector in 2021.

With respect to life insurance, the CAA stresses, *inter alia*, the following:

- Operational impact: companies observed an increase in cyber-attacks and only a small increase in operational incidents (particularly linked to the implementation of teleworking).
- Production impact: most companies observed only a moderate impact on premium income linked to the health crisis; however, the largest companies all observed a significant impact on their premium income. The impact on premium is much greater for products with guaranteed rates (-45%) than for unit-linked products (-12%). The overall premium (excluding portfolio transfers) of life insurance in 2020 was 22% lower than 2019.
- AML impact: most life insurance companies have carried out a specific impact analysis of the health crisis on money laundering and terrorist financing activities.
- The 2021 outlook for life insurance companies is optimistic.
- With respect to non-life insurance and reinsurance, the CAA notes in particular the following:
- Operational impact: cyber-attack attempts have increased, but with no real impact; more attention is paid to IT security, training and raising the awareness of all employees to limit risks.
- Financial impact: impacts on production, technical results and solvency are not significant as at 30 September 2020. 52% did not note any impact on production, while 48% observed an effect of less than 10%.
- 2021 perspectives: majority of the companies indicated that they had not adapted their underwriting strategy following the crisis. One third of the companies added exclusions following a change in their reinsurance conditions. Companies are relatively optimistic and expect, after the crisis, a more flexible organisation (with the use of teleworking). They have taken the pandemic into account in their ORSA analysis.

The CAA notes that the pandemic is ongoing, and it is therefore necessary to renew the study, in particular to analyse the effects at the end of 2020 and during 2021.

1 CAA information notice - 24 March 2021

LUXEMBOURG LAW AMENDING CERTAIN LAWS INTRODUCED IN THE CONTEXT OF THE COVID-19 PANDEMIC

Law of 1 June 2021[2]

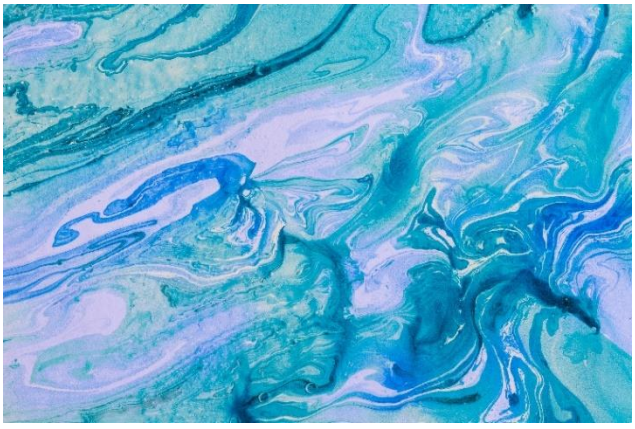
The law of 1 June 2021 amending the following Luxembourg laws, most of which were introduced in the context of the COVID-19 pandemic, was published in the Luxembourg official journal (Mémorial A) on the same day:

- Law of 3 April 2020 on an aid scheme for businesses in temporary difficulty, as amended, and amending the amended law of 19 December 2014 on 1) social measures for the benefit of independent professional artists and intermittent workers in the entertainment industry, and 2) the promotion of artistic creation.
- Law of 18 April 2020 setting up a guarantee scheme to support the Luxembourg economy in the context of the COVID-19 pandemic, as amended.
- Law of 24 July 2020 aimed at stimulating business investment in the context of the COVID-19 pandemic, as amended.
- Financial Sector Law.

The main purpose of the law is to extend the term of application of the said laws from 30 June 2021 to 31 December 2021, as permitted by the temporary framework and required by the current pandemic situation. In addition, the new law increases the maximum amount of aid received per company from EUR800,000 to EUR1,800,000 for applications submitted after its entry into force, and to provide certain clarifications (in particular regarding the "owner-operator" principle).

Finally, in order to encourage the stabilisation of, and re-energise, the economy, the new law intends to facilitate the acquisition of shareholdings and the injection of capital into companies by CRR institutions (credit institutions or CRR investment firms) by excluding qualifying shareholdings that do not exceed a threshold of EUR40 million and 5% of own funds of the CRR. institution from the scope of the prior approval requirement referred to in Article 57 of the LFS.

The law entered into force on 1 June 2021.



2 Law of 1 June 2021

MEASURES CONCERNING HOLDING OF MEETINGS: COMPANIES AND OTHER ENTITIES CAN CONTINUE TO HOLD MEETINGS REMOTELY UNTIL 31 DECEMBER 2021

The law of 23 September 2020, amended most recently by the law of 30 June 2021

The law of 23 September 2020 repealed the law of 20 June 2020, while retaining the same measures concerning the holding of meetings of companies and other legal entities without the physical presence of the participants.

These measures were initially introduced by the Luxembourg government under the regulation of 20 March 2020, in response to the coronavirus (COVID-19) crisis, so as to ensure both the safety of the participants and business continuity. These measures were enacted into law and extended on several occasions, most recently by the law of 30 June 2021, which makes them applicable until 31 December 2021.

At shareholders' meetings, companies may require that shareholders and all other participants participate in the meeting and exercise their rights exclusively:

- by a vote in writing or in electronic format (provided that the full text of the resolutions has been published or otherwise provided to the participant); or
- by appointing a special proxy chosen by the company;
- by videoconference or any other means of telecommunication allowing identification of the participants.

At the level of management bodies, meetings may be held and/or resolutions may be adopted by way of:

- written circular resolutions; or
- videoconference or any other means of telecommunication allowing identification of the participants.

Participants using these means will be considered present for determining the quorum and majorities.

These measures are applicable regardless of any contrary provisions in the articles of association of the entities and regardless of the number of participants.

END OF CSSF COVID-19 REPORTING RELATING TO INVESTMENT FUND MANAGERS

CSSF Communiqué of 16 July 2021[3]

On 16 July 2021, the CSSF has published a Communiqué to inform investment fund managers (IFMs) of the end of the following Covid-19 online reporting on 30 July 2021:

- Ad hoc 'IFM Notification on Fund Issues and Large Redemptions', which was initiated by the CSSF via eDesk in March 2020 and further extended in May 2020 in the context of the CSSF's specific monitoring of largest IFMs with a view to collecting data on:
  - significant developments/issues affecting Luxembourg and/or non-Luxembourg regulated and/or non-regulated funds (as applicable) managed by the relevant Luxembourg or non-Luxembourg based IFMs as a result of the current period of market turbulence (e.g. liquidity issues on the asset side, significant valuation challenges, etc.), and/or
  - larger redemptions at the level of Luxembourg regulated UCITS, Part II UCIs and SIFs managed by the concerned IFMs (i.e. daily net redemptions exceeding 5% of the NAV, net redemptions over a calendar week exceeding 15% of the NAV and/or application of gates/ deferred redemptions); and
- 'Weekly IFM questionnaire', which was launched by the CSSF via eDesk in April 2020 in order to receive weekly updates on financial data (total net assets, subscriptions and redemptions) and governance arrangements in relation to the activities performed by certain IFMs (including e.g. Luxembourg/EU UCITS management companies, Luxembourg/EU authorised AIFMs as well as non-EU AIFMs provided that they manage at least one UCITS, one regulated or non-regulated AIF or any other fund not qualifying as AIF) in view of the specific circumstances and risks which they were exposed to during the Covid-19 pandemic.

The above reporting were put in place mainly to allow the CSSF to continue ongoing supervision of the investment fund sector during the period of market turbulence experienced during the Covid-19 pandemic and to also serve as a basis for discussions at a EU and International level with other authorities and market players. In view of the evolution of financial markets in general and of the investment funds/IFMs sector more specifically, the CSSF has now decided to end these ad hoc reporting at the end of July 2021. Consequently, the relevant IFMs have to provide the last reporting for the reference date of 30 July 2021 as regards the 'IFM Notification on Fund Issues and Large Redemptions', and for the reference week from 26 July to 30 July 2021 as regards the 'Weekly IFM Questionnaire'.

In its Communiqué, the CSSF also indicates that the reporting 'Early Warning on Large Redemptions', which is only applicable to a limited number of UCITS contacted directly by the CSSF in the past – but which was suspended in May 2020 following the introduction of the 'IFM Notification on Fund Issues and Large Redemptions' – will be reinstalled with effect from 2 August 2021. The CSSF will contact the concerned IFMs separately with more specific instructions.

[3] CSSF Communiqué – 16.07.21

FINANCIAL INSTITUTIONS

CSSF REVISED FAQ ON REGULATION CSSF NO 20-08 ON BORROWER BASED MEASURES FOR RESIDENTIAL REAL ESTATE CREDIT

CSSF revised FAQ of 7 April 2021[4]

On 7 April 2021, the CSSF issued, a new version of its technical FAQ on CSSF Regulation No 20-08 on borrower-based measures for residential real estate credit (the first version of which was issued on 21 December 2020).

The CSSF stresses that the Loan-To-Value (LTV) limits introduced by CSSF Regulation No 20-08 require borrowers to satisfy specific own funds requirements in order to qualify for mortgage loans granted for the purchase of real estate in Luxembourg. In this context, the difference between the V (i.e. value of the property purchased) and the L (i.e. loan amount granted) needs to be made up of actual own funds of the borrower. The aim of CSSF regulation No 20-08 is to limit leverage. The CSSF therefore expects that the own funds element in financing a residential real estate property is made up by an actual equity contribution from the borrower according to the applicable LTV limit set out in the regulation.

In its technical FAQs, the CSSF provides clarifications of these requirements, in particular on:

- the type of collateral included in "V";
- the treatment of bridge loans;
- applicable LTV limits and calculation of portfolio allowance;
- determination of value in case of significant renovations or works and properties with constructions to be completed;
- scope of application of the LTV limit;
- notion of the first-time buyer (FTB); and
- eventual reclassification of the loan as buy-to-let.

CSSF CIRCULAR 21/769 ON TELEWORKING GOVERNANCE AND SECURITY REQUIREMENTS FOR SUPERVISED ENTITIES

CSSF Circular 21/769 of 9 April 2021[5]

On 9 April 2021, the CSSF issued Circular 21/769 to define the governance and security requirements with respect to the implementation and utilisation by an entity under the CSSF supervision of work processes based on teleworking solutions.

The CSSF stresses that no approval is required in order to implement, maintain or extend teleworking solutions for staff in a CSSF-supervised entity.

Furthermore, it is specified that the circular applies (i) under normal circumstances (excluding pandemic situations, such as COVID-19, or other exceptional circumstances) and (ii) to financial sector regulatory requirements. Contractual relationships between the supervised entities and their employees are outside the scope of that circular.

The circular provides, *inter alia*, for the following:

- Definitions of key terms used, for example "teleworking", "privileged users", and "critical activities".
- General principles, covering in particular requirements relating to (i) robust central administration and sufficient substance requirements, (ii) teleworking limits and risk assessments, (iii) continuity of the operational functioning of supervised entities, and (iv) ultimate responsibility for the teleworking.
- Compliance with other legal provisions (stating in particular that the use of teleworking must not contravene mandatory public order provisions and that Supervised Entities should consider other legal requirements such as tax, companies, professional confidentiality, data protection or social security laws and regulations which differ from prudential requirements in terms of substance and central administration rules.

4 Technical FAQ on Regulation CSSF No 20-08

5 Circular CSSF 21/769

- Baseline requirements (specifying, inter alia, that staff members should be able to return to the premises on short notice in case of need and providing a list of criteria to be respected (e.g., teleworking time should be limited, at least one authorised manager to be on-site all the time, head office remains the decision-making centre, etc.).
- Internal organisation and internal control framework, covering, in particular, the risk management requirements, obligation to determine a teleworking policy, monitoring compliance with such teleworking policy, and controls by internal control functions over teleworking.
- Requirements related to ICT and security risks, specifying rules in terms of, inter alia, policies and procedures, risk awareness, access rights, remote access devices, teleworking infrastructure, security of connections, review of the communication chain security, technology watch and logging.

The new circular will enter into force on 30 September 2021 (save exceptional circumstances, e.g., COVID-19 pandemic).

CSSF CIRCULAR 21/770 ON THE AMENDED ESMA GUIDELINES ON THE REPORTING UNDER ARTICLES 4 AND 12 SFTR

CSSF Circular 21/770 of 13 April 2021[6]

On 13 April 2021, the CSSF issued Circular 21/770 on the ESMA Guidelines on the Reporting under Articles 4 and 12 SFTR (ESMA-70-151-2838) (ESMA Guidelines).[7]

By way of this circular, the CSSF informs all entities subject to its supervision, and all non-financial counterparties to securities financing transactions as defined in Article 3 of Regulation (EU) 2015/2365 (SFTR), that is has integrated the amended version of the ESMA Guidelines into its administrative practices and regulatory approach.

The revised ESMA Guidelines were published on 29 March 2021.

The circular entered into force on 13 April 2021.

6 Circular CSSF 21/770

7 ESMA Guidelines under Articles 4 and 12 SFTR

CSSF CIRCULAR 21/771 ON THE APPLICATION OF THE ESMA GUIDELINES ON DISCLOSURE REQUIREMENTS UNDER THE PROSPECTUS REGULATION

CSSF Circular 21/771 of 20 April 2021[8]

On 20 April 2021, the CSSF issued Circular 21/771 on the application of the ESMA guidelines (ESMA32-382-1138) on disclosure requirements under the Regulation (EU) 2017/1129 (Prospectus Regulation).

By way of this circular, the CSSF informs all persons or entities subject the Prospectus Regulation that it has integrated the ESMA Guidelines into its administrative practices and regulatory approach.

The CSSF specifies that the circular applies as from 5 May 2021 to market participants, including persons responsible for the prospectus under Article 5(1) of the Luxembourg law of 16 July 2019 on prospectuses for securities, which implements the Prospectus Regulation in Luxembourg.

CSSF FAQS ON THE LAW OF 17 JUNE 1992 RELATING TO THE ACCOUNTS OF CREDIT INSTITUTIONS

CSSF FAQs of 3 May 2021[9]

On 3 May 2021, the CSSF issued a first version of its FAQs on the law of 17 June 1992 relating to the accounts of credit institutions.

In its FAQs, the CSSF provides clarifications on the publication obligations of credit institutions in the following situations:

- when a credit institution publishing its annual accounts under the mixed system (LUX GAAP with IAS/IFRS options) values financial instruments in accordance with IFRS 9 "Financial Instruments";
- when a credit institution publishing its annual accounts under the mixed system (LUX GAAP with IAS/IFRS options) applies IAS/IFRS other than IFRS 9 "Financial Instruments" (for example: IFRS 16 "Leases", IAS 19 "Employee benefits", IAS 37 "Provisions, contingent liabilities and contingent assets", IAS 40 "Investment Property", IAS 12 "Income Taxes").

In the first situation above (IFRS 9), the CSSF stresses that the credit institution must comply with the disclosure requirements provided for under the IFRS. The CSSF further highlights that the credit institution must, in particular, refer to the information required under IFRS 7 "Financial Instruments: Disclosures" and IFRS 13 "Fair Value Measurement".

With respect to IAS/IFRS other than IFRS 9, the CSSF clarifies that a credit institution is required to publish the information (qualitative and quantitative) set out in the IFRS it has chosen to use, provided that such information is necessary to enable users of the financial statements to understand the financial statements.

In both instances, the FAQs specify that the use of these IAS/IFRS is subject to the prior approval of the CSSF.

8 Circular CSSF 21/771

9 CSSF FAQ - Law of 17 June 1992

LUXEMBOURG BILL ON THE ISSUANCE OF MORTGAGE BONDS

Luxembourg Bill 7822 of 6 May 2021[10]

On 6 May 2021, a new bill of law (Bill N°7822) on the issuance of mortgage bonds (*lettres de gage*) and transposing Directive 2019/2162 on the issue of covered bonds and covered bonds public supervision, as well as implementing Regulation (EU) 2019/2160 on exposures in the form of covered bonds, was lodged with the Luxembourg Parliament.

The main purposes of the new bill are to transpose/implement the above-mentioned EU texts into Luxembourg law by introducing a new law dedicated to the issuance of mortgage bonds and amending certain existing Luxembourg laws (including the Financial Sector Law and the UCI Law, to introduce a "product" approach to the issuance of mortgage bonds (*lettres de gage*) and to open, within a strict framework, access to the activity of mortgage bonds (*lettres de gage*) issuance to any Luxembourg credit institution.

The current Luxembourg legal framework on banks issuing mortgage bonds (*lettres de gage*), which is established by the FSL, already provides for rules that are substantially similar to those of Directive 2019/2162. However, while Directive 2019/2162 provides for a regulatory framework establishing the covered bonds, it does not preclude the maintenance of specific national regimes. Therefore, the bill specifies that covered bonds constitute a category of Luxembourg mortgage bonds (*lettres de gage*) which comply, in addition to the provisions arising from the existing Luxembourg framework, with additional conditions arising from Directive 2019/2162. As a consequence, only the mortgage bonds (*lettres de gage*) that comply with these additional provisions can be qualified as covered bonds within the meaning of Directive 2019/2162.

Therefore, the regime and the "labelling" of the product, whether national or European, will be determined based on the combined application of the existing Luxembourg provisions and the Directive 2019/2162. Furthermore, the provisions of Directive 2019/2162 which are of general application have been extended to all Luxembourg mortgage bonds (*lettres de gage*) and not only to covered bonds falling within the scope of this Directive.

The bill also adopts a "product" approach to the issuance of mortgage bonds (*lettres de gage*) and a separate law will now be dedicated to the issuance of such instruments. This change of approach also means that the draft law provides for access to the activity of issuing mortgage bonds (*lettres de gage*) to any Luxembourg credit institution, without requiring the establishment of a specialised credit institution whose main purpose is the issuance of mortgage bonds (*lettres de gage*) ("*Spezialbankenprinzip*"), as is the case under the FSL.

The opening up of the mortgage bonds (*lettres de gage*) business to so-called "universal" credit institutions, should offer the latter additional possibilities to cover their financing needs by giving them access to a wider range of refinancing instruments. However, in order to provide sufficient legal certainty and adequate protection for the creditors of credit institutions operating according to the "universal banking" principle, the issuance of mortgage bonds (*lettres de gage*) by the latter may only be made subject to and within strict limits (e.g., under the condition that the total cover assets linked to the issued mortgage bonds (*lettres de gage*) may not exceed at any time 20% of their total liabilities (including own funds, less eligible deposits).

The current regime for specialised mortgage bond banks will continue in parallel with the new regime, allowing universal banks to access the activity of issuing mortgage bonds (*lettres de gage*).

The lodging of Bill n°7822 with the Luxembourg Parliament constitutes the start of the legislative procedure.

10 Bill N°7822

CSSF CIRCULAR 21/772 AMENDING CSSF CIRCULAR 18/703 ON THE INTRODUCTION OF A SEMI-ANNUAL REPORTING OF BORROWER-RELATED RESIDENTIAL REAL ESTATE INDICATORS

CSSF Circular 21/772 of 7 May 2021[11]

On 7 May 2021, the CSSF issued Circular 21/772 amending CSSF Circular 18/703 on the introduction of semi-annual reporting of borrower-related residential real estate indicators.

CSSF Circular 21/772 is addressed to all lenders in residential real estate. The objective of this circular is to modify Circular CSSF 18/703 as amended by Circular CSSF 20/737 and to inform of an update of the data collection template.

To facilitate reading, changes are presented in the Annex to the circular under a 'Track Changes' format. The changes reflect further clarifications, as already published in the corresponding CSSF FAQ paper, and additional data needed to monitor compliance with Regulation CSSF No 20-08 on borrower-based measures for residential real estate credit.

The circular became applicable as of its publication date.

LUXEMBOURG BILL AMENDING THE LUXEMBOURG SECURITISATION LAW AND IMPLEMENTING THE EU CROWDFUNDING REGULATION

Luxembourg Bill 7825 of 20 May 2021[12]

On 20 May 2021, Bill N°7825 was lodged with the Luxembourg Parliament. Its main purposes are to:

amend the Luxembourg law of 22 March 2004 on Securitisation, as amended (the "**Securitisation Law**); and

implementing Regulation (UE) 2020/1503 of 7 October 2020 on European crowdfunding service providers for business and amending Regulation (UE) 2017/1129 and directive (UE) 2019/1973 into the Luxembourg legal framework.

With respect to the Securitisation Law amendments, the bill proposes to modernise and to provide increased legal certainty on key aspects of the Securitisation Law, including as regards increased flexibility on the financing side, the rules impacting the securitised assets as well as the corporate governance of securitisation vehicles. Clifford Chance has produced a client briefing on these aspects of the bill for further information which is available here.

With respect to the Crowdfunding Regulation (EU) 2020/1503 implementation, the bill appoints the CSSF as competent authority for the application of the Crowdfunding Regulation and specifies the supervision, investigation and sanction powers of the CSSF.

The lodging of bill n°7825 with the Luxembourg Parliament constitutes the start of the legislative procedure.

11 Circular CSSF 21/772

12 Bill N°7825

LUXEMBOURG LAW TRANSPOSING CRD V AND BRRD II

Law of 20 May 2021[13]

On 20 May 2021, the Luxembourg law transposing CRD 5 and BRRD 2, as well as implementing CRR 2 entered into force on 25 May 2021, except for a few provisions which will enter into force on 1 January 2022.

The new law transposes the CRD 5 provisions. These introduce, amongst others, new methods for assessing interest rate risks arising from non-trading book activities and new measures strengthening the supervisory framework for holding companies. The new law also introduces a new obligation for third-country banking groups to set up a single intermediate EU parent undertaking established in the EU. The new law further extends the application of the proportionality principle in banking regulation, particularly with regard to remuneration policies, while strengthening the obligations for co-operation and information exchange between prudential authorities and authorities in charge of combating money laundering and terrorist financing.

The new law also transposes BRRD 2, which aims to improve the resolution of banks in crisis. To this end, the new law strengthens the rules on loss-absorption capacity by creating a framework for restructuring that should be less costly for the resolution fund, while extending the protections given to depositors and to other non-subordinated creditors of banks. The law further introduces new standards for determining additional own funds requirements, that would be more specific to the risks inherent in each institution. The law also provides the CSSF with powers to suspend certain obligations under certain circumstances.

CSSF PRESS RELEASE 21/12 REGARDING THE SIGNATURE OF A MEMORANDUM OF UNDERSTANDING BETWEEN THE CSSF AND THE SEBI

CSSF press release 21/12 of 3 June 2021[14]

On 3 June 2021, the CSSF issued a press release on the signature of a Memorandum of Understanding (the Memorandum) on mutual co-operation and technical assistance relating to the supervision of securities markets between the CSSF and the Securities and Exchange Board of India (SEBI).

In its press release, the CSSF stated that this agreement covers in particular the exchange of regulatory and technical information, as well as co-operation regarding supervision and inquiries. The Memorandum took effect on 2 June 2021.

13 Law of 20 May 2021

14 CSSF press release 21/12

CSSF-REVISED FAQ ON THE STATUSES OF PFS WITH RESPECT TO THE PFS STATUS RELATING TO THE GRANTING OF LOANS TO THE PUBLIC

CSSF revised FAQ of 15 June 2021[15]

On 15 June 2021, the CSSF issued an update of its FAQ (Part II) on the statutes of PSF, together with the related Communiqué.[16]

In the revised FAQ, the CSSF provides, *inter alia*, (i) its interpretation of the notion of "public" within the meaning of Article 28-4 of the amended law of 5 April 1993 on the financial sector (FSL) and (ii) clarity on when the CSSF considers that a lending activity is directed towards the public.

Therefore, in the absence of a legal definition of the term “public” in the LFS, the CSSF considers that a lending activity is not directed towards the public where:

- loans are granted to a limited circle of previously determined persons; or
- the nominal value of a loan amounts to EUR3,000,000 at least (or the equivalent amount in another currency) and the loans are granted exclusively to professionals such as defined in Article L. 010-1. 2) of the Consumer Code.

In all other cases, the CSSF will carry out an assessment on a case-by-case basis.

CSSF PRESS RELEASE REGARDING LUXEMBOURG CRD V IMPLEMENTING LAW

CSSF Press release of 18 June 2021[17]

On 18 June 2021, the Commission de Surveillance du Secteur Financier (CSSF) issued a press release to inform the public of the publication of the law of 20 May 2021 which, among others, transposes CRD 5 and amends the Financial Sector Law.

In its press release, the CSSF highlights in particular the below provisions:

- New approval process for financial holding companies and mixed financial holding companies (Art. 34-1 to 34-3 of the Financial Sector Law);
- New EU intermediate parent undertaking (IPU) requirement for third country groups with institutions in the Union, subject threshold test of EUR 40 billion or more of combined total value of EU assets (Art. 34-4 of the Financial Sector Law);
- Integration of the existing provisions of CSSF Regulation N° 15-02 relating to the supervisory review and evaluation process (SREP) that applies to CRR institutions, including to Luxembourg branches of such institutions incorporated in a third country, into the Financial Sector Law;
- New rules and criteria regarding capital conservation measures and remuneration.

15 CSSF FAQ (Part II) on the statuses of PFS

16 CSSF Communiqué – 15.06.2021

17 CSSF Communiqué - 18.06.2021

CSSF COMMUNIQUE - JOINT PUBLIC STATEMENT ON THE FORTHCOMING CESSATION OF ALL LIBOR SETTINGS

CSSF Communique of 25 June 2021[18]

On 25 June 2021, the Commission de Surveillance du Secteur Financier (CSSF) issued a communique to inform the public of the publication of the Joint Public Statement[19] on the forthcoming cessation of all LIBOR settings published by the European Commission, the European Securities and Markets Authority (ESMA), the European Central Bank in its banking supervisory capacity (ECB Banking Supervision) and the European Banking Authority (EBA).

The CSSF also mentions in its communique that the European Commission, ESMA, the ECB Banking Supervision and EBA strongly encourage market participants to use the time remaining until the cessation or loss of representativeness of USD LIBOR, GBP LIBOR, JPY LIBOR, CHF LIBOR and EUR LIBOR to substantially reduce their exposure to these interest rates.

CSSF REGULAR 21-02 ON THE SETTING OF THE COUNTERCYCLICAL BUFFER RATE

CSSF Regular 21-02 of 30 June 2021[20]

On 30 June 2021 The CSSF issued a new regulation 21-02 (Regulation) on the setting of the countercyclical buffer rate for the third quarter of 2021. The Regulation was published in the Luxembourg official journal (Mémorial A) on 2 July 2021.

The Regulation follows the Luxembourg Systemic Risk Committee's recommendation of 8 June 2021 (CRS/2021/002) and maintains the countercyclical buffer rate for relevant exposures located in Luxembourg at 0.5% for the third quarter of 2021. This rate is applicable since 1 January 2021.

The Regulation entered into force on 2 July 2021.

18 CSSF Communiqué 25.06.2021

19 Joint Public Statement 18.06.2021

20 CSSF Regulation 21-02

CIRCULAR CSSF-CPDI21/26 SURVEY ON THE AMOUNT OF COVERED DEPOSITS HELD ON 30 JUNE 2021

CSSF Circular of 5 July 2021[21]

On 5 July 2021, the CSSF issued a circular aimed at carrying out a survey on deposits, and more particularly on covered deposits, as held by credit institutions incorporated under Luxembourg law, the POST Luxembourg for its provision of postal financial services, and Luxembourg branches of credit institutions having their head office in a third country as at 30 June 2021.

Among others, the CSSF also notes in its circular that a definition of "covered deposits" and "eligible deposits" can be found in Article 163 of the 2015 Law and that the provisions of Circular CSSF-CPDI 16/02 shall be taken into account, in particular with regard to the exclusions of structures assimilated to financial institutions, as well as the treatment of omnibus accounts.

Institutions are requested to provide the data at the level of their legal entity, consolidating data from branches located within other Member States, by 30 July 2021. The requested data shall be reported with utmost care, as it also constitutes the basis to determine the contribution to the Resolution Fund.

The circular further provides detailed guidance on the reporting procedure and it is noted that given the importance of this survey, a member of the authorized management, in this case the member in charge of the membership of the FGDL (the Luxembourg Deposit Guarantee Scheme) in accordance with section C of Circular CSSF 13/555, must review and approve the document prior to its transmission to the CSSF

CSSF CIRCULAR 21/776 ON THE CONDITIONS FOR THE APPLICATION OF THE ALTERNATIVE TREATMENT OF INSTITUTIONS' EXPOSURES RELATED TO 'TRI-PARTY REPURCHASE AGREEMENTS' FOR LARGE EXPOSURES PURPOSES (EBA/GL/2021/01)

CSSF Circular 21/776 of 6 July 2021[22]

On 6 July 2021, the CSSF issued a circular to inform the public that the CSSF, in its capacity as competent authority, applies the Guidelines of the EBA specifying the conditions for the application of the alternative treatment of institutions' exposures related to 'tri-party repurchase agreements' set out in Article 403(3) of Regulation (EU) 575/2013 for large exposures purposes (EBA/GL/2021/01) (the "**Guidelines**"), published on 16 February 2021.

The Circular applies to Less Significant Institutions and to branches of non-EU credit institutions on an individual basis (**In-Scope entities**).

In-Scope entities may replace the total amount of their exposures to a collateral issuer due to tri-party repurchase agreements facilitated by a tri-party agent, using as an alternative treatment the full amount of the limits that the institution has instructed the tri-party agent to apply to those exposures.

When In-Scope entities decide to perform such a replacement, Article 403(3) of the CRR requires them to comply with specific conditions, which are further specified in the Guidelines.

Where an In-Scope entity intends to make use of the alternative treatment with a tri-party agent, it should notify the CSSF at least four weeks prior to the implementation of the alternative treatment. Further details related to the notification and the procedure related thereto are specified in the Circular.

This Circular entered into force on 6 July 2021.

21 Circular CSSF-CPDI 21/26

22 Circular CSSF 21/776

CIRCULAR CSSF 21/777 - IMPLEMENTATION OF ESMA GUIDELINES ON OUTSOURCING TO CLOUD SERVICE PROVIDERS

CSSF Circular 21/777 of 12 July 2021

On 12 July 2021, the Luxembourg financial sector supervisory authority (CSSF) issued new Circular 21/777[23], which implements the guidelines of the European Securities and Markets Authority (ESMA) on outsourcing to cloud service providers (ESMA Guidelines[24]) by amending the scope of CSSF Circular 17/654[25], as amended, on IT outsourcing relying on a cloud computing infrastructure (Circular 17/764).

In its Circular 21/777, the CSSF reminds that Circular 17/654 already contains certain regulatory requirements and guidelines equivalent to those provided for by ESMA Guidelines. However, the CSSF notes that the scope of Circular 17/654 is somewhat different to the one of ESMA Guidelines, in particular to the extent that Circular 17/654 does not apply to all the entities covered by ESMA Guidelines.

To this end, Circular 21/777 extends the scope of CSSF Circular 17/654, so that it also applies to the following new entities:

1. Alternative investment fund managers as defined under Article 4(1)(b) of the AIFMD (i.e. not only those falling within the scope of CSSF Circular 18/698[26] on the authorisation and organisation of Luxembourg investment fund managers that were already subject to Circular 17/654) as well as depositaries of alternative investment funds as defined under Article 21(3) of the AIFMD;
2. UCITS and UCITS management companies as defined under Article 2(1)(b) of the UCITS Directive (i.e. not only those falling within the scope of CSSF Circular 18/698 that were already subject to Circular 17/654) as well as depositaries of UCITS as defined under article 2(1)(a) of the UCITS Directive;
3. Central counterparties as defined in Article 2(1) of EMIR, including central counterparties from Tier 2 third countries in accordance with article 25(2a) of EMIR which are subject to specific EMIR requirements;
4. Data reporting services providers within the meaning of Article 4(1), point 63 of MiFID and market operators of trading venues within the meaning of Article 4(1), point 24 of MiFID;
5. Central securities depositories within the meaning of Article 2(1), point 1 of CSDR; and
6. Administrators of critical benchmarks as defined in article 3(1)(25) of the Benchmarks Regulation.
7. Circular 21/777 shall apply as of 31 July 2021. However, in respect of the above new entities, the CSSF specifies that Circular 17/654 shall apply to all cloud outsourcing arrangements that are entered into, renewed or amended on 31 July 2021 or after such date.

These aforementioned entities should also review and amend accordingly all existing cloud outsourcing arrangements in order to be compliant with the requirements of Circular 17/654 by 31 December 2022 at the latest. Where the review of the cloud outsourcing arrangements of critical or important functions is not finalised by 31 December 2022, the relevant entities should inform their competent authority of this fact, including the measures planned to complete the review or the possible exit strategy.

23 Circular CSSF 21/777
24 ESMA Guidelines
25 Circular CSSF 17/654
26 Circular CSSF 18/698

LUXEMBOURG CENTRAL BANK REGULATION 2021/N°30

Luxembourg Central Bank Regulation of 12 July 2021[27]

On 12 July 2021, the Luxembourg Central Bank (BCL) has adopted a new Regulation 2021/N° 30 on payments statistics which repeals and replaces BCL Regulation N°9 of 4 July 2011 as amended by BCL Regulation 2015/N°20 of 24 August 2015 on the collection of data on payment instruments and transactions. The Regulation was published in the Luxembourg official journal (Mémorial A) on 14 July 2021, with a corrigendum on 15 July 2021 (the Regulation).

The Regulation amends the rules on reporting obligations of statistical information regarding payments to the BCL.

Among others, it clarifies that agents that are subject of a ECB exemption also benefit from derogations under the Regulation and provides a detailed list of what information is subject of collection.

It is supplemented by the "BCL Manual", which specifies the practical details concerning the implementation of the obligations set forth in the Regulation. The "BCL Manual" is published on the BCL website (www.bcl.lu) and may be regularly updated by the BCL.

The Regulation further highlights that the collection of elements of the payment statistics referred to in Regulation (EU) 2020/2011 are to be transmitted considering a reference period starting on January 2022. The first transmission of payment transaction data will take place in February 2022 and the first transmission of fraudulent payment transaction data will take place in April 2022 for data from January 2022.

The new Regulation entered into force on 14 July 2021.

LUXEMBOURG BILL AMENDING THE LUXEMBOURG LAW ON INDICES USED AS BENCHMARKS

Luxembourg Bill 7861 of 22 July 2021[28]

On 22 July 2021, the Bill N°7861 was lodged with the Luxembourg Parliament.

The main purpose of the bill is to amend the Luxembourg law of 17 April 2018 on indices used as benchmarks (Benchmark Law) in order to reflect three European regulations amending the Regulation (EU) 2016/1011 (Benchmark Regulation). The bill introduces among others a framework to anticipate the termination of benchmarks, in particular LIBOR by the end of 2021. The new rules are intended to reduce legal uncertainty and avoid risks to financial stability by ensuring that a legal replacement rate can be put in place before the benchmark ceases to exist.

In addition, the bill integrates into Luxembourg law the changes brought at the European level by Regulation 2019/2175 granting additional powers to the European Securities and Markets Authority (ESMA). ESMA will have direct supervisory powers over certain critical benchmarks and their administrators as of January 1, 2022, and in particular over recognised third-country benchmark administrators.

Finally, the bill also amends Article 4 of the Benchmark Law to include two new provisions in the list of provisions that are sanctionable under the Benchmark Law.

The lodging of bill n°7861 with the Luxembourg Parliament constitutes the start of the legislative procedure.

27 Règlement de la Banque centrale du Luxembourg 2020 / N° 30 du 12 juillet 2021
Règlement de la Banque centrale du Luxembourg 2020 / N° 30 du 12 juillet 2021 - rectificatif

28 Bill N°7861

LUXEMBOURG LAW MODERNISING THE AUTHORISATION REGIME FOR ENTITIES IN THE FINANCIAL AND INSURANCE SECTOR

Luxembourg law of 21 July 2021[29]

On 26 July 2021, the Luxembourg law of 21 July 2021 modernising the authorisation regime for entities in the financial and insurance sector was published in the Luxembourg official journal (Mémorial A).

The law modernises the authorisation regime in particular by granting the CSSF and the CAA directly the power to grant and withdraw the authorisation of entities subject to their respective supervision. The authorisation for these entities would hence no longer be granted by the Minister in charge of the financial and insurance sector (i.e. currently the Minister of Finance).

The law aims at taking into account the evolution of the law of the European Union which is increasingly advocating the allocation of authorisation powers to the competent national authorities in charge of prudential supervision and reflects analogous allocation of authorisation powers to the European Central Bank (with regard to Eurozone credit institutions within the scope of the Single Supervisory Mechanism Regulation (EU) No 1024/2013) and the European Securities and Markets Authority (with regard to EU central counterparties) on the European level.

The law implements the change in approach in a series of Luxembourg sectorial laws relating to the financial sector, including the financial sector law, the CSSF law, the payment services law, the insurance sector law and the markets in financial instruments law.

The law provides for a transitory provision according to which already authorised entities continue to benefit from their existing ministerial authorisation.

The law will enter into force on 30 July 2021.

29 Law of 21 July 2021

LUXEMBOURG LAW IMPLEMENTING IFD AND IFR

Luxembourg law of 21 July 2021

On 27 July 2021, the Luxembourg law of 21 July 2021[30] implementing IFD, certain provisions of Directive (EU) 2019/2177, Directive (EU) 2020/1504, IFR as well as Article 4 of Regulation (EU) 2019/2175 was published in the Luxembourg official journal (Mémorial A).

The law follows the IFD/IFR objective to establish a framework for the prudential supervision of investment firms that is more appropriate to the nature of the activities of investment firms, their vulnerabilities and inherent risks. In particular, the law introduces four major categories of investment firms into Luxembourg law:

- investment firms "class 1" are qualified as credit institutions. These include the biggest investment firms exercising the activities of dealing on own account or underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis and whose total value of assets exceeds EUR 30 billion;
- investment firms "class 1b" are investment firms exercising the activities of dealing on own account or underwriting of financial instruments and/or placing of financial instruments on a firm commitment basis, which because of their size or importance or due to the fact that they belong to a group, remain subject to a number of requirements under Directive 2013/36/EU and Regulation (EU) 575/2013, without however being treated as credit institutions. In Luxembourg, these are defined as CRR investment firms;
- investment firms "class 2" representing the traditional investment firms and which are entirely subject to the new IFD/IFR framework; and
- investment firms "class 3", i.e. small and non-interconnected investment firms benefiting from certain derogations in order to ensure the proportionality of the rules applicable to them.

Additionally, the law modernises certain professionals of the financial sector, notably (i) the existing Luxembourg investment firm licence statuses are replaced by investment firm statuses based entirely on the type of MiFID investment service or investment activity carried out by the firm, (ii) the licence status of "persons carrying out operations of cash exchange" is repealed, such activity becoming an activity reserved to credit institutions, and (iii) the statuses of primary and secondary IT systems operators are merged into one single licence type.

Although the new IFD/IFR regime applies to, and is thus essentially relevant for investment firms, it will also impact UCITS management companies and AIFMs. In particular, the new law amends Article 102(1), a) of the UCI Law and Article 8(5) of the AIFM Law to provide that the own funds of Luxembourg UCITS management companies and authorised AIFMs can never be less than the fixed overheads requirement as set out in Article 13 of IFR – i.e. one quarter of the firm's fixed overheads for the previous year which have to be calculated in accordance with the figures resulting from the applicable accounting framework.

The law further amends the Financial Sector Law in order to implement Article 1 and 2 of Directive 2019/2177 whose objective is to transfer certain authorisation and supervision powers in relation to data reporting service providers from the national competent authority to the European Securities and Markets Authority (ESMA). The law also facilitates the exchange of information between competent authorities, including with national regulators and the European supervisory authorities.

Finally, the law ensures the implementation of MiFID 'Quick Fix' Directive (Directive (EU) 2021/338 amending Directive 2014/65/EU as regards information requirements, product governance and position limits, and Directives 2013/36/EU and (EU) 2019/878 as regards their application to investment firms, to help the recovery from the COVID-19 crisis) and the Crowdfunding Directive (Directive (EU) 2020/1504).

The law will enter into force on 31 July 2021, subject to certain transitional provisions which foresee application of certain provisions as from 1 January 2021. The Crowdfunding Directive implementing provision will enter into force on 10 November 2021.

30 Law of 21 July 2021

INSURANCE

CAA CIRCULAR LETTER 21/6 ON ANNUAL REPORTING OF LUXEMBOURG DIRECT INSURANCE UNDERTAKINGS AND REPLACING CAA CIRCULAR LETTER 03/2

CAA Circular Letter 21/6 of 23 March 2021[31]

On 23 March 2021, the CAA issued Circular Letter 21/6 on annual reporting of Luxembourg direct insurance undertakings and replacing its Circular Letter 03/2.

The CAA decided to replace its Circular Letter 03/2 relating to the annual reporting of Luxembourg direct insurance undertakings, following the introduction of a new annual reporting file.

The main objectives of the new format are the simplification and security of the Excel file (for ease of interfacing, all tables use fixed RowColumnCodes (RC), similar to the quantitative reporting required by the Solvency II Directive).

Other new features introduced in the reporting file are, in particular, (i) a new column relating to exchange differences on technical provisions in the technical account tables, (ii) an additional table on activity in the United Kingdom for statistical purposes, (iii) additional tables to encode information in relation to entries or exits from portfolios, (iv) integration of the information sheet in the reporting file, (v) visibility of validation test formulae, and (vi) in the context of AML/CFT obligations, a new life insurance table on the breakdown of gross premiums written in countries outside the EEA.

The tables relating to the former solvency margin and the fight against money laundering have been removed from the new annual report file.

Finally, the simplified organisation chart completing the information sheet has been replaced by a more detailed organisation chart providing information on all shareholders (including natural persons and persons acting through a fiduciary, trust, foundation or similar legal arrangement holding a qualifying direct or indirect participation of 10% or more in the capital and/or voting rights of the insurance undertaking).

CAA CIRCULAR LETTER 21/7 ON REPORTING OF INSURANCE BROKERAGE FIRMS AND NATURAL PERSON INSURANCE BROKERS

CAA Circular Letter 21/7 of 23 March 2021[32]

On 23 March 2021, the CAA issued Circular Letter 21/7 amending CAA Circular Letter 17/4 on reporting of insurance brokerage firms and natural person insurance brokers.

By way of this Circular Letter, the CAA modifies its Circular Letter 17/4 as a result of:

- The increase in reinsurance brokerage firm authorisations. The CAA therefore decided to also collect data from such firms, which required the CAA to amend the annual brokerage reporting file.
- The recent legislative and regulatory developments in the AML/CTF area and international financial sanctions, which also resulted in a need to amend the annual brokerage reporting file. The CAA specifies that such modifications mainly relate to the distinction made between the functions of RR (responsable du respect) and RC (responsable du contrôle du respect).

The co-ordinated version of the CAA Circular Letter 17/4 has been published on the CAA's website.[33]

31 CAA Circular Letter 21/6 – 23.03.2021

32 CAA Circular Letter 21/7 – 23.03.2021

33 CAA Circular Letter 17/4 – 23.03.2021

CAA CIRCULAR LETTER 21/10 ON THE ESTABLISHMENT OF THE QUARTERLY STATISTICAL REPORTING OF DIRECT INSURANCE COMPANIES AND PENSION FUNDS

CAA Circular Letter 21/10 of 14 April 2021[34]

On 14 April 2021, the CAA issued Circular Letter 21/10 on the establishment of the quarterly statistical reporting of direct insurance companies and pension funds.

The CAA stresses that following the introduction of a new quarterly reporting file, the references to the various tables contained in the CAA Circular Letter 19/12 regarding the quarterly reporting of direct insurance companies and pension funds are outdated.

The new circular therefore repeals the CAA Circular Letter 19/12 with effect as of 14 April 2021 and introduces a new reporting format. A new file using fixed RC Codes (RowColumnCodes) is to be used for all quarterly reporting.

The tables relating to the former solvency margin and exposure by counterparty have been removed from the new file. Furthermore, additional tables, previously required for the fourth quarter of each year, have been removed and will now be included in the annual reporting, starting with the 2021 fiscal year.

This circular letter includes three appendices, published only on the CAA's website, each of which contains all of the quarterly reporting statements, but differentiating between non-life insurance undertakings[35], life insurance undertakings[36] and pension funds[37] subject to the supervision of the CAA.

LUXEMBOURG LAW MODERNISING THE AUTHORISATION REGIME FOR ENTITIES IN THE FINANCIAL AND INSURANCE SECTOR

Luxembourg law of 21 July 2021[38]

Please refer to the Financial Institutions section for further information.

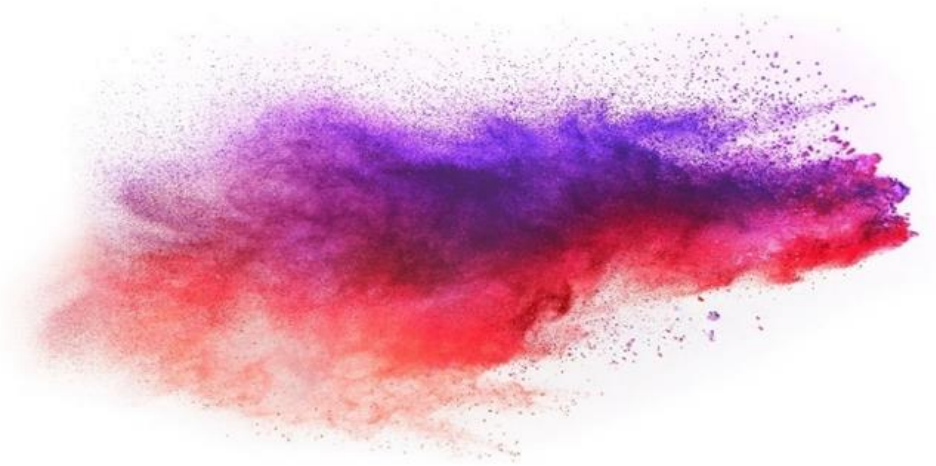
34 CAA Circular Letter 21/10 – 14.04.2021
35 Appendix non-life insurance undertakings
36 Appendix life insurance undertakings
37 Appendix pension funds
38 Law of 21 July 2021

FINTECH

LUXEMBOURG BILL AMENDING THE LUXEMBOURG SECURITISATION LAW AND IMPLEMENTING THE EU CROWDFUNDING REGULATION

Luxembourg bill 7825 of 20 May 2021 [39]

Please refer to the Financial Institutions section for further information.



39 Bill N°7825

ESG

EU COMMISSION'S APRIL 2021 PACKAGE OF MEASURES, INCLUDING LONG-AWAITED AMENDMENTS FOR ASSET MANAGERS, INSURERS AND INSURANCE DISTRIBUTORS ON ESG INTEGRATION

21 April 2021

On 21 April 2021, the EU Commission adopted a package of measures, which is part of the European Green Deal intended to make Europe climate neutral by 2050 and seeks to improve the flow of private investments towards sustainable activities across the EU. It comprises:

- the EU Taxonomy Climate Delegated Act aimed at establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives;
- a proposal for a corporate sustainability reporting directive (CSRD) aimed at improving the flow of sustainability information in the corporate world;
- six amending delegated acts (Delegated Acts) on fiduciary duties, investment and insurance advice aimed at ensuring that financial firms include sustainability in their procedures and their investment advice to clients. These cover amendments to the AIFMD, UCITS, MiFID, IDD and Solvency II frameworks.

For further details on the Delegated Acts, please see our briefing paper "European commission adopts long-awaited amendments for asset managers, insurers and insurance distributors on ESG integration".

EU COMMISSION ANSWERS QUESTIONS SUBMITTED BY ESAS ON THE INTERPRETATION OF SFDR

6 July 2021

The EU Commission has published its answers to a series of questions submitted in January 2021 by the Joint Committee of the ESAs concerning the interpretation of SFDR. The EU Commission adopted the answers on 6 July 2021 and the full set of questions and answers (Q&A) have now been published by ESMA.

Amongst other things, the Q&A address:

- whether SFDR applies to registered (sub-threshold) AIFMs referred to in Article 3(2) AIFMD;
- whether SFDR applies to non-EU AIFMs, for example when they market a sustainable EU AIF under a national private placement regime;
- the 500-employee criterion in Article 4(4) of SFDR;
- whether a product to which Article 9(1), (2) or (3) of SFDR applies must only invest in sustainable investments as defined in Article 2(17) SFDR; and
- whether the name of a product, which may include words like 'sustainable', 'sustainability', or 'ESG' can be considered to qualify a product to be promoting an environmental or social characteristic or to be having sustainable investment as its objective.

For further information and resources on green and sustainable finance, see the Topic Guide on the Clifford Chance Financial Markets Toolkit.

CSSF CIRCULAR 21/773 ON THE MANAGEMENT OF CLIMATE-RELATED AND ENVIRONMENTAL RISKS

CSSF Circular 21/773 of 21 June 2021[40]

On 21 June 2021, the CSSF issued CSSF Circular 21/773 on the management of climate-related and environmental risks.

The CSSF Circular is addressed to all credit institutions designated as less significant institutions under the Single Supervisory Mechanism and to all branches of non-EU credit institutions. The objective of this circular is to raise credit institutions' awareness on the need to consider and assess climate-related and environmental risks and to increase awareness of members of their management bodies and staff about these risks.

To this end, the CSSF Circular describes its expectations regarding how credit institutions should consider and integrate into their operations climate-related and environmental risks as drivers of existing categories of risks. The CSSF indicates that these expectations are most relevant when credit institutions formulate and implement their business strategy, governance and risk management frameworks. The expectations in this Circular are consistent with the ECB's "Guide on climate-related and environmental risks" dated November 2020 and the "Guide for Supervisors: integrating climate-related and environmental risks into prudential supervision" published in May 2020 by the Network of Central Banks and Supervisors for Greening the Financial System (NGFS).

The circular became applicable as of its publication date.

EU COMMISSION DELAYS SFDR RTS BY SIX MONTHS TO 1 JULY 2022

EU Commission's letter of 8 July 2021

On 8 July 2021, the EU Commission announced, in a letter addressed to the Ecofin Council and to the EU Parliament's Committee on Economic and Monetary Affairs, that it has not yet adopted the draft regulatory technical standards (RTS) under Articles 2a(3), 4(6) and (7), 8(3), 9(5), 10(2) and 11(4) of SFDR, as submitted to it by the ESAs on 4 February 2021.

In its letter, the EU Commission has explained that it was not able to adopt the relevant draft RTS within the usual three-month period after their submission, given their length and technical detail, which requires additional time for the adoption process. The EU Commission has also mentioned that the ESAs are currently developing six additional draft RTS based on Articles 8(4), 9(6) and 11(5) of SFDR, which had not been submitted to the EU Commission by the original deadline of 1 June 2021, and some provisions of which will amend the RTS dated 4 February 2021 in order to take into account and integrate the changes as required by the Taxonomy Regulation.

In light of the above, the EU Commission has deemed it necessary, with a view to facilitating the smooth implementation of the RTS by product manufacturers (including UCITS management companies and AIFMs), financial advisers and supervisors to:

- work intensively to ensure the earliest possible adoption of the six further RTS under Articles 8(4), 9(6) and 11(5) of SFDR;
- incorporate all RTS into a single delegated act; and
- defer the dates of application of the RTS by six months, i.e. from 1 January to 1 July 2022.

40 Circular CSSF 21/773

ASSET MANAGEMENT

LUXEMBOURG LAW TRANSPOSING THE CROSS-BORDER DISTRIBUTION FUND DIRECTIVE AND SPECIFYING THE ACCOUNTING STANDARDS THAT CAN BE USED TO PREPARE THE ANNUAL REPORTS OF LUXEMBOURG SCSp-AIFs

Law of 21 July 2021[41]

The law of 21 July 2021 transposing Directive EU/2019/1160 on the cross-border marketing and distribution of UCITS and AIFs within the EU (Directive) was published in the Luxembourg official journal (*Mémorial A*) on 26 July 2021.

The main objective of the new law is to implement into Luxembourg law the provisions of the Directive concerning:

- the pre-marketing of EU AIFs by EU AIFMs in the EU;
- the provision of local facilities for UCITS and AIFs being marketed to retail investors in the EU;
- the de-notification procedure for discontinuing the marketing of UCITS and EU AIFs in a host Member State;
- the alignment of certain notification and timeframe requirements in case of modifications to the information initially notified for the cross-border marketing of UCITS and EU AIFs in a host Member State.

The concrete implementation of most of the Directive's provisions is envisaged by amending the UCI Law and the AIFM Law with two separate sets of provisions in order to distinguish the cases where Luxembourg is the home Member State respectively the host Member State where the marketing and/or pre-marketing activities (as applicable) are performed, modified or discontinued.

In addition to the above cross-border marketing rules implementation, the new law also amends Article 20(3) of the AIFM Law concerning the annual reports of AIFs with a view to clarifying directly in the AIFM Law that Luxembourg authorised AIFMs, which are managing Luxembourg AIFs established under the legal form of an SCSp, may prepare the accounting information given in the annual reports of these SCSp-AIFs by using either (i) Luxembourg GAAP, (ii) IFRS or (iii) other accounting standards considered as equivalent to IFRS by the EU Commission, including more specifically the US GAAP. Please also refer to the Sub-section "CSSF position on accounting standards accepted for preparing annual report of Luxembourg AIFs" below for further information.

41 Law of 21 July 2021

CSSF CIRCULAR ON TELEWORKING GOVERNANCE AND SECURITY REQUIREMENTS FOR SUPERVISED ENTITIES

CSSF Circular 21/769 of 9 April 2021[42]

On 9 April 2021, the CSSF issued Circular 21/769 concerning the governance and security requirements for entities under the CSSF's supervision (thus including, e.g., regulated investment funds and their UCITS management companies or AIFMs, as applicable) in order for these supervised entities to perform tasks or activities through teleworking (or remote working).

Please refer to the Financial Institutions section for further information.

LUXEMBOURG BILL TRANSPOSING THE EU COVERED BOND REFORM AMENDING UCITS 'COMPLIANT COVERED BOND' DEFINITION

Luxembourg bill 7822 of 6 May 2021[43]

On 6 May 2021, a new bill of law (Bill 7822) on the issuance of mortgage bonds (*lettres de gage*) and transposing Directive 2019/2162 on the issue of covered bonds and covered bonds public supervision, as well as implementing Regulation 2019/2160 on exposures in the form of covered bonds, was lodged with the Luxembourg Parliament.

The main purposes of the new bill are to transpose and implement the above-mentioned EU texts into Luxembourg law by introducing a new law dedicated to the issuance of mortgage bonds and by amending certain existing Luxembourg laws, including the Financial Sector Law and the UCI Law.

As regards UCITS investing in covered bonds, it is worth mentioning that Bill 7782 proposes to amend Article 43(4) of the UCI Law to take into consideration the new uniform EU definition and framework for covered bonds as introduced by Directive 2019/2162 and Regulation 2019/2160. Thus, the first paragraph of Article 43(4) of the UCI Law will be amended to raise the 10% single issuer limit to a maximum of 25% where Luxembourg UCITS invest in bonds that are issued before 8 July 2022 and that met the requirements set out in Article 43(4) of the UCI Law on the date of their issue, or where Luxembourg UCITS invest in bonds that fall under the definition of covered bonds provided for by Directive 2019/2162. Bill 7782 also proposes to delete the third paragraph Article 43(4) of the UCI Law regarding the communication by the CSSF to ESMA and the EU Commission of the list of categories of covered bonds and authorised issuers.

Please refer to the Financial Institutions section for further information on Bill 7822 and to the Asset Management section of the March 2020 edition of our Luxembourg Legal Update for further information on the EU covered bond reform amending UCITS 'compliant covered bond' definition.

42 Circular CSSF 21/769

43 Bill N°7822

CRDV REMUNERATION REQUIREMENTS IN A GROUP CONTEXT: IMPACT FOR INVESTMENT FUNDS AND THEIR MANAGERS

Law of 20 May 2021[44] and CSSF Communication of 18 June 2021[45]

Luxembourg has transposed CRDV through the law of 20 May 2021 amending amongst other the Financial Sector Law. The wording of the provisions relating to remuneration policies of CRDV have been transposed "as is" into the Financial Sector Law, and such transposition notably (i) does not provide for a decrease of the threshold for staff members, and (ii) provides for an increase of the threshold for institutions to EUR 15 billion (i.e. the maximum amount allowed by the CRD V).

In principle, CRD remuneration rules are essentially relevant for credit institutions (and certain other investment firms further to the IFD/IFR reform), but to some extent they have also impacted the fund and asset management industry in the past. Indeed, in accordance with CRD IV, credit institutions (and other CRR institutions) have been required to apply CRD IV remuneration requirements at group, parent and subsidiary levels, including to their subsidiaries that were not themselves subject to CRD IV such as UCITS ManCos or AIFMs already subject to other specific sectoral remuneration rules under the UCITS Directive or AIFMD.

In accordance with the law of 20 May 2021, new Article 38(5) of the Financial Sector Law now clarifies that CRD remuneration requirements will not apply on a consolidated basis to CRR institutions' subsidiaries that are subject to other sectoral remuneration provisions on an individual basis (e.g., AIFMD or UCITS Directive), in which case the relevant sector-specific provisions will apply to those subsidiaries. As an exception to the foregoing principle, new Article 38(6) of the Financial Sector Law provides that CRD remuneration requirements will nevertheless apply on a consolidated basis to those subsidiaries' staff members performing certain professional activities having a direct material impact on the risk profile or activities of the CRR institutions within the group.

Please refer to the Financial Institutions section for further information.

44 Law of 20.05.2021

45 CSSF Communiqué – 18.06.2021

CSSF POSITION ON THE APPLICATION OF MIFID TO LUXEMBOURG INVESTMENT FUND MANAGERS

CSSF-updated FAQs on UCI Law[46] and AIFM Law[47] of 10 June 2021

On 10 June 2021, the CSSF updated the following FAQs to clarify the circumstances in, and the extent to which, MiFID may apply to Luxembourg investment fund managers (IFMs), including UCITS management companies and AIFMs, as well as to their third-party delegates and investment advisers[48]:

- FAQs on the UCI Law; and
- FAQs on the AIFM Law.

The updated FAQs primarily seek to clarify the CSSF's approach with respect to the MiFID licensing requirements and other MiFID rules that may apply to Luxembourg IFMs as delegates in the context of the provision of collective portfolio management functions, and analyse the scope of application of MiFID requirements in case of delegation of these portfolio management and marketing functions to Luxembourg or other EU entities qualifying themselves as authorised IFMs (Delegate IFM) or other EU/non-EU third-party delegates that do not qualify as IFMs (Third-Party Delegate).

One of the main clarifications introduced by the CSSF in this respect concerns the Delegate IFMs that manage or market investment funds under a delegation agreement on behalf of other Luxembourg IFMs, which Delegate IFMs must, in principle, be authorised under article 101(3) of the UCI Law (article 6(3) of UCITS Directive) or under article 5(4) of the AIFM Law (article 6(4) of AIFMD) to provide, depending on the tasks performed, discretionary portfolio management and non-core services such as investment advice, administration of units of UCIs or, for authorised AIFMs, reception and transmission of orders (so-called "MiFID top-up licence"). Such Delegate IFMs will, however, not be subject to the full scope of MiFID rules; only articles 15, 16, 24 and 25 of MiFID will apply.

As regards Third-Party Delegates providing portfolio management services or marketing funds on behalf of other Luxembourg IFMs, the exact scope of application of MiFID will vary depending on, e.g., the type of investment funds and services/activities provided by the relevant delegate, and the CSSF reminds that consideration should also be given as to whether the services are rendered by a delegate established in the EU or are considered to be rendered in Luxembourg by a delegate established outside of the EU (as further clarified by the CSSF in its amended Circular CSSF 19/716).[49]

The updated FAQs also consider the provision of investment advice to or by Luxembourg IFMs, and clarify that investment advice is not included in the activity of collective portfolio management within the meaning of the UCI Law and AIFM Law. However, the CSSF indicates in this respect that MiFID rules will, in principle, apply to third parties that provide investment advice relating to financial instruments (within the meaning of MiFID) to a Luxembourg IFM that enables it to make an investment decision, as this investment advice would qualify as personal recommendations issued to a client under MiFID. Moreover, the CSSF reminds that a Luxembourg IFM is not authorised to provide investment advice to another IFM, unless it is also authorised under article 101 (3) (b) of the UCI Law or under article 5 (4) (b) (i) of the AIFM Law to provide such investment advice.

Finally, the updated FAQs reiterate that third parties may benefit from certain specific or partial exemptions under the Financial Sector Law (including more particularly the intragroup service exemption) when they provide investment services under MiFID to Luxembourg IFMs. In any case, however, the third parties must be able to demonstrate that they fall within the scope of an exemption, should they provide such services without an authorisation under the MIFID-applicable framework.

IFMs are expected to comply with the CSSF FAQs as soon as possible and by 31 December 2021 at the latest, considering the best interests of investors.

46 CSSF FAQs on UCI Law
47 CSSF FAQs on AIFM Law
48 CSSF Press Release – 10.06.2021
49 Circular CSSF 19/716 (as amended by Circular CSSF 20/743)

CSSF CLARIFICATION FOR LOAN ORIGINATING ACTIVITIES THAT DO NOT REQUIRE A LICENCE AS PFS

CSSF-updated FAQs on the status of PFS of 15 June 2021[50]

On 15 June 2021, the CSSF issued an update of its FAQs (Part II) on the statutes of PSF, which provides further regulatory clarification on the situations where, in the absence of a legal definition of the term “public” in the Financial Sector Law, the CSSF does not consider a lending activity to be directed towards the public and which therefore does not require a specific authorisation and licence by the CSSF as PFS granting loans to the public under Article 28-4 of the Financial Sector Law.

These updated FAQs are welcome as it provides further guidance and confirms market practice regarding the possibility and the conditions for unregulated investment funds (e.g., RAIFs and unregulated AIFs that, contrary to UCITS, Part II UCIs, SIFs and SICARs, are not explicitly excluded from the scope of the Financial Sector Law in accordance with its Article 1-1(2)) to pursue loan origination activities without being considered as granting loans "to the public".

Please refer to the Financial Institutions section for further information.

50 CSSF FAQ (Part II) on the statuses of PFS

CSSF AML/CTF MARKET ENTRY FORM FOR INVESTMENT FUNDS AND THEIR MANAGERS

New CSSF FAQs on AML/CTF MEF of 21 June 2021[51]

On 21 June 2021, the CSSF published FAQs in relation to the AML/CFT market entry form (MEF), which has to be completed and submitted through the CSSF eDesk portal by certain Luxembourg investment funds and investment fund managers in order to allow the CSSF to collect standardised key information in relation to money laundering and terrorist financing risks to which these funds and managers are exposed to, and in relation to the measures they put in place to mitigate those risks.

The objective of the FAQs published by the CSSF is to bring further clarity to certain requirements applicable for the completion of the MEF in eDesk. In particular, the FAQs reiterates that an MEF has to be completed and submitted to the CSSF for:

- Luxembourg UCITS, Part II UCIs, SIFs, SICARs, European long erm investment fund (ELTIFs), European venture capital funds (EuVECAs), European social entrepreneurship funds (EuSEFs) and money market funds (MMFs) within the meaning of the Money Market Fund Regulation (Funds), each time an application is made for the authorisation of a new Fund (or authorisation of a label as ELTIF, EUVECA, EUSEF or MMF) or for the authorisation of new additional sub-fund thereof;
- Luxembourg UCITS management companies and certain other non-UCITS management companies as well as Luxembourg AIFMs authorised or registered with the CSSF (IFMs), each time an application is made for authorisation or registration of the IFM, and with respect to authorised IFMs only, each time there is a request for an additional licence, a licence extension including the request to manage an ELTIF and/or an entry of a qualified shareholder in the shareholding structure of the relevant authorised IFM.

The FAQs contain a summary table for the different cases, types and related timing of MEF requests expected to be submitted through eDesk[52] depending on the type of Funds/IFMs and on the event concerned, and further remind that eDesk does not allow multiple MEFs to be opened at the same time for the same entity. In particular, for an umbrella Fund, the MEF must be completed and filed for the entire umbrella Fund, including up-to-date information for all sub-funds, and not for each sub-fund.

As regards the roles and possible actions within eDesk, the CSSF reminds that a MEF must always be initiated and submitted by (i) the compliance officer in charge of the control of compliance with the professional obligations (RC) of the Fund/IFM, or (ii) the person responsible for compliance with the professional obligations (RR) of the Fund/IFM. Although the CSSF accepts that the completion of an MEF may be delegated by the RR/RC within eDesk to another employee of the relevant Fund/IFM or to a third party, the FAQs clarify that such delegated persons are "contributors" only in "one" MEF, meaning that a delegation is no longer effective for another MEF to be completed in the future for the same Fund/IFM (e.g., for adding a new sub-fund) and that the RR/RC will always remain the sole responsible person for initiating and submitting the MEF through eDesk.

The other questions and answers addressed by the FAQs aim at clarifying certain specific and/or practical issues in relation to the completion of the MEF and the necessary information and/or supporting documents to be included or appended as appropriate in the MEF, such as the type of documents to be submitted to the CSSF for the appointment of a new RC, the type of signatures accepted by the CSSF for the documents which must be signed, and the actions to be undertaken where eDesk indicates that there documents for the MEF are missing. The question of the relevant information and/or confirmation to be provided when the indirect shareholding of an IFM include a private equity fund or a multitude of indirect shareholders (each below 10%) representing less than 25% of this indirect shareholding is also clarified.

51 CSSF FAQs on Market entry form

52 CSSF eDesk portal

CSSF PUBLISHES FEEDBACK REPORT ON UCITS MANAGER'S LIQUIDITY RISK MANAGEMENT

CSSF Feedback Report[53] and Communiqué[54] of 22 June 2021

On 22 June 2021, the CSSF published its Feedback Report, together with a related Communiqué, in relation to the Common Supervisory Action (CSA) performed in 2020 by ESMA with national competent authorities (NCAs) across the EU/EEA on the supervision of UCITS managers' liquidity risk management (LRM).

The overall analysis of compliance with the applicable rules on LRM in Luxembourg is generally satisfactory and consistent with the conclusions published by ESMA in its Public Statement of 24 March 2021 on the results of its CSA, i.e. most of the Luxembourg-based UCITS investment fund managers (IFMs) participating in the exercise are also meeting their regulatory obligations. However, as pointed out by ESMA, the exercise also identified shortcomings in some cases and the need for improvements in certain key areas.

Consequently, the objective of the CSSF Feedback Report is to inform market participants about the CSSF's main findings in the context of the CSA together with the related recommendations for further improvement by Luxembourg IFMs to comply with their LRM regulatory obligations under, e.g., Grand Ducal Regulation of 8 February 2008, CSSF Regulation 10-04, CSSF Circular 19/733 and CSSF Circular 18/698. In particular, the CSSF Feedback Report notes room for improvement by Luxembourg IFMs with regard the following topics:

- **Definition and implementation of a formalised and risk-based pre-investment liquidity assessment framework**, which must be part of the risk management policy of the IFMs and must provide, at a minimum, (i) a clear allocation of responsibilities at the level of the IFMs for the assessment of liquidity at pre-investment level, (ii) a documented and well-founded approach towards the presumption of liquidity in view of the nature of the financial instruments authorised by the UCITS investment policy, and (iii) the carrying out of adequate and documented liquidity analyses and forecasts at pre-investment levels for less liquid assets and assets not admitted or dealt in on a regulated market;

- **Employment of appropriate LRM process in order to ensure that each UCITS managed is able to redeem its units/shares at the request of any investor**, which imply for IFMs the implementation of the necessary approaches allowing them to have an adequate understanding of the investor basis and distribution channels of the UCITS managed as this constitutes an important building block of a comprehensive LRM process;

- **Implementation of adequate methodologies for the measurement of the liquidity risk of all the assets held by the UCITS managed**, including appropriate controls to verify the reliability of the data used in the LRM processes;

- **Establishment and implementation of an effective risk management policy** to be separate from the risk management procedure document to be submitted annually to the CSSF as per the requirement of Circular 18/698;

- **Assessment of the liquidity risk that the UCITS is likely to face during the product design phase**, which must be adequately formalised and documented in the decision process and must contain the risk analyses performed;

- **Reporting, monitoring and escalation of the liquidity risks to the senior management and the board of directors as well as to the compliance and internal audit functions**, which must all receive sufficiently detailed information on a regular basis for meeting their own obligations and for ensuring an appropriate review of the adequacy of LRM processes and the case being decided upon on any prompt and appropriate action that should be taken;

- **KIID disclosures**, including the definition and implementation of a documented internal approach underlying the definition of what is material or not in terms of liquidity risks for supporting the disclosure in the KIID.

In its Communiqué, the CSSF indicates that it is currently engaging on a bilateral basis with Luxembourg UCITS

53 CSSF Feedback Report

54 CSSF Communiqué – 22.06.2021

IFMs in relation to the above observations so that they can implement the necessary corrective measures for the shortcomings observed. In addition, the CSSF also asks all UCITS IFMs to conduct, by the end of 2021, a comprehensive assessment with regard to the compliance of their LRM set-ups in relation to the observations of ESMA and of the CSSF and to take, if applicable, the necessary corrective measures.

More information on the findings and recommendations by ESMA and the CSSF in this context may be found on the CSSF website and in the CSSF Feedback Report.

CSSF POSITION ON ACCOUNTING STANDARDS ACCEPTED FOR PREPARING ANNUAL REPORT OF LUXEMBOURG AIFs

CSSF-updated FAQs on AIFM Law of 30 June 2021[55]

On 30 June 2021, the CSSF updated its FAQs on the AIFM Law to confirm that Section 14, L2, which previously required the use of Luxembourg GAAP or IFRS as accepted accounting standards under Article 20(3) of the AIFM Law for preparing the accounting information given in the annual report of Luxembourg AIFs managed by Luxembourg authorised AIFMs, is no longer applicable.

This update of the CSSF FAQs follows the governmental amendment introduced in Luxembourg bill of law no. 7737 in April 2021 – which has now been passed into the law of 21 July 2021 transposing Directive EU/2019/1160 on the cross-border marketing and distribution of UCITS and AIFs within the EU [56] and amending the UCI Law and AIFM Law - with a view to clarifying directly under Article 20(3) of the AIFM Law that Luxembourg-authorised AIFMs which manage Luxembourg AIFs established under the legal form of a special limited partnership (SCSp) may prepare the accounting information given in the annual reports of these SCSp-AIFs by using either Luxembourg GAAP, IFRS or other accounting standards considered as equivalent to IFRS by the EU Commission in its Decision of 12 December 2008 (as amended) on the use by third countries' issuers of securities of certain third countries' national accounting standards (Third-Country GAAP) and IFRS.

These equivalent Third-Country GAAP include US GAAP, but also the GAAP of the People's Republic of China, the Republic of Korea, Canada and, on a temporary basis, the GAAP of the Republic of India.

The possibility for Luxembourg-authorised AIFMs to use other equivalent Third-Country GAAP to prepare the accounting information given in the annual reports of the Luxembourg SCSp-AIFs that they manage apply with respect to all Luxembourg SCSp-AIFs irrespective of whether they qualify as SIF, RAIF or other form of alternative investment funds, i.e. SICAR or unregulated AIFs.

55 CSSF FAQ on AIFM Law

56 Law of 21 July 2021

SUBMISSION OF CLOSING DOCUMENTS AND FINANCIAL INFORMATION TO THE CSSF BY FUND MANAGERS

CSSF FAQs on the submission of closing documents and financial information by fund managers of 30 June 2021[57]

End of June 2021, the CSSF has published a set of FAQs in relation to the submission of closing documents and financial information by the following investment fund managers (IFMs):

- Luxembourg UCITS management companies governed by Chapter 15 of the UCI Law and self-managed UCITS;
- Luxembourg external AIFMs authorised under the AIFM Law and internally-managed AIFs; and
- Luxembourg management companies governed by Chapter 16 of the UCI Law, including those subject to article 125-1 and those subject to article 125-2 of the UCI Law.

The objective of the FAQs is to bring further clarity as regards certain requirements applicable to the electronic transmission of closing documents and financial information by these entities to the CSSF in accordance with the provisions of CSSF Circular 19/708, CSSF Circular 18/698, CSSF Circular 15/633 and CSSF Circular 10/467.

In particular, the FAQs contain summary tables specifying the types of closing documents and financial information to be submitted to the CSSF by electronic means depending on the legal regime and authorisation of the relevant IFM (e.g. the annual and other reports, the risk management procedure and certain structure charts and tables such as the table including the number of complaints registered and the table listing the professional activities and the mandates performed by the members of the management body and, where applicable, the conducting officers of the IFM concerned). The CSSF reiterates that it no longer accepts paper copies of these documents and further sets out the procedures, format, nomenclature and related timing to be complied with for the electronic transmission of these documents and information.

The FAQs also notes that any closing document or financial information that does not comply with the relevant type, format, nomenclature or time limits as prescribed by the CSSF will be considered as missing and not received by the CSSF. Consequently, the relevant IFM may be exposed not only to a CSSF reminder to provide the relevant missing document or information, but may also incur certain sanctions and other administrative measures as may be imposed by the CSSF in accordance with Articles 148 and 149 of the UCI Law or Article 51 of the AIFM Law. These sanctions and measures include, without limitation, warnings, fines and/or temporary or definitive prohibition on carrying out certain functions, operations or activities.

57 CSSF FAQs on the submission of closing documents and financial information by fund managers

CSSF CIRCULAR IMPLEMENTING ESMA GUIDELINES ON OUTSOURCING TO CLOUD SERVICE PROVIDERS

CSSF Circular 21/777 of 12 July 2021[58]

On 12 July 2021, the CSSF issued new Circular 21/777, which implements ESMA guidelines on outsourcing to cloud service providers by amending the scope of CSSF Circular 17/654, as amended, on IT outsourcing relying on a cloud computing infrastructure.

Circular 21/777 extends the scope of CSSF Circular 17/654, which was already applicable to investment fund managers falling within the scope of CSSF Circular 18/698 on the authorisation and organisation of Luxembourg investment fund managers, so that Circular 17/654 also applies, *inter alia*, to:

- AIFMs as defined under Article 4(1)(b) of the AIFMD as well as depositaries of AIFs as defined under Article 21(3) of the AIFMD;
- UCITS and UCITS management companies as, as well as depositaries of UCITS as defined under article 2(1)(a) of the UCITS Directive and self-managed investment companies that have note designated a UCITS management company.

Please refer to the Financial Institutions section for further information

LUXEMBOURG LAW IMPLEMENTING IFD/IFR

Luxembourg Law of 21 July 2021

The law of 21 July 2021 implementing amongst others Directive (EU) 2019/2934 on the prudential supervision of investment firms (IFD) and Regulation (EU) 2019/2033 on the prudential requirements of investment firms (IFR) was published in the Luxembourg official journal (Mémorial A) on 27 July 2021 and will enter into force on 31 July 2021.

Although the new IFD/IFR regime applies to, and is thus essentially relevant for investment firms, it will also impact UCITS management companies and AIFMs. In particular, the new law amends Article 102(1), a) of the UCI Law and Article 8(5) of the AIFM Law to provide that the own funds of Luxembourg UCITS management companies and authorised AIFMs can never be less than the fixed overheads requirement as set out in article 13 of IFR – i.e. one quarter of the firm's fixed overheads for the previous year which have to be calculated in accordance with the figures resulting from the applicable accounting framework.

Please refer to the Financial Institutions section for further information.

58 Circular CSSF 21/777

CORPORATE

CLARIFICATION TO THE LAW OF 12 NOVEMBER 2004 ON THE FIGHT AGAINST MONEY LAUNDERING AND TERRORISM FINANCING (THE "AML LAW")

The law of 25 February 2021

The law of 25 February 2021 brings more clarity, amongst other, to the AML Law.
Amongst the changes to the AML Law, it is worth noting that:

- professionals are now required under all circumstances to identify their client and the beneficial owner(s), as part of their risk-proportionate KYC obligations;
- professionals are now expressly prohibited from holding numbered accounts, numbered savings account and numbered safes;
- the AML Law now expressly provides that credit and financial institutions have to establish the origin of the wealth and of the funds of the clients and beneficial owners qualifying as politically exposed persons;
- virtual asset service providers under supervision are now subject to criteria of integrity (honorabilité) and adequate professional expertise;
- authorities are now obliged to take into account the risk situation factors set out in Annex IV of the AML Law for the application of risk-based supervision which are specific to each professional.

DATA PROTECTION

THE CNPD PUBLISHES 18 DECISIONS AND IMPOSED SANCTIONS UNDER THE GDPR

7 June 2021

On 7 June 2021, the Luxembourg data protection authority (the CNPD) published 18 decisions based on investigations/on-site inspections carried out in 2019 which relate to three different topics: the appointment and missions of the data protection officer (thematic investigations initiated by the CNPD), video surveillance, and geolocation.[59]

The decisions notably showcase the first sanctions of the CNPD under the GDPR: six administrative fines (ranging from EUR1,000 to EUR18,000) and three reprimands. Nine concerned closing decisions for lack of breach.

The decisions of the CNPD indeed document the outcome given to the above inspections by the CNPD-restricted panel (*formation restreinte*), taking into account both the proposal by the designated chief investigator (*chef d'enquête*) and the responses of the audited entity.

With these 18 decisions, the CNPD clearly shows that investigations/on-site inspections are being conducted and that it is willing to impose fines if necessary. We note, however, that so far the financial sector does not seem to be the focus of the CNPD.

It is interesting to note that the decisions are based on available guidance issued by the CNPD itself and the EDPB, as well as what the *chef d'enquête* considers to be good practice. Entities must therefore ensure that all processes and procedures are in place and that their compliance with the GDPR is adequately documented.

Decisions of the CNPD may be contested according to the rules of Luxembourg administrative procedure. Entities have three months from the notification of the decision to challenge it (via a *recours en reformation*) before the administrative tribunal.

Going forward, in 2021, the CNPD will conduct thematic investigations concerning records of processing activities (compliance with article 30 of the GDPR) and international data transfers (notably following the *Schrems II* ruling of the European Court of Justice).

59 CNPD decisions and imposed sanctions

REAL ESTATE

THE COMPULSORY CLOSURES ORDERED BY THE GOVERNMENT IN RESPONSE TO THE COVID-19 PANDEMIC ARE NOT CONSTRUED AS FORTUITOUS EVENTS GIVEN THAT THEY AFFECT THE OPERATED ACTIVITIES AND NOT THE LET PREMISES THEMSELVES

Case law

District Court 30 March 2021, n° 2021TALCH03/0059, Magistrates' Court 23 April 2021, n°1219/21 and n°1220/21

In a judgment rendered in appeal by the District Court (*Tribunal d'Arrondissement*) and in two judgments rendered in the first instance by the Magistrates' Court (*Tribunal de Paix*), the judges seem to have somewhat adopted another position than that taken by the Magistrates' Court in decisions rendered in January 2021 concerning the application of the theory of risks under article 1722 of the Civil Code (Magistrate's Court 21 January 2021, n°204/2021, 13 January 2021, n°94/21, 14 January 2021, n°124/2021, 21 January 2021, n°197/21).

In the previous decisions, the Magistrate's Court construed the compulsory closures ordered by the government in response to the COVID-19 pandemic as affecting the let premises and thus as a fortuitous event of temporary nature.

In the decisions commented in the present note, the judges have recalled the principle regarding the theory of risks (i.e. in order for this theory to apply, the fortuitous event must affect the let premises themselves and not the activities operated therein) and stated that the activities operated in the let premises (on-site catering and drinking activities) are affected by the compulsory closures and not the let premises.

As a consequence, the judges ruled that the compulsory closures ordered by the government in response to the COVID-19 pandemic are not a fortuitous event and that consequently (i) the tenants are not discharged from paying the rent and charges corresponding to the compulsory closure period, and (ii) requests by landlords to terminate commercial lease agreements are well-founded.

In one of the decisions, the judges underlined that the tenant could have developed a takeaway activity and that it could have sublet the rooms or developed storage activity. We can infer that in order to determine whether the theory of risks applies, it shall be analysed on a case-by-case basis whether the legal and/or regulatory compulsory measures affect the operated activities (only) or the let premises.

OBLIGATION FOR MUNICIPALITIES TO TAKE INTO ACCOUNT THE ENVIRONMENTAL ASSESSMENT REPORT IN THE FRAME[WORK] OF PROCEDURES RELATING TO THEIR GENERAL LAND USE PLANS

Case law Administrative Court of Appeal, 6 May 2021, n° 44877C and following, and n° 44968C and following

In a series of judgments rendered on 6 May 2021, the Administrative Court of Appeal confirmed the partial cancellation of the general land use plan ("**PAG**") of the City of Luxembourg on the sites called "Schoettermarial" and "Kennedy South", which cover together around 15 hectares, based on a violation by the City of its obligations to perform sufficient strategic environmental studies (*strategische Umweltprüfung*) ("**SUP**") as required by the amended law dated 22 May 2008 on the assessment of the effects of certain plans and programmes on the environment (the "**2008 Law**").

- Criteria in order to determine whether an SUP is required

The Administrative Court of Appeal first noted that although an area is already buildable under the former PAG, the environmental impact of the whole project must be taken into account in order to determine whether an SUP is necessary.

The Administrative Court of Appeal then ruled that a detailed environmental assessment report (SUP) was required on the grounds that (i) the project entails a significant increase of the building potential in these areas, and that (ii) the development project of these parts of territory can have a material impact on the existing environment.

- The moment when the environmental studies have to be performed shall abide by the principle of early and effective participation of the public

The Administrative Court of Appeal finally ruled that the environmental assessment required under the 2008 Law must be carried out at a stage when all options are still open (i.e. before the adoption of the PAG to which it relates) since otherwise it cannot be considered as "early and effective", meaning that the access to information and public participation in the decision-making process cannot be guaranteed.

- Possibility to complete at a later stage a reasonably complete study but impossibility to postpone at a later stage the performance of the studies themselves

The Administrative Court of Appeal noted that although the detailed environmental assessment report can be further detailed at a later stage (e.g., when adopting the specific use plan PAP *nouveau quartier*), a reasonably complete study must be available at the level of the PAG procedure.

The Administrative Court also specified that there is no possibility to postpone the performance of the required environmental assessment studies at a later stage.

- Criteria in order to determine whether an SUP is required

The Administrative Court of Appeal further ruled that, in the case at hand, the detailed environmental assessment report was incomplete and deficient and therefore affected the legality of the procedure to restate the PAG and the subsequent decisions in relation thereto.

THE (RE-)CLASSIFICATION OF A PARCEL IN THE GENERAL LAND USE PLAN DOES NOT CONSTITUTE A HIDDEN EXPROPRIATION

Case law Administrative Tribunal 20 May 2021, n° 43853

In a case concerning the (re-)classification of a cadastral parcel as a "public buildings and facilities zone" in a new general land use plan (*plan d'aménagement general*, or PAG), the Administrative Tribunal (*Tribunal administratif de Luxembourg*) ruled that this classification does not affect the ownership rights in such a way that the limitation can be construed as being equivalent to an expropriation infringing article 16 of the Constitution.

The Administrative Tribunal first noted that in the case at hand no transfer of ownership was decided or achieved, so that in principle no expropriation within the meaning of article 16 of the Constitution can be established.

The Administrative Tribunal further noted that although it is clear from the case law of the Constitutional Court that a change in the attributes of the property so substantial that it deprives the owner of its essential aspects may constitute expropriation, the new classification of the cadastral parcel has only restricted the right of use (*usus*) without impacting its substance. The right to deprive profit (*fructus*) and the right to alienate (*abusus*) remained unaffected by this new classification.

The Administrative Tribunal finally emphasised that the principle of mutability of the PAG is enshrined by the Constitutional Court and that, according to the latter, the administrative judge is not allowed to sanction a reclassification of land, but the owners concerned might, if they deem it necessary, appeal to the judicial judge for the allocation of compensation.

THE NEW GRAND-DUCAL REGULATION ON THE ENERGY PERFORMANCE OF BUILDINGS ENTERED INTO FORCE ON 1 JULY 2021

Grand-Ducal Regulation of 9 June 2021 on the energy performance of buildings

The Grand-Ducal Regulation of 30 November 2007 on the energy performance of residential buildings and the Grand-Ducal Regulation of 31 August 2010 on the energy performance of functional buildings are repealed, the latter with effect as of 1 July 2022.

The new Grand-Ducal Regulation aims at (i) merging the two above-mentioned Grand-Ducal Regulations, (ii) adapting some of the current regulations and establishing a framework to promote the improvement of the overall energy performance of buildings, and (iii) implementing certain provisions of various European directives.

An energy certificate issued by architects or consulting engineers is required for new buildings, existing buildings, extensions, modifications and substantial alterations to buildings. Any application for a building permit for a new building or for an extension or modification of an existing building must include the energy certificate. However, exceptions are provided for in the Grand-Ducal Regulation, in particular with regard to certain types of buildings (e.g., buildings erected on a temporary basis) and certain alterations/transformations (e.g., covering small areas or involving costs of negligible value).

In addition, an energy certificate is also required in the event of (i) a change of tenant in an existing building or part of a building, and (ii) a change of owner of an existing building or part of a building in case of a sale. The future buyer or tenant must be able to consult the energy certificate of the building. The original version of the energy certificate must then be provided to the new owner and a certified true copy must be provided to the new tenant.

Advertisements for residential buildings or parts of residential buildings offered for sale or for rent shall state the energy classification of the building.

It should be noted that the energy certificate is valid for 10 years from the date of its issuance and the new Grand-Ducal Regulation provides for criminal sanctions in several cases, in particular when (i) the seller or landlord does not enable the future buyer or tenant to consult the energy certificate before the sale or rental, (ii) the former owner does not hand over the original energy certificate to the new owner on the day of the notarial deed, and (iii) the landlord fails to provide the new tenant with a certified copy of the energy certificate.

TAX

LUXEMBOURG TAX AUTHORITIES RELEASE CIRCULAR PROVIDING CLARIFICATIONS ON PRIME PARTICIPATIVE

8 March 2021

On 8 March 2021, the Luxembourg tax authorities issued clarifications on the circular L.I.R. – n° 115/12[60] (the "Circular") regarding the application of the prime participative as introduced by the Luxembourg 2021 Budget Law.

The 2021 Budget Law[61] (as adopted on 19 December 2020 by the Chamber of Deputies and published in the Official Journal on 23 December 2020), introduced, *inter alia*, certain specific individual tax measures, including the profit sharing bonus (the so-called "prime participative"). The new profit sharing bonus has applied since 1 January 2021.

Profit sharing bonuses provide employees with an opportunity to participate in the corporate success of their employer under certain conditions. Based on its financial results, the employer can grant a bonus to dedicated employees (meeting further conditions at employer and employee level). Such profit sharing bonus is considered as tax deductible (at employer level), qualifies as employment income (at employee level) and benefits from 50% personal income tax exemption (subject to a 25% limit on the employees gross annual remuneration).

In particular, the Circular (complemented by a FAQ[62]) clarifies the following key aspects:

- The employer offering the profit sharing bonus must report electronically its intention to do so to the respective wage tax office of the employee (the Luxembourg tax authorities provide for a model template that must be used – in French only).63 Failure to comply with timely reporting can result in the retroactive cancellation of the 50% exemption and in wage tax adjustments.
- The profit sharing bonus is limited to 25% of the employee's gross ordinary annual remuneration for any given tax year (respectively the annual salary finally paid in case the employee leaves the employer during the year). Therefore, the 50% exemption only applies to the part of the bonus which does not exceed the 25% threshold. The FAQ addresses in particular the 25% limit, including aspects such as the elements to be excluded from the calculation of the 25% limit: benefits in kind, cash benefits (e.g., bonus, 13th month's salary, interest subsidies, travel expenses) and exempt salaries.
- The social contributions charged on exempt salary income as part of the prime participative are not deductible for wage tax purposes.
- A profit sharing bonus paid to executive directors/managers earning income from salaried occupation is also considered as such type of income, and therefore subject to the employer and employee conditions under the profit sharing bonus regime.
- In addition, the FAQ addresses further administrative aspects such as type and number of beneficiaries (no limitation on number of employees benefiting from the bonus), communication and record-keeping (information on certificate of salary, model 160).

60 L.I.R. n°115/12

61 2021 Budget Law

62 FAQ (article 115, numéro 13a L.I.R.)

63 Prime participative

LUXEMBOURG TAX AUTHORITIES ISSUED CIRCULAR PROVIDING GUIDANCE ON MUTUAL AGREEMENT PROCEDURE

11 March 2021[64]

On 11 March 2021, the Luxembourg tax authorities issued the circular L.G. – Conv. D.I. n° 60 (the "**Circular**")regarding the implementing terms of the mutual agreement procedure ("**MAP**") under the bilateral tax treaties concluded by Luxembourg.

The MAP is routed in article 25 of the OECD Model Tax Convention and various double tax treaties concluded by Luxembourg with the aim to establish a mechanism to resolve cross-border tax disputes arising from application of double tax treaties and interpretation of their provisions.

The Circular clarifies the procedures of the MAP as well as costs that a taxpayer has to suffer in case of a MAP initiation request. It should be kept in mind that the MAP is a non-judicial procedure and therefore not bound by domestic legal rights and remedies (but rather can be initiated in parallel to domestic remedies).

The Circular not only addresses the scope of the MAP – which is mainly provided for by article 35 of the OECD Model Tax Convention, but also provides additional information concerning access to the MAP. It clarifies that access should only be refused in case formal requirements are not adhered to, notably the residence criteria is not met or the prescription period is exceeded. Access should not be denied solely on the basis where the MAP was initiated following the application of domestic or treaty anti-abuse provisions. Furthermore, the MAP should be available for a Luxembourg entity with a permanent establishment in a third country.

Moreover, the Luxembourg tax authorities emphasise the following aspects:

- The MAP request must identify the double tax treaty and refer to the relevant legal provision.
- The competent authority in Luxembourg is the Minister of Finance and requests should be addressed to the Luxembourg tax authorities (*Direction de l'Administration des contributions directes*).
- Protective MAP requests should be possible.
- MAP may also cover situations of double taxation that are not covered by a double tax treaty, and allow for consultation of the tax authorities concerned.

64 L.G. - Conv. D.I. n° 60

EUROPEAN COMMISSION ISSUED COMMUNICATION ON BUSINESS TAXATION FOR THE 21ST CENTURY

18 May 2021 – Communication from the Commission to the EU Parliament and the Council COM (2021) 251 final[65]

On 18 May 2021, the EU Commission published its communication on "Business Taxation for the 21st Century" (the "**Communication**") setting out the EU's tax policy agenda for the creation of a robust, efficient and fair tax framework

In order to achieve this goal, the EU Commission lists five short-term actions that go beyond the reports published by the OECD in October 2020 seeking to address the challenges arising from the "digitsation" of the economy ("BEPS 2.0"):

- A proposal for Business in Europe: Framework for Income Taxation (BEFIT) moving towards a single tax rulebook for the EU based on a common tax base and the allocation of profits between Member States based on the formulary apportionment, will be targeted for 2023. BEFIT would consolidate the profits of the EU members of a multinational group into a single tax base, which will then be allocated to Member States. This new proposal will replace the pending proposal of a Common Consolidated Corporate Tax Base (CCCTB), which will be withdrawn.
- A recommendation to Member States on the domestic treatment of losses for small and medium enterprises (SMEs) to ensure fair competition between companies and better support for businesses during the recovery from the COVID-19 pandemic. The Member States are recommended to allow for the loss carry-back to at least the previous fiscal year. As such, loss carryback will only benefit companies and SMEs that were profitable in the years before the pandemic. The amount of losses to be carried back should be limited at a maximum of EUR3 million per loss making fiscal year.
- A proposal on creating a Debt Equity Bias Reduction Allowance (DEBRA) by the first quarter of 2022 modifying the current tax framework characterized by a pro-debt bias of tax provisions. Indeed, in the current framework a company can deduct interest relating to debt financing but not the costs related to an equity financing. A proposal should be made by 2022 addressing this issue and supporting the re-equitization of financially vulnerable companies.
- A proposal for the publication of effective tax rates paid by large companies is expected by 2022. This proposal will require the annual publication of the effective corporate tax rate by certain large companies which operate in the EU, based on the methodology under discussion in BEPS 2.0 (Pillar 2).
- A legislative proposal to address the use of shell companies (ATAD 3) should be prepared by the end of 2021. Shell companies are defined as legal entities and arrangement that have little or no substance and economic activity. It is expected that the proposal includes a reporting obligation to submit information to the tax administration in order to assess the economic substance (and consequently deny tax benefits in case shell companies are used).

Moreover, the Communication announces the forthcoming proposal to reform the Energy Taxation Directive. In July 2021 the Commission will unveil its proposals for a Carbon Border Adjustment Mechanism (CBAM), a digital levy and a revision of the EU Emissions Trading System (ETS) and propose additional new resources such as a Financial Transaction Tax.

Finally, the Communication considers how this EU business agenda reconciles with BEPS 2.0. Indeed, the OECD is working on a global solution to reform the internal corporate tax framework. The discussion focuses on two work streams: the partial reallocation of taxing rights (Pillar 1) and the minimum effective taxation of multinationals' profits (Pillar 2). In order to ensure its consistent implementation, including by Member States that are not part of the OECD, the Commission will issue two Directives to apply each of the two pillars within the EU.

65 Communication from the commission to the European Parliament and the Council

LUXEMBOURG TAX AUTHORITIES RELEASE CIRCULAR PROVIDING ADMINISTRATIVE GUIDANCE ON APPLICATION OF INTEREST LIMITATION RULE

2 June 2021

On 2 June 2021, the Luxembourg tax authorities issued circular L.I.R. n° 168bis/1[66] (the "**Circular**") updating their guidance on the interest limitation rule and addressing the group escape clause provision.

Background

This new Circular replaces that previously issued by the Luxembourg tax authorities on 8 January 2021, but retains all of the initial sections. The Circular added a new section 6 related to the equity escape provision for members of a consolidated group for financial accounting purposes.

Key elements

Under the group escape clause, a taxpayer that is part of a consolidated group for accounting purposes, may – upon request – deduct borrowing costs in excess of 30% EBITDA to the extent that the ratio of its equity over its total assets is equal to or higher than the equivalent ratio of the group.

In such a case, the taxpayer can request that the interest limitation rule does not apply to him or her at all. The Circular clarifies that the taxpayer's ratio should be considered equal to or higher than the equivalent group ratio even if the taxpayer's ratio is 2% lower than the group ratio.

In order to benefit from the equity escape provision, the taxpayer must cumulatively fulfil the following conditions:

- It must be part of a group with statutory consolidated accounts (i.e. fully consolidated) and the Circular clarifies that a voluntary consolidation is accepted.
- The statutory consolidated accounts of the group must be prepared in compliance with a qualifying accounting framework, i.e. IFRS or domestic accounting standards.
- The consolidated accounts of the group must be subject to an audit by an authorised auditor.
- The financial reporting framework is determined on the basis of the legal provisions governing the consolidation applicable at the level of the consolidating parent entity.

In case all conditions are fulfilled, the application of the equity escape provision requires that the taxpayer's assets and liabilities must be valued by the same method used for the consolidated group accounts.

It should be noted that under article 168bis § 6 of the Luxembourg income tax law, the group escape clause does not apply automatically but is only applicable upon request. This requires the taxpayer to disclose certain additional information in its tax returns (e.g., details on the financial reporting framework, details of adjustments made to financial statements, and equity/assets used for the ratio).

To find our more, please refer to our Client Briefing.

66 L.I.R. n° 168bis/1

LUXEMBOURG EXTENDS MUTUAL AGREEMENT WITH FRANCE AND BELGIUM REGARDING THE TREATMENT OF CROSS-BORDER WORKERS IN THE CONTEXT OF COVID-19

11 and 17 June 2021

Following the mutual agreement with Belgium of 11 June 2021[67], the Luxembourg tax authorities issued circular L.G. – Conv. D.I. n° 62[68] dated 17 June 2021, announcing also the extension of tax measures put in place with France regarding the taxation of cross-border workers in the context of COVID-19.

In accordance with the amicable bilateral tax agreements, the teleworking measures applicable to cross-border

workers (including social security affiliation) remain effective until 30 September 2021.

Working days during which work is carried out from the state in which the individual is resident (e.g., France) are not taken into account for the calculation of the 29-day limit (in the case of France). Such working days will remain taxable in Luxembourg. In respect of Belgium, working days of cross-border workers during which work is carried out at home are not considered as working days in the country of residence (i.e. Belgium).

It should be noted that the mutual agreement concluded between Germany and Luxembourg is automatically renewed, until either party communicates a termination

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[67] Luxembourg Government Communiqué - 11.06.2021

[68] L.G. - Conv. D.I. n° 62

GLOSSARY

"**ABBL**": Luxembourg Banks and Bankers Association

"**ACA**": Association des Compagnies d'Assurance, Luxembourg Association of Insurance Undertakings

"**AIF**": Alternative Investment Fund

"**AIFM**": Alternative Investment Fund Managers

"**AIFM Law**": Luxembourg law of 12 July 2013 (as amended) on alternative investment fund managers

"**AIFMD**": Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on alternative investment fund managers

"**AIFMD Level 2 Regulation**": Commission-delegated regulation (EU) 231/2013 supplementing the AIFMD with regard to exemptions, general operating conditions, depositaries, leverage, transparency and supervision

"**ALFI**": Association of the Luxembourg Fund Industry

"**AML Authority**": *Parquet du Tribunal d'arrondissement de Luxembourg, Cellule de Renseignement Financier*, the department competent for the fight against money laundering and terrorism financing of the Luxembourg state prosecutor

"**AML Law**": Luxembourg law of 12 November 2004 (as amended) on the fight against money laundering and terrorism financing

"**AML/CTF**": Anti-Money Laundering and Counter Terrorism Financing

"**AML/CTF GDR**": Grand Ducal Regulation of 1 February 2010 (as amended) on the fight against money laundering and terrorist financing

"**AMLD 4**": Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing

"**AMLD 5**": Directive (EU) 2018/843 of the European Parliament and of the Council of 30 May 2018 amending Directive (EU) 2015/849 on the prevention of the use of the financial system for the purposes of money laundering or terrorist financing, and amending Directives 2009/138/EC and 2013/36/EU

"**Bank Resolution Law**": Luxembourg law of 18 December 2015 on the failure of credit institutions and of certain investment firms implementing the BRRD and DGSD 2

"**BCBS**": Basel Committee on Banking Supervision

"**BCL**": *Banque Centrale du Luxembourg*, the Luxembourg Central Bank

"**Benchmarks Regulation**": Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts

"**Blocking Regulation**": Council Regulation (EC) 2271/96 of 22 November 1996 protecting against the effects of extraterritorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom

"**Brexit**": The withdrawal of the United Kingdom from the European Union

"**BRRD**": Directive 2014/59 of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms

Glossary

"**BRRD II**": Directive (EU) 2019/879 of the European Parliament and of the Council of 20 May 2019 amending Directive 2014/59/EU as regards the loss-absorbing and recapitalisation capacity of credit institutions and investment firms, and Directive 98/26/EC

"**CAA**": *Commissariat aux assurances*, the Luxembourg insurance sector regulator

"**CCCTB**": Common Consolidated Corporate Tax Base

"**Central Electronic Data Law**": Luxembourg law of 25 March 2020 establishing a central electronic data retrieval system concerning IBAN accounts and safe-deposit boxes

"**CESR**": Committee of European Securities Regulators (replaced by ESMA)

"**CGFS**": Committee on the Global Financial System

"**CJEU**": the Court of Justice of the European Union

"**CNPD**": the Luxembourg data protection authority (*Commission Nationale de la Protection des Données*)

"**Collective Bank Bargain Agreement**": *La convention collective du travail applicable aux banques*

"**Companies Law**": Luxembourg law of 10 August 1915 (as amended) on commercial companies

"**Consumer Act**": Luxembourg law of 25 August 1983 (as amended) concerning the legal protection of the consumer

"**Consumer Code**": *Code de la consommmation*, the Luxembourg Consumer Code

"**CPDI**": Depositor and Investor Protection Council/*Conseil de Protection des Déposants et des Investisseurs*

"**CRA**": Credit Rating Agencies

"**CRD**": Capital Requirements Directives 2006/48/EC and 2006/49/EC

"**CRD III**": Directive 2010/76/EU amending the CRD regarding capital requirements for the trading book and for resecuritisations, and the supervisory review of remuneration policies

"**CRD V**": Directive (EU) 2019/878 of the European Parliament and of the Council of 20 May 2019 amending Directive 2013/36/EU as regards exempted entities, financial holding companies, mixed financial holding companies, remuneration, supervisory measures and powers, and capital conservation measures

"**Creditors Hierarchy Directive**": Directive (EU) 2017/2399 of 12 December 2017 amending Directive 2014/59/EU as regards the ranking of unsecured debt instruments in the insolvency hierarchy

"**CRR II**": Regulation (EU) 2019/876 of the European Parliament and of the Council of 20 May 2019 amending Regulation (EU) No 575/2013 as regards the leverage ratio, the net stable funding ratio, requirements for own funds and eligible liabilities, counterparty credit risk, market risk, exposures to central counterparties, exposures to collective investment undertakings, large exposures, reporting and disclosure requirements, and Regulation (EU) No 648/2012

"**CRR/CRD IV Package**": Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, and Regulation (EU) 575/2013 of the European Parliament and of the Council of 26 June 2013, on prudential requirements for credit institutions and investment firms, and amending Regulation (EU) 648/2012 text with EEA relevancePLS REVIEW PUNCTUATION

"**CSDR**": Regulation (EU) 909/2014 of the European Parliament and of the Council of 23 July 2014 on improving securities settlement in the European Union and on central securities depositories, and amending Directives 98/26/EC and 2014/65/EU and Regulation (EU) 236/2012

Glossary

"**CSSF**": *Commission de Surveillance du Secteur Financier*, the Luxembourg supervisory authority of the financial sector

"**CSSF Regulation 12-02**": CSSF regulation 12-02 of 14 December 2002 (as amended) on AML/CTF

"**Data Protection Law**": the law of 1 August 2018 on the organisation of the National Data Protection Commission and the general regime on the protection of personal data

"**DGSD 2**": Directive 2014/49 of 16 April 2014 on deposit guarantee schemes

"**EBA**": European Banking Authority

"**ECB**": European Central Bank

"**EDPB**": the European Data Protection Board (successor to the Article 29 Working Party as of 25 May 2018)

"**EDPS**": the European Data Protection Supervisor (independent supervisory authority responsible for monitoring the processing of personal data by the EU institutions and bodies)

"**EEA**": European Economic Area

"**EIOPA**": European Insurance and Occupational Pensions Authority

"**EMIR**": Regulation (EU) No 648/2012 of 4 July 2012 on OTC derivatives, central counterparties and trade repositories

"**ESAs**": EBA, EIOPA and ESMA

"**ESMA**": European Securities and Markets Authority

"**ESRB**": European Systemic Risk Board

"**ETDs**": Exchange-Traded Derivatives

"**ETFs**": Exchange-Traded Funds

"**EU**": European Union

"**EUIR**": European Union Insolvency Regulation: Council regulation (EC) 1346/2000 of 29 May 2000 on insolvency proceedings

"**EUIR (Recast)**": Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings

"**FATF**": Financial Action Task Force/*Groupe d'Action Financière* (FATF/GAFI)

"**FATF 2**": Regulation (EU) 2015/847 of the European Parliament and of the Council of 20 May 2015 on information accompanying transfers of funds and repealing Regulation (EC) 1781/2006

"**FCP**": *Fonds Commun de Placement* or mutual fund

"**FGDL**": *Fonds de garantie des dépôts Luxembourg*

"**Financial Collateral Directive**": Directive 2002/47/CE of 6 June 2002 on financial collateral arrangements

"**Financial Collateral Law**": Luxembourg law of 5 August 2005 (as amended) on financial collateral arrangements

"**Financial Sector Law**": Luxembourg law of 5 April 1993 (as amended) on the financial sector

"**FSB**": Financial Stability Board

Glossary

"**GDPR**": EU Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data

"**ICMA**": International Capital Market Association

"**IDD**": Directive (EU) 2016/97 of the European Parliament and of the Council of 20 January 2016 on insurance distribution (recast)

"**IFD**": Directive (EU) 2019/2934 on the prudential supervision of investment firms

"**IFR**": Regulation (EU) 2019/2033 on the prudential requirements of investment firms

"**Insolvency Regulation**": Council Regulation (EC) 1346/2000 of 29 May 2000 on insolvency proceedings

"**Insurance Sector Law**": Luxembourg law of 6 December 1991 (as amended) on the insurance sector

"**IORP Directive**": Directive 2003/41 of the European Parliament and the Council dated 3 June 2003 on the activities and supervision of institutions for occupational retirement provision

"**IRE**": *Institut des Réviseurs d'Entreprises*

"**KIID**": Key Investor Information Document (within the meaning of the UCITS Directive) that aims to help investors understand the key features of their proposed UCITS investment

"**Law on the Register of Commerce and Annual Accounts**": Luxembourg law of 19 December 2002 (as amended) relating to the register of commerce and companies

"**Law on the Registration of Real Estate**": Luxembourg law of 25 September 1905 (as amended) on the registration of real estate rights *in rem* (*loi du 25 septembre 1905 sur la transcription des droits reels immobiliers*)

"**Market Abuse Regulation**": Regulation (EU) No 569/2014 of the European Parliament and of the Council of 16 April 2014 on market abuse

"**MIF Regulation**": Regulation (EU) 2015/751 of the European Parliament and of the Council of 29 April 2015 on interchange fees for card-based payment transactions

"**MiFID**": Directive 2004/39/EC of the European Parliament and of the Council dated 21 April 2004 on markets in financial instruments, amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council, and repealing Council Directive 93/22/EEC

"**MiFID2**": Directive 2014/65/EU of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments

"**MiFIR**": Regulation (EU) No 600/2014 of the European Parliament and of the Council of 15 May 2014 on markets in financial instruments

"**ML/TF**": Money laundering and terrorist financing

"**NCA**": National Competent Authority

"**New Prospectus Regulation**": Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC text with EEA relevance

"**NIS Directive**": Directive (EU) 2016/1148 of the European Parliament and of the Council of 6 July 2016 concerning measures for a high common level of security of network and information systems across the Union

Glossary

"**Part II UCIs**": Undertakings for collective investment subject to the provisions of Part II of the UCI Law

"**Payment Accounts Directive**": Directive 2014/92/EU of the European Parliament and of the Council of 23 July 2014 on the comparability of fees related to payment accounts, payment account switching and access to payment accounts with basic features

"**Payment Services Law**": Luxembourg law of 10 November 2009 on payment services (as amended)

"**PFS**": Professional of the Financial Sector, other than a credit institution and subject to CSSF's supervision in accordance with the Financial Sector Law

"**PRIIPs Delegated Regulation**": EU Commission-Delegated Regulation (EU) 2017/653 of 8 March 2017, supplementing the PRIIPs KID Regulation by laying down regulatory technical standards (RTS) with regard to the presentation, content, review and revision of KIDs and the conditions for fulfilling the requirement to provide such documents

"**PRIIPs KID Regulation**": Regulation (EU) 1286/2014 of the European Parliament and of the Council of 26 November 2014 on key information documents for packaged retail and insurance-based investment products

"**Prospectus Law**": Luxembourg law of 16 July 2019 on prospectuses for securities

"**Prospectus Regulation**": Regulation (EC) 809/2004 of 29 April 2004 implementing the Directive as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and the dissemination of advertisements

"**PSD 2**": Directive 2015/2366 of the European Parliament and of the Council of 25 November 2015 on payment services in the internal market

"**PSP**": Payment Service Provider

"**Public Contracts Law**": Luxembourg law of 25 June 2009 (as amended) on government contracts

"**Public Contracts Regulation**": The Grand Ducal Regulation of 3 August 2009 implementing the Law of 25 June 2009 on public contracts

"**Public Interest Entities**":

(a) entities governed by the law of an EU member state, whose securities are admitted to trading on a regulated market of a member state within the meaning of article 4, paragraph 1, point 21 of Directive 2014/65/EU

(b) credit institutions as defined under article 1, point 12 of the law of 5 April 1993 on the financial sector as amended, other than the institutions covered by article 2 of directive 2013/36/EU

(c) insurance and reinsurance undertakings as defined under article 32, paragraph 1, points 5 and 9 of the law of 7 December 2015 on the insurance sector, to the exclusion of the entities covered by articles 38, 40 and 42, of the pension funds covered by article 32, paragraph 1, point 14, of the captive insurance companies covered by article 43, point 8 and captive reinsurance companies covered by article 43, point 9 of the law dated 7 December 2015 on the insurance sector

"**RAIF**": reserved alternative investment fund

"**RAIF Law**": Luxembourg law of 23 July 2016 (as amended) relating to reserved alternative investment funds

"**Rating Agency Regulation**": Regulation (EC) 1060/2009 of the European Parliament and Council on credit rating agencies

Glossary

"**RCSL**" or "**Register of Commerce**": Luxembourg register of commerce and companies (*Registre de commerce et des sociétés de Luxembourg*)

"**Regulation 2008**"**:** Grand-Ducal regulation of 8 February 2008 relating to certain definitions of the amended law of 20 December 2002 on undertakings for collective investment and implementing Commission Directive 2007/16/EC of 19 March 2007 implementing Council Directive 85/611/EEC on the co-ordination of laws, regulations and administrative provisions relating to UCITS as regards the clarification of certain definitions

"**REMIT**": Regulation (EU) 1227/2011 of 25 October 2011 on wholesale energy market integrity and transparency

"**SFDR**": Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector

"**SFTR**": Regulation (EU) No 2015/2365 of the European Parliament and of the Council of 25 November 2015 on transparency of securities financing transactions and of their reuse and amending Regulation (EU) No 648/2012

"**SHRD II**": Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the encouragement of long-term shareholder engagement

"**SHR Law**": Luxembourg law of 24 May 2011 (as amended) on the exercise of certain rights of shareholders in listed companies

"**SICAR Law**": Luxembourg law of 15 June 2004 (as amended) on investment companies in risk capital

"**SIF Law**": Luxembourg law of 13 February 2007 (as amended) relating to specialised investment funds

"**Solvency II**": Directive 2009/138/EC of the European Parliament and of the Council of 25 November 2009 on the taking up and pursuit of the business of Insurance and Reinsurance

"**SRB**": the Single Resolution Board

"**SRF**": the Single Resolution Fund

"**SRM**": the Single Resolution Mechanism

"**SRMR**": Regulation (EU) 806/2014 of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of an SRM and an SRF and amending Regulation (EU) 1093/2010

"**SSM**": the Single Supervisory Mechanism

"**SSM Regulation**": Council Regulation (EU) 1024/2013 of 15 October 2013 conferring specific tasks on the European Central Bank concerning policies relating to the prudential supervision of credit institutions

"**Statutory Audit Directive**": Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts

"**Statutory Audit Regulation**": Regulation (EU) 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public interest entities

"**STS Regulation**": Regulation (EU) 2017/2402 laying down a general framework for securitisation and a dedicated framework for simple, transparent and standardised securitisation

"**Takeover Law**": Luxembourg law of 19 May 2006 on public takeover bids

"**Taxonomy Regulation**": Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088

Glossary

"**Transparency Law**": Luxembourg law of 11 January 2008 (as amended) on the transparency obligations concerning information on the issuers of securities admitted to trading on a regulated market

"**UCI Law**": Luxembourg law of 17 December 2010 (as amended) on undertakings for collective investment

"**UCITS**": Undertakings for collective investment in transferable securities that are "harmonised" within the meaning of, and governed by, the UCITS Directive and subject to the provisions of Part I of the UCI Law

"**UCITS Directive**": Directive 2009/65/EC of 13 July 2009 of the EU Parliament and of the Council on the co-ordination of laws, regulations and administrative provisions relating to UCITS, as amended

"**UCITS V Delegated Regulation**": Commission Delegated Regulation (EU) 2016/438 of 17 December 2015 supplementing the UCITS Directive with regard to obligations of depositaries

"**UCITS V Directive**": Directive 2014/91/EU of the European Parliament and of the Council of 23 July 2014 amending Directive 2009/65/EC as regards depositary functions, remuneration policies and sanctions

"**VASP**": Virtual Asset Service Providers

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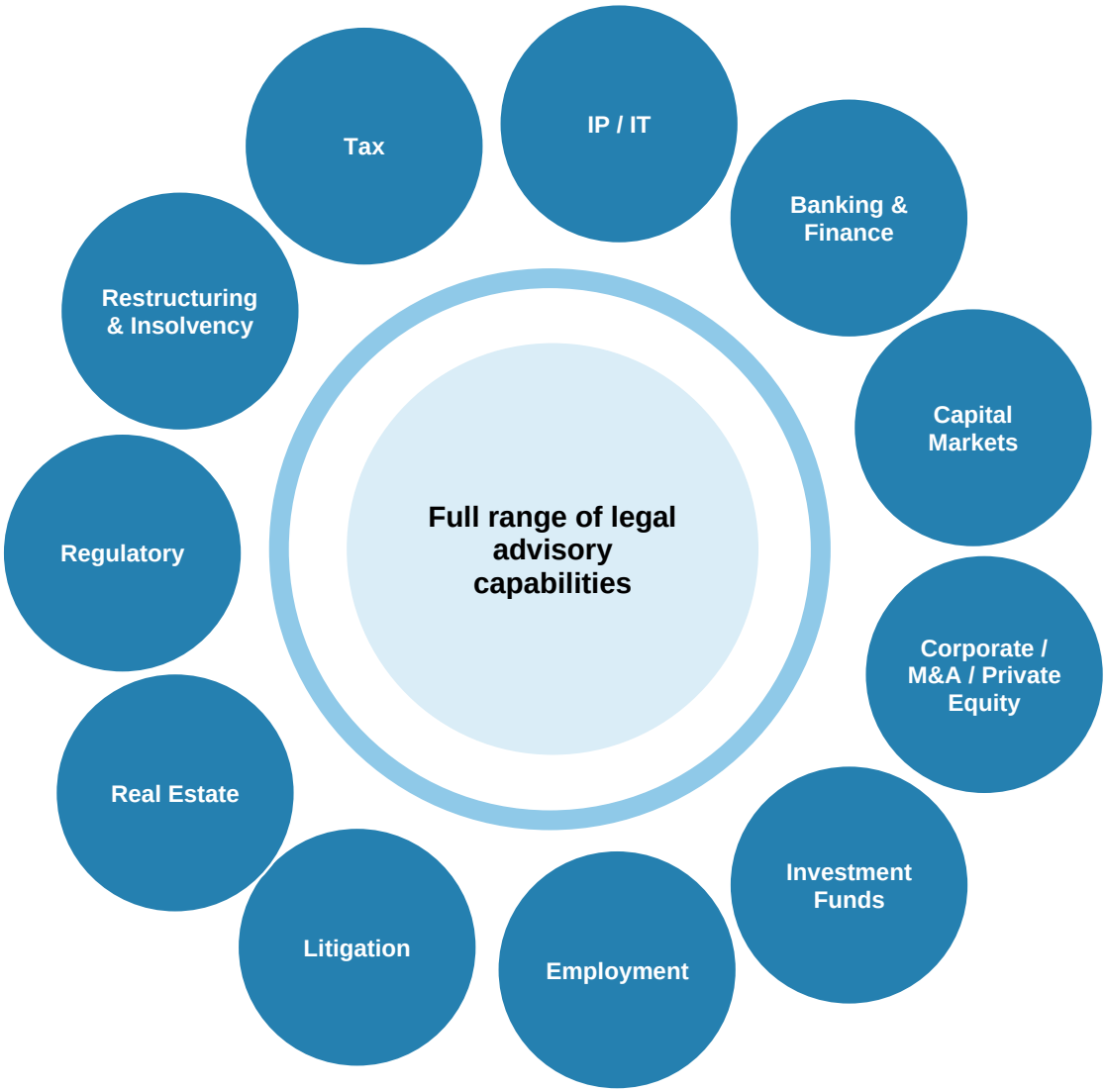

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