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LUXEMBOURG LEGAL UPDATE

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Dear Reader,

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This newsletter provides a compact summary and guidance on the new legal issues that could affect your business, particularly in relation to banking, finance, capital markets, corporate, litigation, employment, funds, investment management and tax law.

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Our dedicated Financial Toolkit to keep you up to date with the most recent developments relating to the Finance industry.

Our dedicated Fintech guide to keep you up to date with the most recent developments relating to Fintech trends.

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BANKING, FINANCE & CAPITAL MARKETS

International and EU Developments

New Delegated, Implementing and other EU Regulations and EU and international texts

Over the past few months, a number of new Commission Delegated, Commission Implementing and other EU Regulations and Directives as well as EU and international texts have been published. These include, amongst others, the following:

CRD IV/CRR

- N°2018/1620 of 13 July 2018 amending Delegated Regulation (EU) 2015/61 to supplement CRR with regard to liquidity coverage requirement for credit institutions
- N°2018/1627 of 9 October 2018 amending Implementing Regulation (EU) 680/2014 as regards prudent valuation for supervisory reporting
- N°2018/1889 of 4 December 2018 on the extension of the transitional periods related to own funds requirements for exposures to central counterparties set out in CRR and EMIR

SSMR

- ECB Banking Supervision publication on supervisory priorities for 2019
- ECB guide to internal models: General topics chapter (November 2018)
- ECB guide of September 2018 to on-site inspections and internal model investigations
- ECB Regulation (EU) N°2018/1845 of 21 November 2018 on the exercise of the discretion under Article 178(2)(d) of CRR in relation to the threshold for assessing the materiality of credit obligations past due

BRRD

- N°2018/1624 of 23 October 2018 laying down ITS with regard to procedures, standard forms and templates for the provision of information for the purposes of resolution plans for credit institutions and investment firms under the BRRD, and repealing Implementing Regulation (EU) 2016/1066

MIFID2/MIFIR

- ESMA updated Q&A of 12 July 2018 questions and answers (Q&As) regarding temporary product intervention measures on the marketing, distribution or sale of CFDs and binary options to retail clients (ESMA35-36-1262)
- ESMA Supervisory Briefing of 13 November 2018 on MiFID2 suitability requirements (ESMA35-43-1206)
- Presidency Compromise Proposal of 9 October 2018 for a Regulation on the prudential requirements of investment firms and amending CRR, MiFIR and Regulation (EU) 1093/2010 (EBA Regulation)
- Presidency Compromise Proposal of 9 October 2018 for a Directive on the prudential supervision of investment firms and amending CRD IV and MiFID2
- ESMA Guidelines on the application of C6 and C7 of Annex 1 of MiFID2 dated 21 December 2018 (ESMA-70-156-869)
- N°2018/2047 of 20 December 2018 on the equivalence of the legal and supervisory framework applicable to stock exchanges in Switzerland in accordance with Directive 2014/65/EU
- ESMA Notice of Product Intervention Renewal Decision in relation to binary options dated 14 December 2018 (ESMA35-43-1533)

PSD2

- EBA Guidelines (updated version of 20 December 2018) on reporting requirements for fraud data under Article 96(6) PSD2

Solvency II

- N°2018/1221 of 1 June 2018 amending Delegated Regulation (EU) 2015/35 as regards the calculation of regulatory capital requirements for securitisations and simple, transparent and standardised securitisations held by insurance and reinsurance undertakings
- N°2018/1078 of 30 July 2018 laying down technical information for the calculation of technical provisions

and basic own funds for reporting with reference dates from 30 June 2018 until 29 September 2018 in accordance with Solvency II

- N°2018/1699 of 9 November 2018 laying down technical information for the calculation of technical provisions and basic own funds for reporting with reference dates from 30 September 2018 until 30 December 2018 in accordance with Solvency II

- EIOPA Report on the use of limitations and exemptions from reporting during 2017 and Q1 2018

IDD

- EIOPA publishes Q&A for requirements for the Product Oversight and Governance arrangements on the application of Commission Delegated Regulation (EU) 2017/2358 of 21 September 2017 supplementing IDD with regard to product oversight and governance requirements for insurance undertakings and insurance distributors

- EIOPA publishes Q&A on the additional regulatory requirements for insurance-based investment products on the application of Commission Delegated Regulation (EU) 2017/2359 of 21 September 2017 supplementing IDD with regard to information requirements and conduct of business rules applicable to the distribution of insurance-based investment products

Benchmarks Regulation

- N°2018/1105 of 8 August 2018 laying down ITS with regard to procedures and forms for the provision of information by competent authorities to ESMA under the Benchmarks Regulation

- N°2018/1106 of 8 August 2018 laying down ITS with regard to templates for the compliance statement to be published and maintained by administrators of significant and non-significant benchmarks pursuant to the Benchmarks Regulation

- Nº2018/1637 of 13 July 2018 supplementing the Benchmarks Regulation with regard to RTS for the procedures and characteristics of the oversight function

- Nº2018/1638 of 13 July 2018 supplementing the Benchmarks Regulation with regard to RTS specifying further how to ensure that input data is appropriate and verifiable, and the internal oversight and verification procedures of a contributor that the administrator of a critical or significant benchmark has to ensure are in place where the input data is contributed from a front office function

- Nº2018/1639 of 13 July 2018 supplementing the Benchmarks Regulation with regard to RTS specifying further the elements of the code of conduct to be developed by administrators of benchmarks that are based on input data from contributors

- Nº2018/1640 of 13 July 2018 supplementing the Benchmarks Regulation with regard to RTS specifying further the governance and control requirements for supervised contributors

- Nº2018/1641 of 13 July 2018 supplementing the Benchmarks Regulation with regard to RTS specifying further the information to be provided by administrators of critical or significant benchmarks on the methodology used to determine the benchmark, the internal review and approval of the methodology and on the procedures for making material changes in the methodology

- Nº2018/1642 of 13 July 2018 supplementing the Benchmarks Regulation with regard to RTS specifying further the criteria to be taken into account by competent authorities when assessing whether administrators of significant benchmarks should apply certain requirements

- Nº2018/1643 of 13 July 2018 supplementing the Benchmarks Regulation with regard to RTS specifying further the contents of, and cases where updates are required to, the benchmark statement to be published by the administrator of a benchmark

- Nº2018/1644 of 13 July 2018 supplementing the Benchmarks Regulation with regard to RTS determining the minimum content of cooperation arrangements with competent authorities of third countries whose legal framework and supervisory practices have been recognised as equivalent

- Nº2018/1645 of 13 July 2018 supplementing the Benchmarks Regulation with regard to RTS for the form and content of the application for recognition with the competent authority of the Member State of reference and of the presentation of information in the notification to ESMA

- Nº2018/1646 of 13 July 2018 supplementing the Benchmarks Regulation with regard to RTS for the information to be provided in an application for authorisation and in an application for registration

CSDR

- N°2018/1229 of 25 May 2018 supplementing CSDR with regard to RTS on settlement discipline

AML/CTF

- N°2018/1108 of 7 May 2018 supplementing AMLD4 with RTS on the criteria for the appointment of central contact points for electronic money issuers and payment service providers and with rules on their functions

- Directive (EU) N°2018/1673 of the European Parliament and of the Council of 23 October 2018 on combating money laundering by criminal law. The Directive establishes minimum rules concerning the definition of criminal offences and sanctions related to money laundering, removes obstacles to cross-border judicial and police cooperation and brings EU rules into line with international obligations. The Directive entered into force on 2 December 2018 and Member States will have until 3 December 2020 to transpose it into their national laws

Shareholders Rights Directive

- N°2018/1212 of 3 September 2018 laying down minimum requirements implementing the provisions of Directive 2007/36/EC of 11 July 2007 on the exercise of certain rights of shareholders in listed companies (Shareholder Rights Directive) as regards shareholder identification, the transmission of information and the facilitation of the exercise of shareholders' rights

Securitisation Regulation

- ESMA final report of 12 November 2018 on draft RTS/ITS on securitisation repository application requirements, operational standards, and access conditions (ESMA33-128-488)

- ESMA final technical advice of 12 November 2018 on fees to be charged by ESMA for registering and supervising securitisation repositories (ESMA33-128-505)

- ESMA reporting instructions of 13 November 2018 to provide Simple, Transparent and Standardised (STS) notifications for public securitisations and an interim STS notification template (ESMA33-128-585)

- ESMA statement of 13 November 2018 on various topics in relation to ESMA's near-term implementation activities under the Securitisation Regulation (ESMA33-128-577)

- EBA Guidelines on the STS criteria for ABCP securitisation dated 12 December 2018 (EBA/GL/2018/08)

- EBA Guidelines on the STS criteria for non-ABCP securitisation dated 12 December 2018 (EBA/GL/2018/09)

Brexit

- ESMA statement of 12 July 2018 on the timely submission of requests for authorisation in the context of the United Kingdom withdrawing from the European Union (ESMA42-110-998)

- EIOPA statement of 5 November 2018 calling for immediate action to ensure service continuity in cross-border insurance

- SRB position paper of 15 November 2018 on its expectations to ensure resolvability in the context of Brexit

- EBA reminder of 17 December 2018 calling for more action by financial institutions in their Brexit-related communications to customers (cf. also CSSF Press Release 18/42 of 21 December 2018)

- ESMA statement of 19 December 2018 with a reminder to firms on their MiFID obligations on disclosure of information to clients in the context of the United Kingdom withdrawing from the European Union (ESMA35-43-1328) (cf. also CSSF Press Release 18/43 of 21 December 2018)

- ECB article "Brexit: preparing for supervision in the euro area" in the November issue of its Supervision Newsletter

Other

- FSB statement of 12 July 2018 on interest rate benchmark reform – overnight risk-free rates and term rates

Clifford Chance Briefing Papers

- Clifford Chance briefing paper setting out the main features of the Luxembourg law dated 20 July 2018 implementing PSD 2
- Clifford Chance briefing paper on the new Luxembourg renewable energy covered bonds regime introduced in the Financial Sector Law by the law dated 22 June 2018

LEGISLATION

Debt Recovery: European Account Preservation Order Procedure – Publication of Luxembourg Implementing Law

Law of 18 July 2018

The law of 18 July 2018 establishing the European Account Preservation Order procedure was published in the Luxembourg official journal (*Mémorial A*) on 31 July 2018. The law establishes a procedure to facilitate cross-border debt recovery in civil and commercial matters.

The procedure focuses on the preservation of the debtor's assets, but does not govern the execution phase, i.e. the recovery of the claim against the debtor, which remains to be governed by national law. The Luxembourg law account preservation order procedure equivalent to the European procedure is the *saisie-arrêt,* which does not clearly distinguish the preservation and the execution phase, but links the asset freezing directly to the recovery of the claim. Thus, an amendment was necessary in order to avoid any incoherence and legal uncertainty.

Accordingly, the law inserts a new Article 718-1 into the New Code of Civil Procedure introducing a specific procedure for the execution phase, which is separate from the national *saisie-arrêt* procedure, and which applies when a European Account Preservation Order within the meaning of the Regulation is issued.

The law entered into force on 4 August 2018.

PSD 2: Publication of Luxembourg Law Implementing PSD 2

Law of 20 July 2018

A new law of 20 July 2018 on payment services, implementing PSD 2, was published in the Luxembourg official journal (*Mémorial A*) on 25 July 2018. The law amends the law of 10 November 2009 on payment services.

The law aims to adapt the legislative framework to the technological evolution of financial services, notably with regard to third-party payment providers which act as an intermediary between financial institutions and their customers. The law, *inter alia*, imposes higher standards with regard to user authentication and IT security, and introduces a legal regime for payment initiation service providers (PISP) and account information service providers (AISP).

Under the new regime, PISPs and AISPs are required to obtain a specific licence or be registered for their activities. The law designates the CSSF as the competent authority for licensing, registration and supervision of these new payment service providers.

The law further specifies the passporting framework for payment institutions and electronic money institutions. In this context, the law, *inter alia*, foresees a closer cooperation between the concerned national competent authorities.

Moreover, the law requires payment service providers to establish strong authentication processes, as well as specific procedures for managing and reporting major operational or security-related incidents. Access by PISPs and AISPs to the payment accounts of their users must be operated through so-called "application programming interfaces" (APIs) in order to provide a safe and efficient access to payment accounts and the data of their users, provided they have consented thereto.

As concerns consumer protection, payment service providers are obliged to inform their customers on complaint and alternative dispute resolution procedures. Furthermore, customers' liability for the damage caused by non-authorised payments after the loss or theft of a payment instrument is now limited to EUR 50 (instead of EUR 150 as previously).

The law entered into force on 29 July 2018.

Please refer to our Clifford Chance briefing paper for further details on this law.

Inactive Accounts, Inactive Safe-Deposit Boxes and Unclaimed Insurance Payments Specific Legal Framework: Publication of Bill

Bill Nº7348

A new bill Nº7348 on inactive accounts, inactive safe-deposit boxes and unclaimed insurance payments was lodged with the Luxembourg Parliament on 6 August 2018.

The aim of the bill is to define a specific legal framework in relation to inactive accounts, inactive safe-deposit boxes and unclaimed insurance payments. The bill is inspired by the regimes existing in this area in France and Belgium.

The proposed legal framework has the objectives:

- to improve the customers' and beneficiaries' position by facilitating the research for their accounts, safe-deposit boxes and insurance contracts, and
- to provide clarity and legal certainty to banks and insurance companies by specifying their obligations.

The bill also reinforces the legal framework fighting against money laundering and terrorism financing (ML/TF) as inactive accounts bear potentially a higher ML/TF risk.

To prevent the situation of inactive accounts or safe-deposit boxes and of unclaimed insurance payments, the bill imposes on banks and insurance companies an obligation to contact their customers on a regular basis, inform them of the consequences of inactivity, and, if needed, carry out additional research in order to find the customer or beneficiary.

If the attempts to contact the customer or beneficiary are not successful, the bank or insurance company must transfer the relevant assets to the Consignment Office (*Caisse de consignation*). In the case of safe-deposit boxes, the Consignment Office must preserve them for 50 years. For any other asset, the customer or beneficiary has 30 years to contact the Consignment Office.

In order to simplify the research by customers and beneficiaries (or successors thereof), the bill also proposes the establishment of a centralised electronic register for any asset that is transferred to the Consignment Office. The register can be consulted by the relevant persons who can justify their right to the assets transferred to the Consignment Office (including, as the case may be, heirs and other successors).

The CSSF, the CAA, and the Consignment Office are in charge of supervising, applying and enforcing the new provisions.

The lodging of the bill with the Parliament constitutes the start of the legislative procedure.

IDD: Publication of Luxembourg Law Implementing IDD

Law of 10 August 2018

The law of 10 August 2018 implementing the IDD and amending the law of 7 December 2015 on the ISL was published in the Luxembourg official journal (*Mémorial A*) on 22 August 2018.

The law brings changes to the legal framework for insurance intermediaries and insurance and reinsurance undertakings. The law also applies to persons selling insurance products on an ancillary basis to the selling of other products or services and the personnel of insurance undertakings selling insurance products directly. Intermediaries selling insurance products on an ancillary basis may carry out a distribution activity for insurance products that covers life insurance or liability risks only if the insurance cover complements the good or service which the intermediary provides as its principal professional activity.

The law introduces the obligation to issue a standardised insurance product information document for non-life insurance products (IPID), which summarises the main characteristics and costs of the product in an easily understandable, clear and comprehensible form. The law further introduces the notion of insurance product manufacturers who need to define for any product they manufacture the target market and to verify continuously that the product actually corresponds to the needs of the target market. Furthermore, the law introduces rules on transparency and business conduct and obliges insurance distributors to adopt policies and procedures relating to conflicts of interest, as well as to pursue regular training (at least 15 hours per year).

The law requires any insurance and reinsurance intermediary to obtain a prior ministerial licence and to register with the CAA. Insurance intermediaries selling insurance products on an ancillary basis only need to register with the CAA or are, if certain conditions are met, out of scope of the insurance intermediary regime. The

law also introduces the possibility to opt for a licence covering only life insurance products or covering only non-life insurance products (instead of a licence covering both categories of insurance products).

Another key element of the law independent from the IDD implementation is to clarify the preferential rights of insurance policyholders and beneficiaries.

The law entered into force on 1 October 2018.

IORP 2 Directive: Publication of Implementing Bill

Bill N°7372

A new bill N°7372 implementing the IORP 2 Directive was lodged with the Luxembourg Parliament on 12 October 2018.

The bill amends:

- the law of 13 July 2005 on institutions for occupational retirement provision in the form of pension savings companies with variable capital (SEPCAVs) and pension savings associations (ASSEPs) which are licensed and supervised by the CSSF,
- the law of 7 December 2015 on the insurance sector for pension funds licensed and supervised by the CAA and
- the law of 13 July 2005 concerning the activities and supervision of the IORP in order to adapt it to requirements under the IORP 2 Directive.

The bill intends to reinforce the legal framework for IORP, to foster the internal market for IORP regimes, and to encourage cross-border activities in this area. For instance, a new procedure for the cross-border transfer of pension scheme portfolios is put in place.

Moreover, a risk-based governance system will be introduced for IORPs, imposing obligations such as the introduction of internal risk assessment procedures for long- and short-term risks, and other risks which could have an impact on an IORP's capacity to honour its obligations.

For the purpose of transparency, the bill further obliges an IORP to communicate to its affiliated members and beneficiaries clear and useful information, allowing the latter to take well-informed decisions.

Finally, the bill aims to provide to the supervisory authorities, namely to the CSSF, to the CAA, and to the General Social Security Inspection (*Inspection Générale de la Sécurité Sociale*), the necessary powers to fulfil their IORP supervisory functions in a better way.

The lodging of the bill with the Parliament constitutes the start of the legislative procedure.

AML/CTF: Publication of Luxembourg Law Implementing Article 31 of AMLD 4

Law of 10 August 2018

The law of 10 August 2018 partially implementing Article 31 of AMLD 4 was published in the Luxembourg official journal (*Mémorial A*) on 21 August 2018.

The law requires persons acting as fiduciaries (*fiduciaires*) under a fiduciary arrangement to obtain, update and conserve certain information on the beneficial owners of the fiduciary arrangement, including in particular information on the settlor, the fiduciary, the protector (if any), the beneficiaries (or, where relevant, the category thereof) as well as information on any other natural person exercising an effective control over the fiduciary structure.

Fiduciaries are further required to submit the above information to national authorities, upon request, and to provide such information to professionals subject to the AML Law when entering into a business relationship with them or when executing a transaction above the thresholds set out in Article 3(1) points b), ba) and bb) of the AML Law.

Finally, competent control authorities are vested with certain control powers, including the power to apply certain administrative measures and sanctions, which are necessary to ensure the appropriate implementation of the law.

The new law entered into force on 25 August 2018.

AML/CTF: Publication of Law Organising the Luxembourg FIU

Law of 10 August 2018

The law of 10 August 2018 organising the financial intelligence unit (*Cellule de renseignement financier, FIU*) and amending: (1) the code of criminal procedure; (2) the amended law of 7 March 1980 on the judiciary organisation; and (3) the AML Law, was published in the

Luxembourg official journal (*Mémorial A*) on 12 September 2018.

The new law restructures the functioning and organisation of the FIU, in order to adapt it to the evolving environment and needs. In particular, the law provides that the FIU shall be integrated in the office of the General Prosecutor (*procureur général*) (instead of the District Prosecutor). It also reinforces the FIU's independence and operational autonomy and increases the human resources of the FIU. Furthermore, the law takes into account the development of international requirements resulting from FATF standards (notably FATF Recommendations 20, 29 and 40) and AMLD 4, with regard to suspicious transaction reporting, FIUs and international cooperation. For instance, the law introduces the requirement for professionals subject to the AML Law, unless otherwise instructed by the FIU, to share information within the group on suspicions that funds are the proceeds of money laundering or related underlying offences or are related to terrorism financing reported to the FIU.

The law entered into force on 1 November 2018.

Please also refer in respect of this new law to the Investment Funds Section of this Luxembourg Legal Update.

AML/CTF: AMLD4 Central Register of Beneficial Owners

Law of 13 January 2019

The Luxembourg law of 13 January 2019 creating a register of beneficial owners (in abbreviated form referred to as "RBE") for Luxembourg entities registered with the Luxembourg Trade and Company Register has been published in the *Mémorial* A on 15 Janvier 2019 and will enter into force on 1 March 2019.

Please refer to the Corporate section of this Luxembourg Legal Update for further details.

CRD IV/CRR: Setting of the Countercyclical Buffer Rate for the Fourth Quarter of 2018

CSSF Regulation 18-05

The CSSF issued on 28 September 2018 a new regulation 18-05 on the setting of the countercyclical buffer rate for the fourth quarter of 2018.

The regulation follows the Luxembourg Systemic Risk Committee's recommendation of 10 September 2018 (CRS/2018/004) and maintains a 0% countercyclical buffer rate for relevant exposures located in Luxembourg for the fourth quarter of 2018.

The regulation entered into force on 1 October 2018.

CRD IV/CRR: Setting of the Countercyclical Buffer Rate for the First Quarter of 2019

CSSF Regulation 18-07

The CSSF issued on 31 December 2018 a new regulation 18-07 on the setting of the countercyclical buffer rate for the first quarter of 2019.

The regulation follows the Luxembourg Systemic Risk Committee's recommendation of 10 December 2018 (CRS/2018/006) and raises the countercyclical buffer rate for relevant exposures located in Luxembourg to 0.25% for the first quarter of 2019.

The regulation entered into force on 1 January 2019.

BRRD: Publication of Luxembourg Law Implementing Bank Creditors Hierarchy Directive (EU) 2017/2399

Law of 25 July 2018

The law of 25 July 2018 implementing the Bank Creditors Hierarchy Directive and amending the law of 18 December 2015 on the failure of credit institutions and certain investment firms and various provisions of the FSL, was published in the Luxembourg official journal (*Mémorial A*) on 30 July 2018.

The objective of the law and the underlying directive is to provide clarity on, and establish the eligibility criteria for, subordinated liabilities which may notably be used to comply with the minimum requirements for own funds and eligible liabilities (MREL) and total loss-absorbing capacity (TLAC). Accordingly, the law sets out provisions on the ranking of unsecured debt instruments in insolvency for the purpose of the recovery and resolution framework and aims to improve the efficiency of the bail-in tool.

The law also amends the FSL. These amendments, amongst others, reflect the changes brought by the corrigendum of 25 January 2017 to the CRD IV.

The law entered into force on 3 August 2018.

Data Protection in the Financial Sector: Publication of Bill transposing GDPR in Area of Financial Supervision

Bill N°7373

A new bill n°7373 concerning the limitation of scope of certain rights and duties under the GDPR and transposing the GDPR in the area of financial supervision was lodged with the Luxembourg Parliament on 22 October 2018.

The bill makes use of the Member State option under Article 23 of the GDPR.

The lodging of the bill with the Parliament constitutes the start of the legislative procedure.

Please refer to the Data Protection Section of this Luxembourg Legal Update for further details on this bill of law.

REGULATORY DEVELOPMENTS

CRR: EBA Guidelines on Connected Clients

CSSF Circular 18/693

The CSSF issued on 5 July 2018 a new circular 18/693 on the adoption of EBA guidelines on connected clients as defined in CRR (EBA-GL-2017-15). The new circular is addressed to all credit institutions and CRR investment firms incorporated under Luxembourg law as well as to Luxembourg branches of credit institutions and CRR investment firms having their registered office in a third country.

The CSSF draws the attention of the public to the guidelines which will enter into force on 1 January 2019 and confirms its intention to comply with the guidelines in its capacity as Luxembourg competent authority.

The CSSF invites institutions to make the necessary arrangements to ensure their compliance with the guidelines as from 1 January 2019. In particular, institutions shall take into consideration the guidelines when assessing whether a group of clients forms a "group of connected clients" for the purposes of, among others, Sub-Chapter 1.2 and Chapters 2, 3 and 6 of Part III of CSSF circular 12/552, their internal capital adequacy assessment process (ICAAP) as defined in CSSF circular 07/301 and their management of concentration risk (CSSF regulation N°15-02).

The circular became applicable with immediate effect.

EMIR: Reporting Requirements for CAA Supervised (Re)Insurance Undertakings and Their Holding Companies

CAA Information Notice

The CAA issued on 10 July 2018 an information notice regarding the reporting obligations under EMIR. The notice is addressed to CAA supervised entities. (Re)insurance undertakings and their holding companies fall within the scope of EMIR when using a derivative instrument, and hence trigger one or more of the following obligations:

- reporting obligation to one of the trade repositories (TRs) (Article 9 EMIR),
- clearing obligation (Article 4 EMIR) and
- obligation to apply risk mitigation techniques (Article 11 EMIR).

The CAA further draws the attention of the undertakings to their reporting obligations to TRs, noting the following:

- reporting must be done for all derivative contracts,
- the list of TRs registered by ESMA is available here: https://www.esma.europa.eu/supervision/trade-repositories/listregistered-trade-repositories,
- information relating to derivative contracts must be reported by the counterparty, without duplicate, to TRs, on the working day following the conclusion, modification or termination of the contract, at the latest,
- counterparties to the same derivative contract must use the same identifier (Unique Transaction Identifier) and
- counterparties should maintain a record of the concluded derivative contracts (including any amendment thereof), for at least five years following termination of the contract.

A CAA supervised counterparty may subcontract the reporting of derivatives to a third party (following notification to the CAA), but it will remain responsible *vis-à-vis* the CAA. To assume its responsibility, it should then dispose periodically of the reports addressed to the TR by the subcontractor.

Undertakings are invited to inform the CAA, by 31 July 2018, of the aforementioned obligations (applicable due to

the derivative contracts they hold, or they intend to hold in the near future) and to provide to the CAA the contact details of one or more persons for questions relating to EMIR and the reporting of derivative instruments.

EMIR: Revised Technical Standards on the Reporting of Derivative Transactions

CSSF Press Release 18/23

The CSSF issued on 13 July 2018 a press release on the reporting of derivative transactions under EMIR.

The CSSF draws the attention of market participants to the importance of ensuring compliance with the revised technical standards contained in Commission Delegated Regulation (EU) 2017/104 and accompanying validation rules regarding EMIR reporting, published by ESMA. The CSSF further notes that it is increasing its focus on the review of reported transactions to TRs.

The CSSF reminds all market participants, falling under the scope of EMIR, of the following:

- Trade rejections: TRs are expected to apply the new validation rules and reject non-compliant reports. Any rejected report should be reviewed and resubmitted as soon as possible in compliance with the validation rules. A rejection does not postpone any duties with regards to timely reporting of derivative transactions,
- Double-sided transaction reconciliations: A transaction should be reported by both counterparties where they are both in the scope of EMIR. The TRs would then reconcile both sides of the submitted reports by pairing and matching both the Legal Entity Identifiers (LEI) of each reporting counterparty and the Unique Trade Identifier (UTI). The CSSF stresses the importance of reporting a common UTI for each transaction by both counterparties. Double-sided transactions, that are neither paired nor matched could be considered as an indicator for unstable processes with regards to reporting duties,
- Content of the reporting: The CSSF expects that the various reporting fields, as defined by the revised technical standards, will be correctly reported and that any inconsistencies or errors will be corrected. Inconsistent information in fields with regards to publicly available identifiers of instruments, benchmarks, stakeholders (e.g. CCP, market) is an indicator for insufficient and inadequate processes and potential non-compliance with regards to EMIR reporting duties.

EMIR: Reporting in the Context of Brexit

CSSF Communication of 20 December 2018

The CSSF issued on 20 December 2018 a communication regarding the reporting obligations under EMIR in the context of the United Kingdom withdrawing from the European Union.

The communication refers to the ESMA public statement of 9 November 2018 on the contingency plans of trade repositories (TR) in the context of Brexit and is addressed to all market participants falling within the scope of EMIR for which the CSSF is the supervisory authority in Luxembourg (financial counterparties subject to CSSF supervision and non-financial counterparties) (Market Participants).

The CSSF reminds the Market Participants of the importance of (i) ensuring daily reporting of derivative contracts to a registered EU-established TR or a recognised third-country TR and (ii) closely monitoring the public disclosure made by TR in the context of the withdrawal process. The CSSF further reiterates that (i) as of the withdrawal date, TRs established in the UK will be third-country TRs and that (ii) all counterparties must ensure that the EMIR reporting requirements continue to be fulfilled after the withdrawal date.

The CSSF therefore invites Markets Participants to contact their TR in order to verify whether continuity of service will be ensured after the withdrawal date and to prepare for the potential outcome that the counterparties may need to request their existing UK TR to port their data to an EU27 TR.

The CSSF therefore encourages counterparties established in Luxembourg to ensure that they and their reporting entities, wherever they are located, fully adhere to the most recent reporting requirements:

- to better enable any potential transfer of data due to the UK's withdrawal; and
- to ensure their continuous compliance with the EMIR reporting obligation.

Brexit: EBA Opinion on Preparations for Withdrawal

CSSF Press Release 18/22

The CSSF issued on 10 July 2018 a press release with respect to the opinion of EBA of 25 June 2018 on preparations for the withdrawal of the United Kingdom from the European Union on 30 March 2019.

In its opinion, EBA asks NCAs to ensure that financial institutions take immediate practical steps to prepare for Brexit and duly inform their customers and consumers, with whom contractual arrangements are in force, of potential risks.

In this context, the CSSF requires that less significant credit institutions, as defined under Article 2(7) of the SSM Framework Regulation, investment firms, payment institutions and electronic money institutions, lenders and credit intermediaries established in Luxembourg, apply the measures prescribed in the opinion. Furthermore, the CSSF notes that significant credit institutions, as defined under Article 2(16) of the SSM Framework Regulation, should refer, where appropriate, to the ECB's instructions.

Prudential Reporting: Update to CSSF Table B 4.6 on Persons Responsible for Certain Functions and Activities

CSSF Circular 18/695

The CSSF issued on 20 July 2018 a new circular 18/695 updating table B 4.6 "Persons responsible for certain functions and activities".

The circular is addressed to all credit institutions.

The amended reporting table introduces the appointment of a specific agent in charge of the credit institution's compliance with its obligations relating to the protection of client assets following the publication of the Grand-Ducal regulation of 30 May 2018 on the protection of financial instruments and clients' funds.

In addition, the revised reporting table B 4.6 introduces an obligation for credit institutions to name one member of the authorised management as person in charge of the compliance with the ESMA Guidelines for the assessment of knowledge and competence and CSSF circular 17/665.

A marked-up version of table B 4.6 and further instructions relating thereto are available on the CSSF website.

MiFID2: Update to EI Table "Persons Responsible for Certain Functions and Activities"

CSSF Circular 18/699

The CSSF issued on 23 August 2018 a new circular 18/699 updating EI table "Persons responsible for certain functions and activities".

The circular is addressed to all investment firms.

The new EI table "Persons responsible for certain functions and activities" introduces the appointment of a single agent, other than a member of the authorised management, specifically responsible for the issues relating to the investment firm's compliance with its obligations with regard to the protection of client assets.

Further, the EI table introduces the appointment of a member of the authorised management responsible for monitoring the implementation of the provisions of the ESMA guidelines for the assessment of knowledge and competence, implemented in Luxembourg by CSSF circular 17/665.

PSD2: Adopting of the EBA Guidelines on Major Incident Reporting

CSSF Circular 18/704

The CSSF issued on 17 December 2018 a new circular CSSF 18/704 adopting the EBA guidelines (EBA/GL/2017/10) on major incident reporting under PSD2.

The circular aims to inform all payment service providers (PSPs) subject to its supervision about the EBA guidelines and that the CSSF intends to comply with these guidelines.

The circular also provides further clarifications relating to PSPs' obligation to report major operational or security incidents under Article 105-2(1) of the law of 10 November 2009 on payment services (as amended), and on the technical details and a template for notifying the CSSF.

The circular entered into force with immediate effect.

Deposit Guarantee Scheme: CSSF Survey on the Amount Held as of 30 June 2018, as of 30 September 2018 and as of 31 December 2018

CSSF-CPDI Circulars 18/12, 18/13 and 18/15

The CSSF, acting in its function as CPDI, issued:

- on 23 July 2018 a new circular 18/12 regarding a survey on the amount of covered deposits held as of 30 June 2018;
- on 3 October 2018 a new circular 18/13 regarding a survey on the amount of covered deposits held as of 30 September 2018; and
- on 18 December 2018 a survey on the amount of covered deposits as of 31 December 2018.

The circulars are addressed to all members of the FGDL, in particular to all credit institutions incorporated under Luxembourg law, to the *POST Luxembourg*, and to Luxembourg branches of non-EU/EEA credit institutions, as a reminder that the CPDI collects the amount of covered deposits on a quarterly basis in order to identify the trends and changes in the relevant indicators of deposit guarantee throughout the year.

The circulars further draw members' attention to the provisions of the CSSF-CPDI circular 16/02, notably as regards the exclusion of structures assimilated into financial institutions and the treatment of omnibus and fiduciary accounts. The volume of eligible and covered deposits in omnibus and fiduciary accounts and the number of beneficiaries (*ayants droit*) are to be reported where credit institutions wish to ensure deposit protection for relevant beneficiaries and in order to allow the CPDI to prepare the FGDL for the reimbursements of such deposits.

In addition, FGDL members were requested to provide the data at the level of their legal entity, comprising branches located within other Member States, by 31 August 2018 respectively 31 October 2018, respectively 18 January 2019 at the latest. In order to transmit these data, institutions were kindly requested to complete the table attached to the circulars, being also available on the CSSF website. The file containing the data had to be duly completed in all cases, respect the special surveys naming convention, as defined by CSSF circular 08/344, and be submitted over secured channels (E-File/SOFiE).

A member of the authorised management, i.e. the member in charge of the FGDL membership, had to review and approve the file prior to its transmission to the CSSF.

Deposit Guarantee Scheme: Definition of Public Authorities in the Context of Exclusions from Deposit Guarantee

CSSF-CPDI Circular 18/14

The CSSF, acting in its function as CPDI, issued on 18 December 2018 circular CSSF-CPDI 18/14 regarding the definition of public authorities in the context of exclusions from deposit guarantee.

The circular is addressed to all members of the Luxembourg deposit protection scheme, the FGDL, and aims at clarifying the exclusion of public authorities from the deposit guarantee pursuant to Article 172(1), point 10, of the Bank Resolution Law.

The circular specifies that, in view of the legal principle that exceptions are to be construed strictly, a narrow definition of the term "public authority" should be adopted. Accordingly, only the "central government" (code: 11000) or the "other general government" (code: 12000), as defined in Chapter 5.3.1 of the document "Definitions and concepts for the statistical reporting of credit institutions" of the BCL, are to be considered as public authorities in the context of the aforementioned provision.

The circular entered into force with immediate effect.

Single Resolution Board: Calculation of the 2019 ex-ante Contributions to the Single Resolution Fund

CSSF-CODERES Circular 18/07

The CSSF, acting for the Luxembourg Resolution Board (*Conseil de Résolution, CODERES*), issued on 23 October 2018 circular 18/07 informing on the data collection for the 2019 *ex-ante* contributions to the SRF.

The circular is addressed to all credit institutions incorporated in Luxembourg and subject to SRMR. Luxembourg branches of credit institutions established outside the EU are not covered by the circular, as they will be covered by the Luxembourg Resolution Fund (rather than by the SRF). Luxembourg branches of credit institutions which have their head office in another Member State of the EU are covered by their head office.

In order to determine the annual contribution to be paid by each credit institution in 2019, the SRB requests to obtain a certain amount of information via a template attached to the circular (together with the relevant instructions on how it has to be filled in).

The circular informs that the requested data collection for the 2019 ex-ante contributions to the SRF has to be sent to the CSSF by 15 January 2019 at 24:00 at the latest.

In cases where all required information is not transmitted correctly within the indicated deadline, the SRB may use estimates or its own assumptions for the calculation of the 2019 contribution in respect of the concerned credit institution and, in specific cases, may assign the credit institution to the highest risk adjusting multiplier for the calculation.

The circular brings changes compared to the data collection for 2018 ex-ante contributions. The main changes include the following:

- in case of waivers, the LEI code of the parent/institution which is part of the (sub-)consolidation has to be filled in instead of the RIAD MFI code (fields affected: 4A4, 4A6, 4A11, 4A13, 4B4, 4B5, 4D19);
- the "Importance of an institution to the stability of the financial system or economy" (field 4C1-4C8) has been added as an additional risk indicator; and
- additional validation rules have been added (see worksheet "6. Validation rules" in Annex 2).

The SRB has prepared an additional verification tool in order to check the data. This tool checks the validation rules which are also listed in worksheet "6. Validation rules" of the template. The link to the verification tool can be found in Annex 3 and the guidelines to this tool are laid down in Annex 4.

According to Article 10(8) Commission Delegated Regulation (EU) 2015/63 (DR), credit institutions which fulfil the condition of Article 10(1)-(6) DR as small institutions are not allowed to opt for the simplified lump-sum approach in case they fulfil the triggers for the use of early intervention measures as defined in EBA guideline EBA/GL/2015/03. Banks concerned by this rule will be contacted separately.

Finally, each credit institution that directly or as part of a group falls under direct ECB supervision, unless it is subject to the above-mentioned lump-sum payment, must make available certain additional assurance documents, which have to be sent to the CSSF by 15 February 2019 at the latest.

AML/CTF: FATF Risk-based Approach Guidance for the Securities Sector

CSSF Communiqué of 31 October 2018

The CSSF issued on 31 October 2018 a communiqué on FATF risk-based approach guidance for the securities sector.

The CSSF informs all entities and persons under its AML/CFT supervision that FATF adopted its revised risk-based approach guidance for the securities sector on 26 October 2018.

The risk-based approach is central to the effective implementation of the 2012 FATF Recommendations. The FATF guidance complements the existing Luxembourg legal and regulatory AML/CTF framework, including *inter alia* Article 3 of CSSF Regulation 12-02 and CSSF circulars 18/698 and 17/661, and has to be read in conjunction with them.

AML/CTF: FATF Guidance for a Risk-Based Approach for the Life Insurance Sector

CAA Information Notice

The CAA issued on 23 November 2018 an information notice regarding the guidance for a risk-based approach (RBA) for the life insurance sector issued by the FATF on 25 October 2018.

The notice is addressed to CAA supervised insurance undertakings and intermediaries subject to legislation on AML/CTF and aims to draw their attention to the new guidance.

The guidance aims to support the design and implementation of the RBA for the life insurance sector (including life insurance undertakings, their intermediaries as well as the life insurance sector supervisors) and highlights the nature and level of money laundering and terrorist financing (ML/TF) risks for the sector. The guidance also provides indications and examples of ML/TF risks for a range of life insurance products and addresses the involvement of intermediaries in the distribution of life insurance products and how this affects the split of AML/CFT responsibilities. The CAA further notes that

under the guidance the intensity and depth of customer due diligence checks will depend on the ML/TF risks.

The guidance completes the existing AML/CTF legal and regulatory framework which includes, *inter alia*, the CAA Regulation No. 13/1 and the CAA circular letters 18/4 and 18/9 and should be read jointly with them.

AML/CTF: Developments regarding AML/CFT in the Private Banking Sector

CSSF Circular 18/702

The CSSF issued circular CSSF 18/702 dated 20 December 2018 on the developments regarding AML/CTF in the "private banking" sector.

The circular is addressed to all banks and other professionals supervised by the CSSF for AML/CTF purposes who are pursuing "private banking" activities in its interpretation of "wealth management" and related activities.

Furthermore, the CSSF points out the increased risk of ML/TF that come with the private banking activity.

The circular is issued in line with the continuous efforts of the CSSF in terms of AML/CTF, including previous circular letters issued in this area by the CSSF with targeted guidance aimed at preventing and mitigating existing or emerging ML/TF risks and following the FATF Recommendations of 2012 specifically focussing on private banking activities.

The circular aims at guiding and increasing awareness of professionals for the MT/TF risks in the private banking sector in Luxembourg so that professionals continue strengthening their AML/CTF framework and ensure that their ML/TF risk mitigating measures remain efficient.

The circular entered into force with immediate effect.

Residential Real Estate: Introduction of Semi-annual Reporting of Borrower Related Residential Real Estate Indicators

CSSF Circular 18/703

The CSSF issued circular CSSF 18/703 dated 17 December 2018 introducing a semi-annual reporting of borrower related residential real estate (RRE) indicators.

The circular is addressed to all lenders in RRE.

The objective of the circular is to introduce a macroprudential risk monitoring framework for the RRE sector in Luxembourg which is based on a recommendation by the European Systemic Risk Board (ESRB/2016/14 Recommendation of the European Systemic Risk Board of 31 October 2016 on closing real estate data gaps). The reporting aims at collecting indicators on lending standards in the RRE market.

The circular introduces definitions of these indicators as well as the template used for the collection of these indicators.

The filled-in templates have to be submitted to the CSSF semi-annually by 15 April and 15 October.

The circular entered into force with immediate effect.

Covered Bond Banks: Minimum Requirements regarding Management and Control of the Cover Pool Register of Cover Assets and of the Limit of Covered Bonds in Circulation

CSSF Circular 18/707

The CSSF issued circular CSSF 18/707 dated 19 December 2018 on covered bond banks' minimum requirements regarding management and control of the cover pool register of cover assets and of the limit of covered bonds in circulation.

The circular is addressed to all covered bond banks subject to CSSF supervision and to their special auditor (*réviseur spécial*).

The circular aims at clarifying the legal requirements with regard to the management and the control of the cover pool, including the liquidity thereof, pursuant to Articles 12-5 and 12-7 of the FSL. The CSSF intends to specify, in particular, the purpose and obligations of the special auditor.

These specifications are provided in an annex to the circular. This annex is only available in German (which is the vehicular language of covered bond banks active in this field in Luxembourg).

Further, the circular emphasises that the special auditor, as well as the relevant covered bond bank, must immediately inform the CSSF on any violation of one of the prudential limitations laid down by the law of 22 June 2018

amending the FSL with respect to the introduction of renewable energy covered bonds.

The circular repeals and replaces circular CSSF 03/95 of 26 February 2003.

The circular entered into force with immediate effect.

Covered Bond Banks: General Valuation Principles for the Determination of the fair Value of Renewable Energy Assets that are Eligible Assets for the Cover Pool

CSSF Circular 18/705

The CSSF issued the circular CSSF 18/705 dated 19 December 2018 on general valuation principles to be applied for the determination of the fair value of renewable energy assets that are eligible assets for the cover pool of covered bond banks.

The circular is addressed to all banks issuing covered bonds subject to CSSF supervision.

The circular refers to the law of 22 June 2018 on the introduction of renewable energy covered bonds under which the CSSF is required to provide details on prudent valuation standards to be applied to renewable energy projects that are part of the cover pool of a covered bond bank issuing this new category of covered bonds.

The CSSF clarifies that the valuation standards set out in the circular should be considered as minimum standards applicable to a covered bond bank and do not represent an exhaustive list of principles. Therefore, covered bond banks shall assess and document whether the application of additional and complementary principles might be appropriate or even required for the valuation of a specific renewable energy project.

The valuation standards defined by the circular are those applicable to the determination of fair value of individual renewable energy projects, where fair value is defined according to IFRS13. The minimum valuation principles set by the CSSF include criteria on:

- independence, qualification and responsibility of the appraiser;
- processes and procedures;
- frequency of revaluation;
- consistent valuation techniques;
- valuation variables and data inputs;
- discount rate and value adjustments for specific risk factors;
- sanity checks of estimated fair value;
- treatment of loans in default; and
- documentation.

The circular entered into force with immediate effect.

Covered Bond Banks: Transparency Requirements

CSSF Circular 18/706

The CSSF issued the circular CSSF 18/706 dated 19 December 2018 on transparency requirements for all covered bond banks in Luxembourg.

The circular is based on Article 12-6(2) of the law of 22 June 2018 on the introduction of renewable energy covered bonds under which the CSSF is required to provide details on the type of information to be provided and to define the procedure to be applied for the publication of the information on the composition of the cover pool.

Therefore, the circular provides a list of information to be published by covered bond banks with respect to:

- the disclosure of cover pool and covered bond information per category (i.e. public sector covered bonds, mortgage backed covered bonds, moveable property covered bonds, mutual covered bonds and renewable energy covered bonds); and
- the cover pool asset specific information per covered pool of each covered bond category.

Covered bond banks shall publish such information on their websites within the following periods:

- regarding the first three quarters of each business year, within one month as of the end of the respective quarter; and
- regarding the fourth quarter of each business year, within two months after the end of the quarter.

The circular will enter into force six months after publication on the CSSF website.

Payment Accounts: Clarifications on the Payment Accounts Law

CSSF Circular 18/700

The CSSF issued on 19 October 2018 circular CSSF 18/700 providing clarifications on the law of 13 June 2017 on payment accounts (PAL).

While the majority of provisions of the PAL entered into force on 19 June 2017, some provisions only entered into force on 1 November 2018. The objective of the circular is to provide general guidelines on the latter, i.e. the provisions that entered into force on 1 November 2018. These provisions relate to the PSPs' obligation to provide a fee information document.

The circular refers to Commission Delegated Regulation (EU) 2018/32 which establishes a standardised terminology for most representative services linked to a payment account. This terminology has to be used when establishing a fee information document.

Under Luxembourg law, this standardised terminology is extended by Grand Ducal Regulation of 6 June 2018, adding several services, such as "maintaining the account" or "online banking", that need to be included in the fee information document.

When establishing such fee information document, PSPs must use a template that has been published as a schedule to Commission Implementing Regulation (EU) 2018/34. This uniformity will allow consumers to easily compare different offers from different PSPs.

Further, PSPs must communicate to their customers at least once a year and free of charge, a statement summarising all incurred fees and the applicable (debit and credit) interest rate(s). This statement of fees must be based on a template that has been published as a schedule to Commission Implementing Regulation (EU) 2018/33.

The terminology in all contractual, commercial and marketing documentation must be the same as used in the fee information document and in the statement of fees.

Finally, the CSSF points out that it has to provide certain information on PSPs in Luxembourg to the European Commission every two years. Therefore, the CSSF sets out that it may require such information from the PSPs on a regular basis.

Payment Accounts: Comparison Website on the Fees Related to Payment Accounts

CSSF Press Release 18/35

The CSSF issued on 25 October 2018 press release 18/35 with respect to a comparison website on the fees related to payment accounts.

As from 1 November 2018, this comparison website is accessible at www.frais-compte-paiement.lu. The CSSF is in charge of establishing and operating this website.

The website's objective is to allow to the public to compare different offers on payment accounts in a transparent and objective manner.

The website will not display a complete list of all offers in Luxembourg, but only offers (i) from PSPs that have at least 25 agencies in Luxembourg and which hold at least 2.5% of the deposits covered under the Bank Resolution Law, or (ii) from PSPs, without fulfilling the aforementioned criteria, who have expressly requested the CSSF to publish their fees.

Any incorrect information published on the website may be reported to the CSSF at frais-signalement@cssf.lu.

CSSF Annual Report 2017

The CSSF published its annual report for the year 2017.

The report contains, among other things, statistical information in relation to the Luxembourg financial sector and the CSSF's exercise of its supervisory powers. It also contains an overview of the CSSF's work and activities in relation to the main legal and regulatory developments of the last 12 months and the CSSF's activities at national and international level.

CAA Annual Report 2017-2018

The CAA published its Annual Report for the period 2017-2018.

The report contains statistical information in relation to the Luxembourg insurance and reinsurance sector and the CAA's exercise of its supervisory powers. It also contains an overview of the CAA's work and activities in relation to the main legal and regulatory developments of the last 12

months and the CAA's activities at a national cross-sectoral and an international level.

The report provides information on the CAA's work in relation to the implementation of the IDD.

BCL Annual Report 2017-2018

The BCL published its annual report for the year 2017.

The annual report contains, amongst other things, an overview of the BCL's organisation, its purpose and its activities in 2017 (including corresponding statistics), as well as projections for the coming years.

Appointment of the Responsible Person for Insurance Product Distribution

CAA Circular 18/10

The CAA issued on 23 October 2018 circular 18/10 on the appointment of the responsible person for insurance product distribution.

According to Article 280(1) of the ISL, any insurance and reinsurance undertaking has to appoint at least one individual within its management who is responsible for the insurance or reinsurance distribution. The aim of the circular is to specify the steps to be taken by the (re)insurance undertaking for the registration of such individuals.

In the case of insurance undertakings, the appointed person must have a sufficient link to the undertaking, e.g. an employee or a board member of the undertaking itself or an employee of one of the entities of the group. In addition, this person must fulfil the same professional knowledge and skills requirements as an insurance agent. Accordingly, persons having worked as a licensed insurance agent will systematically be considered as having fulfilled the criteria. For any other person, the CAA will assess the person on the basis of his/her curriculum vitae, diplomas and other certifications. The CAA may organise an examination in such cases.

Applications in relation to such persons must include several documents listed in the circular such as, in particular, a passport copy, an extract of the police records, an analysis on absence of conflicts of interests and supporting documents for the professional qualifications, and a declaration of honour (a template is attached to the circular). The applications had to be sent to the CAA before 30 November 2018.

In the great majority of reinsurance undertakings and captive insurance undertakings, no active distribution of products is pursued. Therefore, the CAA will consider the authorised manager (*dirigeant agréé*) as the responsible person for distribution. However, if such an undertaking wished to put somebody else in charge of this function, it was allowed to do so by submitting an application to the CAA under the same conditions as for insurance undertakings (and also before 30 November 2018).

Modelling of Mass Lapse Risk relating to SCR Calculation

CAA Information Notice

The CAA issued on 22 October 2018 an information notice regarding the modelling of mass lapse risk relating to solvency capital requirements (SCR) calculation.

The CAA has noticed different approaches adopted by life insurers with regard to calculating SCR in consideration of mass lapse risk. More precisely, these divergences have been observed in the calculation of the best estimate of technical provisions and the relation between a mass lapse wave and "regular" policy terminations. In order to eliminate these divergences in the calculations, the notice provides further clarification with regard to:

- the determination of the exact point in time when such mass lapse wave is supposed to happen; and
- the interaction between "regular" policy terminations and a mass lapse wave.

FINTECH

INTERNATIONAL AND EU DEVELOPMENTS

New International and EU Texts

- ESA's report of 5 September 2018 on the results of the monitoring exercise on "Automation in Financial Advice" (JC 2018-29)
- EU Parliament Resolution of 3 October 2018 on distributed ledger technologies and blockchains (P8_TA-PROV(2018)0373)
- FSB report of 10 October 2018 on crypto-asset markets: Potential channels for future financial stability implications
- ESMA Securities and Markets Stakeholder Group own initiative report on initial coin offerings and crypto-assets (ESMA22-106-1338)
- EU Parliament Committee on Economic and Monetary Affairs (ECON) report of 9 November 2018 on the proposal for a regulation on European Crowdfunding Service Providers (ECSPs) for Business (A8-0364/2018)

LUXEMBOURG DEVELOPMENTS

Cybersecurity: Publication of EU NIS Directive Implementing Bill

Bill N°7314

A new bill n°7314 transposing the NIS Directive was lodged with the Luxembourg Parliament on 6 June 2018.

The bill aims to render the NIS Directive operational in Luxembourg by introducing into the Luxembourg legal framework provisions which, amongst others:

- Set minimum requirements for the security of networks and information systems which have to be respected by operators of essential services (i.e. companies, active in various sectors, that provide an important service to society and the economy) (OES) and digital service providers (e.g. online marketplaces, online search engines and cloud computing services) (DSP). In-scope OES and DSP will have to ensure an adequate level of security in relation to their networks and information systems and to notify the competent authority in Luxembourg of incidents which have a significant impact on the continuity of such essential services;
- Designate the CSSF and the Luxembourg institute of regulation (*Institut luxembourgeois de regulation, ILR*) as the NCAs responsible for fulfilling the tasks linked to the security of the network and information systems of OES and DSP. CSSF will be responsible for the banking and financial market infrastructure sectors whereas ILR will be the NCA for all other sectors;
- Designate ILR as the national single point of contact responsible for coordinating issues related to the security of network and information systems and cross-border cooperation at EU level, as required by the NIS Directive;
- Charge the *Haut-Commissariat à la Protection Nationale* (HCPN) with the task of elaborating a national strategy in the area of network and information system security;
- With regard to the institutional framework for cybersecurity, transfer to the national information technology centre *Centre des technologies de l'information de l'Etat* (CTIE) the mission of being the cryptographic authorisation authority (a mission previously entrusted to the national authority for the security of information systems *Agence Nationale de la Sécurité des Systèmes d'Information* (ANSSI)).

The lodging of the bill with the Parliament constitutes the start of the legislative procedure.

Law on Circulation of Securities: Publication of Amending Bill

Bill N°7363/00

A new bill N°7363/00 amending the law of 1 August 2001 on the circulation of securities (2001 Law) was lodged with the Luxembourg Parliament on 27 September 2018.

The bill aims to modernise the Luxembourg legal framework by providing for the possibility for Luxembourg securities depositories to hold and register securities in securities accounts within or by virtue of a secured electronic recording system (*dispositif d'enregistrement électronique sécurisé*), be it either centralised or distributed. The bill thereby seeks to promote more legal certainty on the use of distributed ledger technology in this area.

The lodging of the bill with the Parliament constitutes the start of the legislative procedure.

Signature of Agreement for Cooperation between CSSF and Australian Securities and Investments Commission on Fintech and Regtech

CSSF Press Release 18/32

The CSSF and Australian Securities and Investments Commission (ASIC) signed an agreement for cooperation to understand financial innovation in each jurisdiction on 4 October 2018.

In particular, the agreement provides a framework for information sharing between the two regulators on Fintech and Regtech.

It complements the existing close relationship between ASIC and the CSSF. In 2013, the regulators entered into memorandums of understanding on regulating entities that have presence in both Australia and Luxembourg, and specifically for funds management entities regulated under the AIFMD.

Artificial Intelligence

CSSF White Paper on Artificial Intelligence and Press Release 18/41

The CSSF published on 21 December 2018 a white paper on artificial intelligence (AI).

The white paper is the result of a research study performed by the CSSF with a view to better understand AI and its related risks, given the increased attention and promising practical application of AI in the financial sector.

The white paper provides essential information on AI and its usage in the financial sector, including in particular an analysis on the concept of AI, a description of the different types of AI and related data science processes. It further examines several financial sector practical use cases, which include robo-advisers, fraud detection/money laundering and terrorism financing investigations and credit scoring.

Additionally, the white paper assesses the main risks associated with AI technology and provides some key recommendations to take into account when implementing AI inside a business process.

The CSSF points out that while the document is published in the form of a white paper with no binding effect *vis-à-vis* CSSF supervised institutions, it still provides the foundations for a constructive dialogue with all the stakeholders in the financial sector for a deeper understanding of the practical implementations and implications of AI technology.

The CSSF also announced the publication of the white paper in its press release 18/41 published on the same date.

CORPORATE

CASE LAW

The Commercial Chamber of the District Court of Luxembourg ruled on the application in time of the minority action provided for in Art. 444-2 of the Luxembourg Law on Commercial Companies of 1915.

The Commercial Chamber of the District Court of Luxembourg, 25 April 2018, Case n° 2018TAL15/543

The minority action brought by minority shareholders or holders of beneficiary units against the directors or members of the management board or the supervisory board has been implemented by the law of 10 August 2016 on the modernisation of company law (entered into force on 23 August 2016) under Art. 444-2 of the Companies Law.

On 25 April 2018, the Commercial Chamber of the District Court of Luxembourg ruled on (1) the nature and conditions of the minority actions (2) the application in time of Art. 444-2 of the Companies law, and (3) the consequences attached to a discharge vote at the general meeting within the meaning of Art. 461-7 paragraph 2 of the Companies Law.

1. **The nature and conditions of the application of the minority action.**

   Pursuant to Art. 444-2 the minority action shall be validly introduced by one or more shareholders or holders of beneficiary units holding, at the general meeting taking a resolution on the discharge, securities carrying with them a right to vote at such meeting representing at least 10% of the votes attached to all the securities. The relevant shareholder(s) may not represent the majority, should not have approved the discharge and must initiate the minority action within a five-year prescribing period.

   The minority action can only be brought to court after the general meeting of shareholders has taken place and decided on the discharge of the managers of the company. This means that only the discharge for the financial year in which the alleged misconduct has taken place being subject of the minority action will be taken into account.

2. **The application in time of Art 444-2 of the Companies Law.**

   Facts which occurred before the entry into force of the new law, but not yet covered by a valid discharge, trigger the minority action if the conditions set out by the Companies Law are met.

   In other words, the minority action may be initiated for facts prior to 23 August 2016 provided that there was no valid discharge. Conversely, a discharge validly granted by a general meeting prior to 23 August 2016 does not allow the exercise of the minority action.

3. **The consequences attached to the vote of a special discharge within the meaning of Art 461-7 paragraph 2 of the Companies Law.**

   The general meeting can either grant or refuse the discharge, or make reservations/impose conditions to the discharge.

   The discharge vote is only valid if the annual accounts contain no omission or false information concealing the true situation of the company.

   Regardless of the severity or nature of the fault committed by the directors and the violation of a law of public order, the general meeting can validly grant discharge acting with full knowledge of the facts.

Register of Beneficial Owners

The Luxembourg law of 13 January 2019 on the register of beneficial owners for Luxembourg entities has been published in the *Mémorial* A on 15 Janvier 2019 and will enter into force on 1 March 2019. Entities in scope will have six months to comply with the new legislation after its entry into force.

Such law implements certain transparency measures introduced by AMLD 4 as well as AMLD 5 and introduces a national register of beneficial owners (the "**RBE**") for all Luxembourg entities registered with the RCS. These entities include, without limitation, commercial companies, investments funds (whatever their legal form) and branches of foreign entities. Listed companies are also subject to the new law but are only required to register the name of the regulated market on which their securities are admitted.

Beneficial owners are defined with reference to the AML Law and include thus any natural person(s) who ultimately owns or controls the entity and/or the natural person(s) on whose behalf a transaction or activity is being conducted.

Entities in scope will be required to obtain and maintain internally the relevant information on their beneficial owners as well as file such information with the RBE. In turn, beneficial owners must provide entities in scope with all information and supporting documents required for such purposes.

The information to be collected by entities and filed with the RBE includes personal information on the beneficial owners (name, the date and place of birth, nationality, country of residence, private or professional address and Luxembourg or foreign national identification number) as well as on the nature and extent of the beneficial ownership held by them.

Any person will be able to access the RBE and consult the information contained therein except the private or professional address and Luxembourg or foreign national identification number of the beneficial owners. The full set of data contained in the RBE will however be accessible to specified Luxembourg judicial, administrative, regulatory and tax authorities. In exceptional cases and upon motivated application only, the access to the information contained in the RBE can be limited to national authorities, credit institutions, financial institutions, bailiffs and notaries public.

Criminal sanctions consisting of fines ranging from EUR1,250 to EUR 1,250,000 may be imposed on entities in scope and beneficial owners in case of non-compliance.

For more information on the RBE, please see our client briefing titled "Luxembourg Law on Register of Beneficial Owners"[1]

INVESTMENT FUNDS

1. EU DEVELOPMENTS

UCITS & AIFMD

Delegated regulations on UCITS and AIFMD depositary safekeeping duties published in Official Journal

The two delegated regulations "**Delegated Regulations**" adopted by the EU Commission on 12 July 2018 in relation to the safekeeping duties of UCITS' and AIFs' depositaries, i.e. (i) Delegated Regulation 2018/1618 amending AIFMD Delegated Regulation 231/2013 and (ii) Delegated Regulation 2018/1619 amending UCITS Delegated Regulation 2016/438, were published in the Official Journal on 30 October 2018.

The Delegated Regulations entered into force on 20 November 2018 and will apply directly in all Member States as from 1 April 2020.

For further information about the above Delegated Regulations, please refer to the related section of the July 2018 edition of our Legal Update.

ESMA updated Q&As on AIFMD

On 4 October 2018, ESMA published an updated version of its Q&As on the AIFMD, which include one new question and answer on notification by AIFMs.

In particular, ESMA clarifies that an AIFM, which intends to manage an EU umbrella AIF on a cross-border basis by way of the AIFM management passport (Article 33 of the AIFMD), must identify all the compartments of the umbrella AIF in the notification to its national competent authorities (NCAs) in order to facilitate the administrative procedure in home and host Member States. ESMA further indicates that any change in the composition of an umbrella AIF that is managed on a cross-border basis has to be notified to the NCAs pursuant to Article 33(6) of the AIFMD.

Benchmarks Regulation

EU Commission delegated regulations published in Official Journal

Ten EU Commission delegated regulations supplementing the Benchmarks Regulation have been published in the Official Journal. These Delegated Regulations entered into force on 25 November 2018 and are applicable as from 25 January 2019.

Please refer to the Banking, Finance and Capital Markets section of this Luxembourg Legal Update for further details.

ESMA updated Q&As on Benchmarks Regulation

ESMA published several updated versions of its Q&As regarding the implementation of the Benchmarks Regulation between September and December 2018, which provide new clarifications on, amongst others, the following points:

- *Robustness of contingency plans*: ESMA clarifies when the written contingency plan to be produced by users of benchmarks should be considered robust and how such plans should be reflected in the contractual relationship with clients. As a reminder, users of benchmarks within the meaning of the Benchmarks Regulation include supervised entities (such as self-managed UCITS, UCITS management companies and AIFMs) which must, amongst others, (i) have robust contingency plans in case benchmarks used by them materially change or cease to be produced and (ii) reflect those plans in the contractual relationship with their clients. In this respect, ESMA considers that:
  - Written plans are robust if they determine operational procedures in writing and if they include detailed courses of action, relevant communication channels and arrangements for different scenarios and contingencies. These written plans should be thorough and adequate and should reflect the nature and size of the individual benchmark and the scale of its use in the markets. ESMA further considers that maintaining the robust written plans requires supervised entities to continuously monitor relevant factors and update arrangements as appropriate. In our view, this suggests that plans should be relatively detailed although there are challenges in this.
  - The contractual relationships with clients are governed by national contract law and, accordingly, the legally adequate reflection of the written plans may vary among Member States. However, ESMA considers that supervised entities should be able to demonstrate to the NCAs that they have communicated their written plans to their clients and that the written plans are legally effective under applicable Member States' law. As an example, ESMA indicates that prospectuses may be contractual documents under national law and supervised entities may then opt to update

outstanding prospectuses in order to guarantee that all new investors in an investment fund are subject to such terms. In other cases, supervised entities may opt to include a reference to their written plans in other contractual documents that they formalise with new investors. In our view, this suggests that supervised entities should actually communicate their written plans to their clients. This seems to be inconsistent with the approach taken by the industry so far which has been to focus on ensuring that client contracts have robust fall-back provisions to address discontinuance of or material changes to a benchmark. However, this just may be a different way of saying the same thing.

- *NAV of investment funds*: ESMA clarifies that NAVs of investment funds should be considered as input data of benchmarks, but not as indices or benchmarks within the meaning of the Benchmarks Regulation. In this respect, ESMA indicates that, according to Article 3(1)(24) point (b) of the Benchmarks Regulation, the NAVs of investment funds are data that, if used solely or in conjunction with regulated data as a basis to calculate a benchmark, qualify the resulting benchmark as a regulated-data benchmark. The Benchmarks Regulation thereby treats NAVs as a form of input data that is regulated and, consequently, ESMA considers that NAVs should not be themselves considered as indices as defined in Article 3(1)(1) of the Benchmarks Regulation and that investment funds providing NAVs for regulatory purposes (e.g. UCITS) should therefore be considered, from the perspective of the Benchmarks Regulation, providers of potential input for regulated-data benchmarks and not providers of benchmarks. Should an investment fund be acting as contributor by providing input data to an administrator in connection with the determination of one or more indices or benchmarks, it may be subject to the specific rules imposed on contributors by the Benchmarks Regulation.

- *Scope of application of the Benchmark Regulation to financial instruments traded on a systematic internaliser*: ESMA considers that "traded via a systematic internaliser" as referred to in Article 3(1)(16) of the Benchmark Regulation should be read to cover:

  – all instruments described in reference data provided by a systematic internaliser in compliance with Article 27 of Regulation (EU) No 600/2014 (MiFIR) (even if traded outside that systematic internaliser); and

  – all other instruments that are actually traded on a systematic internaliser, regardless of any requirement of the systematic internaliser to provide reference data.

- *Use of benchmarks in a bilateral agreement on exchanged collateral*: ESMA clarifies that the reference to an index in a bilateral agreement on the interest to be paid on exchanged collateral under various OTC derivatives is not equal to the determination of the amount payable under a financial instrument and therefore does not amount to the "use of a benchmark" within the meaning of Article 3(1)(7)(b) of the Benchmarks Regulation.

Securitisation Regulation

Reminder of Securitisation Regulation deadline 1 January 2019

The Securitisation Regulation, which entered into force on 17 January 2018, will apply to securitisation transactions the securities of which are issued on or after 1 January 2019 and to any securitisations that create new securitisation positions on or after 1 January 2019.

Subject matter and scope

As a refresher, the Securitisation Regulation does two main things:

- it repeals the main securitisation provisions in existing sectoral legislation applicable to banks (CRR), insurers (Solvency II) and fund managers (AIFMD) and recasts those provisions in a new, harmonised securitisation regime applicable to all EU securitisations; and

- it introduces a concept of simple, transparent and standardised (or "STS") securitisation that would receive more benign regulatory treatment than other securitisations.

In addition to these two high-level changes, the Securitisation Regulation legislative package introduces a number of other significant changes, which include a ban on resecuritisation, a ban on securitising self-certified residential mortgage loans, formal restrictions on marketing securitisations to retail investors and an – apparently accidental – significant expansion in the scope of securitisation rules applicable to EU banks on a consolidated basis.

Impact on investment fund managers

In the context of the Securitisation Regulation, a "securitisation" is defined to capture any transaction or scheme whereby a credit risk associated with an exposure or pool of exposures is tranched, and the Securitisation Regulation provides for, amongst others, due diligence, risk retention and transparency requirements to be complied with as applicable by the different parties involved in a securitisation, including the originator, sponsor or original lender of the securitisation, the securitisation special purpose vehicle and the institutional investors investing in the securitisation.

UCITS management companies/self-managed investment companies and all AIFMs (regardless whether they are fully authorised AIFMs or so-called small AIFMs and regardless whether they are located in or outside the EU) are mainly captured and impacted by the Securitisation Regulation as they qualify as "institutional investors" within the meaning of Article 2(12) (d), (e) and (f) of the Securitisation Regulation.

In this respect, they are subject to due diligence requirements under the Securitisation Regulation, which requires that institutional investors perform an initial due diligence prior to investing in a securitisation position and that they continue to perform due diligence on an ongoing basis during the period they hold a position in securitisation transactions. In particular, UCITS management companies/self-managed investment companies and AIFMs will have to:

- carry out certain verifications on (i) the originator, sponsor or original lender of the securitisation (also if these are non-EU entities) and on the underlying assets, including verifying that the securitisation is risk retention compliant with the originator retaining not less than 5% in the securitisation and that the assets are originated in accordance with certain credit granting standards, and (ii) the risks involved in relation to the structural characteristics of the securitisation and the underlying exposures;
- establish reliable written monitoring procedures proportionate to the risk profile of the securitisation position and, where relevant, to the institutional investor's trading and non-trading book, in order to monitor the performance of the securitisation position and of the underlying exposures;
- regularly perform stress tests on the cash flows and collateral values supporting the underlying exposures or, where applicable, on the solvency and liquidity of the sponsor;
- ensure internal reporting to the management body of the relevant UCITS management companies/self-managed investment companies and AIFMs so that there are aware of the material risks arising from the securitisation position and so that those risks are adequately managed; and
- be able to demonstrate to their competent authorities, upon request, that they have a comprehensive and thorough understanding of the securitisation position and its underlying exposures and that they have implemented written policies and procedures for the risk management of the securitisation position and for maintaining records of the verifications and due diligence in accordance with the above requirements.

It is worth mentioning that, according to the Securitisation Regulation, if an institutional investor (such as a UCITS management company/self-managed investment company or AIFM) delegates its investment management functions to another institutional investor that might expose it to a securitisation, the relevant institutional investor may instruct the investment manager to fulfil its obligations under the Securitisation Regulation in respect of any exposure to a securitisation arising from those decisions. In this case, the Securitisation Regulation provides that EU Member States are required to ensure that any sanctions for breach are applied to the relevant delegate and not to the appointing institutional investor.

In addition to the above, the Securitisation Regulation also amends Article 50a of the UCITS Directive and Article 17 of the AIFMD to state that where UCITS management companies/self-managed investment companies and AIFMs are exposed to a securitisation that no longer meets the requirements provided for in the Securitisation Regulation, they shall act and take corrective action, if appropriate, in the best interest of the investors in the relevant UCITS or AIF.

Please refer to our last client briefing titled "The EU Securitisation Regulation – Entering A Brave New World" for further details on the Securitisation Regulation.

PRIIPs

ESAs consultation on proposed changes to PRIIPs KID

On 8 November 2018, ESAs issued a consultation paper on targeted amendments to the PRIIPs Delegated Regulation, which are made in the context of the ongoing discussions between the EU co-legislators on the application of the KID by certain investment funds as well as the timing of a wider and more comprehensive review of the PRIIPs framework.

In particular, Section 4 of ESAs' consultation paper discusses the nature of the proposed amendments to the PRIIPs Delegated Regulation and is divided into three main sections:

- section 4.1 includes proposals to change the approach for performance scenarios as well as a description of several other options that were identified;
- section 4.2 presents potential amendments on a limited number of other specific issues based on the information gathered by the ESAs since the implementation of the PRIIPs KID; and
- section 4.3 considers possible changes in view of the exemption set forth in Article 32 of the PRIIPs Regulation from the PRIIPs KID obligations in relation to UCITS and other relevant non-UCITS funds offered to retail investors and the possible use of the PRIIPs KID by UCITS and other relevant non-UCITS funds from 1 January 2020 (it being understood that these funds could be required, in the absence of any legislative changes, to draw up and publish both a PRIIPs KID and UCITS KIID).

The ESAs will take into account the feedback from respondents to its consultation paper (which are due by 6 December 2018) as well as the latest information of the political discussions on the application of the PRIIPs KID by certain investment funds and are expected to develop and submit proposed legislatives changes under form of regulatory technical standards (RTS) by the beginning of 2019. It is then intended that the proposed amendments to the PRIIPs Delegated Regulation could be applicable from 1 January 2020 (subject to the endorsement of the RTS by the EU Commission, following which the EU Parliament and Council would be given the opportunity to express any objections to the RTS).

For more information and resources on PRIIPs, see the PRIIP Topic Guide on the Clifford Chance Financial Markets Toolkit.

MiFID2/MiFIR

Please refer to the Banking, Finance and Capital Markets section of this Luxembourg Legal Update for further details on MiFID2/MiFIR.

AML/CTF

Please refer to the Banking, Finance and Capital Markets section of this Luxembourg Legal Update for further details on AML/CTF.

2. LUXEMBOURG LEGAL AND REGULATORY DEVELOPMENTS

ATAD I

Implementation of ATAD I Law of 21 December 2018

The law of 21 December 2018 implementing the Anti-Tax Avoidance Directive, i.e. Directive 2016/1164 of 12 July 2016 (ATAD I), was published in the Luxembourg official journal *Mémorial A,* on 21 December 2018 and entered into force on 1 January 2019.

This law contains five key measures according to ATAD I, namely (i) the limitation on interest deductibility, (ii) the modification of the exit taxation regime, (iii) the modification of the general anti abuse provisions, (iv) the introduction of controlled foreign company rules, and (v) new provisions on the prevention of hybrid mismatch arrangements.

It is worth mentioning that the law excludes standalone entities (i.e. a taxpayer that is not part of a consolidated group for financial accounting purposes and has no associated enterprise) and financial undertakings regulated by EU directives (such as credit institutions, investment firms, UCITS/AIFs and their UCITS management companies/AIFM, insurance and reinsurance undertakings, etc.) from the scope of the interest limitation rule. Furthermore, loans concluded before 17 June 2016 (provided they are not subsequently modified – in this respect, the scope of acceptable modifications is not clearly defined in the law) and long-term funding on public infrastructure projects in the EU are excluded. It should be assessed on a case-by-case basis whether subsidiaries below the exempt fund also benefit from these exemptions.

The provisions of the law of 21 December 2018 will apply to financial years starting on or after 1 January 2019, except for the provisions regarding exit taxation which will apply as from 1 January 2020.

Please refer to the Tax section of this Luxembourg Legal Update for further details.

AML/CTF

AMLD4 central register of beneficial owners Law of 13 January 2019

The Luxembourg law of 13 January 2019 creating a register of beneficial owners (in abbreviated form referred to as "RBE") for Luxembourg entities registered with the Luxembourg Trade and Company Register has been published in the *Mémorial* A on 15 Janvier 2019 and will enter into force on 1 March 2019.

Please refer to the Corporate section of this Luxembourg Legal Update for further details.

Partial implementation of article 31 AMLD4 Law of 10 August 2018

The law of 10 August 2018 on information to obtain and hold by trustees and transposing partially Article 31 of AMLD 4 was published in the Luxembourg official journal (*Mémorial A)* on 21 August 2018 and entered into force on 25 August 2018.

This law requires, amongst other things, persons acting as fiduciaries (*fiduciaires*) under a fiduciary arrangement to obtain, update and conserve certain information on the beneficial owners of the fiduciary arrangement, including in particular information on the settlor, the fiduciary, the protector (if any), the beneficiaries (or, where relevant the category thereof) as well as information on any other natural person exercising an effective control over the fiduciary structure.

Please refer to the Banking, Finance and Capital Markets section of this Luxembourg Legal Update for further details.

AMLD4 organisation of FIU Law of 10 August 2018

The law of 10 August 2018 organising the financial intelligence unit and amending the code of criminal procedure, the amended law of 7 March 1980 on the judiciary organisation and the AML Law was published in the Luxembourg official journal (*Mémorial A)* on 12 September 2018 and entered into force on 1 November 2018.

In brief, this law restructures the functioning of the Financial Intelligence Unit (FIU), the *Cellule de renseignement financier*, in order to adapt it to the evolving environment and needs. In particular, it provides that the FIU shall be integrated in the office of the General Prosecutor (*procureur general*) (instead of the District Prosecutor). It also reinforces the FIU's independence and operational autonomy and increases the FIU's human resources. Furthermore, the law takes into account the development of international requirements resulting from FATF standards (notably FATF Recommendations 20, 29 and 40) and AMLD 4, with regard to suspicious transaction reporting, FIUs and international cooperation.

Please refer to the Banking, Finance and Capital Markets section of this Luxembourg Legal Update for further details.

CSSF Press Release

FATF risk-based approach guidance for the securities sector

On 31 October 2018, the CSSF published a press release to inform all entities and persons under its AML/CFT supervision (including thus Luxembourg investment funds and their management companies/AIFMs) that the FATF has adopted its revised risk-based approach guidance for the securities sector on 26 October 2018 (FAFT Guidance).

As a reminder, the risk-based approach (RBA) is central to the effective implementation of the so-called "FATF Recommendations", which were adopted in 2012, and this RBA approach is equally reflected in AMLD4 as implemented in the AML Law. It recognises that the risk of money laundering and terrorist financing can vary (depending amongst others on the type of client, business relationship, product or transaction, national context, legal and supervisory framework, etc.) and requires that professionals subject to AML/CTF legislation identify and assess those risks with a view to managing them through appropriate AML/CTF measures, including appropriate CDD measures. Thus, where the money laundering and terrorist financing risk associated with a situation is higher, enhanced CDD measures should be applied to mitigate

this risk. Conversely, where the money laundering and terrorist financing is lower, simplified CDD measures may apply.

The FATF Guidance adopted in October 2018 focuses on the RBA for the securities sector. Its purpose is to provide general guidelines and examples of current practice to assist and support NCAs, providers of securities products and services (including but not limited to investment funds) and intermediaries in the RBA design and implementation of applicable AML/CTF measures. The FAFT Guidance also clarifies that when determining the type and extent of the CDD measures to apply, a securities provider should understand whether its customer is acting on its own behalf or as an intermediary on behalf of its underlying customers, assess the risk of the intermediary and apply the required level of CDD on the intermediary.

In its press release, the CSSF recalls that the FATF Guidance complements the existing Luxembourg legal and regulatory AML/CFT framework, including the AML Law, CSSF Regulation 12-02, and CSSF circulars 18/698 and 17/661, and has thus to be read in conjunction with the latter.

Please refer to the Banking, Finance and Capital Markets section of this Luxembourg Legal Update for further details.

UCITS/AIFs

Luxembourg UCITS investing in China through QFII New CSSF position

The CSSF has softened its position regarding the permitted percentage of investments into Chinese assets by Luxembourg UCITS using the Qualified Foreign Institutional Investor (QFII) quota.

Thus, as it was already the case for Luxembourg UCITS investing in China through the Renminbi Qualified Foreign Institutional Investor (RQFII) quota, the CSSF now also accepts that a Luxembourg UCITS can invest up to 100% (instead of 35%) of its net assets into Chinese markets through the QFII quota.

The suppression by the CSSF of the previous 35% investment limit for Luxembourg UCITS using the QFII quota follows the issuance in June 2018 of the "Regulations on Foreign Exchange Administration for Domestic Securities Investments by Qualified Foreign Institutional Investors" by the State Administration of Foreign Exchange of the People's Republic of China (SAFE), which regulation has reduced the risks likely to limit the overall liquidity of UCITS funds and their capacity to deal with the redemption requests from investors (namely by removing the three-month lock-up period for the repatriation of funds).

Brexit and marketing of Luxembourg funds

FCA opening notification window for UK temporary permissions regime for the marketing of EU27 funds

On 7 January 2019, the FCA opened the notification window for EU27 managers wishing to use the so called "Temporary Permissions Regime" (TPR) to continue to market their funds and sub-funds for a limited period after 29 March 2019 (exit day). EU27 managers have until the end of 28 March 2019 to submit their notification and have been advised by the FCA not to wait for confirmation of whether there is a Brexit transitional period before submitting their notifications.

The TPR will come into force on 29 March 2019 if there is a "no-deal" Brexit and will last for a maximum of three years. UCITS and AIFs (including EuVECAs, EuSEFS, ELTIFs and AIFs authorised as MMFs) which immediately prior to exit day were marketed into the UK under a passport, can use the TPR if they have notified the FCA in the required manner.

Once the notification window closes on 28 March 2019, EU27 managers that have not submitted a notification for a fund will be unable to use the TPR for that fund and will not be able to continue marketing that fund in the UK. The only exception to this is for new sub-funds of EU27 UCITS that are in the TPR on exit day, where it will be possible for new sub-funds to enter the TPR after exit day.

Details of investment funds with temporary permission which will continue to be marketed to retail investors in the UK after exit day will be shown on the FS Register.

Further information on how funds will exit the TPR will be available from the FCA shortly.

Key steps in the notification process may be summarised as follows:

- notifications must be made using the Connect System. A guide to doing this is available from the FCA website;

- notifications will need to be submitted for funds and sub-funds; and
- there is no fee for notifying.

Cross-border provision of services by UCITS Management Companies and AIFMs
New CSSF template forms regarding the free provision of services and the free establishment of a branch

In January 2019, the CSSF published on its website two notification forms intended to Luxembourg UCITS management companies and AIFMs, which wish to notify the CSSF and obtain its prior authorisation in order to provide their services on a cross-border basis either under the freedom to provide services pursuant to Article 18 of the UCITS Directive and/or Article 33 of the AIFMD or through the establishment of a branch under Article 17 of the UCITS Directive and/or Article 33 of the AIFMD.

These template forms are designed to standardise the CSSF authorisation processes and must therefore be filled in with appropriate mandatory information and supporting documents in relation to the relevant UCITS management company/AIFM, its programme of operations, the activities to be carried out on a cross-border basis and the UCITS/AIFs to be managed.

The CSSF has indicated in a press release dated 14 January 2019 that any submitted notification form can be handled only once it is complete, by stressing that any incomplete notification file will lead to delays in launching or completing the examination phase by the CSSF.

Once completed, the notification form and the supporting documents must be submitted to the CSSF by e-mail to the address as specified in the relevant form.

Authorisation and organisation of Luxembourg investment fund managers
CSSF Circular 18/698

On 23 August 2018, the CSSF issued Circular 18/698 concerning the authorisation and organisation of Luxembourg investment fund managers (IFMs), including Luxembourg UCITS management companies and self-managed UCITS as well as Luxembourg AIFMs and self-managed AIFs. The circular also includes provisions applicable to Luxembourg Chapter 16 management companies which are not licensed as AIFMs by the CSSF. It further introduces specific provisions on the fight against money laundering and terrorist financing applicable not only to IFMs, but also to Luxembourg entities carrying out the activity of registrar agent of investment funds.

The main purpose of Circular 18/698 is to clarify, in a single document, the fundamental legal and regulatory conditions applicable to the authorisation, and the maintaining of the licence, of all Luxembourg IFMs by the CSSF, namely in terms of shareholding structure, capital and own funds, management bodies, central administration, internal governance arrangements and delegation of functions. To a large extent, Circular 18/698 codifies the CSSF's existing regulatory practice already complied with by IFMs. However, it also imposes certain new requirements, in particular as regards (i) the maximum number of mandates that can be exercised, and the working time to be spent, by the directors/managers and the conducting officers of Luxembourg IFMs, and (ii) the minimum number of conducting officers and full-time employees required within Luxembourg IFMs.

Circular 18/698 entered into force with immediate effect on 23 August 2018 and repealed Circular 12/546 regarding the authorisation and organisation of Luxembourg UCITS management companies and self-managed UCITS.

Table for listing professional activities and mandates in relation to IFMs under Circular 18/698
New CSSF template forms

In the framework of Circular 18/698 on the authorisation and organisation of Luxembourg IFMs incorporated under Luxembourg law, the CSSF has published a template form on its website to be used in order to list the professional activities and mandates performed by the members of the management body/governing body and by the conducting

officers of IFMs as per the requirements of points 105 and 107 of Circular 18/698. This form must henceforth be used for the purposes of applying the above-mentioned points.

Organisational arrangements of depositaries of Luxembourg Non-UCITS funds

CSSF Circular 18/697

On 23 August 2018, the CSSF issued Circular 18/697 concerning the organisational arrangements of depositaries of Luxembourg investment funds other than those subject to the UCITS depositary regime (Non-UCITS), including:

- Luxembourg "Full Scope AIFs" (i.e. Luxembourg AIFs that are required to be managed by an authorised and fully licensed AIFM under the AIFMD) and Luxembourg Part II UCIs qualifying as Full Scope AIFs that do not allow the marketing of their units to retail investors in Luxembourg, which funds are both subject to the AIFMD depositary regime as set out in the AIFM Law and the AIFMD Delegated Regulation 231/2013;

- Luxembourg Part II UCIs benefiting and making use of the so-called "*de minimis*" or "group" exemptions under the AIFMD and that do not allow the marketing of their units to retail investors in Luxembourg, which funds are subject to a lighter depositary regime as set out in Part II of the UCI Law; and

- Luxembourg SIFs/SICARs non-AIFs and Luxembourg SIFs/SICARs benefiting from and making use of the *de minimis* or group exemptions under the AIFMD, which funds are also subject to a lighter depositary regime as set out in Part I of the SIF Law, respectively Part I of the SICAR Law.

To a large extent, Circular 18/697 mirrors the structure of Circular 16/644 concerning the depositary regime of Luxembourg UCITS. However, certain requirements of Circular 18/697 differ from those of Circular 16/644 to take into account the specifics of the relevant AIFMD depositary regime, respectively the relevant UCI Law, SIF Law or SICAR Law depositary regime, as applicable to the relevant type of Non-UCITS funds concerned.

In brief, Circular 18/697 provides for common clarifications and additional precision in relation to the governance and internal organisation of credit institutions, investment firms and certain other professionals within the financial sector (namely the depositary of assets other than financial instruments) acting as depositaries of Non-UCITS funds regardless of their legal regime. Amongst other things, these clarifications concern:

- The eligibility criteria, the professional and honourability conditions and the technical and human infrastructure requirements to be complied with, as well as the minimum level of information to be submitted to the CSSF, in order for a credit institution, an investment firm or another professional within the financial sector to be approved by the CSSF, in addition to its banking or professional within the financial sector licence, as depositary of any Non-UCITS fund. In this respect, entities already approved as UCITS' or AIFs' depositaries on 1 January 2019 do not need to submit a new application file to the CSSF but must comply with the provisions of Circular 18/697.

- The minimum conditions applicable to the delegation of the safekeeping function, respectively to the outsourcing of only operational tasks, by depositaries of all Non-UCITS funds.

- The information on the depositaries' functions that has to be submitted by all depositaries of Non-UCITS funds to the CSSF on an annual or ongoing basis, it being understood that additional CSSF approval will be required in case of change to any fundamental element of the initial approval of the relevant depositary (such as changes in relation to its delegation and/or outsourcing structure).

Circular 18/697 also contains specific provisions applicable only to depositaries of Non-UCITS funds qualifying as Luxembourg Full Scope AIFs (but not to depositaries of other Non-UCITS funds subject to the UCI Law, SIF Law or SICAR Law depositary regime). These provisions mainly concern the internal procedures and policies to be put in place by these AIFs' depositaries (namely in terms of conflicts of interest, internal control mechanisms and escalation procedures). They also clarify the scope of the safekeeping obligation of AIFs' depositaries (including specific measures to be taken depending on, amongst others, the type of AIFs' assets safekept) and the asset segregation obligation to be complied with throughout the entire depositary's delegation chain (i.e. for the assets held by the depositary, by the first delegate and by any other delegate further down the custody chain).

Circular 18/697 will enter into force on 1 January 2019 and will repeal Chapter E of IML Circular 91/75 (which is, to a large extent, incorporated in Circular 18/697 with regard to Non-UCITS regulated investment funds that are subject to the UCI Law, SIF Law and SICAR Law depositary regime). Circular 18/697 also amends Circular 16/644 to make it applicable, as from 1 January 2019, to Part II UCIs that are allowed to market their units to retail investors in Luxembourg (irrespective of whether these Part II UCIs qualify as Full Scope AIFs or not).

CSSF updated FAQ on AIFM Law

On 14 August 2018, the CSSF published an updated version of its FAQ document on the AIFM Law.

The update concerns question 23b) relating to the impact of the PRIIPs KID Regulation on Luxembourg retail AIFs issuing a UCITS KIID-like document, where the reference to the "1 January 2018" deadline for the issue of such UCITS KIID-like document has been deleted. In practice, this aims at clarifying that Luxembourg retail AIFs created after 1 January 2018 may also benefit from the 31 December 2019 transitional period – during which they may be exempted from the obligation to have a PRIIPs KID – if these AIFs issue a UCITS KIID-like document provided that the following conditions listed in question 23b) of the CSSF FAQ on the AIFM Law are complied with:

- the UCITS KIID-like document to be issued should comply with Articles 159 to 162 of the UCI Law, as well as with the provisions of Commission Regulation (EU) n° 583/2010;
- the UCITS KIID-like document should be issued for each retail share class of the sub-funds of the relevant Luxembourg AIF; and
- the offering document of the Luxembourg AIF in question should be amended in order to reflect the distribution of a UCITS KIID-like document to all retail investors contemplating an investment in the AIF, and also mention that the UCITS KIID-like document shall be published on the website of the registered or authorised AIFM of the Luxembourg AIF and that it shall be available, upon request, in paper form.

CSSF updated FAQ on Non-AIF SIFs and SICARs

On 14 August 2018, the CSSF published an updated version of its FAQ document concerning SIFs and SICARs that do not qualify as AIFs, which makes a cross-reference to question 23b) of the CSSF FAQ document on the AIFM Law. As a result, Non-AIF retail SIFs and SICARs created after 1 January 2018 may also benefit from the 31 December 2019 transitional period – during which they may be exempted from the obligation to have a PRIIPs KID – if these investment vehicles issue a UCITS KIID-like document and that the conditions described by the CSSF in question 23b) of its FAQ document on the AIFM Law are met.

Money Market Funds

CSSF FAQ on MMF Regulation

On 28 August 2018, the CSSF published a new FAQ document concerning the MMF Regulation, which entered into force on 20 July 2017 and most provisions of which are applicable as from 21 July 2018, subject to a grandfathering period running until 21 January 2019 for existing MMFs.

In its FAQ on the MMF Regulation, the CSSF provides some clarifications on the following topics:

- the general provisions governing the MMF Regulation;
- the obligations concerning the investment policy of MMFs;
- the obligations concerning the risk management of MMFs;
- the valuation rules; and
- the transparency requirements.

As a reminder, the CSSF published Press Release 18/24 on 20 July 2018 in relation to the MMF Regulation under which the CSSF has indicated that it is the responsibility of Luxembourg domiciled UCITS and AIFs (as well as non-EU AIFs for which the CSSF will be the competent authority) to assess whether they fall within the scope of the MMF Regulation and to be authorised accordingly by the CSSF as an MMF in accordance with the MMF Regulation. For that purpose, a dedicated form, which is available on the CSSF website, has to be completed and submitted to the CSSF.

In its Press Release 18/24, the CSSF has also indicated that, in accordance with article 5 of the MMF Regulation, an AIF can only be authorised as an MMF if the competent authority of the MMF approves the application submitted by an AIFM that has already been duly authorised under the AIFMD to manage an MMF that is an AIF. On that basis, Luxembourg domiciled AIFMs will have to be authorised by the CSSF before being able to manage MMFs that are an AIF.

For further information about the MMF Regulation, please refer to the July 2017 edition of our Legal Update.

EMIR

CSSF EMIR Questionnaire

In September 2018, the CSSF issued a revised version of its EMIR questionnaire (initially published in August 2018) which must be completed and filed with the CSSF by Luxembourg management companies subject to Chapter 15 or Chapter 16 of the UCI Law and by Luxembourg AIFMs in order to be authorised by the CSSF.

This questionnaire aims at collecting various information on, amongst others, the EMIR classification of the relevant management company/AIFM and the use of derivative contracts by that management company/AIFM for its own account (for hedging purposes only) or by the funds/sub-funds under management in order to check compliance with EMIR obligations in terms of risk mitigation, reporting and clearing. In the case of changes in either the EMIR classification or use of derivative contracts or organisational model, the EMIR Questionnaire shall be updated and resubmitted to the CSSF without undue delay.

Please also refer to the Banking, Finance and Capital Markets section of this Luxembourg Legal Update for further details on EMIR in general.

Others

CSSF Annual Report

In August 2018, the CSSF published its activity report for 2017. In addition to statistical information concerning the Luxembourg financial sector and information on legal and regulatory developments in the last 12 months, the report contains information on the CSSF's exercise of its regulatory powers.

ALFI Updated Q&A on PRIIPs KID

On 19 October 2018, ALFI published the fourth issue of its Q&A document on the PRIIPs KID, which contains ALFI's answers to questions covering many aspects of the PRIIPs KID Regulation and the PRIIPs Delegated Regulation written from the perspective of investment funds (including UCITS and AIFs as PRIIPs, or where these funds form part of multi-option PRIIPs).

The new issue of ALFI's Q&A follows the adoption of the Luxembourg law of 17 April 2018 implementing the PRIIPs Regulation in the Luxembourg legal framework and amending the Luxembourg UCI Law. The Q&A has also been amended in accordance with the changes made by the CSSF in question 23b) of its FAQ document on the AIFM Law concerning the possibility for Luxembourg retail AIFs created after 1 January 2018 to also benefit from the 31 December 2019 transitional period if they issue a UCITS KIID-like document and that the conditions described by the CSSF in question 23b) of its FAQ document on the AIFM Law are met.

ALFI Updated Q&A on GDPR

On 19 October 2018, ALFI published a revised version of its Q&A document on GDPR, which contains the ALFI GDPR Working Group's updated answers to questions about EU data protection that are written from a perspective of investment funds.

EMPLOYMENT LAW

LAW OF 10 AUGUST 2018

The law of 10 August 2018 amending (i) the Luxembourg Labour Code; and (ii) the Luxembourg Social Security Code relating to the maintaining of the employment contract and the gradual resumption of work in case of long term incapacity (the "**Law**") was published in the Luxembourg Official Journal on 21 August 2018.

The key aspects of the Law are the following:

- Right to sickness benefits: increase of the 52-week limit to 78 weeks

  Currently, after 52 weeks of incapacity to work over a 104-week reference period, the employee's right to sickness benefits expires (article 14 §2 of the Social Security Code) and the employment contract is terminated by operation of law (article L. 125-4 §2 of the Labour Code).

  With the Law, the duration of the right to sickness benefits paid by the *Caisse Nationale de Santé* will be extended from 52 weeks to 78 weeks, over a 104-week reference period, as of 1 January 2019 (the 52-week threshold remains applicable until 31 December 2018).

  Hence, the automatic termination of the employment contract is also deferred to 78 weeks.

  The reference period of 104 weeks, as well as the process for calculating the periods of incapacity to work during the reference period will remain unchanged.

- Continuation of the salary by the employer: increase of the reference period

  In case of incapacity to work of an employee, the employer must continue to pay his/her salary and other benefits resulting from the employment contract until the end of the calendar month in which the 77th day of incapacity to work occurs, which is currently calculated over a 12-month reference period (article L. 121-6 (3) §2 of the Labour Code). In this framework, employers contribute to the *Mutualité des employeurs* and are reimbursed up to 80% of the salary paid to their employees during the period of continuation of the salary, which extends in average over a period of 13 weeks per calendar year, during which the *Caisse Nationale de Santé* does not intervene. In view of a harmonisation of – on one hand – the 78-week new limit in the framework of the sickness benefit and – on the other hand – the reference period in the framework of continuation of the salary, it has been decided to expand the reference period from the current 12 months (52 weeks) to 18 months (78 weeks). With the increase of the reference period, the related employer costs are reduced, and these costs are transferred to the *Caisse Nationale de Santé*.

  The increase of the reference period from 12 months to 18 months will apply as of 1st January 2019.

  In order for the employers to fully benefit from this measure, the total rate of the employers' global contribution to the *Mutualité des employeurs* has been reduced from 1.95% to 1.85%, as of 1 January 2019 (article 56 of the Social Security Code).

- Introduction of a gradual resumption of work for therapeutic reasons (*reprise progressive du travail pour raisons thérapeutiques*)

  The Law has introduced the possibility of a gradual resumption of work for therapeutic reasons, if the return to work and the work carried out are recognised as helping the employee to improve his/her health situation (article 14 §1 of the Social Security Code, as amended).

  Such request must be submitted to the CNS by the employee, based on a medical certificate issued by the attending physician (*médecin traitant*) and in agreement with the employer.

  In order to benefit from this provision, the employee must have been unable to work for at least one month during the three months preceding his/her request (new article 14*bis* of the Social Security Code).

  The gradual resumption of work for therapeutic reasons is granted by a prior decision of the CNS, taken based on a reasoned opinion rendered by the *Contrôle Médical de la Sécurité Sociale*.

  Unlike part-time work for therapeutic reasons – which is governed by the regulations of the CNS and under which half of the work attendance is compensated by the employer – gradual resumption of work is fully

assimilated to a sick leave period and is booked as such.

During a gradual resumption of work period, the employee continues to receive his/her sickness benefits from the CNS and remains covered by accident insurance. According to the preparatory works to the law, this new measure triggers a transfer of the employer costs to the CNS of approximatively EUR 9 million.

NEWSLETTER – GRAND-DUCAL REGULATION OF 11 SEPTEMBER 2018

The grand-ducal regulation of 11 September 2018 on the electoral process for the appointment of staff representatives (the "**Regulation**"), which repeals the grand-ducal regulation of 21 September 1979, came into effect on 22 September 2018. Its provisions will be applicable for the upcoming social elections.

The Regulation specifies the practical aspects of the upcoming electoral process for the designation of the staff delegation on 12 March 2019. The main changes are the following:

- Ballot organisation

  According to the Regulation, when staff delegations are fully renewed between 1 February and 31 March of each fifth civil year, the Labour Inspectorate (*Inspection du Travail et des Mines*) sends an identification code to the concerned companies, by registered letter, no later than two months prior to the election date.

  This identification code allows the companies to use an interactive secured government platform concerning electoral process for the designation of staff delegates.

  When the staff delegations are organised outside of the above-mentioned period, the identification code is transmitted to the companies within 15 days of their request.

- Drawing up of electoral lists and public notices

  The employer must, at least one month prior to the elections, provide the employees with a public notice, indicating the place and date of the election and the time on which the process shall start and end.

  The public notice shall indicate the number of employees to take into consideration when calculating the number of staff employed in the company and shall specify (i) the number of employees working at least 16 hours per week; (ii) the number of employees working less than 16 hours per week and the total amount of the weekly working time indicated in their contracts; and (iii) the number of employees on fixed-term employment contracts and other employees of the company together with the hours of their presence in the company during the 12 months preceding the mandatory date for establishing the electoral lists.

  The employer must organise the elections so that each employee may materially be in a position to go to the polls during his/her working hours, without losing his/her remuneration.

  The electoral process begins with the public notice.

  No later than the day on which the public notice is provided to the employees, the employer must display a public notice for employees, explaining that any complaint made against the lists submitted must be presented to the employer and also the Labour Inspectorate, for information purposes, within three working days of submission.

  On the same day, the employer must, via the electronic platform, submit the public notice as well as the public complaints notice to the Labour and Mines Inspectorate.

  On the day the lists are submitted, the employer must, via the electronic platform, send to the Labour and Mines Inspectorate the public notice produced one month before the elections as well as any public notice regarding complaints.

  For each ballot, the employer draws up an alphabetical list of the employees qualifying for active and passive votes, to be disclosed three weeks prior to the elections.

- Presenting the candidates

  The list of candidates or isolated candidatures must be presented to the employer at the latest on the 15th

working calendar day preceding the day of the opening of the poll, at 6 p.m.

Each list presented by a labour union justifying general national representation or representation in a particularly important sector of the economy, may name one observer per polling station, who will be able to attend the electoral process to make sure it is conducted properly.

The employer may refuse to register candidates of a list or isolated candidates who do not comply with the requirements of the Regulation. If none of the candidates of the list complies with the prescriptions, the employer refuses to register the list.

- Composition and publication of candidate lists

  According to the Regulation, the employer may publish the lists of candidates electronically.

  The employer must, four days prior to the election at the latest, register valid candidatures on the electronic platform, with information on the candidate.

  On the day on which the candidatures are registered, the Labour Inspectorate transmits to the employer, via the electronic platform, a notice detailing information about the lists of valid candidates and the voting instructions for the electors, to be displayed by the employer.

  In case of postal votes (*vote par correspondence*), valid candidatures must be displayed for the 10 calendar days before the ballot.

- Polling stations

  The Regulation stipulates that, on the day of the ballot, one main polling station and, if applicable, additional polling stations, each one with a chairman (the employer or its delegate for the main polling station and its representative for the additional polling stations) and two assessors, must be set up in the Grand Duchy of Luxembourg. The polling station or stations must be fully manned for the duration of the election process.

- Postal votes

  In case of postal votes (*vote par correspondence*), the employer must, no later than the 10th day prior to the election, transmit, by registered mail, to the employees not present in the company on the day of the election for professional reasons, for sickness, accident at work, maternity leave or holiday, the ballot forms along with the instructions for the elections.

- Common provisions

  The Regulation specifies that a report on the electoral process and on the election results is drawn up by the main polling station and, if applicable, by the additional polling stations.

  This report, which is signed by the chairman and the assessors, must contain certain information, detailed in the Regulation. A copy of the report must be passed on to any labour union that presented a list.

  The chairman of the main polling station must then (i) register the results of the ballot on the electronic platform, including the information contained in the report form drawn up by the main polling station and, if applicable, in the reports from the additional polling stations; (ii) draw up, via the electronic platform, a general census report on the election process and the results of the election; and (iii) publish the results of the ballot via the electronic platform, as well as the report, on the day of the elections.

  During the three days following the election, the names of the elected and unelected candidates, as well as the number of votes obtained, must be displayed in the company.

GOVERNMENT'S COALITION PROGRAMME 2018-2023

On 3 December 2018, leaders of the three political parties in coalition (Liberal, Labour and Greens), forming Luxembourg's new government, signed a 246-page coalition agreement, setting out their joint policies for the next five years.

Labour-related proposals are set out in the agreement in broad and brief terms.

Key measures announced include the following:

- Holidays and salaries

The minimum statutory leave will be increased from 25 days to 26 days per year and Europe Day, celebrated on 9 May, will be declared as statutory holiday in Luxembourg.

The net salary earned by beneficiaries of the social minimum salary (SMS) will be increased by EUR 100. The government commits to obtain the required legislative changes as soon as possible, notably in the tax field. The first revalorisation leading to such announced increase occurred on as of 1 January 2019, with the increase of the SMS for full-time non-qualified workers from EUR 2,048.54 to EUR 2,071.10.

Also, the salary indexation mechanism will be maintained.

- Flexibilisation of working relationships

  The parental leave reform (December 2016) will be analysed in the framework of a study sponsored by the Minister of Family and of Integration, in order to establish a first assessment and to proceed with potential adjustments. Negotiations will be carried on with the employer and worker representatives on the possibilities and conditions of a flexibilisation of working time, in order to meet the needs of businesses and to facilitate the conciliation between the private and professional life of employees.

  The introduction of a right to part-time employment for family reasons will be discussed, in order to grant parents – under certain conditions, on demand and with the approval of the employer – a reduction of their working time. During this predefined period and for the non-worked hours, the State will pay the contributions due to the respective insurance-pension plans. Such a right will be limited in time and limited to firms employing at least 50 employees.

  Draft legislation on the right to a combination of partial retirement and part-time work will be submitted to the social partners.

  It will also be suggested to review the resort to temporary employment (*intérim*) and its form, and to clarify the possibilities to resort to employment contracts for a definite period.

- Health and safety in the workplace

  The bill amending certain terms of reclassification will be finalised at the Parliament (*Chambre des Députés*) as soon as possible.

  The bill on age policy (*politique des âges*) will be revised, notably concerning the work conditions and the promotion of health in the workplace.

  A bill on the prevention of moral harassment will be introduced "in due time".

  The principle of "disconnection" will be established and will be set up by collective labour agreements, taking into account the industry particularities.

- Professional training

  The creation of a personal training account – introducing a "training cheque" system allowing employees to freely attend training – will be studied.

- Worker mobility

  In terms of telework, the interprofessional agreement of 2003 will have to be assessed and the extension of teleworking will be promoted, while verifying certain aspects in terms of labour law and health in the workplace.

  The bill n°7319 relating to the reform of the Labour and Mine Inspectorate (ITM) – which contains specific provisions in terms of secondment (administrative simplification) – will rapidly be submitted for the Parliament's vote.

DATA PROTECTION

NATIONAL UPDATE

Law of 1 August 2018

On 12 September 2017, the Luxembourg Government lodged a bill (n°7184) aiming at implementing and complementing the GDPR and repealing the Luxembourg law dated 2 August 2002 on the protection of persons with regard to the processing of personal data. After lengthy negotiations, the law of 1 August 2018 was finally adopted by the Luxembourg Parliament on 26 July 2018 and published in the Luxembourg Official Gazette on 16 August 2018 (the "**Law of 2018**"). The Law of 2018 entered into force on 20 August 2018.

General provisions of the law of 2018

While the Law of 2018 ensures the implementation of the GDPR in the Luxembourg legal framework, it is limited to completing the EU framework through national provisions in relation to:

- the Luxembourg data protection authority, the *Commission Nationale de la Protection des Données* ("**CNPD**"). The Law regulates the structure, functioning and powers of the CNPD (powers which are necessary for the exercise of its mission under the GDPR), confirms its independence as regulator and expands its sanction powers (see below); as well as

- specific areas where the GDPR allows for local deviations, including in particular provisions on (i) the conciliation of personal data protection rules and the freedom of expression and information, (ii) the safeguards and derogations relating to the processing for archiving purposes in the public interest, scientific or historical research purposes, or statistical purposes and (iii) the prohibition of processing genetic data for the purposes of exercising the data controller's own rights in the field of labour and insurance law. The Law of 2018 also amends article L.261-1 of the Luxembourg Labour Code ("**LC**") which regulates the monitoring of employees at the workplace (see below).

Specific focus on monitoring at work

Processing for monitoring purposes is strictly regulated by Article L.261-1 of the LC.

Until the entry into application of the GDPR and of the Law of 2018, the monitoring of employees in the workplace was subject to a prior authorisation of the CNPD and was only allowed under the very strict conditions foreseen in Article L.261-1 LC.

With the entry into application of the GDPR and the removal of the notification/authorisation, the Luxembourg legislator had to decide whether to maintain or not the very strict regime of Article L.261-1 LC.

After lengthy debates, Article L.261-1 LC has been amended by the Law of 2018.

(New) Article L.261-1 LC foresees that:

Employers may put in place processing for monitoring purposes at the workplace if one of the legitimated bases as per Article 6.1 a) to f) of the GDPR can be relied upon. Note that the GDPR rules on the necessity to conduct a data privacy impact assessment (with a possible consultation with the CNPD) shall also be taken into account.

Prior to any processing for monitoring purposes, employers must inform: the employees concerned, as well as the Joint works council ("*comité mixte d'entreprise*") or failing that the staff delegation ("*délégation du personnel*"), or failing that, the Labour Inspectorate ("*Inspection du Travail et des Mines*"). Employers must therefore provide a detailed description of the purpose of the intended processing, as well as the implementation methods of the monitoring system and, where appropriate, the period or the criteria used to determine that period for which the data will be stored, as well as a formal commitment by the employer not to use the data collected for a purpose other than that explicitly foreseen in the prior information.

When the processing for monitoring purposes is carried out: (i) for the safety and health of the employees; or (ii) to control, on a temporary basis, the productivity or performance of an employee, if such processing is the only mean of determining the exact salary of the employee; or (iii) if it is carried out in the context of a flexible working hours organisation in accordance with the law, the employers will need to comply, unless if the processing is legally required, with the provisions of the LC concerning the compulsory implication of the staff representatives on certain decisions taken by the employers (with a power of co-decision where said co-decision power is applicable).

In all cases of monitoring, the staff delegation or, failing it the employees, may request an advisory opinion of the CNPD in relation to the compliance of the envisaged monitoring. This request must be lodged with the CNPD within 15 days after the prior information. The CNPD will need to render its opinion within one month of the request. Such request has a suspensive effect. Note that this suspensive effect is *a priori* also applicable where the implementation of the processing is legally required.

Finally, the employees concerned have the right to lodge a complaint with the CNPD. Such a complaint is neither a serious reason nor a legitimate ground for dismissal.

Pursuant to article L. 261-2 LC, processing of personal data without complying with the provisions of article L.261-1 LC is a criminal offence sanctioned by criminal penalties (imprisonment of eight days to one year and fines ranging from EUR 251 to EUR 125,000). The judge may also order the discontinuance of the processing on pain of a penalty the amount of which is determined by the court.

Finally, it should be kept in mind that in addition to the GDPR and the LC, the privacy of employees at their workplace is governed by other rules relating to the secrecy of communication and the right to privacy, in particular: the Luxembourg Constitution, the law of 11 August 1982 on the protection of the intimacy of private life, and Article 8 (1) of the Convention for the Protection of Human Rights and Fundamental Freedoms to which direct effect in the Luxembourg legal system has been recognised.

Strengthened Sanctions

Since the entry into force of the Law of 2018, the CNPD has seen its sanctioning power increased in the event of an infringement of the Law of 2018 and/or the GDPR.

The CNPD may indeed impose administrative fines against data controllers and data processors. Depending on the nature of the breach, there are two level of fines:

- administrative fines of level 1: up to EUR 10 million, or in the case of an undertaking, up to 2% of the total worldwide annual turnover of the preceding financial year, whichever is higher,

- administrative fines of level 2: up to EUR 20 million, or in the case of an undertaking, up to 4% of the total worldwide annual turnover of the preceding financial year, whichever is higher. Level 2 fines are applicable to what is considered to be major infringements of the GDPR (e.g. violation of the data subjects' rights).

The CNPD may also impose penalty payments (*astreintes*) to data controllers and data processors, amounting to up to 5% of their average daily turnover achieved during the previous financial year to constrain such stakeholders to communicate specific information to the CNPD or to comply with a corrective measure prescribed by the CNPD.

The CNPD may order, at the expense of the sanctioned person, the publication of its decisions (with the exception of the decisions regarding periodic penalty payments) provided that all remedies have been exhausted and that the publication does not cause disproportionate harm to the parties involved.

Last but not least, for those who knowingly prevent or impede, in whatever manner, the accomplishment of the mission of the CNPD, they may be punished by an imprisonment of eight days to one year and/or be given a fine of EUR 251 to EUR 125,000.

Bill N°7373

A new bill n°7373 (the "**Bill 7373**") was issued in October 2018 by the Luxembourg Government, which aims at limiting certain rights foreseen in the GDPR and imposing specific obligations on the CSSF, the CAA and the FGDL.

Under the Bill 7373, the CSSF, the CAA and the FGDL will have the possibility to limit certain rights of the persons concerned by a data processing (including the right not to provide information on their data processing to these data subjects) under a certain number of conditions.

The Bill is at the early stage of the legislative process.

CNPD

During the summer, the CNPD has published guidelines in relation to:

- the exercise of the right to one's image (*droit à l'image*) and the protection of the image as personal data. The CNPD provides answers to two main questions in these guidelines: "What should be taken into consideration when taking pictures?" and "What precautions should be taken when publishing photos?", and points out that a double consent (when taking the

photo and then when publishing the photo) must be obtained from the person concerned.

- the use of video surveillance. If it is no longer necessary since the entry into application of the GDPR to request the prior authorisation from the CNPD to install a video surveillance system, data controllers are now subject to other obligations, such as to keep a record of processing activities (hence, the processing of personal data resulting from video surveillance should be included in the record, as required by Article 30 of the GDPR) and to inform adequately the data subjects (for example, by affixing signs and pictograms to areas subject to video surveillance, in addition to publishing a more detailed information notice on the company's website).

On 28 September 2018, the CNPD published its first report on the personal data breaches which have occurred in Luxembourg between 25 May and 27 September 2018. It results from this study that the origin from most of the data breaches is internal to the company (i.e. accidental disclosure of personal data, for example where an employee sends an e-mail containing personal data on customers to the wrong recipient).

As already mentioned in the Legal Update of July 2018, the CNPD had launched a public consultation on its "GDPR Certified Assurance Report based Processing Activities (GDPR-CARPA)".

Two reports have been published following this public consultation:

- a report which provides clarification on the certification criteria (i.e. for data controllers and data processors wishing to have some of their data processing certified), and

- a report on certification mechanism which provides guidance on the accreditation criteria to be met by an organisation wishing to act as a certification body.

INTERNATIONAL UPDATE

Press release, guidelines, and opinions of the EDPB

As mentioned in the Legal Update of July 2018, with the GDPR entering into application as of 25 May 2018, the Article 29 Working Party has ceased to exist and has been replaced by the European Data Protection Board ("**EDPB**").

* On 26 September 2018, the EDPB published on its website a press release which summarises the content of their third plenary session. Following this press release, the EDPB published an opinion on the proposals of the European Commission to have new rules to make it easier for police and judicial authorities to obtain electronic evidence, such as e-mails or documents located on the cloud, when they investigate, prosecute and convict criminals and terrorists (also called the E-evidence proposals).

As foreseen in Article 35 of the GDPR, national supervisory authorities must create a list which contains the types of operations that are "likely to result in a high risk to the rights and freedoms of natural persons" and would therefore require a Data Protection Impact Assessment (DPIA). To date, the EDPB has received 27 national lists and has rendered an opinion on each of these lists (including the Luxembourg list).

On 16 November 2018, the EDPB issued draft guidelines on the territorial scope of the GDPR, which are opened to public consultation. In these guidelines, the EDPB sets out and clarifies the criteria for determining the application of the territorial scope of the GDPR, that is to say (i) the establishment criterion as foreseen in article 3 (1) of the GPDR, and (ii) the "targeting" criterion as foreseen " in article 3 (2) of the GDPR. Indications are also given on the process for the designation of a representative in the EU, as well as its responsibilities and obligations. These clarifications are more than welcome as they will help companies located outside the EU to assess whether (and how) they need to comply with the GDPR.

Following their fifth plenary session held on 4-5 December 2018, the EDPB published an opinion on the EU-Japan adequacy decision. The objective of this opinion is to assess whether the European Commission, which drafted the EU-Japan adequacy decision, has ensured that sufficient guarantees are in place for an adequate level of data protection for individuals in the Japanese legal framework. The EDPB came to the conclusion that a number of concerns should be addressed and called for a couple of further clarifications.

On 14 December 2018, the EDPB made available on its website the final version of its guidelines on the accreditation of certification bodies under Article 43 of the GDPR. The aim of these guidelines is to help Member

States, supervisory authorities and national accreditation bodies to establish a consistent and harmonised baseline for the accreditation of certification bodies that issue certification in accordance with the GDPR. These guidelines have been completed by an annex (on the additional requirements to be established by the supervisory authorities in relation to the accreditation of certification bodies), which is subject to public consultation.

CJEU case-law

New judgments of the Court of Justice of the European Union ("**CJEU**")

* On 10 July 2018, the CJEU rendered a judgment in Case C-25/17 following a request for a preliminary ruling brought by the Data Protection Supervisor in Finland concerning the legality of a decision of the Data Protection Board (in Finland) prohibiting the Jehovah's Witnesses religious community from collecting or processing personal data in the course of their door-to-door preaching unless the requirements of Finnish legislation relating to the processing of personal data are observed.

First, the CJEU examined whether the collection and processing of personal data by members of a religious community in the course of door-to-door preaching falls in the scope of the GDPR.

According to article 3 (2) of Directive 95/46 (now article 2 (2) of the GDPR), a processing activity which can be considered as "an activity of the State or of State authorities" or as "the processing of personal data by a natural person in the course of a purely personal or household entity" falls outside of the scope of the European data protection rules.

In this case, the CJEU held that this processing activity is not to be considered as "an activity of the State or of State authorities" or as "the processing of personal data by a natural person in the course of a purely personal or household entity" and therefore, that it is subject to the European data protection rules.

The CJEU then confirmed that the concept of "filing system" does not necessary need to include data sheets, specific lists or other search methods. This concept covers therefore a "simple" set of personal data consisting of the names and addresses and other information concerning the persons contacted, if those data are structured according to specific criteria which, in practice, enable them to be easily retrieved for subsequent use.

The CJEU concludes that a religious community is to be considered as a data controller, jointly with its members who engage in preaching, for the processing of personal data carried out by the latter in the context of door-to-door preaching organised, coordinated and encouraged by that community, without it being necessary that the community has access to those data, or to establish that that community has given its members written guidelines or instructions in relation to the data processing.

This case law evidences that only very little data processing fall outside the scope of the GDPR.

On 2 October 2018, the CJEU rendered a judgement in case C-207/16 in relation to the interpretation of Article 15(1) of the Directive 2002/58 on privacy and electronic communications (otherwise known as the "**ePrivacy Directive**").

Under Article 15 (1) of the ePrivacy Directive, Member States are allowed to adopt legislative measures to restrict the scope of the right to the confidentiality of communications when such restriction constitutes "a necessary, appropriate and proportionate measure within a democratic society to safeguard national security, defence, public security, and the prevention, investigation, detection and prosecution of criminal offences or of unauthorised use of the electronic communication system".

In this case, an investigating magistrate refused to grant the police access to personal data retained by providers of electronic communications services on the ground that the national law limited the communication of the data retained by said services providers to "serious offences", while under the Spanish Criminal Code, serious offences are punishable by a term of imprisonment of more than five years, whereas the facts at issue in the main proceedings did not appear to constitute such an offence.

The national court asked therefore whether public authorities' access to data for the purpose of identifying the owners of SIM cards activated with a stolen mobile telephone entails interference with their fundamental rights, which is sufficiently serious to entail that access being limited, in the area of prevention, investigation, detection and prosecution of criminal offences, to the objective of fighting serious crime and, if so, by reference

to which criteria the seriousness of the offence at issue must be assessed.

The CJEU held that the public authorities' access to data does constitute an interference with the fundamental rights to privacy and personal data protection. However, as provided in Article 15 (1) of the ePrivacy Directive, access to these data may be granted to the public authorities in case of "investigation, detection and prosecution of criminal offences". It is therefore not mentioned that it is limited to "serious offences".

The CJEU however recalled that when there is a "serious interference" with the fundamental rights of a person (for example where public authorities' access to personal data retained by providers of electronic communications services would allow precise conclusions to be drawn concerning the private lives of the persons concerned), the justification to such "serious" interference is limited to, in areas of prevention, investigation, detection and prosecution of criminal offences, the objective of fighting crime which must also be defined as "serious".

Since the purpose of the request at issue was to identify the owners of SIM cards activated over a period of 12 days with the IMEI code of the stolen mobile telephone (i.e. only the telephone numbers corresponding to those SIM cards and the data relating to the identity of the owners of those cards were needed) and did not concern the communications carried out with the stolen mobile telephone or its location, it did not allow precise conclusions to be drawn concerning the private lives of the persons concerned. Therefore, access to data in this case cannot be defined as a "serious" interference with the fundamental rights of the persons, and the interference is therefore capable of being justified by the objective of preventing, investigating, detecting and prosecuting "criminal offences" generally, without it being necessary that those offences be defined as "serious".

On 19 December 2018, Advocate General Michal Bobek has issued an opinion in Case C-40/17 Fashion ID GmbH & Co. KG v Verbraucherzentrale NRW eV.

The case concerns an online retailer, Fashion ID GmbH & Co. KG, which embedded a plug-in in its website: Facebook's "Like" button. As a result, when a user lands on Fashion ID's website, information about that user's IP address and browser string is transferred to Facebook (Ireland). That transfer of personal information (user's IP address) occurs automatically when Fashion ID's website has loaded, whether or not the user has clicked on the "Like" button and whether or not he has a Facebook account.

Verbraucherzentrale NRW e.V, a German consumer protection association, brought legal proceedings against Fashion ID claiming that the use of that plug-in resulted in a breach of data protection legislation (i.e. Directive 95/46/EC which has now been superseded by the GDPR).

In his opinion, Advocate General Michal Bobek proposes to the Court of Justice to rule, first, that the Directive 95/46/EC does not preclude national legislation which grants public-service associations standing to commence legal proceedings against the alleged infringer of data protection legislation to safeguard the interests of consumers.

The Advocate General then suggests that the operator of a website (i.e. Fashion ID) which has embedded on its website a third-party plugin such as the Facebook "Like" button, should be considered as a joint controller, along with such third party (i.e. Facebook Ireland). However, that controller's (joint) responsibility should be limited to those operations for which it effectively co-decides on the means and purposes of the processing of the personal data.

The Advocate General further proposes that the Court rules that the legitimate interests of both joint controllers (i.e. Fashion ID and Facebook Ireland) should be taken into account and balanced against the rights of the data subjects (i.e. the users of Fashion ID's website).

The Advocate General is also of the opinion that the operator of the website (i.e. Fashion ID) should provide to the website users the required minimum information as foreseen in the data protection legislation. In addition, he considers that the consent of the website user, where required, has to be given to the operator of the website which has embedded the content of a third party.

The CJEU has started its deliberations in the case and will render a judgment at a later date. We will thus have to wait to see if the CJEU's decision will (or not) diverge from the Advocate General's Opinion.

ECHR caselaw

New judgment of the European Court of Human Rights ("**ECHR**")

As mentioned in the Legal Update of March 2018, the ECHR held an hearing on 7 November 2017 in relation to the following cases: Big Brother Watch and Others v. the United Kingdom (no. 58170/13), Bureau of Investigative Journalism and Alice Ross v. the United Kingdom (no. 62322/14), and 10 Human Rights Organisations and Others v. the United Kingdom (no. 24960/15) concerning the bulk interception of external communications by the United Kingdom intelligence services, and the sharing of intelligence between the United Kingdom ("**UK**") and the United States of America.

On 13 September 2018, the ECHR finally rendered its judgment.

As a reminder, the three complaints were brought by journalists and non-governmental organisations which denounced violations of Articles 8 (right to respect for private and family life) and 10 (freedom of expression) of the European Convention on Human Rights (the "**Convention**") by the UK intelligence services with the use of three different surveillance regimes: (1) the bulk interception of communications; (2) intelligence sharing with foreign governments; and (3) the obtaining of communications data from communications service providers.

As a summary, the UK bulk interception regime and the UK regime for obtaining communications data from communications service providers were found by the ECHR to be in violation with Articles 8 and 10 of the Convention.

However, the impact of this caselaw should be mitigated since both regimes were based on the "Regulation of Investigatory Powers Act 2000", which has been significantly amended by a new law "the Investigatory Powers Act 2016", which came fully into force in 2018. Since the "new law" was not in force at the time the complaints were brought, the ECHR only considered the law in force and not the "new law" in its assessment.

REAL ESTATE

Law of 18 July 2018 modifying, amongst others, the law of 2 September 2011 regulating access to certain professions

The law of 18 July 2018 amends the law of 2 September 2011 regulating access to the craft, retail and industrial professions, as well as certain liberal professions.

The main purpose of the new law is to attract foreign investments, enhance entrepreneurship and encourage administrative simplification.

Pursuing the goal of administrative simplification, and in order to promote entrepreneurship, the law of 18 July 2018 abolishes the minimum professional prerequisites to obtain a business licence for general commercial activities.

Furthermore, the activities of adviser (*conseil*) and economic adviser (*conseil économique*) are no longer regulated, and a business licence for general commercial activities is now sufficient to carry out such advisory activities. In fact, the main reasons for their existence were no longer relevant, and seemed to violate Directive 2006/123/EC of 12 December 2006 on services in the internal market. The legislation on the use of academic titles is now deemed sufficient for the protection of clients.

Finally, the new law abolishes the special authorisation required for the creation, extension or taking over of big retail stores exceeding 400 square metres. In fact, the European Commission had considered Luxembourg's legislation (that went back to 1934) to be the most restrictive of the European Union Member States in this matter.

TAX

INTERNATIONAL LEGISLATION

EU Council proposal introducing quick-fixes to the VAT system

ECOFIN Council meeting of 2 October 2018

On 2 October 2018, the Economic and Financial Affairs ("**ECOFIN**") Council adopted measures to strengthen administrative cooperation and improve the prevention of VAT fraud. As a result, the ECOFIN Council published a proposal introducing a set of adjustments ("**quick-fixes**") to the EU's VAT rules. The latter are aimed at fixing specific issues pending the introduction of a new VAT system and are applicable as of 1 January 2020. They contain the following:

- the proposals suggest a simplified and uniform treatment for call-off stock arrangements, where a vendor transfers stock to a warehouse at the disposal of a known acquirer in another member state;
- the VAT identification number of the customer becomes a substantive condition for exempting the intra-EU supply of goods;
- the proposals establish uniform criteria to enhance legal certainty in determining the VAT treatment of chain transactions; and
- a common framework is proposed for the documentary evidence required to claim a VAT exemption for intra-EU supplies of goods.

Publication of the directive amending VAT rates for electronic publications

Council Directive (EU) 2018/1713 of 6 November 2018 amending Directive 2006/112/EC as regards VAT rates applicable to books, newspapers and periodicals was published in the Official Journal of the European Union. The Directive entered into force on 4 December 2018.

The provisions of the Directive allow Member States to apply reduced (i.e. minimum 5%), super-reduced (i.e. below 5%) or zero VAT rates to electronic publications. These rates were already applicable to physical publications such as books, newspapers and periodicals, whereas electronic publications were still taxed at the standard VAT rate (minimum 15%).

Please note that the new rules will apply until a definitive VAT system is introduced in the European Union.

National legislation

New Luxembourg law implementing the Anti-Tax Avoidance Directive ("**ATAD**")

Law of 21 December 2018 implementing the ATAD into Luxembourg domestic tax law

On 21 December 2018, the Luxembourg Government passed bill of law N°7318 dated 19 June 2018 on the transposition of the EU Anti-Tax Avoidance Directive into Luxembourg domestic tax law (the "**ATAD Law**").

The ATAD Law provides for five major action points, namely (i) limitation on interest deductibility, (ii) exit taxation, (iii) general anti-abuse provisions, (iv) controlled foreign company rules and (v) provisions on the prevention of hybrid mismatch arrangements. These provisions will apply to financial years starting on or after 1 January 2019, except for the provisions on exit taxation which will apply as from 1 January 2020.

Please note that the initial bill of law was amended by the government in early December; since then, no further amendments have been made. The main changes can be summarised as follows:

- As regards the interest limitation rule, the initial bill of law provided for a grandfathering provision, excluding from the interest limitation rule loans concluded before 17 June 2016, but not any modifications made to such loans after this date. The governmental amendments revert to the exact wording of the directive and clarify that such exclusion (i.e. the grandfathering provision) does not extend to subsequent modifications of such loans;

  Please also note that the tax unity option offered by the directive has not been included in the ATAD law. However, the Luxembourg Government has announced that the ATAD Law should be amended in early 2019, allowing taxpayers that are in a tax unity to apply the limitation on interest deductibility rule on a consolidated basis. Exceeding borrowing costs may then be calculated at the level of the group and comprise the results of all tax unity members.

- The CFC rules broadly provide that income not distributed by a CFC will have to be included in the

Luxembourg tax base of the Luxembourg taxpayer. The governmental amendments clarify that income which is not distributed by the CFC to the Luxembourg taxpayer itself, but to a subsidiary of the Luxembourg taxpayer, would also need to be included in the Luxembourg tax base; and

- As regards hybrid mismatches, the term "operating expenses" was replaced by the term "payment" concerning the "deduction without inclusion" rule. This rule allows the state that operates a deduction of a "payment" to deny such deduction if the recipient's state of residence does not include such payment in the recipient's tax base.

New Luxembourg VAT group regime

Law of 6 August 2018 introducing the VAT group regime into the Luxembourg VAT law

The Luxembourg Parliament adopted law dated 6 August 2018 introducing the VAT group regime into domestic law.

The new VAT group regime is applicable since 31 July 2018 and allows companies to form a VAT group. The VAT group is considered as a sole taxable person for VAT purposes if three conditions are met at once: the entities forming the group are established in Luxembourg and (i) directly or indirectly bound by a financial link (e.g. depending on the participation general control over group members); (ii) are economically linked (e.g. depending on the activities performed); and (iii) are organisationally linked.

Should these cumulatively applying conditions be met, transactions between the group members will be disregarded for VAT purposes. The VAT group itself will be considered as a new taxable person with a single VAT number assigned to the group as a whole and serving the group in its dealings with the tax administration. Members of the group will receive an auxiliary VAT number to be used in relation with contractual parties. Supplies rendered by one or more members to third parties (and *vice versa*) are considered to be made to the group itself.

Members must participate in the VAT group for at least two years (renewable if the conditions are met) and the group cannot be dissolved prior to the expiration of the two-year period.

Access to anti-money laundering information by tax authorities

Law of 1 August 2018 implementing Directive (UE) 2016/2258

Luxembourg implemented the amending Directive (UE) 2016/2258 (DAC5) via the law of 1 August 2018 allowing Luxembourg tax authorities access to anti-money laundering information on taxpayers.

Tax authorities (i.e. both the direct and indirect tax authorities, as well as the customs and excise department) will have access, upon demand, to anti-money laundering information, procedures and mechanisms, such as information on the identity of beneficial owners. This will allow tax authorities to properly perform their duty of monitoring compliance by financial institutions with the due diligence procedures set out in Directive 2011/16 (DAC1).

New bill of law approving the multilateral instrument

Bill of law N°7333 dated 3 July 2018 approving the multilateral instrument ("MLI")

On 3 July 2018, the Luxembourg Government released bill of law N°7333 approving the MLI. The bill of law reiterates the reserves and notifications made by Luxembourg and submitted to the OECD in June 2017.

The MLI will implement tax treaty related measures to prevent base erosion and profit shifting (BEPS) and will automatically impact all 83 double tax treaties concluded by Luxembourg, without any bilateral negotiations.

The MLI will enter into force the first day following a three-month waiting period after ratification by the Luxembourg Parliament (date not yet known). However, the entry into force will only occur between Luxembourg and countries that have also ratified the LMI (currently Australia, Austria, France, the Isle of Man, Israel, Japan, Jersey, Lithuania, New Zealand, Poland, Serbia, Slovak Republic, Slovenia, Sweden and the United Kingdom) and for which the three-month waiting period has also elapsed.

The entry into effect of the relevant provisions depends on the nature of the tax. For withholding taxes, the entry into effect of the MLI will be on or after the first day of the next calendar that begins on or after the entry into force. For all other taxes, the provisions apply to taxable periods starting on or after the expiration of six months from the date of entry into force (i.e. if Luxembourg ratifies the MLI in

December 2018, the MLI will enter into force on 1 April 2019 and its provisions will be applicable as of 1 October 2019).

Double tax treaties

Luxembourg has a total of 83 double tax treaties ("**DTT**") currently in force, most of them being in line with the OECD exchange of information standards. In addition, negotiations with other states are ongoing to either amend existing DTTs or to adopt new DTTs.

Double tax treaty between Luxembourg and the Republic of Botswana

On 19 September 2018, Luxembourg and the Republic of Botswana signed a DTT, the details of which have not been released yet.

Double tax treaty between Luxembourg and Kosovo

On 16 November 2018, the Council of Government of Luxembourg has approved the bill of law for the adoption of the Kosovo-Luxembourg DTT signed on 8 December 2017.

CIRCULARS/REGULATORY DEVELOPMENTS

Circular on optional reduction of net wealth tax

Circular N°47quarter dated 17 May 2018

On 17 May 2018, the Luxembourg tax authorities released circular I.Fort. n°47quarter (the "**Circular**") on the optional net wealth tax ("**NWT**") reduction applicable as of 1 January 2017. Luxembourg entities that wish to book a reduction of their NWT liability in year N, may do so under two conditions. They would need to allocate a special reserve in the accounts of year N which equals five times the amount of the NWT reduction and they would need to keep such reserve for five years. It should be noted that the special reserve must be booked in the account of year N as the administrative tolerance of one additional year to book the special reserve no longer applies.

Unlike the former regime, the new regime of optional NWT reduction provides that the amount of NWT reduced in year N is limited to the amount of corporate income tax due in year N-1. The reduction can also not exceed the difference between the NWT assessed based on the unitary value and the minimum net wealth tax after reduction.

In case the special reserve is not kept for the entire five-year period, the taxpayer loses the NWT reduction and the NWT due for the subsequent year is increased by a fifth of the special NWT reserve. In case of a restructuring in the sense of Articles 170 and 172 of the Luxembourg income tax law before the end of the five-year term, the NWT reduction could be maintained under the condition that the special reserve is taken over by the beneficiary, irrespective of its tax residency.

The request for an optional NWT reduction applying in year N must be made in the corporate tax returns of year N, on 31 December at the latest, by allocating the (carried-forward) results or available reserves to the special reserve.

Circular on the determination of input VAT deduction of partial taxpayers

Circular Letter N°765-1 dated 11 June 2018

Circular N°765 of 2013 on the calculation method of the deductible input VAT was only applicable to mixed taxpayers, i.e. persons carrying out VAT-able as well as exempt activities and where only the VAT-able activity gives rise to a deduction right.

Unlike mixed taxpayers who carry out activities that are in any case in the scope of Luxembourg VAT, taxpayers with a partially VAT-able activity carry out economic activities that are in scope as well as non-economic activities that are out of scope of Luxembourg VAT. The activities that are out of Luxembourg VAT scope do consequently not give rise to an input VAT deduction right.

The new circular N°765-1 extends the application of the previous circular N°765 to companies having a partially VAT-able activity and renders the direct allocation method applicable to these taxpayers. Under this method, every expense should be allocated according to its nature and purpose to the taxpayer's economic or non-economic activities. Expenses in relation to activities that are out of scope of Luxembourg VAT should be disregarded for VAT deduction purposes.

Circular on the valuation of in-kind benefits made available by employers to their employees

Circular N°104/1 dated 16 July 2018

On 16 July 2018, the Luxembourg tax authorities issued circular LIR N° 104/1 (the "**Circular**") on the assessment

of benefits in kind granted by an employer to its employees, replacing circular LIR N° 104/1 of 1 September 2015 with immediate effect. Generally, benefits in kind (such as accommodation and company cars) are assessed at their market value, i.e. the price that the employee would have paid had he obtained the latter benefit himself, but the tax authorities also accept a flat-rate valuation of the benefit.

The Circular maintains the flat-rate valuation for housing provided by an employer to its employee but clarifies the new valuation rules introduced by the tax reform of 1 January 2017 regarding company cars made available by the employer, both for business and private use.

In this respect, the value of a company car will no longer be solely assessed on the car's investment value, but also on its CO2 emissions level (g/km) and the car's motorisation. The previous circular set the monthly taxable value of a car at 1.5% of the car's purchase price, irrespective of the emission category and engine type. In order to incentivise the purchase of eco-friendly cars, the monthly benefit in kind will now vary according to whether the car is petrol-driven, diesel-driven or electric. For leasing contracts entered into prior to 1 January 2017, the rate of 1.5% will apply until the expiry of the contract.

CASE LAW

Definition of the event entitling the taxpayer to claim a withholding tax refund

Administrative Court of Luxembourg, 20 September 2018, Case N°39950C

On 20 September 2018, the Administrative Court of Luxembourg ruled on the definition of the event which entitles the taxpayer to claim a refund for withholding taxes levied on capital income (such as dividends).

A UK company had to pay Luxembourg withholding tax on dividends received in December 2012. The company submitted a request for a withholding tax refund with the Luxembourg tax authorities on 12 December 2014 as it was bound to fall under the Luxembourg participation exemption regime.

The refund claim was dismissed by the tax authorities since it was brought after the deadline had expired. The latter deadline is provided by §152(3) *Abgabenordnung* ("**AO**") pursuant to which entitlement to a withholding tax refund expires if the refund claim has not been submitted before the end of the calendar year following the occurrence of the facts giving rise to taxation.

According to the tax authorities, the facts giving rise to a refund entitlement consist in the remittance of tax by the taxpayer, in the case at hand, such tax remittance had occurred at the end of 2012. Consequently, the refund claim should have been lodged no later than one calendar year after such date, i.e. on 31 December 2013 at the latest.

On appeal, the company argued that the facts entitling it to submit a refund claim in the sense of §152(3) AO should be construed as consisting in the day on which the conditions to benefit from the participation exemption regime are fulfilled. In the case at hand, the missing condition consisted in the 12-month holding period not being fully elapsed before the refund claim had been lodged and consequently, the above-mentioned day would be the day where the 12-months holding period had elapsed.

The Administrative Court of Luxembourg endorsed the company's reasoning and overturned the position of the Luxembourg tax authorities. In case of a refund claim lodged by a company fulfilling all the conditions of the participation exemption regime, except for the 12-month holding period, the Court considered that the event entitling the company to claim a refund consists in the expiration of the 12-month holding period. In this respect, the deadline for introducing a withholding tax refund claim should be analysed in the light of §152(3) AO but with reference to Article 149(4a) of the Luxembourg income tax law.

Preliminary questions raised before the European Court of Justice regarding a horizontal tax unity

Administrative Court of Luxembourg, 29 November 2018, Case N°40632C

The administrative Court of Luxembourg has raised three preliminary questions before the European Court of Justice ("**ECJ**") regarding the compatibility of the previous fiscal unity regime as provided for by Article 164*bis* of the Luxembourg income tax law ("**LITL**") with the principle of freedom of establishment as laid down in the European treaties.

In the present case, several Luxembourg resident subsidiaries of a French resident parent company formed a fiscal unity in the sense of Article 164*bis* of the LITL but wanted to extend such fiscal unity to include two sister companies directly held by the French resident parent company for fiscal years 2013 and 2014.

The Luxembourg tax authorities denied the request claiming that it would result in the formation of a horizontal fiscal unity between subsidiaries that had no common Luxembourg resident parent company but, instead, a French parent company. It should be noted that before 2015, Luxembourg tax law did not provide for a horizontal fiscal unity.

The first preliminary question concerns the compatibility of Article 164*bis* of the LITL with the principle of freedom of establishment as it was in force before 2015.

Should the ECJ confirm the non-conformity of Article 164*bis* of the LITL with European law, the second preliminary question raised by the administrative Court of Luxembourg concerns the strict division between the vertical and horizontal fiscal unity regimes and the fact that a vertical fiscal unity must come to an end before the start of a horizontal fiscal unity regime by the same members.

The third preliminary question concerns the compatibility of the deadline within which the fiscal unity request must be filed (i.e. before the end of the year for which the fiscal unity request is made) with the principle of freedom of establishment.

Luxembourg to appeal EU Commission's decision in the Engie case

Luxembourg press release dated 31 August 2018

The Luxembourg Government has decided to appeal the decision in the Engie case (case number SA.44888) in which the EU Commission considered that Luxembourg gave state aid to Engie (former GDF Suez) by providing in with undue advantages in 2008 and 2010 amounting to EUR 120 million.

In a press release dated 31 August 2018, the Luxembourg Government announced that it will appeal the decision on the grounds that no state aid was granted back then, as Engie was taxed according to the tax rules in force during the relevant periods of time.

Commission rules Luxembourg did not give state aid to McDonald's

Commission press release dated 19 September 2018

The Commission has found that the non-taxation of certain McDonald's profits in Luxembourg did not lead to illegal state aid, as it is in line with national tax laws and the Luxembourg-US double tax treaty (the "**Treaty**").

In the case at hand, McDonald's Europe Franchising ("**McDonald's**"), a Luxembourg tax resident, acquired franchise rights from its parent company, McDonald's Corporation in the US, which it allocated to its US branch and in return for which it received royalties. A first ruling obtained in March 2009 confirmed that the profits of McDonald's would be taxable in the US according to the Treaty, provided that McDonald's proves to the Luxembourg tax authorities that the royalties transferred to the US are subject to tax there. A second ruling obtained in September 2009 relieved McDonald's from proving that the royalties were subject to tax in the US.

The Commission concluded that the Luxembourg tax authorities did not provide selective treatment to McDonald's but that double non-taxation resulted from a mismatch between US and Luxembourg tax laws, hence no state aid was granted by the Luxembourg tax authorities.

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

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 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

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: Proposal for a Directive of the European Parliament and of the Council 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 Directive 2009/101/EC

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

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

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

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

CCCTB: Common Consolidated Corporate Tax Base

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

CGFS: Committee on the Global Financial System

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

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

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 insolvency hierarchy

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 relevance

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

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

Data Protection Law: Luxembourg law of 2 August 2002 (as amended) on the protection of persons with respect to the processing of personal data

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

EBA: European Banking Authority

ECB: European Central Bank

ECJ: European Court of Justice

EIOPA: European Insurance and Occupational Pensions Authority

ESAs: EBA, EIOPA and ESMA

ESMA: European Securities and Markets Authority

ESRB: European Systemic Risk Board

ETDs: Exchange Traded Derivatives

ETFs: Exchange Traded Funds

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

GDPR: Regulation (EU) 2016/679 of 27 April 2016 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)

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

NCAs: National Competent Authorities

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

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

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 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

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 insurance captive companies covered by article 43, point 8 and reinsurance captive companies covered by article 43, point 9 of the law dated 7 December 2015 on the insurance sector

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

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

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

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

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

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: Law of 19 May 2006 on public takeover bids

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 Directive: Directive 2009/65/EC of 13 July 2009 of the EU Parliament and of the Council on the coordination 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

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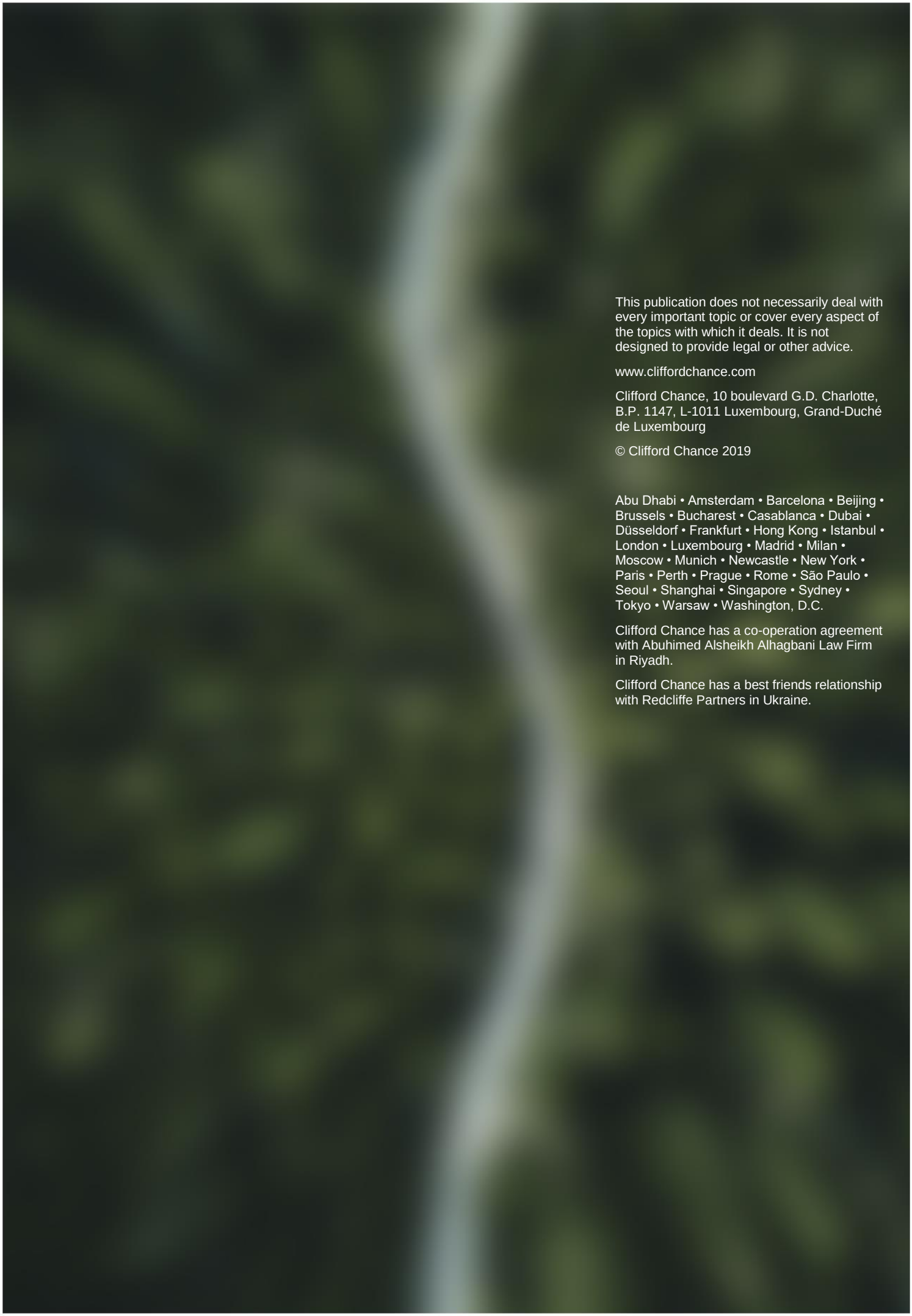

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